



# Terms and Conditions of Hire

## 1. DEFINITIONS

- 1.1 "Agreement" means the Application for Credit Account, the Hire Agreement and these terms and conditions. It includes any covering letter, quotation, estimate and any other document that refers to these terms and conditions.
- 1.2 "Claim" means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise.
- 1.3 "Credit" means JET Excavators and Trucks providing, or proposing to provide, in the course of business, credit to the Hirer in relation to the provision of earthmoving equipment on hire.
- 1.4 "Earthmoving Equipment" means the earthmoving and associated equipment provided by JET Excavators and Trucks to the Hirer pursuant to this Agreement.
- 1.5 "Hirer" means the party described as the Hirer in the Hire Agreement.
- 1.6 "JET" means JET Excavators & Trucks Pty Ltd ACN 504 656 721 ATF the M & J Jennings Family Trust.
- 1.7 "Liability" means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees).
- 1.8 "PPSA" means the *Personal Property Securities Act 2009*.
- 1.9 "Privacy Act" means *Privacy Act 1988 (Cth)*.
- 1.10 "Outstanding Debts" means all amounts payable by the Hirer to JET Excavators and Trucks this Agreement.
- 1.11 "Price" means the price for the hire of the Earthmoving Equipment including but not limited to any other charges JET Excavators and Trucks is entitled to recover under this Agreement.
- 1.12 "Security interest" means a security interest within the meaning of the *Personal Property Securities Act 2009*.
- 1.13 "Services" means any services associated with the provision of the Earthmoving Equipment.
- 1.14 "Site" means the place or places at which the Hirer will use the Earthmoving Equipment.

## 2. CORPORATIONS

- 2.1 If the Hirer is a corporation, the Hirer warrants that its director(s) and/or company secretary will sign this Agreement pursuant to the requirements in section 1.5.7 of the *Corporations Act 2001 (Cth)* for signing documents on behalf of the Hirer.
- 2.2 The Hirer warrants that all of its directors will provide personal guarantees and indemnities to JET Excavators and Trucks in relation to the Hirer's obligations under the Agreement.

## 3. TRUSTEE CAPACITY

- 3.1 If the Hirer is the trustee of a trust (whether disclosed to JET Excavators and Trucks or not), the Hirer warrants to JET Excavators and Trucks that:
  - (a) the Hirer enters into this Agreement in both its capacity as trustee and personal capacity;
  - (b) the Hirer has the right to be indemnified out of trust assets;
  - (c) the Hirer has the power under the Trust Deed to sign this Agreement; and
  - (d) the Hirer will not retire as trustee of the trust or appoint any new or additional trustee without advising JET.
- 3.2 The Hirer must give JET Excavators and Trucks a copy of the Trust Deed upon JET Excavators and Trucks' request.

## 4. PARTNERSHIP

- 4.1 If the Hirer is a partnership, the Hirer warrants that all of its partners agree to and have signed this Agreement and that all of its partners will provide personal guarantees and indemnities to JET in relation to the Hirer's obligations under the Agreement.
- 4.2 If the Hirer is a partnership, It must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without first advising JET Excavators and Trucks. In the case of a change of partners, JET may ask for new partners to sign a personal guarantee and indemnity.

## 5. ACCEPTANCE

- 5.1 The Hirer is taken to have accepted, and is immediately bound, jointly and severally, by this Agreement if the Hirer (or its agent or employee)

JET Excavators and Trucks Pty Ltd

orders Earthmoving Equipment and/or accepts delivery of the Earthmoving Equipment.

5.2 This Agreement shall prevail to the extent of any inconsistency with any other document or agreement.

## 6. FORMATION OF CONTRACT

6.1 Quotations given by Jet Excavators will not be construed as an offer or obligation to supply in accordance with the quotation. JET Excavators and Trucks reserves the right to accept or reject, at its discretion, any offer to hire received by it from the Hirer to hire Earthmoving Equipment pursuant to the terms contained in a quotation.

6.2 Placement of an order, either verbally or in writing, will imply acceptance of JET Excavators and Trucks' quotation and the terms and conditions contained in this Agreement.

## 7. PRICE

7.1 At JET Excavators and Trucks' sole discretion, the Price shall be calculated by reference to the rates published by JET Excavators and Trucks on its website from time to time or quoted by JET separately.

7.2 The Hirer acknowledges that:

- (a) JET is entitled to charge the rate specified for the minimum period specified in a quote, or if there is no quote, in the rates published by JET on its website from time to time notwithstanding that the period for which the Hirer requires the Earthmoving Equipment for less than that minimum period;
- (b) JET shall be entitled to charge a surcharge calculated at the rates specified in a quote, or if there is no quote, the rates published by JET on its website from time to time for overtime in the event that hire period and/or work for which the Earthmoving Equipment is required includes night work, weekend work or work on statutory or gazetted holidays;
- (c) it is responsible for and must pay JET for all freight and other charges incurred by JET in delivering and unloading the Earthmoving Equipment at the Site and loading the Earthmoving Equipment at the Site and returning it to JETs' holding yard;
- (d) it is responsible for and must pay JET for all tolls and levies incurred by JET in delivering the Earthmoving Equipment to the Site and collecting it and returning it to JETs' holding yard;
- (e) tipping fees charged by the Hirer to JETs' account(s), including the surcharge included by JET in its rates published on its website from time to time; and

(f) any other amounts payable by the Hirer to JET pursuant to these terms and conditions.

7.3 JET Excavators and Trucks reserves the right to change the Price:

- (a) if a variation to the Earthmoving Equipment originally ordered is requested; or
- (b) in the event of increases in JET Excavators and Trucks' cost of labour or materials which are beyond JETs' control.

## 8. PAYMENT TERMS

8.1 The terms of payment are strictly 21 days from the date of the invoice (or such other period as nominated by JET Excavators and Trucks in writing). JET may, at any time, vary the terms of trade in its absolute and unfettered discretion.

8.2 Should the Hirer not pay for the Price in accordance with the credit terms agreed in writing with JET Excavators and Trucks from time to time, JET will be entitled to charge an administration fee of 10 percent (10%) of the amount of any invoice payable.

## 9. HIRE PERIODS

9.1 The hire shall commence from the time at which the Earthmoving Equipment is unloaded by JET at the Site.

9.2 The hire shall end at the time the Earthmoving Equipment is reloaded on transport supplied by JET for return to its holding yard.

## 10. TITLE TO EARTHMOVING EQUIPMENT

10.1 Title to the Earthmoving Equipment remains vested in JET Excavators and Trucks at all times and will not pass to the Hirer or any third party at any time.

10.2 The Hirer must not at any time pass itself off as the owner of the Earthmoving Equipment or otherwise during the period of the hire part with possession of the Earthmoving Equipment at any time.

10.3 The Hirer must only use the Earthmoving Equipment for the purposes disclosed to JET in orders placed with JET Excavators and Trucks from time to time.

10.4 The Hirer agrees that JET has the right, with or without prior notice to the Hirer, to enter upon the Site to inspect the Earthmoving Equipment and to repossess the Earthmoving Equipment when payment is overdue.

10.5 The Hirer will be responsible for JETs' costs and expenses in exercising its right under clause 10.4. Where JET Excavators and Trucks exercises its right to enter the Site, that entry will not give rise to any action for trespass or similar action on the part of the Hirer against JET, its employees, servants or agents.

JET Excavators and Trucks Pty Ltd

10.6 The Hirer must not part with possession of, sell, sub lease, transfer, dispose of, mortgage, charge or otherwise encumber the Earthmoving Equipment in any way.

10.7 The Hirer agrees that where the Earthmoving Equipment has been retaken into the possession of JET Excavators and Trucks, JET has the absolute right to deal with the Earthmoving Equipment without regard to this Agreement.

## 11. CANCELLATION

11.1 Cancellations by the Hirer must be made by telephone at least one (1) hour prior to the Earthmoving Equipment leaving the JETs' holding yard or minimum hire charges plus travel charges will be payable by the Hirer to JET Excavators and Trucks irrespective of the cancellation. Faxed or emailed cancellations will not be accepted irrespective of the time of transmission and in those circumstances the minimum hire charge and travel charges will be payable without deduction.

## 12. MATERIAL SUPPLY

12.1 Supply of sand, soil, scoria or gravel will be at JET Excavators and Trucks' current price published on its website from time to time and subject to availability.

## 13. HIRER'S RESPONSIBILITIES

### Before Hire

13.1 Prior to the hire of the Earthmoving Equipment, the Hirer must:

- (a) consult with JET to determine the condition and suitability of the Earthmoving Equipment for the purpose required. Should this process not be followed, the Hirer shall indemnify JET Excavators and Trucks from any additional cost, expenses or losses incurred; and
- (b) at its own costs obtain all necessary permits and/or plans and pay all fees payable to any local or government authority in relation to the hire.

### During Hire

13.2 During the Hire Period the Hirer will:

- (a) identify all services above and below ground at the Site, including, but not limited to drains, pipes, sewers, mains and telephone and data cables and clearly mark their location, to enable the Hirer's equipment operator to avoid damage to those services. [plans can be obtained from the Dial before You Dig website at [www.1100.com.au](http://www.1100.com.au) or phone 1100]. The Hirer indemnifies JET and will keep JET indemnified from and against all demands, claims, proceedings, penalties, losses, damages and expenses (including legal costs) arising from any damage or

disruption to any service, to the extent (which without limiting the indemnity may be expressed as a percentage, if appropriate) that such demand, claim, proceeding, penalty, loss, damage or expense was not caused or contributed to by JET Excavators and Trucks;

- (b) be responsible for the loss of or any damage to the Earthmoving Equipment if such loss is caused or contributed to by the conduct of the Hirer or any persons under its control;
- (c) indemnify JET and keep JET indemnified from and against all demands, claims, proceedings, loss, damages and expenses (including legal costs) in respect of any injury to or the death of any person or loss or damage to property arising out of the delivery, servicing, storage, possession or use of the Earthmoving Equipment during the period of hire to the extent (which without limiting the indemnity may be expressed as a percentage if appropriate) that such demand, claim, proceeding, loss, damage or expense was not caused or contributed to by JET;
- (d) not alter, make any additions to, deface or erase any identifying mark, plate or number on or in the Earthmoving Equipment or in any other manner interfere with the Earthmoving Equipment;
- (e) be liable for the costs of recovering and repairing the Earthmoving Equipment should it become bogged;
- (f) comply with all workplace health and safety laws and requirements regarding the presence and operation of the Earthmoving Equipment at the Site including without limitation, following the directions of the person in charge of work health and safety on the Site and keeping all persons including the Hirer a safe distance from the Earthmoving Equipment whilst in operation;
- (g) comply with all other laws and regulations regarding the presence and operation of the Earthmoving Equipment on Site;
- (h) not repair or attempt to repair or cause any repair to be made to the Earthmoving Equipment without the prior consent of JET;
- (i) not allow any other person to operate the Earthmoving Equipment without JET prior written approval;
- (j) ensure that the Earthmoving Equipment is operated by a suitably qualified and authorized (under relevant laws) person and for the purpose for which the

JET Excavators and Trucks Pty Ltd

Earthmoving Equipment was designed;  
and

- (k) take all reasonable precautions to prevent injury or death to persons and damage or destruction to property in the course of operating the Earthmoving Equipment.

13.3 If in the opinion of the Hirer (acting reasonably) the Hirer's operation of the Earthmoving Equipment could cause the death of or injuries to persons or the loss of or damage to the Earthmoving Equipment, the Hirer must suspend operation of the Earthmoving Equipment until such time as the Hirer, acting reasonably, determines that the risk has passed and, provided the risk was not caused by JET Excavators and Trucks, the Hirer will incur hire charges in accordance with this Agreement for the term of the suspension.

13.4 In the event that the Hirer wishes to place the Earthmoving Equipment on standby, it must notify JET in writing as soon as possible. JET retains the right to obtain a stand down number and divert the Earthmoving Equipment to another Site during any such period.

#### **14. DRY HIRE RESPONSIBILITIES**

14.1 The Hirer must:

- (a) ensure that only duly qualified and licensed persons operate the Earthmoving Equipment in accordance with all applicable laws, the Earthmoving Equipment's instruction manuals and best practice;
- (b) comply with all workplace health and safety laws and requirements regarding the presence and operation of the Earthmoving Equipment including without limitation keeping all persons including the Hirer a safe distance from the Earthmoving Equipment whilst in operation;
- (c) notify JET in writing should the Earthmoving Equipment prove to be in poor working order. Should the Hirer fail to do so within two (2) working days of the Earthmoving Equipment being delivered JET will assume the Earthmoving Equipment is in good order and condition;
- (d) ensure that the Earthmoving Equipment is lubricated and that the correct levels of oil and water and tyre pressure are maintained at those levels recommended by the Earthmoving Equipment's manufacturer;
- (e) notify JET immediately by telephone of any breakdown or the unsatisfactory working of any part of the Earthmoving Equipment. Any claim for breakdown time will only be

considered from the time and date of such notification;

- (f) be responsible for and report immediately in writing any loss or damage to the Earthmoving Equipment whether caused by any conduct of the Hirer or any persons under its control for any reason whatsoever or by any other person.

#### **15. DEFECTS/RETURNS**

15.1 Upon receipt of the Earthmoving Equipment the Hirer is responsible for inspecting the Earthmoving Equipment and satisfying itself that it is in good order and condition.

15.2 The Hirer must advise JET Excavators and Trucks of any defect with the Earthmoving Equipment within 24 hours from the time of delivery.

15.3 Provided the Hirer has complied with clause 15.2, JET will arrange either a credit for the Hirer, or alternatively, replace the Earthmoving Equipment at no additional cost to the Hirer.

#### **16. SECURITY/CHARGE**

16.1 The Hirer charges in favour of JET all of its estate and interest in any real property that the Hirer owns at present and in the future with the amount of its indebtedness until discharged.

16.2 The Hirer charges in favour of JET all of its estate and interest in any personal property that the Hirer owns at present and in the future with the amount of its indebtedness until discharged.

16.3 The Hirer appoints, as its duly constituted attorney, JET Excavators and Trucks' company secretary from time to time to execute, in the Hirer's name, any real property mortgage, bill of sale or consent to any caveat which JET may choose to lodge, against any real property that the Hirer may own, in any Land Titles Office in any state or territory of Australia, even though the Hirer may not have defaulted in carrying out its obligations hereunder.

16.4 Where the Hirer has entered into a previous Agreement with JET Excavators and Trucks in which the Hirer has granted a charge, mortgage or other security interest (including a security interest defined in PPSA) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this Agreement and will secure all indebtedness and obligations of the Hirer under this Agreement. JET may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

## 17. COSTS

- 17.1 The Hirer must pay for its own legal, accounting and business costs and all costs incurred by JET relating to any default by the Hirer. The Hirer must also pay all stamp duty and other taxes (if any) payable on this Agreement.
- 17.2 The Hirer will pay JET Excavators and Trucks' costs and disbursements incurred in pursuing any recovery action/or any other claim or remedy, against the Hirer, including collection costs, debt recovery fees, commission and legal costs on an indemnity basis. Such costs, disbursements and commission will be due and payable by the Hirer to JET irrespective of whether pursuit of the recovery action, claim or remedy is successful.
- 17.3 Subject to clauses 17.4 and 17.5, payments by, or on behalf of, the Hirer will be applied by JET as follows:
- (a) firstly, in payment of any and all collection costs, debt recovery fees and commission and legal costs in accordance with clauses 10.5 and 17.2;
  - (b) secondly, in payment of any interest payable pursuant to clause 20.1; and
  - (c) thirdly, in payment of the outstanding debt(s).
- 17.4 JET may apply and allocate payments made by, or on behalf of, the Hirer in a manner in JETs' absolute and unfettered discretion, including so as to attribute the payments to satisfy obligations which are or are not secured by a purchase money security interest or otherwise.
- 17.5 To the extent that payments have been allocated to invoices by JET in its business records, JET may, in its sole and unfettered discretion, allocate and/or retrospectively reallocate those payments in any manner whatsoever at any time whatsoever.
- 17.6 Payments allocated (and/or reallocated) under clause 17.4 and 17.5 will be treated as though they were allocated or reallocated, respectively in the manner determined by JET on the date of receipt of payment.

## 18. TAXES AND DUTY

- 18.1 The Hirer must pay GST on any taxable supply made by JET to the Hirer under this Agreement. The payment of GST is in addition to any other consideration payable by the Hirer for a taxable supply.
- 18.2 If as a result of:
- (a) any legislation becoming applicable to the subject matter of this Agreement; or
  - (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration,

JET becomes liable to pay tax, duty, excise or levy in respect of the amounts received from the Hirer, then the Hirer must pay JET these additional amounts on demand.

## 19. DEFAULT

- 19.1 Each of the following is an event of default, namely:
- (a) the Hirer allowing any sum of money payable to JET pursuant to this Agreement to remain unpaid five (5) clear days following the day upon which the amount became due and payable;
  - (b) the Hirer failing to punctually perform or observe any of the conditions or obligations imposed upon it by this Agreement and such failure remaining unremedied for a period of seven (7) clear days after the notice in writing is served upon the Hirer by JET specifying the default;
  - (c) if JET ascertains that the Hirer has made any false, inaccurate or misleading statement having a material effect in relation to the making of the Agreement or any related or collateral document;
  - (d) if the Hirer is a company, upon the passing of a resolution for its winding up or the making of any order by any court for its winding up, the appointment of a controller, provisional liquidator, receiver, or receiver and manager, or voluntary administrator in respect of it or in respect of the whole or any part of its assets;
  - (e) the levying of execution by any court against Hirer and such execution not being satisfied within fourteen (14) days;
  - (f) if the Hirer, or if the Hirer is a company, any director of the Hirer, being convicted upon indictment of a criminal offence or being sentenced to a term of imprisonment; or
  - (g) if the Hirer breaches any one or more of the terms or conditions of this Agreement.

## 20. INTEREST RATES

- 20.1 Any amount not paid in accordance with this Agreement, will be subject to interest calculated at the rate of 10%.

## 21. SET-OFF

- 21.1 All payments required to be made by the Hirer under this Agreement will be made free of any set-off, or counterclaim and without deduction or withholding.
- 21.2 Any amount due to JET Excavators and Trucks from time to time may be deducted from any monies which may be or may become payable to the Hirer by JET.

## 22. INDEMNITY

JET Excavators and Trucks Pty Ltd

22.1 The Hirer indemnifies JET Excavators and Trucks in respect of all costs and disbursements incurred by it in pursuing any recovery action or any other claim or remedy, against the Hirer, including collection costs, debt recovery fees and legal costs on an indemnity basis. Such costs, disbursements will be due and payable by the Hirer to JET irrespective of whether the recovery action is successful.

22.2 The Hirer agrees to indemnify JET Excavators and Trucks against all and any losses sustained by JET as a result of any claim(s) or action(s) brought against JET, by any third party, as the result of any event arising out of or in any way in connection with this Agreement.

### **23. LIABILITY**

23.1 To the extent permitted by law warranties implied by statute, the common law, through custom or usage or otherwise in equity are hereby expressly excluded.

23.2 To the extent that warranties implied in the manner set out in clause 23.1 cannot be excluded by contract, JETs' liability for those warranties is limited in the manner set out in clauses 23.33 to 23.55 of this Agreement.

23.3 In relation to the supply of Earthmoving Equipment, JET Excavators and Trucks' liability is limited to:

- (a) replacing the Earthmoving Equipment with similar Earthmoving Equipment;
- (b) repairing the Earthmoving Equipment;
- (c) providing the cost of having the Earthmoving Equipment repaired.

23.4 In relation to the supply of services, JETs' liability is limited to:

- (a) supplying the service again; or
- (b) providing for the cost of having the services supplied again at the amount of which is equal to or reasonably equivalent to the cost JET Excavators and Trucks would have incurred if supplying the services again.

23.5 JET is not liable, whether claims are made or not, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Hirer.

23.6 JET Excavators and Trucks is not liable for any loss caused to the Hirer by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other matter beyond JETs' control.

### **24. PERSONAL PROPERTY SECURITIES ACT**

24.1 JET Excavators and Trucks may register its interest in the Earthmoving Equipment under the Personal PPSA.

24.2 The Hirer consents to JET Excavators and Trucks registering its interests under the PPSA in respect of any Earthmoving Equipment and will do all things reasonably necessary to assist JET registering its interests.

24.3 The Hirer waives the right to receive verification of a registration of an interest under the PPSA pursuant to section 157(3)(b) of the PPSA. JET is not required to provide notice under the PPSA unless the obligation to provide notice cannot be excluded.

24.4 Pursuant to section 115 of the PPSA the parties contract out of the following sections of the PPSR in respect of all goods to which that section can be applied: section 95 (notice of removal of accession); section 96 (when a person with an interest in the whole may retain an accession); section 121(4) (enforcement of liquid assets – notice to grantor); section 125 (obligations to dispose of or retain collateral); and section 143 (reinstatement of security agreement).

24.5 JET Excavators and Trucks rights under this clause are in addition to and not in substitution for their respective rights under other law.

24.6 JET may choose whether to exercise rights under this clause or any other law as it sees fit.

24.7 JET Excavators and Trucks interest under the PPSA in respect of any Earthmoving Equipment (if any) will attach to proceeds.

24.8 The parties are not to disclose information of the kind that can be requested under section 275(1) of the PPSA. The Hirer must do everything necessary on its part to ensure that section 275(6)(a) of the PPSA continues to apply. This clause is included for the sole purpose of giving JET the benefit of section 275(6)(a) of the PPSA and JET Excavators and Trucks shall not be liable to pay any compensation or be subject to injunction regarding any breach of this clause.

### **25. SERVICE**

25.1 The Hirer agrees to accept service of any document required to be served, including any notice under the Agreement, the PPSA or court process, by prepaid post at any address nominated in this Agreement or any other address later notified to JET Excavators and Trucks by the Hirer or its authorised representative.

### **26. PROVISION OF FURTHER INFORMATION**

26.1 The Hirer undertakes to comply with any request by JET Excavators and Trucks to provide further information for the purpose of assessing the Hirer's creditworthiness, including an updated credit application.

JET Excavators and Trucks Pty Ltd

26.2 If the Hirer is a corporation (with the exception of a publicly listed company), it must advise JET Excavators and Trucks of any alteration to its corporate structure (for example a change in directors, shareholders, or constitution). In the case of a change of directors or shareholders JET may ask for the new directors or shareholders to sign a guarantee and indemnity.

## **27. WAIVER**

27.1 A waiver of any provision or breach of this Agreement by JET Excavators and Trucks must be made by an authorised officer of JET Excavators and Trucks in writing. A waiver of any provision or breach of this Agreement by the Hirer must be made by the Hirer's authorised officer in writing.

## **28. CANCELLATION OF TERMS OF CREDIT**

28.1 JET reserves the right to withdraw credit at any time, whether the Hirer is in default under the terms of this Agreement or not.

28.2 Upon cancellation of credit, with or without notice, all liabilities incurred by the Hirer become immediately due and payable to JET.

## **29. VARIATION**

29.1 Variations to this Agreement are not enforceable unless they are in writing and signed by the parties.

## **30. ASSIGNMENT**

30.1 This Agreement is personal to the Hirer and cannot be assigned by the Hirer in any circumstances.

## **31. SEVERANCE**

31.1 If any provision of this Agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.

31.2 If any part of this Agreement is invalid or unenforceable, that part is deleted and the remainder of the Agreement remains effective.

## **32. INSOLVENCY**

32.1 If the Hirer becomes insolvent, the Hirer remains liable under this Agreement for payment of all liabilities incurred hereunder. The Hirer remains liable under this Agreement even if JET receives a dividend or payment as a result of the Hirer being insolvent.

## **33. JURISDICTION**

33.1 The Hirer acknowledges and agrees that this Agreement will be governed by the laws of Queensland, and the laws of the Commonwealth of Australia which are in force in Queensland.

33.2 The Hirer acknowledges and agrees that any contract for the hire of Earthmoving Equipment or

services between JET Excavators and Trucks and the Hirer is formed at the address of JET.

33.3 The parties to this Agreement submit to the non-exclusive jurisdiction of the courts of Queensland and the relevant federal courts and courts competent to hear appeals from those courts.

## **34. ENTIRE AGREEMENT**

34.1 This Agreement constitutes the entire Agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this Agreement are merged in this Agreement and are of no further effect. No oral explanation of information provided by a party to another effects the meaning or interpretation of this Agreement or constitutes any collateral Agreement, warranty or understanding.

34.2 Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (Original Agreement) between the Hirer and JET, these terms and this Agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.

34.3 Nothing in this Agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the Agreement in relation to the supply of any Earthmoving Equipment and/or services pursuant to this Agreement of all or any of the provisions of the *Competition and Consumer Act 2010* or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.

## **35. PRIVACY ACT**

35.1 The Hirer acknowledges and agrees to the terms of the Privacy Statement annexed to this Agreement.