

**1. INTERPRETATION**

In this Agreement:

**'Company'** means Vac-U-Digga NZ Ltd IRD 109-547-298 of 10 Tenahaun Place, Wigram, Christchurch 8042, New Zealand, its associated companies, subsidiaries, successors, permitted assigns and its licensees, franchisees and/or its agents; **'Client'** means any person who signs this Agreement personally or by an agent; **'Equipment'** means all Plant & Operator(s) provided by the Company and includes all quoted accessories; **'Services'** means the services to be provided by the Company; **'GST'** has the same meaning as in the Goods & Services Tax Act 1985.

**2. EQUIPMENT AND SERVICES**

2.1 The Company agrees to provide the Equipment and / or Services as specified in the quotation to the Client for the Hire period and the Client agrees to pay the Hire Charges / fee in accordance with these Terms and Conditions.

2.2 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.

2.3 The hourly rate or quoted charges are based upon the Equipment / Services being hired for a minimum Hire Period in accordance with 2.6 below unless otherwise agreed in writing by the Company. All hours in excess of the minimum hire will be charged at the quoted hourly or linear metre rates.

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

2.5 Normal business hours are 6.00am to 6.00pm Monday to Friday excluding public holidays.

2.6 Minimum Hire Periods apply for the following Equipment / Service:

Equipment	Normal Hours	After Hours
❖ EMI Locator	4 hours	5 hours
❖ Vacuum Excavation Unit	4 hours	5 hours
❖ Other	❖ Refer to quotation	

2.8 For night work a 30% surcharge is levied on top of quoted rates. For weekend work a 25% surcharge is levied on top of quoted rates. For public holidays a 30% surcharge is levied on top of quoted rates.

**3. SALES ORDERS AND CANCELLATION**

3.1 Upon placing an order the Client is to provide a purchase order stating the date, time and Equipment / Services required in order to secure the availability of the Equipment / Services when required. The company in its absolute discretion can require you to pay a deposit equivalent to 40% of the likely cost of the hire of the Equipment / Services or alternatively require you to make payment in full of the likely cost of the hire of the Equipment / Services.

3.2 Where the Company receives from the Client, notification of the cancellation of a job less than four (4) hours before the commencement of the job when booked to take place during normal business hours OR less than thirty six (36) hours before the commencement of the job when booked to take place outside of normal business hours then a cancellation fee will be charged. The cancellation fee will be equivalent to the minimum hire period as defined in clause 2.6, and will be applied to day and night shift minimum charges depending on when the job was scheduled to take place.

3.3 Title to any Equipment hired to a Client does not pass from the Company to the Client.

**4. BREAKDOWN**

4.1 In the event of any Equipment breakdown, other than that caused by or contributed to by the Client's act, error or omission, the Client will not be charged for the time that that particular piece of Equipment 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 Equipment cannot be repaired in a reasonable timeframe, the Company will use its best endeavours to replace the Equipment with another piece of Equipment that is suitable to carry out the work.

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

4.4 The Client agrees that the Company's maximum liability to the Client for any breach of these Terms and Conditions or any other claim against the Company however arising is limited to the monetary value of the purchase order.

**5. TERMS OF PAYMENT**

5.1 The Company will issue to the Client an invoice for the Equipment / Services, based on the charges / costs in the purchase order and all other amounts for which the Client is liable including stamp duty, financial institutions duty, fees, outgoing, penalties due, demands, charges imposed by any authority as to the Equipment / Services provided. The Client agrees that the invoice evidences the monies due and payable by the Client to the Company for the Equipment / Services provided.

5.2 (a) The Company will apply a ten dollar (\$10) invoicing fee to all invoices raised.

5.2 (b) The Client is required to make payment of the invoice within 30 days of the date of the invoice.

5.3 The Company reserves the right to revise its rates and related charges without notice.

5.4 Hire charges cover only the fee for hiring the Equipment / providing a Service to the Client. If the Client requires the Equipment to be delivered and/or installed, the Client shall in addition pay to the Company all freight and other charges incurred in transporting the Equipment, including loading and unloading at site. Any other additional services provided to the Client, shall be paid for by the Client.

5.5 The Company may charge interest on all amounts not paid by the Client by the due date at the rate per annum equal to the Westpac Business Overdraft Indicator Lending Rate plus 1.5%, from and including the due date to the date of the actual receipt of payment.

5.6 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.

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

**6. CLIENTS WARRANTIES**

The Client 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 Client will not breach any copyright or other restriction in relation to or in connection with, the Equipment / Services;

6.3 in accepting the quotation for provision of Equipment or Services the Client 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 Equipment / Services comply with their description, are in merchantable condition and are fit for the Client's purpose.

6.4 The Client is solely responsible for meeting all legislative and duty of care obligations forming part of the provision of or relating to the carrying out of Equipment / Services provided with respect to any underground services including but not limited to

a. Requesting and obtaining current plans from the relevant service provider for each underground asset that is to be located by the Company with respect to the site.

b. Providing the said plans to the Company prior to the commencement of the works to be undertaken by the Company.

6.5 The Client solely accepts responsibility to any public authority or public person or company in relation to any damage caused by our Equipment or the equipment of the Client and in this regard the Client acknowledges that such damage can include, but may not be limited to personal injury, property damage and business interruption of the service providers business.

6.6 The Client will not hold the Company responsible for any inaccuracies in the plans provided, or in the event that the plans do not cover the site in its entirety (e.g. Private property).

6.7 The Client agrees to abide by the minimum clearance guidelines as specified by the relevant service provider and acknowledges that a copy of these guidelines is available from the service provider with the beforeUdig plans provided.

6.8 The Client acknowledges that the findings of the Locating Equipment used by the Company cannot be guaranteed for 100% accuracy. As a minimum, all findings will be provided in accordance with ASS488-2013 "Classification of Sub-surface Utility Information (SUI).

6.9 The Client acknowledges that some services are untraceable because they are for example, Optic Fibre, PVC piping or other non-ferrous material substances. In these instances, the provisions in clause 12.4 apply.

6.10 The Client hereby agrees to indemnify the Company and keep the Company indemnified against any and all actions, suits, claims, damages or loss sustained by or brought against the Company either directly or indirectly as a result of any breach by the Client of this Agreement, legislative or duty of care obligation or as a result of any damage caused by the Client to any service, or to any person, as a result of the Client's actions involving the service in any way whatsoever.

6.11 The Client acknowledges that it has reviewed, read and understood these Terms and Conditions and has sought their own legal counsel.

**7. COMPANY SUPPLY OBLIGATIONS**

The Company will ensure that:

7.1 The Equipment 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 trained or licensed Operator who will work entirely in accordance with the instructions of the Company or an authorised representative operates the Equipment.

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

7.4 All safety and operating instructions and notices are observed.

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

7.6 A risk assessment is conducted prior to operating any mechanical Equipment 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 Equipment.

**8. LABOUR**

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

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

**9. DAILY JOB DOCKETS**

9.1 Daily Job Dockets are completed for every project. The Company will provide the Client with these sheets at the completion of each project. For projects extending past one (1) day a Job Docket will be completed for every day on site. Any request by you as Client to "sign off" on the Job Docket requires sufficient notice to be provided. Any sign off is to assist your record keeping only and cannot be relied upon to dispute any invoice issued pursuant to clause 5.1.

9.2 At the completion of the day's work the Client (if available) is required to sign the Job Docket to signify their acceptance of the work carried out including hours worked, scope, quality and compliance with applicable regulations.

9.3 If the Client is not available to sign the Job Docket at the completion of the day's work and the Client has not made alternative arrangements to have the Job Docket signed, then the Company may, at its discretion, charge the Client for supervisors to come back and have the Job Docket authorised.

**10. DISPOSAL OF EXCAVATED MATERIAL**

10.1 (a) All disposal of excavated material will be carried out in accordance with relevant legislation at an agreed disposal facility.

(b) It is the Client's responsibility to inform the Company of the type of soil to be removed.

10.2 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 Client's site. It is the Client'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.

10.3 All disposal costs and associated cleaning costs incurred by the Company will be charged out in addition to all Equipment Hire charges. Should the Company experience delays in disposing the excavated material at these facilities, the hourly rate applicable to the Equipment will be charged for the entire time the Equipment is delayed unless otherwise agreed by the Company in writing. This includes delays overnight due to the closure of the disposal facility.

**11. TERMINATION OF HIRE & RECOVERY OF EQUIPMENT**

Without prejudice to any other remedies available to the Company and notwithstanding any Hire Period specified, the Company may terminate this Hire Agreement:

11.1 At any time by giving the Client 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 otherwise agreed in writing.

11.2 Without notice, if the Client shall commit any breach of these Terms and Conditions, or do or permit to be done any act or thing whereby the Company's rights in or to the Equipment 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 Period or if the Client has failed to make payment to the Company in accordance with these Terms and Conditions, then upon giving the Client 24 hours' notice of its intention to remove the Equipment, the Client expressly authorises the Company to enter the premises where the Equipment is located and arrange for its removal. The Company is expressly authorised to decommission such Equipment and disconnect (or arrange for disconnection) of any utility services where this is required in order to remove the Equipment from the premises. The Hire Period shall not cease until the Equipment has been decommissioned, all utility services have been disconnected and the Equipment removed and returned to the Company. The costs associated with any decommissioning, disconnecting services and removal will be charged to the Client. The Company shall not be liable for any damage

caused to the Client's property as a result of decommissioning, disconnecting the utility services and removing the Equipment. The Company will not be responsible or liable for any personal property left inside the Equipment when it is removed or returned to the Company. The Client 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 These Terms and Conditions fully and solely comprise the agreement between the parties. It supersedes any previous arrangements, correspondence, tenders, representations, proposals, understandings and communications, whether oral or in writing.

12.2 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, state or regional legislation.

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

12.4 The Company will take all due care with regards to the location of services within the areas nominated by the Client. However all responsibility remains at all times with the Client and no warranty, whether expressed or implied is given in the event the Company is unable to locate a service or services which is or are subsequently damaged in any way whatsoever.

**13. INCAPACITATED EQUIPMENT DUE TO SITE CONDITIONS**

If it is 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 Client will be advised. If the Client requests the Company to attempt to reach the work site, the Company's representative believes it is safe to do so and the Equipment subsequently becomes bogged, the Client will be responsible for all recovery costs incurred by the Company along with all Equipment 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 relevant, control of traffic will be managed to comply with the Traffic Control Devices Manual (2008). Sites will also adhere to the relevant legislation or Code of Practice.

14.2 Equipment will be supplied with the necessary accessories to undertake a basic short-term pedestrian traffic management set up only. Should vehicular traffic control be required, the Company will engage the services of an accredited Traffic Management Company. The charge for this service shall be in addition to all Equipment hire and labour charges.

**15. MISCELLANEOUS**

15.1 The Client hereby covenants with the Company that the Officer or representative of the Client in accepting these Terms and Conditions is vested (explicitly, implicitly, or through conduct) with the powers to commit the Client to this binding agreement. The Client hereby indemnifies the Company against all losses, costs and claims incurred by the Company arising out of its Officer or Representative accepting this Agreement not in fact having such power and/or authority.

15.2 If any part of these Terms and Conditions 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 to these Terms and Conditions is valid or binding on a party unless made in writing and executed by both 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 these Terms and Conditions are in addition to, and do not exclude or 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 country in which the Equipment and Services are provided.

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

15.8 The Company supports the Land Transport Act 1998. A legal Chain of Responsibility exists and impacts anyone who uses road transport for any part of their business. Therefore the Client must not knowingly or unknowingly cause the Company's employee(s) to experience unsafe fatigue levels, cause overloading, inadequate load restraint and/or speeding during the Hire Period.

**16. PRIVACY STATEMENT**

The Company will comply with the Privacy Act in all dealings with the Client.

**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.

**COPYRIGHT** in the Contract Documents subsists in Neil Costello ("the Author"). Other than for the purposes of and subject to the conditions prescribed under the **Copyright Act** no part of these documents may be copied or otherwise dealt with without the prior written permission of the Author. ANY BREACH OF THE AUTHOR'S COPYRIGHT IN THESE DOCUMENTS WHICH COMES TO THE AUTHOR'S ATTENTION WILL RESULT IN PROSECUTION OF THE RESPONSIBLE PERSONS TO THE FULL EXTENT PERMITTED BY LAW.