

Budget Mini Excavators T/AS Miniquip and Miniquip NT current as of 1 December 2016 until superseded**1. Definitions**

- 1.1 "MINIQUIP" means and includes Budget Mini Excavators Pty Ltd Trading as either MINIQUIP or MINIQUIP NT and either's successors or assigns or their employees and agents.
- 1.2 "Client" means the Client or any person acting on behalf of and with the authority of the Client.
- 1.3 "Equipment" means and includes any machine, truck or vehicle with all accessories and other equipment or things attached thereto or used in connection therewith hired out at any time to the Client (and where the content so permits shall include any supply of Services as hereinafter defined).
- 1.4 "Vehicle/Truck" shall mean any Vehicle/Truck supplied by MINIQUIP to the Client. The Vehicle/Truck shall be described on the Rental Agreement or any other commencement forms as provided by MINIQUIP to the Client.
- 1.5 "Services" means all services supplied by MINIQUIP to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Equipment as defined above).
- 1.6 "Price" means the cost of the Equipment (plus any GST where applicable) as agreed between MINIQUIP and the Client subject to clauses 4, 5 & 6 of this contract.
- 1.7 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" Cth.

2. Acceptance

- 2.1 Any instructions received by MINIQUIP from the Client for the supply of Equipment and/or the Client's acceptance of Equipment supplied by MINIQUIP shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Client's shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of MINIQUIP.
- 2.4 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and MINIQUIP.
- 2.5 None of MINIQUIP's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of MINIQUIP in writing nor is MINIQUIP bound by any such unauthorised statements.
- 2.6 The Client shall give MINIQUIP not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by MINIQUIP as a result of the Client's failure to comply with this clause.
- 2.7 Equipment is supplied by MINIQUIP based only on the Terms and Conditions of Hire herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of hire.
- 2.8 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on MINIQUIP's website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.
- 2.9 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2003 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Equipment

- 3.1 The Equipment is as described on any invoices, quotation, hire documentation, authority to hire or any other work commencement forms as provided by MINIQUIP to the Client.

4. Pricing & Payment - General

- 4.1 Price shall be the Hire rate is as set out on the front hereof, or MINIQUIP's current schedule of rates, or hire documentation provided however, that MINIQUIP may from time to time, during the hiring consequent upon any variation in the costs prevailing at the date of the contract, vary said rates by giving to the Client not less than seven (7) days written notice.
- 4.2 A surcharge of fifteen percent (15%) of the agreed daily rate will apply for remaining un-used days in the event that equipment is returned earlier than the estimated hire term. The surcharge will only apply to hire agreements with an estimated hire term of thirty (30) days or more. Any reduction to this surcharge is at the sole discretion of MINIQUIP.
- 4.3 A cleaning fee will be charged to the Client for any equipment requiring cleaning upon return. This will be charged at one hundred dollars (\$100.00) + GST for the FIRST hour of any cleaning required and seventy-five dollars (\$75.00) + GST for additional hours thereafter, an addition charge will apply to returned vehicles or equipment should the vehicles or equipment require removal of but not limited to: decals, grout, cement, red dust, salt, bitumen, mud, clay, graffiti.
- 4.4 At MINIQUIP's sole discretion a bond may be required which shall be refunded to the Client at the termination of the Equipment hire provided

after the Equipment is returned to MINIQUIP in a condition which is to MINIQUIP's satisfaction.

- 4.5 In addition to the payment for hire, a further charge (as per MINIQUIP's current schedule of rates) will be made to cover delivery from and to MINIQUIP's depot, and unless the transport of the Equipment is undertaken by MINIQUIP, the Client is responsible for any damage to the Equipment incurred during transport by the Client.
- 4.6 All hire, rental or contracting services provided by MINIQUIP will be subject to a margin for products or Services provided (including but not limited to, landfill charges, sand and materials, labour and/or subcontracted Services). This margin will be a percentage (%) factor added to MINIQUIP'S direct cost or a lump sum figure as defined by MINIQUIP. The Client may request the mark up percentage (%) or lump sum value to be used for products or Services supplied prior to placement of order to provide such Services, alternatively the Client agrees to the terms in accordance in clause 4.7.
- 4.7 It is deemed that the Client has agreed to MINIQUIP's hire, rental & contracting rates, charges, terms & conditions on proceeding to order Services and Equipment from MINIQUIP.
- 4.8 The Client must pay all charges due immediately by cash or credit card or within seven (7) days of receipt of an invoice from MINIQUIP unless a thirty (30) day credit account or other arrangements have been agreed to in writing.
- 4.9 Payment may be made by cash, or by cheque, or by bank cheque, or by credit card (a surcharge may apply per transaction), or by internet banking, or by any other method as agreed to between the Client and MINIQUIP.
- 4.10 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by MINIQUIP nor to withhold payment of any invoice because part of that invoice is in dispute.
- 4.11 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except where such taxes and duties are expressly included in any pricing given by MINIQUIP.

5. Conditions, Pricing & Payment – (Dry Hire/Rental Only)

- 5.1 Unless stated otherwise by MINIQUIP in writing:
- (a) Daily Hire: The minimum charge for any hire is that payable for eight (8) hours hire, but if equipment is used in excess of eight (8) hours of any one-day, all such hours of use must be paid for at the hourly rate; and
- (b) Weekly Hire: The hire rate is for the use of the equipment for not more than forty (40) hours over five (5) days in any one-week. If the Equipment is used for more than forty (40) hours in any one week, an additional charge, equal to one-eighth of the daily hire charge shall be made for each hour or part of an hour the Equipment is so used in excess of forty (40) hours; and
- (c) Monthly Hire: The hire rate is for the use of the equipment for not more than one hundred and sixty (160) hours over twenty (20) days in any one-month. If the Equipment is used for more than one hundred and sixty (160) hours in any one month, an additional charge, equal to one-eighth (1/8) of the daily hire charge shall be made for each hour or part of an hour the Equipment is so used in excess of one hundred and sixty (160) hours.
- 5.2 All equipment is provided with a full fuel tank at the time of delivery, any fuel required on return of equipment will be charged to the Client at cost of provision plus a margin of up to two dollars (\$2.00) per litre supplied + GST.
- 5.3 Liability of the Client for the hire charges payable at the rate specified on the front hereof shall commence;
- (a) immediately the Client takes possession of the Equipment at MINIQUIP's depot; or
- (b) where the Client requires the Equipment to be delivered by MINIQUIP, immediately the Equipment leaves a MINIQUIP depot for the purpose of delivery to the site nominated by the Client.
- 5.4 The Client will pay hire charges at the rate and in the manner specified from the commencement date of the hire until the goods are returned by the Client to MINIQUIP premises or collected by MINIQUIP subject to Clause 11.2 below)
- 5.5 If you as the Client require a purchase order number to approve vendor invoices it is your responsibility to provide one to MINIQUIP's fleet controllers or accounts department at time of making booking. Under no circumstances will a lack of your purchase order number effect the standard terms and conditions set out in this rental agreement. All invoices are strictly payable within thirty (30) days from the date of MINIQUIP invoice regardless of invoice purchase order requirements.

6. Delivery Of Equipment / Services

- 6.1 Delivery of the Equipment shall be made to the Client's nominated address. The Client shall make all arrangements necessary to take delivery of the Equipment whenever they are tendered for delivery, or delivery of the Equipment shall be made to the Client at MINIQUIP's address.
- 6.2 The Client agrees to clean and stack the Equipment & attachments for collection (Dry Hire) and in all instances wet or dry hire shall provide a level unloading & loading area on site for pick-ups & deliveries. An unobstructed on-site parking area shall be supplied by the Client for Equipment & Transporters. All transporter waiting time for access or exit of site, loading or unloading will be charged at hourly rates. Shall parking only be available offsite the Client will be charged for all costs in regard to moving and parking the Equipment and/or Transporters off-site.

Budget Mini Excavators T/AS Miniquip and Miniquip NT current as of 1 December 2016 until superseded

- 6.3 The failure of MINIQUIP to deliver shall not entitle either party to treat this contract as repudiated.
- 7. Stand Downs**
- 7.1 Stand Downs are only available in the event equipment cannot be used on the day due to inclement weather and the decision to except a stand down is at the sole discretion of MINIQUIP. Stand downs must be notified before 8.00 am on the day of stand down. There will be no charge for twenty-four (24) hours stand down. The second and subsequent days of stand down will be charged at fifty percent (50%) of hire rate. Except for in the case of extreme weather conditions where MINIQUIP may at its discretion allow additional days of stand down at no charge.
- 8. Risk**
- 8.1 The Client assumes risk and all Equipment supplied by MINIQUIP upon the earlier of:
- delivery to the Client;
 - collection by the Client; or
 - delivery to the Client's custody, possession or control.
- 8.2 At all times title in the Equipment remains with MINIQUIP.
- 8.3 The Client acknowledges that they are liable for any loss or damage to the equipment from the time of delivery until it is returned to or picked up by MINIQUIP. The Client shall immediately advise MINIQUIP in writing of any such loss or damage.
- 8.4 The Client will accept all responsibility for all damage to property and injury caused during the period of hire to the Client, his servants, employees or agents and shall indemnify and hold MINIQUIP harmless in respect thereof.
- 8.5 In respect of all claims whether for workers compensation or third party liability or otherwise the Client shall comply with all statutes, regulations and industrial awards relating to the labour and effect all such insurances as may be necessary.
- 8.6 The Client shall indemnify MINIQUIP and its employees and agents from and against all claims which may be made against any of them for damages or otherwise, in respect of any loss, damage, death or injury caused by, or in the course of, or arising out of the use of the Equipment whilst the Equipment is on hire to, or in the custody of the Client, his agent, or employees, or any other person acting on behalf of the Client.
- 8.7 The Client shall not be entitled to damages or compensation from MINIQUIP for any loss suffered by reason of late delivery or breakdown of the Equipment or if MINIQUIP should determine the hiring.
- 8.8 It is the Client's responsibility to monitor site conditions including asphalt surface temperatures to ensure equipment tracks, tyres & or blades do not damage asphalt surfaces.
- 9. Accommodation and Meals**
- 9.1 The Client is responsible for providing at no cost to MINIQUIP, accommodation and meals for any MINIQUIP employee or agent whilst they are required onsite.
- 10. Client's Disclaimer**
- 10.1 The Client hereby, disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to him by any servant or agent of MINIQUIP and the Client acknowledges that he Hires the Equipment relying solely upon his own skill and judgement and that MINIQUIP (to the maximum extent allowed by legislation) shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Client and shall not be transferable to any subsequent Client.
- 11. Termination of Hire**
- 11.1 MINIQUIP shall have the right to determine the type of operation on or in which the Equipment may reasonably be used and the suitability of the Equipment for the work to be done and to terminate the hire at any time.
- 11.2 The Client may terminate the hire of equipment by delivering the equipment to MINIQUIP during normal working hours, or by notifying MINIQUIP that the equipment is ready for collection by MINIQUIP, on notifying MINIQUIP of termination the Client must obtain an "off hire" number failing which the Client will not be deemed to have notified MINIQUIP that the equipment is ready for collection. All equipment shall be returned to the depot of equipment dispatch.
- 12. Warranty**
- 12.1 To the maximum extent permitted by legislation no warranty is provided by MINIQUIP in respect of the condition of the Equipment or its fitness for any particular purpose. The Client shall indemnify and hold harmless MINIQUIP in respect of all claims arising out of use of the Equipment.
- 13. Defects**
- 13.1 The Client shall inspect the Equipment on delivery and shall within eight (8) hours notify MINIQUIP of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford MINIQUIP an opportunity to inspect the Equipment within a reasonable time following delivery if the Client believes the Equipment is defective in any way. If the Client shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which MINIQUIP has agreed in writing that the Client is entitled to reject, MINIQUIP's liability is limited to either repairing or replacing the Equipment, except where the Client has hired Equipment as a consumer within the meaning of the Competition and Consumer Act 2010 (CCA) or the Fair Trading Acts of the relevant state or territories of Australia, and may therefore also be entitled to, either a refund of the hire price of the Equipment, or repair of the Equipment, or replacement of the Equipment.
- 14. Client's Responsibilities (Dry Hire/Rental)**
- 14.1 The Client is responsible for any disappearance of the Equipment (without evidence or report to police of theft from site, yard etc.), loss or damage to the equipment and also repair costs for additional damage and damage caused by accident, abuse or lack of daily maintenance (including lubrication and normal daily servicing) and the costs of repairs required to the equipment as a result of acid, caustic, salt or other abnormal environmental conditions.
- 14.2 The Client is responsible for loss of or damage to the Equipment from the time of commencement of hire or delivery, whichever is earlier, until the equipment is returned to MINIQUIP premises or collected by MINIQUIP. This right shall not be prejudiced by or prejudice any other right under this agreement.
- 14.3 The Client shall take adequate and reasonable precautions to protect the equipment against theft or burglary and all other usual risks. As a minimum, the Client must keep the equipment in a safe secure locked private compound when not in use.
- 14.4 The Client shall not assign, sell, mortgage, sub-lease, lend or otherwise deal with the whole or part of the equipment and/or its attachments.
- 14.5 The Client is responsible for the supply of replacement wear parts (teeth, cutting edges, rock breaker tools, etc.) replacement wear parts shall be the same brand & quality as supplied by MINIQUIP.
- 14.6 The Client shall be responsible for daily checks and topping up of fuel, oils, coolants etc., to ensure safe operation of Equipment
- 14.7 If MINIQUIP has quoted hire charges excluding maintenance charges then during the period of hire the Client at its own expense shall carry out all running repairs and regular servicing as per manufacturers recommendations so as to keep the Equipment at all times in good working condition.
- 14.8 If Client elects to include maintenance charges then the Client is to make available and deliver all vehicles & equipment for servicing or repair to a MINIQUIP depot or authorised repairer as nominated by MINIQUIP, charges will apply should MINIQUIP or a MINIQUIP authorised repairer attend any vehicle or equipment other than at a MINIQUIP depot for service or repair.
- 14.9 For larger excavators of thirteen (13) ton & above MINIQUIP may elect to conduct on site servicing for Client's within fifty kilometres (50km) of a MINIQUIP depot without additional travel charges.
- 14.10 All servicing of vehicles & equipment other than at a MINIQUIP depot or as nominated in clause 14.8 including remote areas will attract additional charges as required for labour from time of dispatch until time returned to MINIQUIP depot, air fares, accommodation, meals, travel, supply of suitable vehicle, fuel & tyres, transportation including but not limited to people, parts, fluids & tools.
- 14.11 Should the Equipment hired suffer major breakdown or failure the Client will not have any repairs affected thereto by any person other than an employee of MINIQUIP or such person as MINIQUIP may nominate. In the event of a breakdown or failure, which in the opinion of MINIQUIP is caused by fair wear and tear, MINIQUIP will at its own expense restore the Equipment to working order as quickly as reasonably possible.
- 14.12 In the event that any breakdown, accident or repair are deemed to be a result due to driver/operator induced errors (including but not limited to, incorrect refuelling, flat battery, lost keys, keys locked in vehicle, tyre & track changing or refitting, repairs to tip truck tail gates), then any costs associated with towing, travel, parts and labour will be borne by the Client.
- 14.13 During the period of hire the Client shall observe and comply with the provisions of all Statutes, Acts, Ordinances and Regulations in relation to the work on which the equipment shall be used and the manner of performance of such work in relation to the premises in or on or about which such work is being performed and shall indemnify MINIQUIP from and against all claims for damages or otherwise whenever the Equipment is used in breach thereof.
- 14.14 The Client agrees that prior to the commencement of the hire the Equipment was in the condition described in the Rental Agreement
- 14.15 The Client will not remove or cover, any plates or other markings that MINIQUIP may have affixed to the plant to indicate that the plant is the property of MINIQUIP. The Client must store the Equipment in such a manner that they are readily distinguishable from other equipment held by the Client in order to clearly show that it is the property of MINIQUIP.
- 14.16 The Client shall be responsible for free access by MINIQUIP to the site where the Equipment is located. If there are any delays due to free access not being available then the Client shall be responsible and shall reimburse MINIQUIP for all lost hire fees associated with the Equipment being unavailable. The Client shall also be responsible for all other expenses and costs incurred by MINIQUIP due to delays in access to the Equipment.
- 14.17 Immediately on request by MINIQUIP the Client will pay;
- MINIQUIP as compensation for the Equipment or for such part or parts thereof that is or are lost or destroyed as the case may be an amount equal to the replacement value of the Equipment or of a like part or like parts thereof as the case may be together with any associated labour costs incurred by MINIQUIP;
 - all costs incurred in cleaning the Equipment;
 - the cost of repairing any damage to the Equipment caused by the direction, instruction or negligence of the Client or Client's operators,

Budget Mini Excavators T/AS Miniquip and Miniquip NT current as of 1 December 2016 until superseded

- representatives or carriers;
- (d) the cost of repairing any damage to the Equipment caused by vandalism, or (in MINIQIP reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
- (e) until the Client has paid MINIQIP the compensation therefore as so determined the Client shall continue to be liable for the hire charges at the rate specified on the front hereof or as the same thereafter may have been increased; as the case may be.
- 14.18 It is the Client's responsibility to ensure that all persons operating Equipment are licensed and experienced operators and are fully conversant with Equipment, and aware of all safe operating procedures and safety requirements for the use of the Equipment hired.
- 14.19 It is Client's responsibility to locate & /or expose if necessary all services & obstructions prior to commencement of excavation or works. MINIQIP will under no circumstances take responsibility or liability for damage or repair to property, foundations, retaining walls, cables, utility services etc.
- 14.20 The Client further agrees to comply with the Australian Communication Industrial Form and Industrial Code for external communications cable network which will include contacting Telstra by way of Dial Before You Dig Enquiry Services.
- 14.21 If equipment is required to work on roads or road verge or an area that requires the equipment to be registered it is the Client's responsibility to request an item of registered equipment at time of booking. If the Client is hiring Equipment in WA MINIQIP has SOME Equipment registered under a restricted concession code 401 type license. The Client agrees that such Equipment will at all times be used in compliance with the requirements of code 401.
- 14.22 At no time are any attachments to be used on the equipment other than those supplied by MINIQIP.
- VEHICLE & TRUCK RENTAL**
- The Client acknowledges that IN SOME CASES MINIQIP supplies the Vehicle/Truck on hire to the Client as an agent for Daikel Pty Ltd (as trustee for Daikel Trust) T/A Fleetspec Hire ("Fleetspec"), and irrespective of such, the Vehicle/Truck is supplied by MINIQIP only on the terms and conditions herein to the exclusion of anything to the contrary in the terms of the Client's order, notwithstanding that any such order is placed on terms that purport to override these terms and conditions.*
- INSURANCE: The Client acknowledges and accepts that all Equipment, Vehicle or Truck rentals must have insurance in place prior to delivery or use. Unless otherwise agreed in writing such insurance will be organised by MINIQIP in accordance with clause 19.**
- 15. Price & Payment**
- 15.1 Price shall be the hire rate as is set out on the front hereof, or MINIQIP's current schedule of rates, or hire documentation provided.
- 15.2 At MINIQIP sole discretion:
- payment shall be before delivery of vehicle, or
 - payment shall be due on pick up of the vehicle
 - payment shall be due by demand, cash or credit card or as per previously agreed credit terms for all additional days of hire or additional charges.
 - payment shall be within seven (7) days of receipt of an invoice from MINIQIP unless a thirty (30) day credit account or other arrangements have been agreed to in writing.
- 15.3 Any sum received by MINIQIP on or behalf of the Client at or before the commencement of an agreement shall be held by MINIQIP as security for the return of the Vehicle and as security for payment of any sums owed by the Client to MINIQIP on the termination of this agreement. Upon the termination of the agreement MINIQIP shall be entitled to apply any sum so held in payment of all amounts owed by the Client under this agreement and any balance shall be refunded to the Client.
- 15.4 In the event additional charges exceed funds held, the Client is to pay MINIQIP any outstanding balance on demand.
- 15.5 The Client agrees that MINIQIP may charge any credit card details previously provided by the Client or the Clients thirty (30) day credit account with MINIQIP for, damage to the hired vehicle, loss of or damage to accessories, or any traffic or parking infringements that occurs during the period of hire.
- 16. Hire Period**
- 16.1 The minimum hire period shall be a period of twenty four (24) hours commencing at 7am daily and finishing at 7am the following day, in the event a vehicle is returned after 8am on the terminating day of any agreed hire period then MINIQIP shall be entitled to charge the hirer an additional full days hire.
- 16.2 All Vehicles will include a specified amount of kilometres allocated for use per day, (for example two hundred kilometres (200km)) all additional kilometres will be charged at a cost per kilometre as per MINIQIP current schedule of rates or as specified in the hire documentation provide.
- 16.3 MINIQIP reserves the right to change the Vehicle/Truck charges in the event of a variation to the Clients use description of the Vehicle or a variation to MINIQIP'S quotation
- 16.4 All Vehicles are provided with a full fuel tank at the time of commencement of hire, any fuel required on return of Vehicles will be charged to the Client at cost of provision plus a margin of up to two dollars (\$2.00) per litre supplied + GST .
- 16.5 In no case may be the hire period of the Equipment specified in the Rental Agreement be exceeded.
- 16.6 Notwithstanding clause 29.2, if the hire period set out in the Rental Agreement is less than ninety (90) days then the Parties agree that this Rental Agreement will not constitute a PPS Lease for the Purposes of the PPSA and do not give rise to a security interest thereunder.
- 17. Delivery of Vehicle**
- 17.1 Delivery of the Vehicle shall be made to the Client's nominated address at the Client's cost. MINIQIP may agree to deliver & or collect Vehicles on behalf of the Client, charges for such Service will incur additional charges subject to but not limited to availability, location, labour, fuel, transportation costs to conduct such Service.
- 17.2 The Client shall make all arrangements necessary to take delivery of the vehicle whenever they are tendered for delivery, or delivery of the vehicle shall be made to the Client at MINIQIP depot.
- 17.3 The Client agrees to clean the Vehicle before collection or return, any waiting time to deliver or collect Vehicle will be charged at hourly rates.
- 17.4 When a Vehicle is left at any other location than the premises of MINIQIP then the termination shall be when the Vehicle inspection shall occur at the time of the collection, the client will be responsible for the Vehicle up until this time of termination, inspection, and collection
- 17.5 A relocation fee will be applicable to any Vehicle being left at any other agent or business address or any other place other than the address from which the Vehicle was hired and all charges to reposition the Vehicle to its original business address shall be chargeable, and/or any hire shorter than the specified return date may have its daily rate adjusted accordingly to the length of hire.
- 17.6 The Client is liable for all charges if Vehicles requiring towing or salvage.
- 17.7 The failure of MINIQIP to deliver shall not entitle either party to treat this contract as repudiated.
- 18. Drivers Licensing Requirements**
- 18.1 Where the Client is an individual then that person must have a valid driver's licence, which must be maintained for the term of any Hire. The driver must be twenty-five (25) years of age or over and have held and Australian licence for this class vehicle for more than two (2) years.
- 18.2 Where the Client is a company, then the company warrants that all drivers that are to drive the hired Vehicle will have a valid driver's licence, which must be maintained for the term of any Hire. All drivers must be twenty-five (25) of age or over and have held and Australian licence for this class vehicle for more than two (2) years.
- 18.3 If the need arises, consent is given to MINIQIP to check the validity and currency of any drivers licence used in connection with this agreement.
- 19. Insurance**
- 19.1 The Client acknowledges that unless specifically agreed to in writing by MINIQIP or by supplying an independent insurance certificate for hired in plant that it is bound by the provisions of the insurance cover provided by MINIQIP (including where acting as an agent for Fleetspec) and MINIQIP's (or, where applicable, Fleetspec's) insurers, and the Client will be liable for such excesses where applicable, Damages not subject to an insurance claim are the Client's responsibility.
- 19.2 A standard excess of: twenty-five thousand dollars (\$25,000) or ten percent (10%) of the total sum insured, whichever is the higher amount of the two applies to all equipment, a greater amount of twenty-five thousand dollars (\$25,000) or twenty percent (20%) applies to all motor vehicles and trucks
- 19.3 Subject to clause 19.4 An Excess Reduction Fee (ERF) charges of ten percent (10%) will be applied to all dry hire/Equipment/Vehicle & Truck Rental.
- 19.4 The Client shall not be required to pay the ERF if the Client produces a certificate of currency (COC) for an appropriate policy of insurance that covers loss, theft or damage to the Vehicle/Truck or Equipment during the hire period for an amount not less than the full new replacement value of the Vehicle/Truck or Equipment. The COC must be provided to MINIQIP prior to the supply of Vehicle/Truck or Equipment by MINIQIP.
- 19.5 The ERF is not insurance, but is an agreement by MINIQIP to reduce your Insurance Excess Fee in the incidence of loss, theft, or damage, to MINIQIP Vehicles/Truck or Equipment.
- 19.6 Where the Client has paid the ERF , MINIQIP will waive MINIQIP's right to claim against you the full insurance excess fee of the higher amount for loss, theft or damage to the Vehicle/Truck or Equipment if:
- the Client has promptly reported the incident to the Police and Provided MINIQIP with a written Police report;
 - the Client has co-operated with MINIQIP and provided MINIQIP with details of the incident, including any written or photographic evidence that MINIQIP requires;
 - the loss, theft or damage does not fall into one or more of the circumstances in clause 19.8; and
 - the Client has paid to MINIQIP the ERF.
- 19.7 The ERF for each item of Equipment is the amount equal to:
- five dollars (\$5,000) or (if the replacement cost of the Equipment is less than five thousand dollars (\$5,000) the replacement cost of the Equipment;
 - the excess is subject to increase where the Vehicle/Truck or Equipment is more than a one hundred kilometres (100km) from MINIQIP depot or

Budget Mini Excavators T/AS Miniquip and Miniquip NT current as of 1 December 2016 until superseded

- if in the instance of a tip truck when the hoist has been engaged or the truck is tipping; and
- (c) whichever is the greater.
- 19.8 Even if the Client has paid the ERF, MINIQUIP shall not waive MINIQUIP's rights to claim against the Client for loss, theft or damage to the Vehicle/Truck or Equipment and the ERF shall not apply if the loss, theft or damage:
- has arisen as a result of the Client breaching a clause of this hire agreement;
 - has been caused by a negligent act or omission by the Client;
 - has arisen as a result of the Client's use of the Vehicle/Truck or Equipment in violation of any law(s);
 - has been caused by the Client's failure to use the Vehicle/Truck or Equipment for its intended purpose or in accordance with MINIQUIP's instructions or the Manufacturer's instructions;
 - occurs to the Vehicle/Truck or Equipment whilst it is located, used, loaded, unloaded, transported on or over water, wharves, bridges, or vessels of any kind;
 - has been caused by a lack of lubrication or a failure to service or properly maintain the Vehicle/Truck or Equipment
 - has been caused by a collision with a bridge, carpark, awning, gutter, tree, or any other overhead structure or object due to insufficient clearance;
 - has been caused by the overloading of the Vehicle or Equipment or any components thereof;
 - is to motors, or other electrical Equipment or components within the Equipment caused by electrical overload, a surge in current or the use of under rated or excessive lengths or extension leads with the electrical Equipment;
 - is caused by exposure to any caustic or corrosive substance, such as cyanide, salt water, acid etc.;
 - is caused by vandalism;
 - is to tyres or tubes;
 - is to glass;
 - is caused by the wilful actions of the Client, their employees, sub-contractors or agents;
 - is animal & livestock related damage.
- 19.9 Any insurance waiver and/or ERF granted to the Client by MINIQUIP is subject to all of the loss or damage being recovered by MINIQUIP through it's (or Fleetspec's) insurers. In the event MINIQUIP does not recover the full amount of any loss or damage from it' (or Fleetspec's) insurers, or in the event that there is a shortfall between the amount recovered and the amount owing pursuant to a finance agreement in relation to the Vehicle/Truck, for any reason whatsoever, the Client agrees to pay the difference between any amount recovered by MINIQUIP and the total amount of loss and damage suffered by MINIQUIP and the shortfall between the amount recovered and the amount owing pursuant to a finance agreement in relation to the Vehicle/Truck, if any.
- 19.10 The Client accepts full responsibility for and shall keep MINIQUIP indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage or loss of the Vehicle/Truck or Equipment, and/or damage or loss to property arising out of the use or provision of the Vehicle/Truck or Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons, particularly in the event that clauses 19.1 to 19.8 are voided for any reason.
- 20. Exclusions**
- 20.1 The indemnities referred to in clause 19 shall not apply where the damage, injury or loss arises when:
- the driver of the Vehicle is under the influence of alcohol or any drug that affects their ability to drive the Vehicle; or
 - the Vehicle is in an unsafe or un-roadworthy condition that arose during the course of the Hire and that caused or contributed to the damage or loss, and the Client or driver was aware of or ought to have been aware of the unsafe or un-roadworthy condition of the Vehicle; or
 - the Vehicle is operated in any race, speed test, rally, or contest, or on any closed road or non-public roadway; or
 - the Vehicle is driven by any person who at the time when they drove the Vehicle is disqualified from holding or has never held a driver's licence appropriate for that Vehicle; or
 - the Vehicle is willfully or recklessly damaged either by the Client, or any other person named on the front of this form, or any person driving the Vehicle under the authority of the Client; or
 - the Vehicle is operated outside the term of the Hire or any agreed extension of that term.
- 21. Unsealed Road Cover**
- 21.1 Where the Client acknowledges the use of the Equipment may be used on an unsealed road MINIQUIP reserves the right to request the Client to obtain an URC to cover the use of Vehicle/Truck or Equipment that allows the Vehicle/Truck or Equipment to be used on an unsealed road provided that the road is gazetted and graded and maintained by a local, state, territory government body, authority or council but it never allows the use of the vehicle off road. An additional fee will apply being an additional twenty-five percent (25%) of MINIQUIP's daily hire rates.
- 22. Vehicle/Truck Mechanical Repairs & Accidents**
- 22.1 If the Vehicle/Truck is damaged, or requires repair or salvage, whether because of any accident or breakdown, the Client shall advise MINIQUIP of the full circumstances as soon as practical.
- 22.2 The Client shall not arrange or undertake any repairs or salvage without the authority of MINIQUIP, except to the extent that the repairs or salvage are necessary to prevent further damage the vehicle or to other property, and only then by use of MINIQUIP's (or where applicable, Fleetspec's), or their insurer's, authorised repairer/salvager.
- 22.3 The Client shall ensure that no person shall interfere with GPS monitoring equipment, distance recorder or speedometer or, except in an emergency, any part of the engine, transmission, braking, electrical, or suspension systems of the Vehicle/Truck.
- 23. Use of the Vehicle/Truck**
- 23.1 The Client shall not use or permit the Vehicle/Truck to be used for the carriage of passengers for hire or reward.
- 23.2 Furthermore, the Client shall not:
- sublet or hire the vehicle to any other person or company; or
 - Permit the vehicle to be operated without their authority; or
 - Operate the vehicle or permit it to be operated in any race, speed test, rally, or contest, or on any closed road or non-public roadway; or
 - Operate the vehicle or permit it to be operated to propel or tow any other vehicle; or
 - Operate the vehicle or permit it to be operated for the transport of more than the number of passengers or more than the weight of goods specified in the certificate of loading for the vehicle; or
 - Drive or permit the vehicle to be driven by any person if at the time of his or her driving the vehicle the client or person is not the holder of current drivers licence appropriate for the vehicle; or
 - Use or allow the vehicle to be used in any way that would be deemed unlawful.
- 24. Wet Hire (This clause 24 only applies where this Service is offered to the Client by MINIQUIP i.e. Equipment is to be supplied with an operator provided by MINIQUIP)**
- 24.1 It is the Client's responsibility to provide a safe work site. Should MINIQUIP's plant operator or MINIQUIP's representative believe the task requested by the Client is unsafe MINIQUIP will cease all works until safety concerns are rectified. If Equipment is in a position where it cannot be removed off site under its own power whilst safety concerns are rectified hourly plant hire charges will continue to apply until the equipment is available for removal under its own power.
- 24.2 It is the Client's responsibility to supply all labour to set out, observe, instruct & supervise all works conducted for the Client also to check all works conducted by MINIQUIP representatives are to the requirements of the Client. MINIQUIP will not accept responsibility for any inaccuracies in whole or in part in works conducted by the company's representatives. Any request either verbally or in writing, by the Client or their representative to rectify works, will be at the discretion of MINIQUIP and charges will apply for all works undertaken.
- 24.3 It is Client's responsibility to locate and/or expose if necessary all services & obstructions prior to commencement of excavation or works. MINIQUIP will under no circumstances take responsibility or liability for damage or repair to property, foundations, retaining walls, cables, utility services etc. when working within instructions given by the Client, the Client's agents or employees.
- 24.4 Prior to MINIQUIP commencing any work the Client must advise MINIQUIP of the precise location of all underground mains & services on the site and clearly mark the same. The underground mains & services the Client must identify include (but are not limited to) the following:
- electrical services;
 - gas services;
 - sewer services;
 - pumping services;
 - sewer connections;
 - sewer sludge mains;
 - water mains;
 - irrigation pipes;
 - telecommunication cables;
 - fibre optic cables;
 - oil pumping mains; and
 - all other services that may be on site.
- 24.5 The Client further agrees to comply with the Australian Communication Industrial Form and Industrial Code for external communications cable network which will include contacting Telstra by way of Dial Before You Dig Enquiry Services.
- 24.6 MINIQUIP will take all care to avoid damage to any underground services however the Client agrees to indemnify MINIQUIP in respect of all and any liability claims, loss, damage, costs and fines as a result of carrying out the Services.
- 24.7 MINIQUIP's business booking hours are Monday to Friday 7am to 5pm and Saturday 7am to 12 noon. Normal plant booking hours are Monday to Friday between 6am to 6pm.

Budget Mini Excavators T/AS Miniquip and Miniquip NT current as of 1 December 2016 until superseded

- 24.8 Minimum hire period & charges for Equipment with an operator are:
- four (4) hours Monday to Friday between operational hours of 6am - 6pm; and
 - minimum charge applies to all trucks, loaders & excavators under eight (8.0) ton; and
 - eight (8) hours for all excavators over eight (8.0) ton; and
 - four (4) hours for weekends, after hours call out and public holidays; and
 - eight (8) hours for all excavators over eight (8.0) ton;
- 24.9 Minimum attachment charges apply to all attachments of;
- two (2) hours; and
 - additional continuous usage is charged in fifteen (15) minute increments.
- 24.10 Transportation charges include:
- a minimum hire charge for up to one (1) hour of transportation within the metropolitan area; and
 - travel outside of the first hour which will be charged on the actual time taken, the rate used for calculating travel charges will be equal to that charged for bucket rate of the plant item hired. (Alternatively a fixed cost for travel charges is available at time of booking plant). (Please note: A minimum operators daily travel charge of fifty-five dollars (\$55.00) + GST will apply for all days an operator attends a worksite were equipment is not transported by the vehicle driven on that day by that operator)
- 24.11 Transportation charges and operator travel charges apply for eight (8.0) ton; and larger excavator hire. Such charges are variable depending on time and distance travelled, charges are available on application.
- 24.12 After hour's charges cover;
- an additional one hundred dollars (\$100.00) call out fee for an emergency or after hours call out bookings; and
 - an additional twenty dollars (\$20.00) per hour will apply to hourly hire rates on a Saturday; and
 - an additional thirty-five dollars (\$35.00) will apply to hourly hire rates on Sundays, public holidays & after hours, (including but not limited to, callouts, nightshifts, and/or between the hours of 6pm and 6am daily; and
 - additional Equipment, Labour, Travel, Transportation, Accommodation & servicing. Charges will apply for works outside of the Perth Metropolitan area.
- 25. Default & Consequences of Default**
- 25.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of two and a half percent (2.5%) compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
- 25.2 If the Client owes MINIQUP any money the Client shall indemnify MINIQUP from and against all costs and disbursements incurred by MINIQUP in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, MINIQUP's contract default fee, and bank dishonour fees).
- 25.3 Further to any other rights or remedies MINIQUP may have under this contract, if a Client has made payment to MINIQUP, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by MINIQUP under this clause 25 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 25.4 Without prejudice to any other remedies MINIQUP may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms of hire MINIQUP may repossess the Equipment as per clause 26.2, or suspend or terminate the supply of Equipment to the Client and any of its other obligations under the terms and conditions. MINIQUP will not be liable to the Client for any loss or damage the Client suffers because MINIQUP has exercised its rights under this clause.
- 25.5 Without prejudice to MINIQUP's other remedies at law MINIQUP shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies MINIQUP may have and all amounts owing to MINIQUP shall, whether or not due for payment, become immediately payable in the event that:
- any money payable to MINIQUP becomes overdue, or in MINIQUP's opinion the Client will be unable to meet its payments as they fall due; or
 - the Client has exceeded any applicable credit limit provided by MINIQUP;
 - the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 26. Title**
- 26.1 The Equipment is and will at all times remain the absolute property of MINIQUP.
- 26.2 If the Client fails to return the Equipment to MINIQUP then MINIQUP or MINIQUP's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 26.3 In addition to any hire charges which might be due hereunder at the time MINIQUP repossesses the Equipment the Client must pay MINIQUP all such reasonable cost and expenses as are incurred by MINIQUP in repossessing the Equipment including but not limited to the costs of transporting such Equipment from the premises where the same was housed at the time the same was repossessed.
- 27. Security And Charge**
- 27.1 In consideration of MINIQUP agreeing to supply Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 27.2 The Client indemnifies MINIQUP from and against all MINIQUP's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising MINIQUP's rights under this clause.
- 27.3 The Client irrevocably appoints MINIQUP and each director of MINIQUP as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 27 including, but not limited to, signing any document on the Client's behalf.
- 28. Privacy Act 1988**
- 28.1 The Client agrees for MINIQUP to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by MINIQUP.
- 28.2 The Client agrees that MINIQUP may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- to assess an application by the Client; and/or
 - to notify other credit providers of a default by the Client; and/or
 - to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 28.3 The Client consents to MINIQUP being given a consumer credit report to collect overdue payment on commercial credit.
- 28.4 The Client agrees that personal credit information provided may be used and retained by MINIQUP for the following purposes (and for other agreed purposes or required by):
- the provision of Goods; and/or
 - analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - enabling the collection of amounts outstanding in relation to the Goods.
- 28.5 MINIQUP may give information about the Client to a CRB for the following purposes:
- to obtain a consumer credit report;
 - allow the CRB to create or maintain a credit information file about the Client including credit history.
- 28.6 The information given to the CRB may include:
- personal information as outlined in 28.1 above;
 - name of the credit provider and that MINIQUP is a current credit provider to the Client;
 - whether the credit provider is a licensee;
 - type of consumer credit;
 - details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and MINIQUP has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - information that, in the opinion of MINIQUP, the Client has committed a serious credit infringement;
 - advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 28.7 The Client shall have the right to request (by e-mail) from MINIQUP:
- a copy of the information about the Client retained by MINIQUP and the right to request that MINIQUP correct any incorrect information; and
 - that MINIQUP does not disclose any personal information about the Client for the purpose of direct marketing.
- 28.8 MINIQUP will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 28.9 The Client can make a privacy complaint by contacting MINIQUP via e-mail. MINIQUP will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the

Budget Mini Excavators T/AS Miniquip and Miniquip NT current as of 1 December 2016 until superseded

- complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 29. Personal Property Securities Act 2009 (“PPSA”)**
- 29.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 29.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Equipment that has previously been supplied and that will be supplied in the future by MINIQUIP to the Client. Further, the Client grants to MINIQUIP Security Interest in the Client’s All Present and After Acquired Property to secure the payment of all amounts due and performance of its obligations under this Agreement.
- 29.3 The Client undertakes to:
- promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which MINIQUIP may reasonably require to:
 - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - register any other document required to be registered by the PPSA; or
 - correct a defect in a statement referred to in clause 29.3(a)(i) or 29.3(a)(i);
 - indemnify, and upon demand reimburse, MINIQUIP for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Equipment charged thereby;
 - not register a financing change statement in respect of a security interest without the prior written consent of MINIQUIP;
 - 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 the prior written consent of MINIQUIP.
- 29.4 MINIQUIP and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 29.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 29.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 29.7 Unless otherwise agreed to in writing by MINIQUIP, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 29.8 The Client must unconditionally ratify any actions taken by MINIQUIP under clauses 29.3 to 29.5.
- 29.9 Subject to any express provisions to the contrary (including those contained in this clause 29), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.
- 30. Dispute Resolution**
- 30.1 Any dispute between MINIQUIP and the Client arising out of or in any way connected with the contract which is not resolved by MINIQUIP and the Client within fourteen (14) days shall be referred for decision to the person agreed between MINIQUIP and the Client, or if the parties to this agreement fail to agree on a suitable person within thirty (30) days the matter shall be referred to the Institute of Arbitration which arbitration shall be conducted in accordance with the rules of Conduct Of Commercial Arbitration Of that Institute.
- 31. Notices**
- 31.1 Any notice, Invoice or document relating to the Agreement will be deemed to be served:
- on the second business day after the date on which it was posted – if sent by ordinary pre-paid post addressed to the Client;
 - on the day on which it was sent – if it is sent:
 - by facsimile transmission before or during normal business hours on a business day, and a receipt of successful transmission is produced to that effect; or
 - by email transmission before or during normal business hours on a business day; or
 - on the next business day following the day on which it was sent – if it is sent:
 - by facsimile transmission after normal business hours on a business day or on a day other than a business day, and a receipt of successful transmission is produced to that effect; or
 - by email transmission after normal business hours on a business day or on a day other than a business day.
- 32. General**
- 32.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party’s right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 32.2 The contract shall be governed by the law of the Australian State or territory in which the contract is made and the parties agree to submit to the jurisdiction of the courts of that state or territory and any courts having appellate jurisdiction from them.
- 32.3 MINIQUIP shall be under no liability whatever to the Client for any indirect loss and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by MINIQUIP of these terms and conditions.
- 32.4 In the event of any breach of this contract by MINIQUIP the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of MINIQUIP exceed the Price.
- 32.5 MINIQUIP may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client’s consent.
- 32.6 The Client cannot licence or assign without the written approval of MINIQUIP.
- 32.7 MINIQUIP may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of MINIQUIP’s sub-contractors without the authority of MINIQUIP.
- 32.8 MINIQUIP reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which MINIQUIP notifies the Client of such change. Except where MINIQUIP supplies further Equipment to the Client and the Client accepts such Equipment, the Client shall be under no obligation to accept such changes.
- 32.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 32.10 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.
- 32.11 The Client shall ensure that no person shall interfere with GPS monitoring equipment fitted to any equipment/vehicle or truck, except in the case of an emergency.
- 32.12 SEVERABILITY AND SURVIVAL OF COVENANTS**
If any provision of the Agreement is or at any time becomes void or unenforceable, the remaining provisions will continue in full force and effect, and the parties agree that they will amend the Agreement forthwith so that such void or unenforceable provision will be replaced forthwith by a lawful and enforceable provision which, so far as possible, achieves the same economic benefit or burden for the parties as the unlawful or unenforceable provision was intended to achieve.
- 33. Damage**
- 33.1 The Client agrees to pay for damages incurred to any MINIQUIP plant machinery, vehicles and equipment whilst on site or being transported (whether due to negligence or otherwise) by anyone who is not a MINIQUIP employee.
- 33.2 In the case that MINIQUIP deems that you have been in violation of the terms and conditions of your rental agreement as the Client you will forfeit any insurance cover, thus being responsible for the full cost of replacing the equipment or the full cost of repair, whichever is the lesser of the two. You will also be liable for any ‘down time’.
- 33.3 The Client is liable to pay for any Tyre / Track Damage sustained to Plant Machinery, Equipment, Rental, Delivery and Service Vehicles where it is not deemed Fair Wear and Tear for normal use (This includes but is not limited to Punctures and Stakes.). If damage has occurred you will be charged the repair or replacement cost plus an administrative fee of five percent (5%) of that cost.
- 33.4 In the event that any of MINIQUIP’s Plant Machinery, Vehicles or Equipment sustain damage from a natural disaster including cyclone or flood damage but not limited to, the Client is responsible for all damage as stated in section 33.1 unless any other section of the terms and conditions have been broken. You as the Client are responsible in the event of a natural disaster, to take necessary steps to ensure Plant Machinery, Equipment, Rental, Delivery and Service Vehicles safety at all times otherwise you risk forfeiting any insurance cover as set out in your rental agreement.
- 33.5 The insurance excess is the Client’s responsibility at all times and is payable immediately.
- 33.6 The Client acknowledges that;
- goods transported in the hired Equipment are carried and stored at the Client’s sole risk and not at the risk of MINIQUIP; and
 - MINIQUIP is under no obligation to arrange insurance of the goods and it remains the Client’s responsibility to ensure that the goods are insured adequately or at all;
- (c) Overhead, Glass, rims, tyre, off road, water, excess loading, animal & livestock related damage is the Client’s responsibility at all times.
- 34. Specific Site Requirements**
- 34.1 Any Costs related to adhering to site specific conditions will be chargeable to the Client these costs include, but are not limited to, medicals, inductions, labour cost incurred to complete inductions and any unusual vehicle specifications or requirements such as roadworthy certifications or reflective numbering on vehicles.