

IMS-FOR-027 GENERAL TERMS AND CONDITIONS

1) Agreement

a) AGREEMENT BETWEEN YOU AND US

- i. This Agreement comprises:
 - 1) any Plant Hire Out Agreement Details intended for the Hirer;
 - 2) these Terms;
 - 3) the Special Conditions herein;
 - 4) any Annexures;
 - 5) our Terms of Trade; and
 - 6) any Credit Facility Terms (if applicable);

and is the entire Agreement (“Agreement”) between the parties and unless the parties agree in writing, this Agreement supersedes and takes precedence over all prior negotiations and communications between the parties.

- ii. These Terms govern the rights and obligations of Enviro and the Hirer under the Agreement. Capitalised terms have the meanings given in this Agreement or these Terms, as applicable.
- iii. If there is a conflict between these Terms and any other document or statement forming part of the Agreement, then it is expressly agreed the order of precedence will be (in descending order of precedence):
 - 1) any Credit Facility Terms (if applicable);
 - 2) the Special Conditions herein;
 - 3) these Terms;
 - 4) any Annexures; and
 - 5) our Terms of Trade.
- iv. The Hirer shall be deemed to have accepted the Agreement on the earlier of the Hirer or the Hirer’s Employees:
 - 1) signing the Plant Hire Out Agreement Details; or
 - 2) receiving the Equipment.
- v. Item 7 in the Plant Hire Out Agreement Details sets out the agreed responsibilities for specified obligations relating to the Equipment and any Operator and who is to be charged for the reasonable cost of performing those specified obligations. If a particular specified obligation in Item 7 is not completed as the responsibility of Enviro it is deemed to be the responsibility of the Hirer.
- vi. No change in the terms of the Agreement shall be effective unless agreed in writing by Enviro.
- vii. By entering into this Agreement, the parties warrant that they are solvent and able to meet the obligations under this Agreement. The Hirer warrants and covenants that they are able to remunerate Enviro for the Equipment as set out in this Agreement.

b) DEFINITIONS

In this Agreement:

- i) “**Claim**” means any claim, demand, proceeding, appeal, penalty, fine, right or action of every nature whatsoever (whether actual, commenced, anticipated, threatened or potential) whether in contract, tort, equity or under any other principle of law or statute of any jurisdiction that a party may have now or in the future against the other party arising out of or in connection with this Agreement.
- ii) “**Costs**” means costs, expenses, charges, duties and other expenses including, but not limited to:
 - (1) the costs and commission payable to a mercantile agent or a debt collector to pursue or recover outstanding monies pursuant to this Agreement and the liability to pay this commission arises at the time the recovery is placed in the hands of the debt collector; and
 - (2) legal costs on the indemnity basis,
- iii) “**Delivery Address**” means the delivery address specified in the Plant Hire Out Agreement Details.
- iv) “**Demobilisation**” has the meaning in subclause 4(d) and Item 6 of the Plant Hire Out Agreement Details.
- v) “**Demobilisation Cost**” means the demobilisation cost as set out in the Plant Hire Out Agreement Details.
- vi) “**Employees**” of any party means that party’s employees, directors, officers, contractors and agents or any of them;
- vii) “**Equipment**” means any and all plant and equipment (including attachments and accessories) as specified in the Plant Hire Out Agreement Details or which has been hired by the Hirer from Enviro.
- viii) “**Estimated Hire Finish Date**” means the estimated hire finish date as specified in the Plant Hire Out Agreement Details.
- ix) “**GST**” has the same meaning as in the GST Legislation.
- x) “**GST Legislation**” means *A New Tax System (Goods and Services) Tax Act 1999* (Cth), any associated regulations and associated legislation.
- xi) “**Head Contract**” means the contract between the Principal and Enviro in respect of the project.
- xii) “**Hire Charge**” means the fees for the hire of the Equipment including the Hire Rates.

- xiii) **"Hire Period"** has the meaning in clause 3.
- xiv) **"Hire Rates"** means the Working Rate, Standby Rate and rate for Enviro to supply the Operator as set out in the Plant Hire Out Agreement Details.
- xv) **"Hire Start Date and Time"** means the hire start date and time specified in the Plant Hire Out Agreement Details.
- xvi) **"Insolvency Event"** means the point in time when a party is Insolvent and is deemed to include when:
- (1) a party informs the other party in writing or creditors generally that it is insolvent or financially unable to proceed with this Agreement;
 - (2) execution is levied against a party by a creditor;
 - (3) notice is given of a meeting of creditors with the view to a party entering into a deed of company arrangement;
 - (4) a controller or administrator is appointed;
 - (5) an application is made to the court for a party's winding up and not stayed within 14 days;
 - (6) a winding up order is made against a party;
 - (7) a party resolves to be wound up voluntarily (except for a member's voluntary winding up); or
 - (8) a mortgagee of any of a party's property takes possession of the property.
- xvii) **"Insolvent"** has the meaning given to it under the *Corporations Act 2001* (Cth).
- xviii) **"Law"** means any and all laws, by-laws, regulations or ordinances of the Commonwealth of Australia, a State or Territory of Australia, any other relevant jurisdiction or any statutory authority.
- xix) **"Long Distance Location"** is a location in excess of 50km from Enviro's plant yard, being 14B Hurley Street, Canning Vale, WA 6155.
- xx) **"Loss"** includes fees, actions, damages, penalties, taxes, levies, Costs, expenses or loss of any kind whatsoever and however arising, including (without limitation), any indirect or consequential losses, loss of profits or prospective profits, loss of revenue, loss of goodwill or increased costs of workings.
- xxi) **"Mobilisation"** has the meaning in subclause 4(a).
- xxii) **"Mobilisation Cost"** means the mobilisation cost as set out in the Plant Hire Out Agreement Details.
- xxiii) **"Enviro," "we," "us," and "our"** means Enviro Plant Hire Pty Ltd ACN 639 553 674, each Related Entity of Enviro and their Employees, agents, contractors, successors, transferees and assigns.
- xxiv) **"Notice"** has the meaning in clause 30.
- xxv) **"Ordinary wear and tear"** means the normal deterioration of the Equipment caused by ordinary and reasonable use taking into account the hire location and ground conditions specified in the Plant Hire Out Agreement Details.
- xxvi) **"Operator"** means the Operator supplied by Enviro as set out in the Plant Hire Out Agreement Details.
- xxvii) **"Hirer"** means the hirer specified in the Plant Hire Out Agreement Details and their Employees, agent and contractors.
- xxviii) **"Plant Hire Out Agreement Details"** means the plant hire details form made by Enviro and the Hirer.
- xxix) **"Principal"** means the person that Enviro contracts with under a Head Contract in respect of the project.
- xxx) **"Public Holidays"** means a public holiday in Western Australia.
- xxxi) **"Related Entity"** has the meaning given to that term in the *Corporations Act 2001* (Cth).
- xxxii) **"Safety Legislation"** means any:
- (1) legislation applicable to work health and safety, mining safety, petroleum and gas safety, environment protection and dangerous goods safety;
 - (2) regulations made under that legislation; and
 - (3) any directions on safety or notices issued by any relevant authority or any code of practice or compliance code appropriate or relevant to the works undertaken by Enviro, as amended from time to time.
- xxxiii) **"Safety Requirement"** means any direction, instruction, request or requirement relevant or necessary for compliance by Enviro or the Hirer with Safety Legislation, and including any such matter of which the Hirer has been informed by Enviro orally or in writing.
- xxxiv) **"Special Conditions"** means the special conditions as set out in the Annexure 1.
- xxxv) **"Standby Rate"** is the standby rate as set out in the Plant Hire Out Agreement Details and shall apply when the Equipment is in full operating condition as required by this Agreement and available for use by the Hirer but the Hirer does not require the use of the Equipment at that time.
- xxxvi) **"Terms"** means these terms and conditions.
- xxxvii) **"Working Rate"** is the working rate as set out in the Plant Hire Out Agreement Details and shall apply at such times as the Equipment is fully operational as required under this Agreement and, where applicable, is being operated by the Operator as directed the Hirer.
- xxxviii) **"Damage Waiver"** has the meaning as described in clause 34.
- xxxix) **"Hirer," "you," "your"** means the party named in the Plant Hire Out Agreement Details as the Hirer, or, absent a named party, means the person, firm, organisation, partnership, corporation, trustee of a trust or other entity hiring Equipment from us.

c) INTERPRETATION

- i. words importing the singular include the plural and vice versa;
- ii. an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate any governmental agency;
- iii. a reference to:

- 1) a document (including this Agreement) includes all amendments or supplements to, or replacements or notations of, that document;
 - 2) a party includes that party's personal representatives, Related Entities (as that term is defined in the Corporations Act), employees, agents, contractors, executors, administrators, successors and permitted assigns; and
 - 3) a statute or statutory provision includes any statutory provision which supplements, amends, extends, consolidates or replaces the same or which has been supplemented, amended, extended consolidated or replaced by the same and any orders, regulations, instruments or other subordinate legislation made thereunder;
- iv. an obligation, representation or warranty on the part of two or more persons binds them jointly and severally;
 - v. an obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally; and
 - vi. "including" means "including, but not limited to" and "includes" has a corresponding meaning.

2) Hire of Equipment & Operator

- a) In accordance with the terms of this Agreement, Enviro shall hire the Equipment to the Hirer.
- b) The Equipment hired under this Agreement shall comply with the Plant Hire Out Agreement Details.
- c) Where in the Plant Hire Out Agreement Details Enviro is to supply an Operator, the Operator will be under the Hirer's direction and control during the Hire Period and will comply with the Hirer's reasonable directions.
- d) While the Operator is working under the direction and control of the Hirer in accordance with subclause 2(c), Enviro will not seek to direct or supervise any of the work undertaken by the Operator.
- e) Enviro will not be liable to the Hirer for any Loss incurred by the Hirer for any acts or omissions of the Operator (including by their negligence) whilst the Operator is working under the direction or control of the Hirer during the Hire Period.
- f) Where in the Plant Hire Out Agreement Details Enviro is to supply an Operator, the Hirer shall have the responsibility to ensure that no other person is allowed to operate the Equipment without Enviro's prior written consent.

3) Hire Period

- a) The Hire Period commences when the earlier of, either:
 - i. The Hirer takes possession of the Equipment; OR
 - ii. Where in the Plant Hire Out Agreement Details Enviro are required to mobilise and demobilise the Equipment, the Hire Start Date and Time as specified in Item 4 of the Plant Hire Out Agreement Details.
- b) The Hire Period is for an indefinite term and ends when the Equipment is returned to Enviro's custody and possession.
- c) The Hire Period includes weekends and Public Holidays.
- d) The Hire Period can only be changed if the Hirer requests a variation and Enviro agree to that variation in writing, or in accordance with clause 8.

4) Mobilisation and Demobilisation

- a) On the Hire Start Date and Time, if specified in the Plant Hire Out Agreement Details that Enviro are to mobilise and demobilise the Equipment, Enviro shall deliver the Equipment to the delivery address stated on the Plant Hire Out Agreement Details ("Delivery Address") as agreed with the Hirer. Transit to and from, loading and off-loading the Equipment at the Delivery Address shall be in accordance with the Plant Hire Out Agreement Details. Delivery shall be deemed to have occurred when the Equipment has been delivered in accordance with this clause and is operational and the Hirer's representative has accepted receipt of the Equipment ("Mobilisation").
- b) On delivery, Enviro and the Hirer shall jointly inspect the Equipment and record the details of the inspection. Acceptance of the Equipment by the Hirer shall constitute acknowledgment by the Hirer that the Equipment is in good working order.
- c) If the Hirer collects or receives Equipment and finds it is broken, damaged and/or defective, the Hirer must notify Enviro within 24 hours of collecting or receiving the Equipment. If the Hirer does not notify Enviro within this time period, Enviro are entitled to assume that the Equipment collected or received by the Hirer was in good order and condition.
- d) At the end of the Hire Period, the Hirer must make the Equipment available to Enviro at the Delivery Address ("Demobilisation"). Enviro and the Hirer shall jointly inspect the Equipment and record the details of the inspection. Any latent damage, defects, abrasion or other impairments caused as a result of the Hirer's acts or omissions not identified during this inspection shall not relieve the Hirer of its liabilities to Enviro.
- e) During the Hire Period and any extension thereof, the Equipment shall be at the risk of the Hirer. For the sake of clarity, the Equipment shall be at the risk of the Hirer commencing on Mobilisation.

5) Industrial Relations

The Hirer must:

- a) comply with all requirements of applicable governmental authorities, industrial agreements and industrial relations requirements applicable to the hire of the Equipment and any Operators under this Agreement; and
- b) keep Enviro fully informed at all times of all industrial relations matters relevant to the hire of the Equipment and any Operators.

6) Environmental, Safety and Health

The Hirer must:

- a) comply with all Safety Legislations and Safety Requirements and any other environmental health and safety laws, policies, lawful requirements, approvals, licences and permits of governmental authorities including Safety Legislation; and
- b) avoid creating any nuisance and dangers to health and safety.

7) Suspension

- a) Enviro may at any time suspend the Hirer's rights to use the Equipment by providing Notice to the Hirer pursuant to clause 30 of these Terms.
- b) The Hirer must comply with any direction issued by Enviro pursuant to this clause 7 and recommence use of the Equipment only when directed to do so by Enviro.

8) Changes

Enviro has the right at any time to make changes to the Agreement, including the quantities or type of the Equipment or the period of hire ("Agreement Variation"). If Enviro issues an Agreement Variation with changes to the quantity or type of the Equipment ordered or the period of hire, the Hirer must promptly notify Enviro whether it can reasonably comply with the Agreement Variation. The parties shall then agree a reasonable variation to the Hire Rates, Mobilisation Costs and Demobilisation Costs in respect of the changes to the Agreement. No cause of action for breach of contract or other right of action shall arise or be instituted by the Hirer as a result of Enviro changing the Agreement and the only remedy for the Hirer will be in accordance with this Agreement for that part of the order that has been completed and claim an adjustment under this clause. Any claim by the Hirer for adjustment under this clause must be made within two (2) weeks from the date of issue of the Agreement Variation.

9) Hire Rates and Costs

- a) The Hirer shall pay Enviro for the hire of the Equipment in accordance with the Hire Rates as specified in the Plant Hire Out Agreement Details.
- b) The Hirer shall pay Enviro the additional charges as set out in the Plant Hire Out Agreement Details should the Equipment be used in excess of eight (8) hours per day.
- c) Enviro reserve the right to charge for a minimum period of hire for certain types of Equipment.
- d) Where stated in the Plant Hire Out Agreement Details that Enviro are required to deliver and / or collect the Equipment, the Hirer shall pay Enviro the cost associated with the delivery and / or collection in accordance with the Plant Hire Out Agreement Details.
- e) Except in the circumstances set out in subclause 9(f), the Hirer will be charged for the hire of the Equipment for the full Hire Period. For the avoidance of doubt, the Hirer will continue to incur hire and other charges after the Expected Off Hire Date as set out in the Plant Hire Out Agreement Details.
- f) Should the Hirer request that Enviro deliver and collect the Equipment and Enviro have agreed to do so, Hire Charges will commence from the time the Equipment leaves Enviro's premises and continue until the date Enviro confirms receiving the Hirer's notification that the Hirer no longer requires the Equipment and that the Equipment is available for collection. For the avoidance of doubt, the Expected Off Hire Date is not considered to be the Hirer's notice that the Equipment is available for collection.
- g) The Mobilisation Cost specified in the Plant Hire Out Agreement Details is a lump sum amount payable to Enviro in respect of the initial delivery of the Equipment and unloading at the Delivery Address.
- h) The Demobilisation Cost specified in the Plant Hire Out Agreement Details is a lump sum amount payable to Enviro in respect of the final removal of the Equipment from the Delivery Address.

10) Other Charges

In addition to the Hire Charges, the Hirer agrees that the Hirer will be required to pay:

- a) for any consumables, fuel or trade materials Enviro supply to the Hirer;
- b) if the Hirer does not return the Equipment in clean and good working condition, the cost of cleaning and repairing of the Equipment plus 15%;
- c) any stamp duty or GST arising out of this Agreement;
- d) any other applicable levies, fines, penalties and any other government charges arising out of the Hirer's use of the Equipment;
- e) any charges for payment made by credit card; and
- f) If the Hirer requests operational guidance or training on the use of the Equipment and Enviro's staff are available to provide this, the cost for the provision of these services at rates determined by Enviro.

11) Payment

The Hirer must pay to Enviro the Hire Charges in the following manner:

- a) Enviro shall submit an invoice to the Hirer at the end of each month detailing the Hire Charges for that month;
- b) The Hirer must pay Enviro all of the Hire Charges including and fees, charges or costs within 30 days of the date of the invoice;
- c) If the Hirer does not pay the invoice in full by the 30th day after the date of the invoice, Enviro may charge, in addition to any other costs recoverable under this Agreement:
 - i. interest on the total outstanding balance calculated daily at a rate of 10% per annum; and
 - ii. any Costs.

12) GST

The parties by signing this Agreement are deemed to have agreed that the following provisions of this clause govern their arrangements in connection with GST:

- a) For the purposes of this clause any terms defined by the GST Act shall have the meaning given to those terms under the GST Act.
- b) The parties acknowledge that all amounts payable pursuant to this Agreement are expressed to be exclusive of GST.

13) Obligations of the Hirer

- a) This Agreement is personal to the Hirer and therefore the Hirer must not allow nor authorise any other party or entity to use, cross-hire or have possession of the Equipment at any time, unless agreed by Enviro in writing.
- b) Prior to accepting the Equipment, the Hirer agrees that they have satisfied themselves with the suitability, condition and fitness for purpose of the Equipment for the job the Hirer intends to use the Equipment for. Subject to subclauses 20(b) and 20(c), Enviro make no representations and gives no guarantee or warranty that the Equipment is suitable for the Hirer's intended purpose.
- c) The Hirer and its employees, agents, and subcontractors are obliged to undertake all of the following:
 - i. Operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the Equipment manufacturer's instructions;
 - ii. Ensure persons operating the Equipment are suitably trained on its safe and proper use, qualified to use the Equipment and where necessary, hold a current Licence or ticket necessary to use the Equipment;
 - iii. Wear suitable clothing and protective equipment when operating the Equipment as required or recommended by Enviro or the manufacturer;
 - iv. Ensure that no persons operating the Equipment are under the influence of drugs or alcohol;
 - v. Conduct a job safety analysis prior to using the Equipment;
 - vi. Ensure that no persons carry illegal, prohibited or dangerous substances in or on the Equipment; and
 - vii. Display all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Equipment.
- d) It is necessary for the Hirer to take care of the Equipment during the Hire Period. The Hirer must:
 - i. Clean, fuel, lubricate and keep the Equipment in good condition and in accordance with the Equipment manufacturer's specifications and Enviro's instructions at the Hirer's expense;
 - ii. Not in any way alter, modify, tamper with, damage or repair the Equipment without the prior written consent of Enviro; and
 - iii. Not deface, remove, vary or erase any identifying marks, plate, number, notices, or safety information, on the Equipment.
- e) At all times during the Hire Period, the Hirer must store the Equipment safely and securely and protected from theft, seizure, loss or damage.
- f) The Hirer must at any time allow Enviro to enter the Hirer's premises and inspect the Equipment during the Hire Period. The Hirer may request that a joint inspection of the Equipment is conducted with Enviro and Enviro may accept or deny the Hirer's request to do so at Enviro's absolute discretion.
- g) When the Hirer is moving the Equipment, the Hirer must ensure the safe loading, securing and transportation of all Equipment in accordance with the Law and the Equipment manufacturer's written guidelines. The Hirer must abide by any safety directions advised by Enviro or the Equipment manufacturer's specifications to ensure the safe loading and unloading of the Equipment.
- h) The Hirer is not permitted to remove the Equipment from the State or Territory in which it was hired without Enviro's written permission.
- i) Except with Enviro's prior written consent, which may be reasonably withheld, the Hirer is not permitted to use of the Equipment off-shore, in a mine, in an area where friable asbestos is present, or move the Equipment over water.
- j) The Hirer is obliged to abide by all applicable environmental Law and, in the event of a breach, immediately remedy any breach caused by the Equipment, the Hirer, or the hire of the Equipment.
- k) The Hirer must endeavour to ensure that the Equipment is not contaminated with any hazardous substances, including asbestos. Subject to subclause 13(i), the Hirer must inform Enviro of any risks of hazardous substance contamination to the Equipment as soon as the Hirer should reasonably become aware of it. In the event that the Equipment may have been subjected to contamination, the Hirer is responsible for effectively decontaminating the Equipment; including providing Enviro with written

certification to confirm that the Equipment is free from contamination containing details of the decontamination process undertaken. If, in Enviro's sole opinion, the Equipment has not been properly decontaminated or is not capable of being decontaminated, the Hirer will be charged the replacement cost for new Equipment of the same make and model of the contaminated Equipment.

- l) Any electrical Equipment provided by Enviro will be tested and tagged before it is hired to the Hirer, and the Hirer will be responsible for ensuring the Equipment is re-tested and re-tagged in accordance with the manufacturer's instructions and the applicable Australian Standard(s) and Regulatory Authority requirements, at the Hirer's cost during the Hire Period.
- m) The Hirer is responsible for the Equipment for the Hire Period.
- n) The Hirer is required to provide Enviro with copies of all service sheets detailing the works undertaken in preventative maintenance interval services completed.
- o) The Hirer must ensure that the Equipment is not removed from or abandoned at the Delivery Address without the prior written consent of Enviro.

14) Ownership of the Equipment

- a) The Hirer acknowledges that Enviro own the Equipment and in all circumstances Enviro retain title to the Equipment (even if the Hirer enters liquidation or becomes bankrupt during the Hire Period). The Hirer's rights to use the Equipment are as a bailee only.
- b) Except in the circumstances set out in clause 15, the Hirer is not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Equipment in any way.
- c) In no circumstances will the Equipment be deemed to be a fixture.

15) Personal Property Securities Act 2009 (PPSA)

- a) The Hirer consents to Enviro affecting and maintaining a registration on the Personal Property Securities Register ("Register") (in any manner Enviro consider appropriate) in relation to any security interest contemplated or constituted by this Agreement in the Equipment and the proceeds arising in respect of any dealing in the Equipment and the Hirer agrees to sign any documents and provide all assistance and information to Enviro required to facilitate the registration and maintenance of any security interest. We may at any time register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest). The Hirer waives the right to receive notice of a verification statement in relation to any registration on the Register of a security interest in respect of the Equipment.
- b) The Hirer undertakes to:
 - i. Do anything (in each case, including executing any new document or providing any information) that is required by Enviro:
 - 1) so that Enviro acquires and maintains one or more perfected security interests under the PPSA in respect of the Equipment and its proceeds;
 - 2) to register a financing statement or financing change statement; and
 - 3) to ensure that Enviro's security position, and rights and obligations, are not adversely affected by the PPSA;
 - ii. Not register a financing change statement in respect of a security interest contemplated or constituted by this Agreement without Enviro's prior written permission; and
 - iii. Not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without Enviro's prior written permission.
- c) If Chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising under or in connection with this Agreement and:
 - i. Section 115(1) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and The Hirer will have no rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and
 - ii. Section 115(7) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and the Hirer will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.
- d) Unless otherwise agreed and to the extent permitted by the PPSA, the Hirer and Enviro agree to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. The Hirer waives any right the Hirer may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.
- e) For the purposes of section 20(2) of the PPS Act, the collateral is Equipment including any Equipment which is described in any Plant Hire Out Agreement Details provided by Enviro to the Hirer from time to time. This Agreement is a security agreement for the purposes of the PPS Act.

- f) Enviro may apply amounts received in connection with this Agreement to satisfy obligations secured by a security interest contemplated or constituted by this Agreement in any way Enviro determine in Enviro's absolute discretion.
- g) The Hirer agrees to notify Enviro in writing of any change to the Hirer's details set out in the Plant Hire Out Agreement Details, within 5 days from the date of such change.

16) Return of Equipment

- a) The Hirer must return the Equipment to Enviro in the same clean condition and good working order it was in when The Hirer received it, ordinary fair wear and tear excluded. If the Hirer does not properly clean the Equipment, Enviro shall charge the Hirer cleaning costs in accordance with subclause 10 (b).
- b) Except in the circumstance set out in subclause 16(c) below, it is the Hirer's responsibility to return the Equipment in good working condition to Enviro's requested location during normal business hours.
- c) If the Hirer has requested, and Enviro has agreed, to collect the Equipment from the Hirer, the Hirer must ensure it is kept safe and secure until the time of collection.

17) Equipment Breakdown

- a) In the event that the Equipment breaks down or becomes unsafe to use during the Hire Period the Hirer must:
 - i. Immediately stop using the Equipment and notify Enviro;
 - ii. Take all steps necessary to prevent injury occurring to any persons or property as a result of the condition of the Equipment;
 - iii. Take all steps necessary to prevent any further damage to the Equipment itself; and
 - iv. Not repair or attempt to repair the Equipment without Enviro's written permission.
- b) Except if clause 18(a) applies, upon receiving notice from the Hirer under subclause 17(a), Enviro will:
 - i. Take all steps necessary to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by the Hirer.

18) Lost, Stolen or Damaged Equipment

- a) If the Equipment has broken down or become unsafe to use as a result of the Hirer's negligence or if the Equipment is lost, stolen or damaged beyond fair wear and tear during the Hire Period, the Hirer must immediately notify Enviro of the events that resulted in the Equipment becoming broken down, unsafe, lost, stolen or damaged.
- b) In the event of any circumstances occurring that cause subclause 18(a) to be enlivened, the Hirer will be liable for:
 - i. Any costs incurred by Enviro to recover and repair or replace the Equipment; and
 - ii. The Hire Charges for the portion of the Hire Period, and the subsequent period when the Equipment is in the possession of Enviro, during which the Equipment is being recovered and repaired or replaced.
- c) Provided that the Hirer pays the costs and charges described in subclause 18(b), Enviro will return the Equipment to the Hirer once it has been repaired or replaced, and the Hirer will continue to pay the Hire Charges for the remainder of the Hire Period.
- d) For the purposes of subclause 18(c), in the event that the Equipment is returned to the Hirer by Enviro, the Hire Period will be treated as having not ceased during Enviro's possession of the Equipment so long as that possession was for the purposes of recovery, repair, or replacement of the Equipment.

19 Long Distance Maintenance

- a) If the Hirer hires the Equipment for use at a Long Distance Location, or the Equipment is used at any time at a Long Distance Location during the Hire Period, this clause 19 applies to this Agreement.
- b) The maintenance requirements for all Equipment operating in a Long Distance Location will be subject to a per kilometre charge both to and from between the premises where the Equipment is located and the Enviro's plant yard, as specified by Enviro. There will be no charge for the first 50km travelled in either direction.
- c) For the avoidance of doubt, the Hirer remains responsible for daily maintenance and care of all Equipment in accordance with clause 13 of these Terms and the Plant Hire Out Agreement Details, including but not limited to, daily checking of all fluids (fuel, oil, water, battery levels etc), general tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points.
- d) If the Equipment breaks down at a Long Distance Location, the Hirer will also pay Enviro the costs associated with any attendance to the Long Distance Location in addition to any other costs payable under this Agreement, including the costs of relocating the Equipment from the Long Distance Location to Enviro's plant yard.

20) Indemnity and Exclusion of Liabilities

- a) Subject to subclause 20(c), and except as expressly provided to the contrary in this Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Agreement or its subject matter are excluded to the maximum extent permitted by law.

- b) Nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Australian Consumer Law, which contains guarantees that protect the purchasers of goods and services in certain circumstances.
- c) Where any Law implies or imposes a guarantee, term, condition, warranty, undertaking, inducement or representation in relation to this Agreement and Enviro are not able to exclude that guarantee, term, condition, warranty, undertaking, inducement or representation ("Non-Excludable Provision"), and Enviro are able to limit the Hirer's remedy for breach of the Non-Excludable Provision, then Enviro's liability for breach of the Non-Excludable Provision is limited to (at Enviro's election):
 - i. In the case of goods, the repair or replacement of the goods or the supply of substitute goods or payment of the comparative cost of replacing the goods; or
 - ii. In the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- d) Subject to Enviro's obligation under the Non-Excludable Provisions and to the maximum extent permitted by law, Enviro's maximum aggregate liability for all Claims under or relating to this Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or any other basis, is limited to an amount equal to the Hire Charges paid by the Hirer under this Agreement. In calculating Enviro's aggregate liability under this clause, the parties must include any amounts paid or the value of any goods or services replaced, repaired or supplied by Enviro for a breach of any Non-Excludable Provisions.
- e) Subject to subclauses 20(c) and 20(d), Enviro will not be liable to the Hirer for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs the Hirer has incurred, amounts that the Hirer is liable to the Hirer's customers for or any Loss suffered by third parties under or relating to this Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.
- f) The Hirer is liable for and indemnifies Enviro against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Enviro and any environmental loss, cost, damage or expense) in respect of:
 - i. Personal injury;
 - ii. Damage to tangible property; or
 - iii. A claim by a third party in respect of the Hirer's hire or use of the Equipment or the Hirer's breach of the Agreement.
- g) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Agreement.
- h) Enviro will not be liable to the Hirer for any acts or omissions of any person supplied by Enviro where that person is acting under the Hirer's direction and control during the Hire Period and the Hirer indemnifies Enviro against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Enviro and any environmental loss, cost, damage or expense) arising from or incurred in connection with such acts or omissions.
- i) Without limiting any other clause of this Agreement, the Hirer covenants and agrees to at all times indemnify, release and save harmless Enviro from and against, whether direct or indirect, including (without limitation) any and all Costs, losses or liabilities howsoever suffered by Enviro arising out of:
 - i. Third party Claims including Claims by the Principal or any other person; and
 - ii. the Hirer's breach of this Agreement, or any other act or omission of the Hirer associated with and arising from the hire of the Equipment.

21) Warranties

- a) The Hirer warrants that upon return, the Equipment will:
 - i. be free from defects in design, materials and workmanship;
 - ii. be preserved by the Hirer in good and safe working condition at the Hirer's own expense; and
 - iii. conform to the conditions and specifications as set out in the Plant Hire Out Agreement Details and these Terms.
- b) The warranties set out in subclause 21(a) are in addition to any statutory warranties applicable to the Equipment. The Hirer warrants that its employees or contractors are competent, have the necessary qualifications and skills and are licensed to drive or operate the Equipment.

22) Assignment

The Hirer may not assign the whole or any part of this Agreement without Enviro's prior written consent.

23 Compliance

In performing its obligations under this Agreement, the Hirer agrees to comply with all Laws and regulations applying to the Agreement, the Equipment and the project generally.

24) Infringement

The Hirer warrants that the Equipment and the hire or use of it will not infringe any patent or any other intellectual property right, and the Hirer covenants that it will indemnify Enviro and the Hirer will defend at its own cost and expense every action which may be brought against the Hirer or Enviro for any alleged infringement of any patent or breach of any other intellectual property right by reason of the use of such Equipment and the Hirer agrees to pay all costs, damages, fines and profits recoverable in any such action. For the avoidance of doubt, the Hirer indemnifies Enviro for any costs, losses and expenses of Enviro should Enviro have to defend any actions or claims brought against it in relation to any alleged infringement of any patent or breach of any other intellectual property right by reason of the use of such Equipment during the Hire Period.

25) Set Off

Unless Enviro agrees in writing, the Hirer cannot set off (whether in Law or otherwise and including by way of counterclaim or deduction) any amount that is or may be owing from Enviro against any money that the Hirer must pay Enviro. Enviro may (in its absolute discretion) set off any of the following amounts against any amount Enviro owes the Hirer, including:

- a) any amount the Hirer is required to pay to Enviro pursuant to this Agreement;
- b) any costs Enviro incurs by doing something the Hirer is required to do but fails to do pursuant to this Agreement; and
- c) any amount the Hirer owes Enviro pursuant to any other agreement.

26) Confidentiality

- a) Each party undertakes that it will not, either during the term of this Agreement or at any time thereafter (except in the proper course of its duties under this Agreement or as required by Law or by the other party) disclose to any person any confidential information of or relating to the other party of which it has become possessed as a result of this Agreement or the negotiations preceding this Agreement, including the terms and conditions of this Agreement.
- b) Nothing in this Agreement prohibits disclosure of information which:
 - i. is in the public domain;
 - ii. after disclosure to a party becomes part of the public domain otherwise than as a result of the wrongful act of that party;
 - iii. is received from a third party provided that it was not acquired directly or indirectly by that third party from a party to this Agreement; or
 - iv. is required to be disclosed by Law or any government or governmental body, authority or agency having authority over a party.

27) Default and Termination

- a) If in Enviro's opinion (acting reasonably) the Hirer has failed to comply with any requirement in this Agreement, Enviro may immediately terminate this Agreement by giving Notice in accordance with clause 30.
- b) Either party may terminate this Agreement effective immediately by Notice to the other if an Insolvency Event occurs in respect of the other party.
- c) Notwithstanding any other provisions of this Agreement, Enviro may elect to terminate this Agreement by giving Notice 72 hours prior to the intended termination date to the Hirer.

28) Recovery of the Equipment

If the Hirer is in breach of the Agreement or if the Agreement or a Hire Period has been terminated under clause 27, Enviro may take all steps necessary (including legal action) to recover the Equipment, including entering the Hirer's premises to do so. Upon receiving written notice from Enviro, the Hirer expressly consents to Enviro entering the Hirer's premises for the purposes of recovering Enviro's Equipment. The Hirer indemnifies Enviro in relation to all costs and expenses incurred by Enviro for the purposes of enforcing Enviro's rights under this clause 28.

29 Dispute Resolution

- a) If a dispute or difference arises between Enviro and the Hirer in respect of any fact, act, matter or thing in connection with this Agreement, then either party may give the other party a written notice of dispute identifying the dispute or difference.
- b) Within 14 days of a party receiving a notice of dispute, Enviro and the Hirer and/or their delegates must meet and attempt to resolve the dispute in good faith.
- c) If, within 14 days of the meeting between Enviro and the Hirer and/or their delegates the dispute or difference is not resolved, either party may require by Notice within seven (7) days after the period stated in clause 29(b) that the dispute or difference be the subject of a good faith negotiation at a meeting of the senior executives of each party.

- d) If, within 14 days of the meeting between a senior executive of Enviro and a senior executive of the Hirer, the dispute or difference is not resolved, a party may provide a mediation notice to the other proposing three mediators who would be suitable to mediate the dispute in Perth, Western Australia.
- e) The mediator shall then be selected as follows:
 - i. by agreement; or
 - ii. if the parties cannot agree on a mediator within seven (7) days of the mediation notice, then either party may request the President of the Institute of Arbitrators and Mediators (WA Chapter) (IAMA) to appoint a mediator. In making that appointment, the President of IAMA need not appoint any of the mediators proposed by the parties.
- f) Except as modified by this clause, the mediation will be conducted in accordance with the IAMA Mediation and Conciliation Rules, current at the time the dispute is referred to mediation.
- g) If, within 14 days of a mediation held in accordance with this clause, the dispute is still not resolved, then, either party may proceed to litigation but nothing in this clause prevents a party from seeking urgent interlocutory relief or commencing proceedings where there is a statutory right to do so.
- h) Prior to the resolution of a dispute, the parties must continue to perform their respective obligations under this Agreement.

30) Notices

- a) A notice, demand, consent, approval or communication under this Agreement ("Notice") must be:
 - i. in writing;
 - ii. signed by a person duly authorised by the sender; and either
 - 1) hand delivered, sent by prepaid post or facsimile to the recipient's address set out in the Details section of this Agreement; or
 - 2) signed correspondence by a duly authorised person attached to an email and sent to Enviro's or the Hirer's named Contact as set out in the Details section of this Agreement.
- b) A Notice given under this Agreement will take effect when it is received (or at any later time specified in the Notice). A Notice is taken to be received:
 - i. if hand delivered, upon delivery;
 - ii. if sent by prepaid post:
 - 1) within the Perth Metropolitan area, on the second Business Day after the date of posting; or
 - 2) to (or from) outside of the Perth Metropolitan area, on the seventh Business Day after the date of posting;
 - iii. if sent by facsimile transmission, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice; or
 - iv. if sent by electronic mail, when the sender receives a delivery confirmation, or, in the absence of a delivery confirmation, when the sender sends the electronic mail and does not receive a delivery error with respect to that electronic mail being sent.
- c) If the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, then the Notice is taken to be received at 9.00am on the next Business Day.
- d) A party may change its address for service of Notices at any time by giving Notice in writing to the other party.

31) Miscellaneous

- a) This Agreement is subject to and is to be construed in accordance with the laws of the State or Territory of Australia where the Agreement is entered into by the parties and the parties submit to the non-exclusive jurisdiction of the Courts of that State or Territory.
- b) The Agreement, as defined in clause 1, comprises the entire agreement between the parties. No additional terms and conditions (including any terms contained in any purchase order) apply to the hire of the Equipment unless agreed in writing by the parties. There are no other oral or implied understandings, terms or conditions and neither party has relied upon any representation, express or implied, not contained in this Agreement.
- c) Except for clause 8, this Agreement may not be varied except in writing and signed by both parties. In this clause 31:
 - i. "Conduct" includes delay in the exercise of a right or failure to exercise a right under the Agreement;
 - ii. "Right" means any right arising under or in connection with this Agreement and includes the right to rely on this clause;
 - iii. "Waiver" includes an election between rights and remedies and conduct which might otherwise give rise to an estoppel whether by way of representation or convention.
- d) No party may rely on the words or Conduct of any other party as a Waiver of any Right unless the Waiver is in writing and signed by the party granting the Waiver. Failure, delay, relaxation or indulgence on Enviro's part in exercising any Right it has under this Agreement does not operate as a Waiver of that Right. Any single exercise of Enviro's Rights does not preclude any other or further exercise of them.

- e) The parties agree that if part or all of any provision of this Agreement is illegal, invalid or unenforceable it may be severed from this Agreement and the remaining provisions of this Agreement are not affected and will continue in force, valid and enforceable to the fullest extent of the Law.
- f) Except where expressly provided otherwise, the rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers and remedies provided at law, independently of this Agreement.
- g) The rights and obligations contained in clauses 20 (Indemnity and Exclusion of Liabilities), 21 (Warranties), 26 (Confidentiality) and 29 (Dispute Resolution) survive termination of this Agreement.
- h) This Agreement may be signed in counterparts. All counterparts together will be taken to constitute one instrument.

32) National Construction Code

The Hirer must comply with the National Construction Code ("Code") Given effect through the *Environmental Planning and Assessment Act 1979 (Cth)* and the *Plumbing and Drainage Act 2011 (Cth)* as amended from time to time. Copies of the Code are available at <https://ncc.abcb.gov.au/editions-national-construction-code>.

- a) Compliance with the Code shall not relieve the Hirer from its responsibility to perform the Agreement, or from liability associated with the hire of the Equipment arising from compliance with the Code.
- b) Where a change in the Agreement is proposed and that change would affect compliance with the Code, the Hirer must submit a report to Enviro and the Commonwealth specifying the extent to which the Hirer's compliance with the Code will be affected.

33) Trustee Provisions

If the Hirer is a trustee of a trust, then the Hirer:

- a) Represents and warrants to Enviro that the Hirer is liable both personally and in its capacity as trustee; and
- b) Declares that:
 - i. The Hirer has power and authority as trustee of the trust to enter into this Agreement and is doing so for a proper purpose;
 - ii. The Hirer is doing so and is entitled to do so, in a way that permits the Hirer to resort to the property of the trust ("Trust Property") before the Claims of the beneficiaries;
 - iii. The Hirer is entitled to be indemnified fully out of the Trust Property for its liabilities and obligations as trustee under this Agreement before any Claims of the beneficiaries of the trust;
 - iv. The Hirer will not retire from the said trusteeship, or cease to act as such trustee and no new or additional trustee of the trust shall be appointed, and the Hirer shall not do or suffer anything by reason of which the Hirer would be disqualified from holding office as trustee;
 - v. The Hirer is capable of binding and does so bind successors of the office of trustee to these Terms and all required resolutions and meetings have been held to authorise the Hirer to do so; and
 - vi. The trust shall not be determined before the vesting day provided in the applicable trust deed and the Hirer will not cause to vest or distribute prior to the final date for distribution the whole or any part of the Trust Property (other than income) other than in the ordinary course of business where such disposal would limit the ability of Enviro to recover from the Hirer.

34) Damage Waiver

- 34.1 The Damage Waiver is not insurance, but is an agreement by Enviro to limit the Hirer's liability in certain circumstances for loss, theft or damage to the Equipment to an amount called the Damage Waiver Excess. The Damage Waiver Excess is explained below in subclause 34.5. Note limitations set out in subclause 34.6.
- 34.2 Subject to subclause 34.3, the Damage Waiver amount will be automatically charged to the Hirer in addition to the Hire Charges and will be set out in the Plant Hire Out Agreement Details. The Damage Waiver amount is calculated as a percentage of the Hire Charge.
- 34.3 The Hirer is not required to pay the Damage Waiver amount from the date the Hirer produces a certificate of currency for an appropriate policy of insurance that covers loss, theft or damage to the Equipment during the Hire Period for an amount not less than the reasonably estimated replacement value of the Equipment ("New Replacement Cost"). For the avoidance of any doubt, the Hirer is liable to pay the Damage Waiver amount for that portion of the Hire Period where a certificate of currency required pursuant to this subclause 34.3 remains outstanding and the Hirer is not entitled to any credit and/or reimbursement of the Damage Waiver amount charged and/or paid that relates to the uninsured period. The Hirer is responsible for any excess and any other costs associated with the Hirer's insurance and is responsible for any shortfall in repair or replacement costs of the Equipment following payment of any amount received under the Hirer's insurance, including any loss Enviro suffers as a result of not being able to hire out the Equipment.
- 34.4 Where the Hirer has paid the Damage Waiver amount, Enviro will waive its right to claim against the Hirer for loss, theft or damage to the Equipment if:
 - a) for theft, the Hirer has promptly reported the incident to the police and provided Enviro with a written police report;

- b) the Hirer has co-operated with Enviro and provided Enviro with the details of the incident, including any written or photographic evidence Enviro requires;
- c) the loss, theft or damage does not fall into one or more of the circumstances set out in subclause 34.6; and
- d) the Hirer has paid Enviro the damage waiver excess as described in subclause 34.5 (“Damage Waiver Excess”).

34.5 The Damage Waiver Excess for each item of Equipment is the amount calculated as follows:

(1) where the Equipment is lost, stolen or damaged beyond repair:

- a) Subject to subclause b) directly below, the Damage Waiver Excess for each item of Equipment that is lost, stolen or damaged beyond repair will be the amount equal to the greater of:
 - i. \$500.00; or
 - ii. 15% of the New Replacement Cost.
- b) Where the New Replacement Cost is less than \$500.00, the Damage Waiver Excess will be an amount equal to the New Replacement Cost.

(2) where the Equipment is partially damaged and can be repaired:

- a) Subject to subclause b) directly below, the Damage Waiver Excess for each item of Equipment that is partially damaged and can be repaired will be the amount equal to the greater of:
 - i. \$500.00; or
 - ii. 15% of the repair cost.
- b) Where the repair cost of the Equipment is less than \$500, the Damage Waiver Excess will be an amount equal to the lesser of the repair cost and the New Replacement Cost

34.6 Even if the Hirer has paid the Damage Waiver amount, Enviro will not waive its rights to claim against the Hirer for loss, theft or damage to the Equipment and the Damage Waiver **will not apply** if the loss, theft or damage:

- a) has arisen as a result of the Hirer's breach of a clause of this Agreement;
- b) has been caused by the Hirer's negligent act or omission;
- c) has arisen as a result of the Hirer's use of the Equipment in violation of any laws;
- d) has been caused by the Hirer's failure to use the Equipment for its intended purpose or in accordance with Enviro's instructions or the manufacturer's instructions;
- e) occurs to the Equipment whilst it is located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
- f) has been caused by a lack of lubrication or a failure to properly service or maintain the Equipment in accordance with the relevant manufacturer's specifications;
- g) has been caused by collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object due to insufficient clearance;
- h) has been caused by the overloading of the Equipment or any components thereof contrary to the relevant manufacturer's specifications or, if no applicable entry is present within those specifications, contrary to the load the Equipment or any components thereof could reasonably withstand;
- i) is to motors or other electrical Equipment or components within the Equipment caused by electrical overload, a surge in electrical current or the use of under-rated or excessive lengths of extension leads with the electrical Equipment;
- j) is caused by exposure to any corrosive or caustic substance, such as cyanide, salt water, acid, etc;
- k) is caused by vandalism;
- l) is to tyres or tubes; or
- m) is to windscreens, mirrors, glass, or perspex.

ANNEXURE 1 - SPECIAL CONDITIONS

1) HIRE OF MOTOR VEHICLES

When the Hirer hires a Motor Vehicle from Enviro, these additional Special Conditions also apply to the Agreement, in addition to the Terms. Capitalised terms used in these Special Conditions have the same meaning as those used in the Terms unless indicated otherwise:

- a) “Motor Vehicle” means Equipment that is a car, truck, utility, caravan, van, motorbike, bus, prime mover, watercart, forklift or trailer.
- b) In the event that the Motor Vehicle is lost, stolen or damaged during the Hire Period, for the avoidance of doubt, the Hirer's liability is determined in accordance with clauses 18 and 20 of the Terms.
- c) For the avoidance of doubt, the Hirer is liable to pay the cost of repairing or replacing flat or damaged tyres arising as a result of the Hirer's use outside the ordinary and reasonable use of the Motor Vehicle.
- d) The Hirer warrants that the Hirer will not allow a person to drive a Motor Vehicle if the person:
 - i. does not hold an unrestricted licence to drive that class of Motor Vehicle;
 - ii. is under the age of 21 years;
 - iii. is affected by drugs and/or alcohol;

- iv. has been convicted of any offence relating to driving a motor vehicle under the influence of drugs or more than the legally prescribed limit of alcohol (whether that conviction is recorded or not); or
 - v. has previously been refused motor vehicle insurance.
- e) The Hirer will promptly pay all tolls, fines, penalties and other statutory or Government charges arising out of the Hirer's use of the Motor Vehicle during the Hire Period. If Enviro pay any such charges on the Hirer's behalf, the Hirer must reimburse Enviro within seven (7) days of receiving notification of the charges from Enviro.
 - f) The Hirer must pay a charge for the number of kilometres that the Motor Vehicle has travelled during the Hire Period, or for excess kilometres if an agreed usage is made within the Hire Charges.
 - g) Prior to the commencement of the Hire Period, the Hirer will provide Enviro with all the information required under the relevant legislation for those persons who will operate the Motor Vehicle on the Hirer's behalf. Enviro are also permitted to request a copy of any driver's licences at the commencement of the Hire Period and the Hirer will ensure that Enviro receives copies of those licenses requested.
 - h) The Hirer warrants that the Hirer will not load the Motor Vehicle in excess of the Motor Vehicle's gross vehicle mass, or in excess of the recommended maximum load as prescribed by the Motor Vehicle's manufacturer's specifications, at any time during the Hire Period.
 - i) The Hirer must return the Motor Vehicle to Enviro with a full tank of the relevant fuel for that Motor Vehicle or the Hirer will be liable to pay Enviro a charge specified by Enviro for filling the fuel tank.
 - j) If there is any conflict between the Terms and these Special Conditions, then these Special Conditions will prevail to the extent of any conflict.

ANNEXURE 2 - SPECIAL CONDITIONS

2) HIRE OF EARTHMOVING PILING & COMPACTION EQUIPMENT

When the Hirer hires any Earthmoving, Piling & Compaction Equipment from Enviro, these additional Special Conditions also apply to this Agreement, in addition to the Terms. Capitalised terms used in these Special Conditions have the same meaning as those used in the Terms unless indicated otherwise:

- a) "Earthmoving, Piling & Compaction Equipment" includes, without limitation, excavators and mini excavators, backhoes, skid steer loaders, wheel loaders, motor graders, tractors, articulated trucks, attachments, piling rigs, smooth drum rollers, padfoot rollers and multi-tyre rollers.
- b) "Machine Control and Guidance Devices" means any device designed to guide the operation of the Earthmoving, Piling & Compaction Equipment, including but not limited to cross slope, laser, UTS, GPS or compaction meters.
- c) "Wear Items" includes ground engaging tools, wear on blades/buckets/rippers, tyres, track gear and fuel lubricants.
- d) The Hirer must pay an excess hire charge where the Hirer uses the Earthmoving, Piling & Compaction Equipment in excess of the number of hours specified in the Plant Hire Out Agreement Details. The excess hire charge is payable only in respect of those hours exceeding the specified number of hours.
- e) Unless otherwise indicated in the Plant Hire Out Agreement Details, the Hirer must pay a Wear Items charge in respect of the fuel, tyres, track gear, ground engaging tools and any other Wear Items listed in the Plant Hire Out Agreement Details. Enviro will calculate the level of usage of the Wear Item as a percentage of the actual cost of the Wear Item to Enviro. This percentage is to be calculated by deducting the percentage usage at the start of the Hire Period from the percentage usage at the end of the Hire Period. The Hirer will not be entitled to a payment or credit in respect of any Wear Item returned with less usage than anticipated at the start of the Hire Period.
- f) The Hirer is responsible for replacing Wear Items, at the Hirer's expense, when they become worn out or they run out, subject to any contrary provisions for specific Wear Items in these Special Conditions.
- g) Enviro are responsible for the cost of ordinary wear and tear to tyres and track gear. Ordinary wear and tear is set as a number of service meter unit hours ("SMU Hours"), as advised by Enviro at the time of hire. Any wear and tear caused as a result of the Hirers usage of the Earthmoving, Piling & Compaction Equipment in excess of the set SMU Hours will be repaired at the Hirers cost.
- h) The Hirer is liable for the cost of repairing or replacing flat or damaged tyres and is responsible for all wear and tear and damage to tyres and track gear which is caused by use of the tyres and track gear in conditions which Enviro consider are adverse or abnormal. At all times the Hirer must adhere to the manufacturer's recommended tyre pressure and track tension for each of the Earthmoving, Piling & Compaction Equipment.
- i) The Hirer is responsible for all wear and tear and damage to buckets, blades, cutting edges, bucket teeth, hardware, ripper teeth and all other ground engaging attachments and accessories hired with the Earthmoving, Piling & Compaction Equipment.
- j) All ground engaging tools the Hirer hires are to be returned to Enviro at the end of the Hire Period in the same condition in which they were supplied. Usage of ground engaging tools will be measured by comparing the percentage of use at the commencement of the Hire Period with the percentage of use at the end of the Hire Period.
- k) In accordance with subclause 13(d) of the Terms, the Hirer will, at the Hirer's own expense, service, maintain and clean the Earthmoving, Piling & Compaction Equipment. Except as otherwise notified by Enviro:

- i. The Hirer is responsible for undertaking all preventative maintenance servicing and minor running repairs (including electrical, hydraulic hoses and oil leaks) in accordance with the manufacturer's specifications for each of the Earthmoving, Piling & Compaction Equipment; and
- ii. The Hirer is responsible for completing the manufacturer's required oil sampling analysis on all compartments of the Earthmoving, Piling & Compaction Equipment. If the Hirer does not complete this, the Hirer will be responsible for paying Enviro the actual cost of doing so.
- l) The Hirer is required to use best endeavours to prevent the theft of any Machine Control and Guidance Devices from the Earthmoving, Piling & Compaction Equipment. The Hirer must remove any detachable operator display or receiver of any Machine Control and Guidance Devices from the Earthmoving, Piling & Compaction Equipment at the end of every shift and store it in a safe place.
- m) The Hirer is responsible for verifying the accuracy of any Machine Control and Guidance Devices during the Hire Period. The Hirer must check the calibration of the Machine Control and Guidance Devices on the Earthmoving, Piling & Compaction Equipment before each use and calibrate it at frequent intervals during use of the Earthmoving, Piling & Compaction Equipment.
- n) If there is any conflict between the Terms and these Special Conditions, then these Special Conditions will prevail to the extent of any conflict.

ANNEXURE 3 - SPECIAL CONDITIONS

3) SPECIAL CONDITION IF HIRER HAS BEEN GRANTED RIGHT TO PURCHASE

If Enviro has agreed in the Plant Hire Out Agreement Details, or otherwise in writing, that the Hirer has the right to purchase specified Equipment ("Relevant Equipment"), the following provisions apply to that purchase, together with the other terms of the Agreement (except to the extent that the context requires otherwise).

- a) The Hirer may notify Enviro that it wishes to purchase the Relevant Equipment. Unless the Plant Hire Out Agreement Details state otherwise, or Enviro has agreed otherwise in writing, the notice by the Hirer:
 - i. must be given in writing;
 - ii. must be given in respect of all (and not some only) of the Equipment hired noted within the relevant Plant Hire Out Agreement Details in respect of which a right of purchase has been given;
 - iii. must specify a purchase date which is a business day, and which is between 10 business days and 20 business days after the notice is given, being the date on which the Hirer shall purchase the Relevant Equipment ("Purchase Date");
 - iv. may not be given less than two months after the date the hire of the Relevant Equipment commenced;
 - v. may not be given more than 36 months after the date the hire of the Relevant Equipment commenced;
 - vi. may not be given unless the Hirer has first paid all amounts then due or to become due to Enviro, whether in respect of the hire of the Relevant Equipment or any other Equipment. Amounts must be paid (in advance if applicable) in respect of the hire of the Relevant Equipment under the Agreement for the period up to the Purchase Date;
 - vii. may not be given if the Hirer is in default of any term of the Agreement with Enviro whether in relation to the Relevant Equipment or any other Equipment or matter.
- b) Unless the parties agree otherwise (including in the Plant Hire Out Agreement Details) the purchase price (excluding GST which the parties hereby agree must be added) payable by the Hirer for the purchase of the Relevant Equipment ("Purchase Price") shall be calculated as follows:
Purchase Price (excluding GST) = Agreed Value minus (70% x HCR)
where:
Agreed Value is the GST-exclusive amount, shown in the Plant Hire Out Agreement Details, which Enviro indicated it would accept for sale of the Relevant Equipment subject to deductions under this clause;
HCR is the aggregate (in each case excluding GST) of all Hire Charges (excluding amounts in respect of Damage Waiver) which have been paid to and received by Enviro in respect of the hire of the Relevant Equipment up to the Purchase Date.
- c) Upon the Purchase Date and subject to the payment of all amounts due to Enviro in respect of the Relevant Equipment including the Purchase Price and applicable GST, the hire of the Relevant Equipment shall cease, Hire Charges shall cease to accrue, and the Hirer shall hold the relevant Equipment as purchaser.
- d) For the avoidance of any doubt, title to the Relevant Equipment shall not pass until the Purchase Price has been received in full and cleared funds by Enviro.
- e) Enviro warrants to the Hirer that it has the full right and title to enter into the sale of the Relevant Equipment and that upon payment of all the amounts due to Enviro in respect of the sale of the Relevant Equipment, Enviro will convey to the Hirer full and unencumbered title to the Relevant Equipment.