

1 Definitions

- 1.1 "Supplier" means Epic360 Limited T/A McCabe Sutton, its successors and assigns or any person acting on behalf of and with the authority of Epic360 Limited T/A McCabe Sutton.
- 1.2 "Client" means the Client or any person acting on behalf of and with the authority of the Client, as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Services" means all Goods or Services supplied by the Supplier to the Client at the Client's request from time to time (where the context so permits the terms 'Goods', 'Equipment' and/or 'Services' shall be interchangeable for the other)
- 1.4 "Equipment" means all Equipment including any accessories supplied on hire by the Supplier to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Supplier to the Client.
- 1.5 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Supplier to the Client.
- 1.6 "Price" means the Price payable for the Services as agreed between the Supplier and the Client in accordance with clause 6 below.

2 Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts delivery of, the Services.
- 2.2 Where the Client is unable to order or approve the provision of the Services/Equipment in writing, the Client's verbal instructions shall be deemed to be full acceptance of the Supplier's terms and conditions.
- 2.3 These terms and conditions may only be amended with the Supplier's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Supplier.
- 2.4 These terms and conditions may be meant to be read in conjunction with the Supplier's quotation, agreement, manifests, or any other forms as provided by the Supplier to the Client. If there are any inconsistencies between these documents then the terms and conditions contained in that document shall prevail.
- 2.5 Any time specified by the Supplier for the delivery of the Services/Equipment is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Services to be delivered at / in the time arranged between both parties. In the event that the Supplier is unable to deliver as agreed solely due to any action or inaction of the Client then the Supplier shall be entitled to charge the Client any additional costs incurred by the Supplier as a direct consequence of any resultant delay or rescheduling of the delivery.
- 2.6 Provided the Supplier acts reasonably, then the Supplier is entitled to assume that any request in connection with the Services that the Supplier receives from the Client (or the Client's agents, employees or contractors) is authorised by the Client.
- 2.7 Where the Customer requesting or organising the Supplier to provide Services is acting with or on behalf of any third party and that third party is intended to be responsible for the payment (or any part thereof) of the Price then in the event that the third party does not pay for the Services when due, the Customer acknowledges that they shall be liable for the payment of the Price as if they had contracted the Services on their own behalf.

3 Electronic Transactions Act 2000

- 3.1 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 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4 Change in Control

- 4.1 The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.

5 Authorised Representatives

- 5.1 Unless otherwise limited as per clause 5.2 the Client agrees that should the Client introduce any third party to the Supplier as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Materials or Services on the Client's behalf and/or to request any variation to the Works on the Client's behalf (such authority to continue until all requested Works have been completed or the Client otherwise notifies the Supplier in writing that said person is no longer the Client's duly authorised representative).
- 5.2 In the event that the Client's duly authorised representative as per clause 5.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise the Supplier in writing of the parameters of the limited authority granted to their representative.
- 5.3 The Client specifically acknowledges and accepts that they will be solely liable to the Supplier for all additional costs incurred by the Supplier (including the Supplier's profit margin) in providing any Works, Materials, Services or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 5.2 (if any)).

6 Price and Payment

- 6.1 At the Supplier's sole discretion the Price shall be either;
- as indicated on invoices provided by the Supplier to the Client; or
 - the Price as at the date of delivery of the Services according to the Supplier's current standard schedule of rates (which is available from the Supplier on request); or
 - the Supplier's quoted Price (subject to clause 6.3) which shall be binding upon the Supplier provided that the Client shall accept the Supplier's quotation (in accordance with clause 2 above) within thirty (30) days.
- 6.2 If the Supplier has, at the Supplier's discretion, provided the Client with any special discount on a quotation or on the Supplier's standard rates, as approved by the Supplier in writing, then the relevant discount applies only to those portions of the Supplier's charges as agreed in

writing. The Supplier also reserves the right to review applicable discounts at any time and will give the Client no less than thirty (30) days' prior written notice of any change to that discount. If no discount is offered in writing by the Supplier then no discount will apply. Any discount that is offered by the Supplier will only apply if payment from the Client is received in full on or before the due date for payment as indicated on the invoice.

- 6.3 The Supplier reserves the right to change the Price:
- (a) if a variation to the Goods/Equipment which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, change of design, obscured objects and/or hard rock barriers below the surface, reinforcing in concrete, existing underground utility services etc) which are only discovered on commencement of, or during the provision of the Services; or
 - (d) in the event of increases to the Supplier in the cost of labour, materials, taxes, or levies) which are beyond the Supplier's control; or
 - (e) where, in the Supplier's opinion, it is deemed to be necessary to provide pilot vehicles and/or Police escort, or to temporarily remove power-lines in order to supply the Services. Any additional costs in respect of such will be in addition to the Price.
- 6.4 At the Supplier's sole discretion, a non-refundable deposit may be required.
- 6.5 The Supplier may submit a detailed payment claim at intervals not less than weekly for work performed up to the end of each month. The value of work so performed shall include the reasonable value of authorised variations and the value of materials delivered to the site but not installed.
- 6.6 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which may be:
- (a) before delivery of the Services; or
 - (b) on delivery of the Services; or
 - (c) for approved Clients: by instalments/progress payments in accordance with the Supplier's payment schedule; or
 - (d) due twenty (20) days following the end of the month in which an invoice is given, emailed or posted to the Client by the Supplier; or
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Supplier.
- 6.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Supplier.
- 6.8 Unless otherwise stated the Price does not include GST. GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 6.9 Unless otherwise agreed in writing, no allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, the Supplier reserves the right to treat all retentions as placing the Client's account into default.
- 6.10 The Client acknowledges and agrees that the Client's obligations to the Supplier for the supply of Services shall not cease, and ownership of the Goods shall not pass, until:
- (a) the Client has paid the Supplier all amounts owing for the particular Services; and
 - (b) the Client has met all other obligations due by the Client to the Supplier in respect of all contracts between the Supplier and the Client.
- 6.11 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Supplier ownership or rights in respect of this agreement shall continue.

7 Delivery

- 7.1 At the Supplier's sole discretion delivery of the Services/Equipment shall take place when:
- (a) the Services/Equipment are supplied to the Client or the Client's nominated carrier at the Supplier's address; or
 - (b) the Services/Equipment are supplied to the Client at the Client's nominated address, even if the Client is not present at the address.
- 7.2 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 7.3 At the Supplier's sole discretion, the cost of delivery is included in, or is in addition to, the Price.
- 7.4 The Supplier may deliver the Services/Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

8 Supply of Goods

- 8.1 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
- 8.2 If the Client requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 8.3 It is agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 6.10, that the Client is only a bailee of the Goods and must return the Goods to the Supplier on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.
 - (e) the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods.

- (f) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier.
- (h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

9 Access

- 9.1 The Client shall ensure that the Supplier has clear and free access to the site at all times to enable them to undertake the Services. The Supplier shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Supplier.
- 9.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by the Supplier. The Client agrees to indemnify the Supplier against all costs incurred by the Supplier in recovering such vehicles in the event they become bogged or otherwise immovable.

10 Underground Locations

- 10.1 Prior to the Supplier commencing the Services, the Client must advise the Supplier of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 10.2 Whilst the Supplier will take all care to avoid damage to any underground services the Client agrees to indemnify the Supplier in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10.1.

11 Personal Property Securities Act 1999 ("PPSA")

- 11.1 Upon accepting these terms and conditions in writing the Client acknowledges and agrees that:
 - (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
 - (b) a security interest is taken in all Equipment, Goods and/or collateral (account) – being a monetary obligation of the Client for Services – that have previously been provided, and that will be provided in the future, by the Supplier to the Client.
- 11.2 The Client undertakes to:
 - (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
 - (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
 - (c) not register a financing change statement or a change demand without the prior written consent of the Supplier.
- 11.3 The Supplier and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 11.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 11.5 Unless otherwise agreed to in writing by the Supplier, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 11.6 The Client shall unconditionally ratify any actions taken by the Supplier under clauses 11.1 to 11.5.
- 11.7 Only to the extent that the hire of the Equipment exceeds a twelve (12) month contract term (or a six (6) month contract term with the right of renewal), this clause 11 shall apply, and this agreement a security agreement for the purposes of PPSA generally, and in particular Section 36.

12 Security and Charge

- 12.1 In consideration of the Supplier agreeing to supply Services, 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).
- 12.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- 12.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.

13 Client's Disclaimer

- 13.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Supplier or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Supplier and the Client acknowledges that the Services are ordered relying solely upon the Client's skill and judgment.

14 Defects, Errors and Omissions

- 14.1 The Client shall inspect the Services on delivery and shall within seven (7) days of such time (being of the essence) notify the Supplier of any alleged defect, shortage in quantity, errors, omissions or failure to comply with the description or quote. The Client shall afford the Supplier an opportunity to inspect/review the Services within a reasonable time following such notification if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions, the Services shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 14.2 For defective Services, which the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Services, repairing the Equipment/Goods or rectifying the Services provided that the Client has complied with the provisions of clause 14.1.

15 Consumer Guarantees Act 1993

- 15.1 If the Client is ordering Services for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Services by the Supplier to the Client.

16 Compliance with Laws

- 16.1 The Client and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation
- 16.2 The Supplier shall obtain (at the expense of the Client) all licenses and approvals (including, but not limited to, local council and rail permits) that may be required for the Services.

17 Insurance

- 17.1 The Supplier shall have public liability insurance of at least \$2m. It is the Clients responsibility to ensure that they are similarly insured.

18 Cancellation

- 18.1 The Supplier may cancel these terms and conditions or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any sums paid in respect of the Price. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.2 In the event that the Client cancels delivery of the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).

19 Default and Consequences of Default

- 19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).
- 19.3 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions, the Supplier may suspend or terminate the supply of Services to the Client (including repossessing the Equipment as per clause 27.2), and any of its other obligations under the terms and conditions including the Supplier's right to revoke any discount which applies to the order, and apply their standard rates. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.
- 19.4 In the event that any discount offered to the Client is revoked due to late payment, interest shall be charged in accordance with clause 19.1 on the full amount of the invoice including the addition of the discounted amount.
- 19.5 Without prejudice to the Supplier's other remedies at law the Supplier 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 the Supplier may have and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20 Privacy Act 1993

- 20.1 The Client authorises the Supplier or the Supplier's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by the Supplier from the Client directly or obtained by the Supplier from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 20.2 Where the Client is an individual the authorities under clause 20.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 20.3 The Client shall have the right to request the Supplier for a copy of the information about the Client retained by the Supplier and the right to request the Supplier to correct any incorrect information about the Client held by the Supplier.

21 Dispute Resolution

- 21.1 All disputes and differences between the Client and the Supplier touching and concerning this agreement shall be referred to arbitration under a single arbitrator agreed upon by both parties, or failing agreement, by two arbitrators (one to be appointed by each party) and their umpire (appointed by them prior to arbitration), such arbitration to be carried out in accordance with provisions of the Arbitration Act 1996.

22 Construction Contract Act 2002

- 22.1 The Client hereby expressly acknowledges that:
- (a) the Supplier has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Client, and:
 - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Client; or

- (ii) a scheduled amount stated in a payment schedule issued by the Client in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the Client has not complied with an adjudicator's notice that the Client must pay an amount to the Supplier by a particular date; and
 - (iv) the Supplier has given written notice to the Client of its intention to suspend the carrying out of construction work under the construction contract.
- (b) if the Supplier suspends work, it:
- (i) is not in breach of contract; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the Client or by any person claiming through the Client; and
 - (iii) is entitled to an extension of time to complete the contract; and
 - (iv) keeps its rights under the contract including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
- (c) if the Supplier exercises the right to suspend work, the exercise of that right does not:
- (i) affect any rights that would otherwise have been available to the Supplier under the Contractual Remedies Act 1979; or
 - (ii) enable the Client to exercise any rights that may otherwise have been available to the Client under that Act as a direct consequence of the Supplier suspending work under this provision.

23 General

- 23.1 The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier'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.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the North Shore Courts of New Zealand.
- 23.3 Subject to the remainder of clause 23, the liability of each party to the other party under these terms will at all times be limited to the aggregate of all amounts the Client have actually paid to the Supplier in the six (6) month period immediately preceding the date of any written claim (or the first if a series of related claims).
- 23.4 Neither the Client nor the Supplier will be liable at any time for an indirect or consequential loss, or loss of revenue or profits.
- 23.5 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 the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 23.6 The Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent. The Client agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.
- 23.7 The Client agrees that the Supplier may amend these terms and conditions at any time. If the Supplier makes a change to these terms and conditions, then that change will take effect from the date on which the Supplier notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Supplier to supply Services to the Client. The Supplier's current terms and conditions will also be available on the Supplier's website.
- 23.8 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.
- 23.9 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

Applicable to Equipment Hire Only

24 Hire Period

- 24.1 Hire Charges shall commence from the time the Equipment departs from the Supplier's premises and will continue until the return of the Equipment to the Supplier's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 24.2 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 24.3 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless the Supplier confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies the Supplier immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.
- 24.4 Off-hire receipts will only be issued when the Equipment has been either collected by the Supplier, or returned to the Supplier's premises.

25 Risk

- 25.1 The Supplier retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on delivery.
- 25.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies the Supplier for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
- 25.3 The Client will insure, or self-insure, the Supplier's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will affect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 25.4 The Client accepts full responsibility for and shall keep the Supplier indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons.

26 Client's Responsibilities

- 26.1 The Client shall:

- (a) ensure that the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;
- (b) ensure that all persons driving and/or operating Equipment are suitably instructed in the Equipment's safe and proper use and where necessary that the operator holds a current Certificate of Competency and/or are fully licensed to drive and/or operate the Equipment and shall provide evidence of the same to the Supplier upon request;
- (c) maintain the Equipment as is required by the Supplier (including, but not limited to, maintaining (where applicable) water, oil and fluid levels and tyre pressures);
- (d) ensure that all reasonable care is taken by the driver in handling and/or parking the Equipment and that the Equipment is left locked and/or securely stored when not in use;
- (e) be liable for any parking or traffic infringement, impoundment, towage and storage costs incurred during the hire period and will supply relevant details as required by the Police and/or the Supplier relating to any such matters or occurrences;
- (f) not carry any animals, illegal, prohibited or dangerous on, or in, the Equipment supplied without the prior written permission of the Supplier;
- (g) not exceed the recommended or legal load and capacity limits of the Equipment (including the recommended number of passengers (if applicable));
- (h) refuel the Equipment prior to its return from Hire. In the event the Equipment needs to be refuelled upon its return from Hire then the costs of refuelling shall be charged to the Client in addition to the costs of the Equipment hire;
- (i) notify the Supplier immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
- (j) satisfy itself at commencement that the Equipment is suitable for its purposes;
- (k) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by the Supplier or posted on the Equipment;
- (l) comply with all occupational health and safety laws relating to the Equipment and its operation;
- (m) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to the Supplier (or the Supplier's designated employee);
- (n) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to take a lien, or grant any encumbrance over the Equipment;
- (o) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (p) use the Equipment solely for the Client's own works and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
- (q) immediately notify the Supplier should the Equipment become bogged or stuck (refer also clause 9.2).

26.2 Immediately on request by the Supplier the Client will pay:

- (a) the new list price of any Equipment, accessories or consumables that are for whatever reason destroyed, written off or not returned to the Supplier;
- (b) all costs incurred in cleaning the Equipment;
- (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;
- (d) the cost of repairing any damage to the Equipment caused by wilful or negligent actions of the Client or the Client's employees;
- (e) the cost of repairing any damage to the Equipment caused by vandalism, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
- (f) the cost of fuels and consumables provided by the Supplier and used by the Client;
- (g) any costs incurred by the Supplier in picking up and returning the Equipment to the Suppliers premises if the Client does not return the Equipment to the Suppliers premises or any pre-agreed pickup location when it was originally agreed that the Client would do so.
- (h) any lost hire fees the Supplier would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
- (i) any insurance excess payable in relation to a claim made by either the Client or the Supplier in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or the Supplier's.

27 Title to Equipment

27.1 The Equipment is and will at all times remain the absolute property of the Supplier.

27.2 If the Client fails to return the Equipment to the Supplier when requested then the Supplier or the Supplier's nominated agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.

27.3 The Client is not authorised to pledge the Supplier's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

28 Wet Hire

28.1 "Wet Hire" shall mean that the Equipment is hired with an operator who shall at all times remain an employee of the Supplier. In the event of "wet" hire of the Equipment, the operator of the Equipment remains an employee of the Supplier and operates the Equipment in accordance with the Client's instructions and the terms and conditions applicable to Earthmoving Services. As such the Supplier shall not be liable for any actions of the operator in following the Client's instructions.