

TERMS & CONDITIONS WET HIRE

Form



SUPPLY OF SERVICES AGREEMENT - TERMS AND CONDITIONS

1. **Interpretation.** In this agreement: 'Owner' means Barry Bros. Specialised Services Pty Limited [ABN 430 65876 977] of the Address shown in Item 2 of Schedule A and its substitutes, successors and permitted assigns and its licensees, franchisees and/or its agents; 'Customer' means any person who signs this agreement personally or by an agent; 'Plant' means all equipment & operator(s) provided by the supplier and includes all accessories; 'GST' has the same meaning as in the A New Tax System (Plant & Services Tax) Act 1999 (Cth).

2. **Plant Hire**

2.1 The Owner will not be held responsible for any delays in delivery or installation or failure to deliver due to causes beyond its control, including, but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations or governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.

2.2 The hourly rate is based upon the Plant being hired for a minimum hire period in accordance with 2.4 below unless otherwise agreed in writing by the Owner. All hours in excess of the minimum hire will be charged at the appropriate hourly rate.

2.3 The Hire Period commences at the time the Plant leaves the Owner's depot and is completed when the Plant arrives back at the Owner's depot unless otherwise agreed in writing by the Owner.

2.4 Minimum hire periods apply for the following equipment see Table 1:

Plant	Minimum Hire period
Low pressure Jet	3 hours
CCTV unit	3 hours
Combination jet / vacuum	4 hours
Industrial vacuum loader	4 hours
Non Destructive Digging unit	3 hours
High pressure jet	4 hours
Other	Specified at time of quotation

2.5 An After Hours Call Out Fee will apply when the Customer requests unplanned work to be done out of normal business hours. This fee is in addition to all Plant Hire and labour charges.

3. **Sales Orders and Cancellation**

3.1 Upon placing an order an Account Customer is to provide a purchase order stating the date, time and Plant required in order to secure the availability of the piece of Plant when required. Non account customers may be

TERMS & CONDITIONS WET HIRE

Form



required to pay the Owner a deposit nominated by the Owner at the time of ordering Plant to secure the availability of Plant when required.

3.2 Where the Owner receives from the Customer, notification of cancellation of a job less than four (4) hours before the commencement of the job then a cancellation fee will be charged. The cancellation fee will be equivalent to two (2) hours hire at the full quoted rate unless otherwise agreed in writing by the Owner.

3.3 Non account or Cash Hire Customers shall make payment in full prior to work commencing on site. Special conditions may be agreed with an approved Cash Hire Customer in good standing.

3.4 Title to any Plant hired to a Customer does not pass from the Owner to the Customer.

4. Breakdown of Hire Plant

4.1 In the event of any Plant breakdown, the Customer will not be charged for the time that that particular piece of Plant was unable to be used.

4.2 The Owner will make every effort to make good the repair but gives no guarantee to a timeframe. In the event that Plant cannot be repaired in a reasonable timeframe, the Owner will endeavour to replace the Plant with another piece of Plant that is suitable to carry out the work.

4.3 The Owner shall not be liable for any expenditure, damages, loss or inconvenience incurred by the Customer arising out of any breakdown in the Plant whether caused by fair wear and tear, lack of repair or negligence on the part of the Owner or any other reason whatsoever.

5. Terms of Payment

5.1 The Customer agrees to pay to the Owner the full amount of the hire charge which is drawn from the price list for the Plant for the rental period, together with any applicable GST in addition to any deposit set out in 3.1.

5.2 Payment in full by account Customers for all hiring charges and any other amounts payable in accordance with these Conditions of Hire is required 30 days from the date of the invoice.

5.3 Requests for credit will not be considered if received more than fourteen (14) days after the date of invoice.

5.4 The Owner reserves the right to revise its hire rates and related charges including fuel surcharges without notice.

5.5 Hire charges cover only the fee for hiring the Plant to the Customer. If the Customer required the Plant to be delivered and/or installed, the Customer shall in addition pay to the Owner all freight and other charges incurred in transporting the Plant, including loading and unloading at site. Any other additional services provided to the Customer, shall be paid for by the Customer.

5.6 The Owner may charge interest on all amounts not paid by the Customer by the due date at the rate per annum equal to 1%, plus the Westpac Business Overdraft Indicator Lending Rate, from and including the due date to the date of the actual receipt of payment.

5.7 The right to demand payment of interest is without prejudice to any other right and remedies that the Owner may have in respect of a payment default under this agreement.

5.8 The Owner may set-off against any credit owed to the Customer any amount owing by the Customer to the Owner.

5.9 The Customer also agrees to pay on the date nominated by the Owner additional amounts as determined by the Owner, the other amounts calculated in accordance with the price list and any stamp duty, financial institutions duty, fees, outgoings, penalties, fines, demands, charges or costs imposed by any authority on or in connection with this agreement or the Customer's hiring of the Plant. Where the Customer claims exemption from duty or tax, the Customer must furnish appropriate exemption certificates to the Owner.

5.10 The Customer authorises the Owner to complete any documents necessary or desirable to enable the

TERMS & CONDITIONS WET HIRE

Form



Customer to make any payments through a credit card system. The Owner may charge the Customer a fee for accepting payment by a credit card in accordance with State laws. Only Visa, Mastercard & Bankcard can be used. Limit of \$5000 per transaction.

6. **Customer's warranties** The Customer warrants that:

6.1 the parties confirm that particulars, in so far as they are relevant to a particular party are correct in every respect and are not misleading in anyway including, without limitation, by omission;

6.2 the Customer will not breach any copyright or other restriction in relation to or in connection with, the Plant;

6.3 in selecting the Plant the Customer has not relied on the Owner's skill and judgment or on any representations made by or on behalf of the Owner and agrees that the Plant comply with their description, are in merchantable condition and are fit for the Customer's purpose.

7. **Owner Supply Obligations.** The Owner will ensure that:

7.1 The Plant is used in a skilful and proper manner and only for the purpose and within the capacity for which it was designed.

7.2 A suitably certified, trained or licensed operator who will work entirely in accordance with the instructions of the Owner or authorised representative operates the Plant.

7.3 It will maintain and display with the Plant any safety signs required by State or Federal legislation and ensure that they are clearly visible to all persons within the vicinity of the Plant and work site.

7.4 All safety and operating instructions and notices are observed.

7.5 All operators of the Plant wear suitable clothing and any protective equipment required or recommended by the manufacturer's safety and operating instructions.

7.6 A job safety analysis is conducted prior to operating any mechanical Plant to ensure safe working methods apply.

7.7 It complies with all Environmental Laws from time to time and immediately rectifies any breach of an Environmental Law caused by the use of the Plant.

8. **Labour**

8.1 All employees are paid in accordance with the appropriate Enterprise Bargaining Agreement (EBA). It is the responsibility of the Customer to acquaint itself with all the relevant conditions of the relevant EBA and comply with its terms as required. In accordance with these EBA's when allowances (ie meal, penalty rates, confined space, etc) are to due to be paid to the employee, these costs where appropriate will be charged to the Customer.

8.2 All labour rates charged include allowance for Payroll tax, Superannuation, Workers Compensation and the appropriate rates detailed in the relevant EBA's.

9. **Client Worksheets**

9.1 Client Worksheets are completed for every project. The Owner will provide the Customer with these sheets at the completion of each project. For projects extending past one (1) day a Client Worksheet will be completed for every day on site.

9.2 The employee will complete the Job Safety Analysis section of the Client Worksheet prior to commencing work on any given day. The Customer can view this on request and will receive a copy at the end of the hiring.

9.3 All unexpected incidents relating to the hiring will be listed on the Customer Worksheet for future reference.

9.4 At the completion of the project or days work the Customer (if available) is required to sign the Customer Worksheet to signify their acceptance of the work carried including scope, quality and in accordance with necessary regulations

TERMS & CONDITIONS WET HIRE

Form



10. *Waste Disposal*

10.1 All waste disposal will be carried out in accordance with relevant State legislation.

10.2 The customer will identify hazardous substances and dangerous goods to Barry Bros. This includes the provision of a Material Safety Data Sheet (MSDS). If the substances are unknown then the customer agrees to provide, at its cost, a representative sample for testing and analysis. The customer agrees to compensate Barry Bros for the full commercial cost of damages arising from a failure to correctly identify substances and inform Barry Bros.

10.3 All of the Owner's vehicles that carry prescribed waste will have relevant Environmental Protection Authority ('EPA') permits and the operators will be trained in the handling and transportation of prescribed waste. Appropriate paperwork will be completed for each load of prescribed waste removed from a Customer's site. It is the Customer's responsibility, as the waste producer, to ensure that they complete the necessary sections of the paperwork and are fully aware of where the waste is being transported.

10.4 All waste disposal and associated cleaning costs will be charged out in addition to all Plant Hire charges.

10.5 All waste removed from the Customer's site will be transported and disposed of at a licensed waste disposal facility. Should the Owner experience delays disposing of the waste at these facilities, the hourly rate applicable to the plant will be charged for the entire time the plant is delayed unless otherwise agreed by the Owner in writing. This includes waste being left in the Owner's plant overnight due to the closure of a waste disposal facility.

11. **Termination of Hire & Recovery of Plant.** Without prejudice to any other remedies available to the Owner and notwithstanding any period of hire specified, the Owner may terminate this hire agreement.

11.1 At any time by giving the Customer eight (8) hours' notice of its intention to so terminate, such termination to be effective as of the expiry of the 8 hours or as agreed under the hire contract.

11.2 Without notice, if the Customer shall commit any breach of the hire agreement, or do or permit to be done any act or thing whereby the Owner's rights in or to the Plant may be prejudiced, or have a winding up petition presented against it, or be wound up, or go into voluntary liquidation or commit an act of bankruptcy or if a receiver of its assets or any of them is appointed or if it makes an assignment or compromise for the benefit of its creditors or if its creditors or if its business is placed under administration or official management or if it ceases to carry on business.

11.3 If the Owner has terminated the hire agreement or if the Customer has failed to make payment to the Owner in accordance with the terms of the agreement, then upon giving the Customer 24 hours notice of its intention to remove the Plant, the Customer expressly authorises the Owner to enter the premises where the Plant is located and arrange for its removal. The Owner is expressly authorised to decommission such Plant and disconnect [or arrange for disconnection] of any utility services where this is required in order to remove the Plant from the premises. The hire period shall not cease until the Plant has been decommissioned, all utility services have been disconnected and the Plant removed and returned to the Owner. The costs associated with any decommissioning, disconnecting services and removal will be charged to the Customer. The Owner shall not be liable for any damage caused to the Customer's property as a result of decommissioning, disconnecting the utility services and removing the Plant. The Owner will not be responsible or liable for any personal property left inside the Plant when it is removed or returned to the Owner. The Customer indemnifies the Owner in respect of any claims, damages and expenses arising out of any action taken under this condition.

12. *Exclusion of Conditions, Warranties & Liability*

12.1 To the full extent permitted by law the Owner excludes all implied terms and conditions and warranties including, without limitation, terms, conditions and warranties implied by Commonwealth or state legislation.

12.2 The Owner and the Customer agree that in the event of the Customer suffering any loss [including economic loss], damage, cost, expense or claim howsoever arising as a result of hiring the Plant, including without limitation in respect of delay or inconvenience arising out of any breakdown, failure or defect in the Plant or in recovery of

TERMS & CONDITIONS WET HIRE

Form



equipment, the liability of the Owner is limited to the repair or replacement of the Plant. The Owner shall not be liable under any circumstances for any direct, indirect, economic, special or consequential loss or damage of any nature whatsoever.

12.3 Service locating can only be guaranteed if verified via the use of non-destructive digging (NDD). If the customer decides to dig on the basis of the initial service locating report without verification by NDD then it does so understanding the need to use an appropriate method given the potential to strike assets. If the client proceeds to conduct digging without NDD proving then Barry Bros does not warranty the customer for the resultant damage which may occur.

12.4 Where removal of soil, earth or other material by any means utilizing the Owner's equipment is requested by the Customer then it is the responsibility of the Customer to ensure that the site nominated is not of Cultural or Heritage Significance and that all requirements for permits, approvals, etc remain the responsibility of the Customer.

13. **Incapacitated Plant Due To Site Conditions.** If in the opinion of the Owner or it's representative that a work site cannot be reached for a particular time or at all due to ground conditions the Customer will be advised. If the Customer requests the Owner to attempt to reach the work site, the Owner's representative believes it is safe to do so and the Plant becomes bogged, the Customer will be responsible for all recovery costs incurred by the Owner along with all Plant repair costs for damage incurred. The Owner's representative will be responsible for the final decision on whether a site is safe to access or not.

14. *Road Traffic Management*

14.1 Where practicable, works at all sites will be managed to Australian Standards AS 1742.3, 1996 – Manual of uniform traffic control devices. Sites will also adhere to the relevant State legislation or Code of Practice.

14.2 Plant will be supplied with the necessary equipment to undertake a basic short-term traffic management set up. Should more specialist equipment be required such as traffic lights, flashing arrows or electronic signage boards, etc. then the Customer will be notified and additional charges will apply for the supply of such equipment.

15. *Miscellaneous*

15.1 The person signing the document for and on behalf of the Customer hereby covenants with the Owner that he or she has the authority of the Customer to make this agreement on the Customer's behalf and is empowered by the Customer to bind the Customer to this Agreement and hereby indemnifies the Owner against all losses, costs and claims incurred by the Owner arising out of the person so signing this agreement not in fact having such power and/or authority.

15.2 If any of the Conditions of Hire are found to be void, voidable or unenforceable the validity and enforceability for the remaining provisions shall not in any way be affected or impaired.

15.3 No amendment or variation of this agreement is valid or binding on a party unless made in writing and executed by the parties.

15.4 No failure to exercise nor any delay in exercising any right, power or remedy by the Owner operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

15.5 The right, powers and remedies of a party under this agreement are in addition to, and do not exclude limit, any right, power or remedy provided by law or equity or by any agreement.

15.6 This Agreement is governed by the laws of the State or Territory in which the Plant is operating.

15.7 No other terms and conditions shall be binding upon the Owner unless agreed to in writing by the Owner.

16. **Privacy Statement** The Owner will comply with the National Privacy Principles in all dealings with the Customer. A copy of the Owner's Privacy Statement is set out at www.barrybros.com.au

TERMS & CONDITIONS WET HIRE Form



17. **No waiver.** Time is of the essence of this agreement, except that no delay by the Owner in exercising any right or power will operate as a waiver of that right or power. Nor will any single or partial exercise of any right or power preclude any other or further exercise of that right or power.

SUPPLY OF SERVICES AGREEMENT - TERMS AND CONDITIONS

1. **Interpretation.** In this agreement: 'Owner' means Barry Bros. Specialised Services Pty Limited [ABN 430 65876 977] of the Address shown in Item 2 of Schedule A and its substitutes, successors and permitted assigns and its licensees, franchisees and/or its agents; 'Customer' means any person who signs this agreement personally or by an agent; 'Plant' means all equipment & operator(s) provided by the supplier and includes all accessories; 'GST' has the same meaning as in the A New Tax System (Plant & Services Tax) Act 1999 (Cth).

2. Plant Hire

2.6 The Owner will not be held responsible for any delays in delivery or installation or failure to deliver due to causes beyond its control, including, but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations or governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.

2.7 The hourly rate is based upon the Plant being hired for a minimum hire period in accordance with 2.4 below unless otherwise agreed in writing by the Owner. All hours in excess of the minimum hire will be charged at the appropriate hourly rate.

2.8 The Hire Period commences at the time the Plant leaves the Owner's depot and is completed when the Plant arrives back at the Owner's depot unless otherwise agreed in writing by the Owner.

2.9 Minimum hire periods apply for the following equipment

Table 1 – Minimum Hire Periods	
Plant	Minimum Hire period
Low pressure Jet	3 hours
CCTV unit	3 hours
Combination jet / vacuum	4 hours
Industrial vacuum loader	4 hours
Non Destructive Digging unit	3 hours
High pressure jet	4 hours
Other	Specified at time of quotation

3.5 Upon placing an order an Account Customer is to provide a

purchase order stating the date, time and Plant required in order to secure the availability of the piece of Plant when required. Non account customers may be required to pay the Owner a deposit nominated by the Owner at the time of ordering Plant to secure the availability of Plant when required.

3.6 Where the Owner receives from the Customer, notification of cancellation of a job less than four (4) hours before the commencement of the job then a cancellation fee will be charged. The cancellation fee will be equivalent to two (2) hours hire at the full quoted rate unless otherwise agreed in writing by the Owner.

3.7 Non account or Cash Hire Customers shall make payment in full prior to work commencing on site. Special conditions may be agreed with an approved Cash Hire Customer in good standing.

3.8 Title to any Plant hired to a Customer does not pass from the Owner to the Customer.

4. Breakdown of Hire Plant

4.1 In the event of any Plant breakdown, the Customer will not be charged for the time that that particular piece of Plant was unable to be used.

4.2 The Owner will make every effort to make good the repair but gives no guarantee to a timeframe. In the event that Plant cannot be repaired in a reasonable timeframe, the Owner will endeavour to replace the Plant with another piece of Plant that is suitable to carry out the work.

4.3 The Owner shall not be liable for any expenditure, damages, loss or inconvenience incurred by the Customer arising out of any breakdown in the Plant whether caused by fair wear and tear, lack of repair or negligence on the part of the Owner or any other reason whatsoever.

5. Terms of Payment

5.11 The Customer agrees to pay to the Owner the full amount of the hire charge which is drawn from the price list for the Plant for the rental period, together with any applicable GST in addition to any deposit set out in 3.1.

5.12 Payment in full by account Customers for all hiring charges and any other amounts payable in accordance with these Conditions of Hire is required 30 days from the date of the invoice.

5.13 Requests for credit will not be considered if received more than fourteen (14) days after the date of invoice.

5.14 The Owner reserves the right to revise its hire rates and related charges including fuel surcharges without notice.

5.15 Hire charges cover only the fee for hiring the Plant to the Customer. If the Customer required the Plant to be delivered and/or installed, the Customer shall in addition pay to the Owner all freight and other charges incurred in transporting the Plant, including loading and unloading at site. Any other additional services provided to the Customer, shall be paid for by the Customer.

5.16 The Owner may charge interest on all amounts not paid by the Customer by the due date at the rate per annum equal to 1%, plus the Westpac Business Overdraft Indicator Lending Rate, from and including the due date to the date of the actual receipt of payment.

5.17 The right to demand payment of interest is without prejudice to any other right and remedies that the Owner may have in respect of a payment default under this agreement.

5.18 The Owner may set-off against any credit owed to the Customer any amount owing by the Customer to the Owner.

5.19 The Customer also agrees to pay on the date nominated by the Owner additional amounts as determined by the Owner, the other amounts calculated in accordance with the price list and any stamp duty, financial institutions duty, fees, outgoing, penalties, fines, demands, charges or costs imposed by any authority on or in connection with this agreement or the Customer's hiring of the Plant. Where the Customer claims exemption from duty or tax, the Customer must furnish appropriate exemption certificates to the Owner.

5.20 The Customer authorises the Owner to complete any documents necessary or desirable to enable the Customer to make any payments through a credit card system. The Owner may charge the Customer a fee for accepting payment by a credit card in accordance with State laws. Only Visa, Mastercard & Bankcard can be used. Limit of \$5000 per transaction.

6. **Customer's warranties** The Customer warrants that:

6.1 the parties confirm that particulars, in so far as they are relevant to a particular party are correct in every respect and are not misleading in anyway including, without limitation, by omission;

6.2 the Customer will not breach any copyright or other restriction in relation to or in connection with, the Plant;

6.3 in selecting the Plant the Customer has not relied on the Owner's skill and judgment or on any representations made by or on behalf of the Owner and agrees that the Plant comply with their description, are in merchantable condition and are fit for the Customer's purpose.

7. **Owner Supply Obligations.** The Owner will ensure that:

7.2 The Plant is used in a skilful and proper manner and only for the purpose and within the capacity for which it was designed.

7.2 A suitably certified, trained or licensed operator who will work entirely in accordance with the instructions of the Owner or authorised representative operates the Plant.

7.3 It will maintain and display with the Plant any safety signs required by State or Federal legislation and ensure that they are clearly visible to all persons within the vicinity of the Plant and work site.

7.4 All safety and operating instructions and notices are observed.

7.5 All operators of the Plant wear suitable clothing and any protective equipment required or recommended by the manufacturer's safety and operating instructions.

7.8 A job safety analysis is conducted prior to operating any mechanical Plant to ensure safe working methods apply.

7.9 It complies with all Environmental Laws from time to time and immediately rectifies any breach of an Environmental Law caused by the use of the Plant.

8. Labour

8.1 All employees are paid in accordance with the appropriate Enterprise Bargaining Agreement (EBA). It is the responsibility of the Customer to acquaint itself with all the relevant conditions of the relevant EBA and comply with its terms as required. In accordance with these EBA's when allowances (ie meal, penalty rates, confined space, etc) are due to be paid to the employee, these costs where appropriate will be charged to the Customer.

8.2 All labour rates charged include allowance for Payroll tax, Superannuation, Workers Compensation and the appropriate rates detailed in the relevant EBA's.

9. Client Worksheets

9.1 Client Worksheets are completed for every project. The Owner will provide the Customer with these sheets at the completion of each project. For projects extending past one (1) day a Client Worksheet will be completed for every day on site.

9.2 The employee will complete the Job Safety Analysis section of the Client Worksheet prior to commencing work on any given day. The Customer can view this on request and will receive a copy at the end of the hiring.

9.3 All unexpected incidents relating to the hiring will be listed on the Customer Worksheet for future reference.

9.4 At the completion of the project or days work the Customer (if available) is required to sign the Customer Worksheet to signify their acceptance of the work carried including scope, quality and in accordance with necessary regulations

10. Waste Disposal

10.1 All waste disposal will be carried out in accordance with relevant State legislation.

10.2 The customer will identify hazardous substances and dangerous goods to Barry Bros. This includes the provision of a Material Safety Data Sheet (MSDS). If the substances are unknown then the customer agrees to provide, at its cost, a representative sample for testing and analysis. The customer agrees to compensate Barry Bros for the full commercial cost of damages arising from a failure to correctly identify substances and inform Barry Bros.

10.3 All of the Owner's vehicles that carry prescribed waste will have relevant Environmental Protection Authority ('EPA') permits and the operators will be trained in the handling and transportation of prescribed waste. Appropriate paperwork will be completed for each load of prescribed waste removed from a Customer's site. It is the Customer's responsibility, as the waste producer, to ensure that they complete the necessary sections of the paperwork and are fully aware of where the waste is being transported.

10.4 All waste disposal and associated cleaning costs will be charged out in addition to all Plant Hire charges.

10.5 All waste removed from the Customer's site will be transported and disposed of at a licensed waste disposal facility. Should the Owner experience delays disposing of the waste at these facilities, the hourly rate applicable to the plant will be charged for the entire time the plant is delayed unless otherwise agreed by the Owner in writing. This includes waste being left in the Owner's plant overnight due to the closure of a waste disposal facility.

11. **Termination of Hire & Recovery of Plant.** Without prejudice to any other remedies available to the Owner and notwithstanding any period of hire specified, the Owner may terminate this hire agreement.

11.4 At any time by giving the Customer eight (8) hours' notice of its intention to so terminate, such termination to be effective as of the expiry of the 8 hours or as agreed under the hire contract.

11.5 Without notice, if the Customer shall commit any breach of the hire agreement, or do or permit to be done any act or thing whereby the Owner's rights in or to the Plant may be prejudiced, or have a winding up petition presented against it, or be wound up, or go into voluntary liquidation or commit an act of bankruptcy or if a receiver of its assets or any of them is appointed or if it makes an assignment or compromise for the benefit of its creditors or if its creditors or if its business is placed under administration or official management or if it ceases to carry on business.

11.6 If the Owner has terminated the hire agreement or if the Customer has failed to make payment to the Owner in accordance with the terms of the agreement, then upon giving the Customer 24 hours notice of its intention to remove the Plant, the Customer expressly authorises the Owner to enter the premises where the Plant is located and arrange for its removal. The Owner is expressly authorised to decommission such Plant and disconnect [or arrange for disconnection] of any utility services where this is required in order to remove the Plant from the premises. The hire period shall not cease until the Plant has been decommissioned, all utility services have been disconnected and the Plant removed and returned to the Owner. The costs associated with any decommissioning, disconnecting services and removal will be charged to the Customer. The Owner shall not be liable for any damage caused to the Customer's property as a result of decommissioning, disconnecting the utility services and removing the Plant. The Owner will not be responsible or liable for any personal property left inside the Plant when it is removed or returned to the Owner. The Customer indemnifies the Owner in respect of any claims, damages and expenses arising out of any action taken under this condition.

12. Exclusion of Conditions, Warranties & Liability

12.1 To the full extent permitted by law the Owner excludes all implied terms and conditions and warranties including, without limitation, terms, conditions and warranties implied by Commonwealth or state legislation.

12.2 The Owner and the Customer agree that in the event of the Customer suffering any loss [including economic loss], damage, cost, expense or claim howsoever arising as a result of hiring the Plant, including without limitation in respect of delay or inconvenience arising out of any breakdown, failure or defect in the Plant or in recovery of equipment, the liability of the Owner is limited to the repair or replacement of the Plant. The Owner shall not be liable under any circumstances for any direct, indirect, economic, special or consequential loss or damage of any nature whatsoever.

12.3 Service locating can only be guaranteed if verified via the use of non-destructive digging (NDD). If the customer decides to dig on the basis of the initial service locating report without verification by NDD then it does so understanding the need to use an appropriate method given the potential to strike assets. If the client proceeds to conduct digging without NDD proving then Barry Bros does not warranty the customer for the resultant damage which may occur.

12.4 Where removal of soil, earth or other material by any means utilizing the Owner's equipment is requested by the Customer then it is the responsibility of the Customer to ensure that the site nominated is not of Cultural or Heritage Significance and that all requirements for permits, approvals, etc remain the responsibility of the Customer.

13. **Incapacitated Plant Due To Site Conditions.** If in the opinion of the Owner or it's representative that a work site cannot be reached for a particular time or at all due to ground conditions the Customer will be advised. If the Customer requests the Owner to attempt to reach the work site, the Owner's representative believes it is safe to do so and the Plant becomes bogged, the Customer will be responsible for all recovery costs incurred by the Owner along with all Plant repair costs for damage incurred. The Owner's representative will be responsible for the final decision on whether a site is safe to access or not.

14. Road Traffic Management

14.1 Where practicable, works at all sites will be managed to Australian Standards AS 1742.3, 1996 – Manual of uniform traffic control devices. Sites will also adhere to the relevant State legislation or Code of Practice.

14.2 Plant will be supplied with the necessary equipment to undertake a basic short-term traffic management set up. Should more specialist equipment be required such as traffic lights, flashing arrows or electronic signage boards, etc. then the Customer will be notified and additional charges will apply for the supply of such equipment.

15. Miscellaneous

15.1 The person signing the document for and on behalf of the Customer hereby covenants with the Owner that he or she has the authority of the Customer to make this agreement on the Customer's behalf and is empowered by the Customer to bind the Customer to this Agreement and hereby indemnifies the Owner against all losses, costs and claims incurred by the Owner arising out of the person so signing this agreement not in fact having such power and/or authority.

15.2 If any of the Conditions of Hire are found to be void, voidable or unenforceable the validity and enforceability for the remaining provisions shall not in any way be affected or impaired.

15.3 No amendment or variation of this agreement is valid or binding on a party unless made in writing and executed by the parties.

15.4 No failure to exercise nor any delay in exercising any right, power or remedy by the Owner operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

15.5 The right, powers and remedies of a party under this agreement are in addition to, and do not exclude limit, any right, power or remedy provided by law or equity or by any agreement.

15.8 This Agreement is governed by the laws of the State or Territory in which the Plant is operating.

15.9 No other terms and conditions shall be binding upon the Owner unless agreed to in writing by the Owner.

16. **Privacy Statement** The Owner will comply with the National Privacy Principles in all dealings with the Customer. A copy of the Owner's Privacy Statement is set out at www.barrybros.com.au

17. **No waiver** Time is of the essence of this agreement, except that no delay by the Owner in exercising any right or power will operate as a waiver of that right or power. Nor will any single or partial exercise of any right or power preclude any other or further exercise of that right or power.

Document History

Version No.	Reason for change	Previous Document No	Authorised by	Date
5	Consolidation into new IMS		D. Arundale	1 May 2007
6	Reformat to fit both standard format & function		A Fehring	4 June 07