

TERMS & CONDITIONS WET HIRE Form



SUPPLY OF SERVICES AGREEMENT - TERMS AND CONDITIONS

1. **Interpretation.** In this agreement: 'Company' means Barry Bros. Pty Limited [ABN 43 065 876 977] 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 Company 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 Company. All hours in excess of the minimum hire will be charged at the appropriate hourly rate inclusive of penalty rates and rest hours incurred at the direction of the customer.

2.3 The Hire Period commences at the time the Plant and operator commence task at the Company's depot and is completed when the Plant completes task at the Company's depot, or next job unless otherwise agreed in writing by the Company.

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

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

2.5 An After Hours Call Out Fee will apply when the Customer requests unplanned work to be done out of normal business hours 6am to 6pm Monday to Friday. This fee is in addition to all Plant Hire and labour charges.

TERMS & CONDITIONS WET HIRE Form



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 to secure the availability of the piece of Plant when required. Non account customers will be required to pay the Company a deposit equal to the minimum hire at the time of ordering Plant to secure the availability of Plant when required.

3.2 Where the Company 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 the minimum hire period, unless otherwise agreed in writing by the Company. Cancellation must be confirmed with a reference number from the relevant branch.

3.3 Cancellation requests must be processed via the Company's branches and a cancellation reference will be provided by the branch works desk. Customer verbal instruction to plant operators will not be accepted as an authorised cancellation of the order.

3.4 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.

3.5 Title to any Plant hired to a Customer does not pass from the Company 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 Company 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 Company will endeavour to replace the Plant with another piece of Plant that is suitable to carry out the work.

4.3 The Company 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 Company or any other reason whatsoever.

5. Terms of Payment

5.1 The Customer agrees to pay to the Company 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 hire.

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

5.4 The Company reserves the right to revise its hire rates and related charges including fuel surcharges without notice. A copy of your current account rates can be received from your local area manager – sales.

5.5 Hire charges cover only the fee for hiring the Plant to the Customer. Any other additional services provided to the Customer, shall be paid for by the Customer inclusive of but not limited by freight and installation costs, additional labour costs, transportation of operators to site, environmental levies.

5.6 The Company will 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 unless otherwise agreed by the Company.

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

TERMS & CONDITIONS WET HIRE Form



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

5.9 The Customer also agrees to pay on the date nominated by the Company additional amounts as determined by the Company, 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 Company.

5.10 The Customer authorises the Company to complete any documents necessary or desirable to enable the Customer to make any payments through a credit card system. The Company will charge the Customer a processing 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 Company's skill and judgment or on any representations made by or on behalf of the Company and agrees that the Plant comply with their description, are in merchantable condition and are fit for the Customer's purpose.

6.4 The customer acceptance of the client worksheet is a final acceptance of the workmanship and job and that this acceptance is solely reliant on the customers judgment as to the satisfaction of its needs. No reliance is placed upon the Companys employees in making this final decision.

6.5 The Customer acknowledges and agrees that the Customer has sole and absolute ownership of and title to any and all waste generated and/or collected by the Owner under this agreement.

7. **Company Supply Obligations.** The Company 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 Company 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

TERMS & CONDITIONS WET HIRE

Form



rates, confined space, no 10 hour break etc) are too due to be paid to the employee, these costs will be charged to the Customer unless agreed otherwise by the Company.

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 Company 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. The Company relies on the customer acceptance of the client worksheets as the final acceptance of work.

9.5 If the Client Worksheet charges are to be altered to our administration system, and the changes result in an increased quantity from what was originally signed for. The Client worksheet changes will be confirmed with the customer and authorised by re-signing.

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 Company'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 The Customer acknowledges and agrees that the Owner is only performing a waste removal service at the Customer's request and that the Customer retains sole and absolute ownership of all the waste until such time that the waste has been disposed of at a licensed waste disposal facility.

10.5 All waste disposal documentation charges and associated cleaning costs will be charged out in addition to all Plant Hire charges. Unless otherwise agreed in writing the choice of waste disposal site will be at the discretion of the Company.

10.6 All waste removed from the Customer's site will be transported and disposed of at a licensed waste disposal facility of the Company's discretion. Should the Company 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 Company in writing. This includes waste being left in the Company's plant overnight due to the closure of a waste disposal facility.

TERMS & CONDITIONS WET HIRE Form



11. **Termination of Hire & Recovery of Plant.** Without prejudice to any other remedies available to the Company and notwithstanding any period of hire specified, the Company 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 Company'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 Company has terminated the hire agreement or if the Customer has failed to make payment to the Company 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 Company to enter the premises where the Plant is located and arrange for its removal. The Company 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 Company. The costs associated with any decommissioning, disconnecting services and removal will be charged to the Customer. The Company 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 Company will not be responsible or liable for any personal property left inside the Plant when it is removed or returned to the Company. The Customer indemnifies the Company 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 Company excludes all implied terms and conditions and warranties including, without limitation, terms, conditions and warranties implied by Commonwealth or state legislation.

12.2 The Company 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 Company is limited to the repair or replacement of the Plant. The Company 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 Company'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 Company or its 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 Company to attempt to reach the work site, the Company's representative believes it is safe to do so and the Plant becomes bogged, the Customer will be responsible

TERMS & CONDITIONS WET HIRE Form



for all recovery costs incurred by the Company along with all Plant repair costs for damage incurred. The Company'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 customer understands their obligation to verify work conducted and certify their satisfaction by providing a suitably competent and authorised representative, to sign and accept work on the client worksheet. Where a customer fails to provide such suitable representation then the service provided by the Company will be taken as accepted and complete once the Company's plant departs the worksite.

15.2 The person signing the document for and on behalf of the Customer hereby covenants with the Company 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 Company against all losses, costs and claims incurred by the Company arising out of the person so signing this agreement not in fact having such power and/or authority.

15.3 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.

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

15.5 No failure to exercise nor any delay in exercising any right, power or remedy by the Company 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.

15.6 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.

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

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

16. **Privacy Statement** The Company will comply with the National Privacy Principles in all dealings with the Customer. A copy of the Company'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 Company 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: 'Company' means Barry Bros. Pty Limited [ABN 430 65876 977] of the Address shown in Item 2 of Schedule A and its subsidiaries, 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 Company 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 Company. 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 Company's depot and is completed when the Plant arrives back at the Company's depot unless otherwise agreed in writing by the Company.

2.9 Minimum hire periods apply for the following equipment

2.10 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

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

3.7 Where the Company 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 Company.

3.8 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.

3.9 Title to any Plant hired to a Customer does not pass from the Company 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 Company 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 Company will endeavour to replace the Plant with another piece of Plant that is suitable to carry out the work.

4.3 The Company 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 Company or any other reason whatsoever.

5. Terms of Payment

5.11 The Customer agrees to pay to the Company 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 Company 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 Company 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 Company 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 Company may have in respect of a payment default under this agreement.

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

5.19 The Customer also agrees to pay on the date nominated by the Company additional amounts as determined by the Company, 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 Company.

5.20 The Customer authorises the Company to complete any documents necessary or desirable to enable the Customer to make any payments through a credit card system. The Company 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 Company's skill and judgment or on any representations made by or on behalf of the Company and agrees that the Plant comply with their description, are in merchantable condition and are fit for the Customer's purpose.

7. Company Supply Obligations.

The Company 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 Company 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 too 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 Company 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 Company'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 Company 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 Company in writing. This includes waste being left in the Company'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 Company and notwithstanding any period of hire specified, the Company may terminate this hire agreement.

15.7 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.

15.8 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 Company'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.

15.9 If the Company has terminated the hire agreement or if the Customer has failed to make payment to the Company 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 Company to enter the premises where the Plant is located and arrange for its removal. The Company 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 Company. The costs associated with any decommissioning, disconnecting services and removal will be charged to the Customer. The Company 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 Company will not be responsible or liable for any personal property left inside the Plant when it is removed or returned to the Company. The Customer indemnifies the Company 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 Company excludes all implied terms and conditions and warranties including, without limitation, terms, conditions and warranties implied by Commonwealth or state legislation.

12.2 The Company 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 Company is limited to the repair or replacement of the Plant. The Company 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 Company'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 Company or its 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 Company to attempt to reach the work site, the Company'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 Company along with all Plant repair costs for damage incurred. The Company'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 Company 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 Company against all losses, costs and claims incurred by the Company 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 Company 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.

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

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

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

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.

17. **No waiver** Time is of the essence of this agreement, except that no delay by the Company in exercising