

BEBROK EXCAVATIONS - TERMS AND CONDITIONS OF HIRE

INTRODUCTION

For the purposes of this Agreement, "Bebrok" is Bebrok Excavations Pty Ltd ACN 121 288 819 ATF the Bebrok Unit Trust A.B.N. 69 514 890 993 trading as BEBROK EXCAVATIONS; "the Contractor" is the earthmoving contractor and equipment operator; "the Hirer" is the client receiving the earthmoving and associated services; "Work" means earthmoving and associated services supplied by the Contractor to the Hirer; "Site" means the place where the Hirer's work will be carried out; and "Equipment" means plant and/or machinery used in the performance of the Work.

1. AGENT ONLY

Bebrok acts as an agent for the Contractor who has entered into a contract with the Hirer and whose name is on the front of the Job Docket. Bebrok has every confidence in the Contractor engaged by the Hirer, but as an agent only, Bebrok will not be responsible for delays, defaults or claims of any description.

2. THE HIRER'S RESPONSIBILITIES

2.1 Prior to the use of the Equipment it is agreed that the Hirer should:

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

2.2 The Hirer agrees to keep all persons including the Hirer away from the Equipment whilst the Equipment is in operation.

3. SITE ACCESS

3.1 The Hirer shall ensure that the Contractor has clear and uninterrupted access to the Site until the Work has been completed and the Contractor paid in full.

3.2 The Hirer shall indemnify the Contractor from additional costs or penalties if the completion of the Work is delayed due to interrupted Site access.

4. CONTAMINATED WORK SITE

Should the Contractor discover asbestos or any other contaminants at the Site which pose a serious health risk, then the Hirer shall indemnify the Contractor from any costs, losses or expenses incurred should the Contractor need to suspend the Work, until such time as licensed contractors commissioned by the Hirer have cleared such contaminants from the Site.

5. MATERIAL SUPPLY

Supply of sand, soil or gravel will be at Bebrok's current price at the time of the order and subject to availability.

6. UNSAFE CONDITIONS

Should the Contractor be directed to operate the Equipment, when in the Contractor's opinion it is unsafe to do so, then, the Contractor reserves the right to refuse such directions. Should the Work be halted because of this and the Contractor does not proceed with any further Work, then the Hirer shall indemnify the Contractor from all costs, losses and expenses incurred by the Contractor for any Work already performed.

7. HIRE PERIODS AND CHARGES

7.1 Hire Periods

7.1.1 The hire rate is based upon the Equipment being hired for a minimum period as specified in Bebrok's current price list.

7.1.2 The hire shall commence from the time and date the Equipment arrives at the Site plus applicable travel and/or float charges as specified in clause 7.2(c).

7.1.3 The Hirer shall pay Bebrok a surcharge to allow for overtime costs (rates on application) should the hire period and/or Work include night work, weekends, statutory or gazetted public holidays.

7.2 Hire Charges

The Hirer shall pay Bebrok on completion of the hire period for the following:

- a) all hiring charges at the rate/s specified in Bebrok's current price list or Job Docket for the full hire period that the Equipment is at the Site plus applicable travel and/or float charges;
- b) all charges including but not limited to all freight and other charges incurred by the Contractor in transporting the Equipment or loading and unloading the Equipment at the Site;
- c) where the Hirer is responsible for the loss or damage to the Equipment, the whole or part of the cost of replacement or repair of the Equipment;
- d) the amount of tolls, levies offences (traffic/parking) or like charges paid or payable by the Contractor to any Government body in respect of use of the Equipment;
- e) any tipping fees charged to Bebrok's tip account/s; and
- f) the cost of recovering Equipment bogged as a result of instructions given by the Hirer.

8. 'DO AND CHARGE'

The hourly rate for 'Do and Charge' Work will be specified on the job card or can be requested from Bebrok's office during normal business hours, but this rate may change should the Contractor experience an unforeseen problem requiring the hire of special Equipment to complete the Work.

9. CREDIT CARD PAYMENTS

Payments by Mastercard and Visa are accepted and incur a 1% (one percent) surcharge.

10. DISPUTES

The Hirer shall, within seven (7) days from the completion of the Work, notify Bebrok in writing of any alleged dispute. If the Hirer fails to comply with this provision, the Work shall be conclusively presumed to have been completed satisfactorily and free from any dispute.

11. PAYMENT

11.1 Time of Payment

The Hirer must pay Bebrok the total amount set out in the job sheet and/or tax invoice on completion of the Work.

11.2 Interest

Bebrok may charge interest at a rate of two per centum (2%) above the commercial lending rate of the Westpac Bank calculated on a daily basis on amounts not paid within the time specified in clause 11.1

11.3 Damages

The Hirer must pay to Bebrok any costs, expenses or losses incurred by Bebrok as a result of the Hirer's failure to pay to Bebrok all sums outstanding as owed by the Hirer to Bebrok including without limiting the generality of the forgoing any debt collection and legal costs incurred in enforcing payment on a solicitor and own client basis.

12. RETENTION OF TITLE

12.1 Title

The Equipment shall remain the property of the Contractor at all times. The Hirer is not entitled to sell, transfer, mortgage, charge or encumber in any way the Equipment nor part with possession of the Equipment or assign the benefit of the hire agreement.

12.2 Repossession

If the Hirer commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this agreement, then the Contractor may repossess any Equipment and Bebrok may, without prejudice to any other remedies it may have, commence proceedings to recover the balance of any monies owing Bebrok by the Hirer.

13. PRIVACY

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

13.2 Bebrok may give information about the Hirer to a credit reporting agency for the purposes of obtaining consumer and commercial credit reports and/or lodging consumer and commercial defaults on the Hirer's credit file. This information may be given before, during or after the provision of credit to the Hirer and will be in accordance with the Privacy Act 1988 and subsequent amendments.

14. LIABILITY

14.1 Non-excludable Rights

The parties acknowledge that, under applicable State and Commonwealth law, certain conditions and warranties may be implied in these terms and conditions and there are rights and remedies conferred on the Hirer in relation to the provision of the Equipment or Work which cannot be excluded, restricted or modified by this agreement ("Non-excludable Rights").

14.2 Disclaimer of Liability

Bebrok disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Hirer by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights.

To the extent permitted by law, the liability of Bebrok for a breach of a Non-Excludable Right is limited, at Bebrok's option, to the supplying of the Equipment and/or any Work again or payment of the cost of having the Equipment and/or Work supplied again.

14.3 Indirect Losses

Notwithstanding any other provision of these terms and conditions, Bebrok is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Hirer for:

- a) any increased costs or expenses;
- b) any loss of profit, revenue, business, contracts or anticipated savings;
- c) any loss or expense resulting from a claim by a third party; or
- d) any special, indirect or consequential loss or damage of any nature whatsoever caused by the Contractor's failure to complete or delay in completing the Work

14.4 Force Majeure

Bebrok will have no liability to the Hirer in relation to any loss, damage or expense caused by the Contractor's failure to complete the Work as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of Bebrok's normal suppliers to supply necessary material or any other matter beyond Bebrok's or the Contractor's control.

15. SECURITY AND CHARGE

The Hirer hereby charges all property, both equitable and legal, present or future of the Hirer in respect of any monies that may be owing by the Hirer to Bebrok under the terms and conditions or otherwise and hereby authorises Bebrok or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the Hirer at any time or to register this charge over assets of the Hirer with the Australian Securities and Investments Commission.

16. GENERAL MATTERS

16.1 Severability

Any provision in these terms and conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these terms and conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

16.2 Governing Law and Jurisdiction

These terms and conditions are governed by the laws of the State of Queensland and all disputes arising between the Hirer and the Contractor and/or Bebrok will be submitted to the Brisbane Registry of any Court as is competent to hear the matter.