



WET AND DRY HIRE TERMS AND CONDITIONS

INTRODUCTION

- A. The Customer hereby accepts the hire of the Equipment and or Labour Personnel by **WA Grouting Systems PTY LTD** ABN 85 717 732 998 (herein "**WA Grouting Systems**") for the Hire Period on the terms and conditions of these Terms and Conditions.
- B. These Terms and Conditions will be the sole authority for governing the Customers hire of the Equipment and Labour Personnel to the exclusion of all others.

1) DEFINITIONS

To assist when we refer to the following terms in this document:

- a) "**Credit Account**" means You have properly completed and submitted a Credit Application to Us and We have approved You for an account with Us.
- b) "**Environmental Laws**" means any statute, regulations or other laws made or issued by a regulatory body or government regulating or otherwise relating to, the environment including without limitation the use or protection of the environment.
- c) "**Equipment**" means any of Our equipment, including but not limited to, portable buildings, vehicles, compaction, and heavy earth moving, dewatering equipment, shoring and pumps, and any associated or attached tools, accessories, and parts available for hire.
- d) "**Off Hire Date**" means the date You returned the equipment to WA Grouting Systems premises in Osborne Park WA.
- e) "**Work Performed / Work Completed / Work Hours**" means any work as per the hire schedule and includes travel to and from site, site inspections, mobilization and demobilization and cleaning.
- f) "**Hire Schedule / Estimate / Agreement**" means the document provided by Us to You which outlines important information, including but not limited to, the Equipment You have hired, the hire rates which apply to the Equipment, any other applicable charges, the Expected Off Hire Date, and the address for delivery of the Equipment.
- g) "**Licence to Perform High Risk Work**" means a validly issued licence issued by the relevant workplace health and safety departments of each respective state government required for the operation of equipment which is considered to be high risk.
- h) "**Long Distance Location**" is a location in excess of 200km WA Grouting Systems premises in Osborne Park WA.
- i) "**Regulatory Authority**" means any public authority or government agency responsible for regulating the performance of electrical works.
- j) "**We/Us/Our**" means WA GROUTING SYSTEMS PTY LTD
- k) "**You/Your**" refers to the person, firm, organisation, partnership, corporation, trust, or other entity hiring Equipment from Us, as named in the Hire Schedule (where You do not hold a Credit Account). The reference to "You" includes any employees, agents, and contractors.
- l) "**Terms and Conditions**" means these Terms and Conditions of Wet and Dry Hire, which give effect to the hire by WA Grouting Systems, and includes any other terms and conditions contained in any quotation or any other document incorporated by reference herein. In the event of any inconsistency, the terms of any quotation to which these Terms and Conditions of Wet and Dry Hire are attached shall take precedence.
- g) The Hire Schedule will specify the type of rate which will apply to You and the method of calculation.
- h) Additional rental charges as set out in the Hire Schedule will apply if the Equipment is used for more than 8 hours per day.
- i) We reserve the right to charge for a minimum period of hire for certain types of Equipment, but We will advise You of any minimum hire periods before You commence the hire.
- j) You will be charged for the hire of Equipment for the full Hire Period. For the avoidance of doubt, You will continue to incur hire and other charges after the agreed Off Hire Date if You have not returned the Equipment to Us by the agreed Off Hire Date.
- k) If You have requested that We deliver and collect the Equipment and We have agreed, hire charges will commence from the time the Equipment leaves Our premises and continue until the date You notify Us that You no longer require the Equipment, and that the Equipment is available for collection (the "Off Hire Date").
- l) You are responsible for arranging the re-testing and re-tagging of any electrical Equipment in accordance with the manufacturer's instructions and the applicable Australian Standard(s) and Regulatory Authority requirements at Your cost. Except where We arrange for re-testing and re-tagging of the electrical Equipment, any damage caused to the Equipment resulting from incorrect testing arranged by You will be at Your cost.
- m) We may apply amounts received in connection with this Hire Agreement to satisfy obligations secured by a security interest contemplated or constituted by this Hire Agreement in any way We determine in Our absolute discretion.
- n) You agree to notify Us in writing of any change to Your details set out in the Credit Application, within 5 days from the date of such change.
- o) Neither party will be responsible for any delays in delivery, installation, or collection due to causes beyond their control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of 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) TERMS OF HIRE

- a) The Hire Period commences when, either:
- i) The equipment is taken from Our premises directly by the hirer,
- ii) If You request delivery and collection of the Equipment, the time the Equipment leaves Our Premise,
- Whichever occurs first.
- b) The Hire Period is for an indefinite term and ends when the Equipment is back in Our custody and possession.
- c) The Hire Period includes weekends.
- d) Any work performed during the night shift (16:00 - 06:00 Monday to Sunday) and or any work performed outside the hire schedule daily work hours, will attract a minimum hire period of four (4) hours for the equipment, and eight (8) hours for wet hire personnel. Any work performed on a given day will attract the hire agreement daily rate for personnel and equipment.
- e) The Hire Period can only be changed if You request a variation, and We agree to that variation in writing.
- f) You will pay Us for the hire of the Equipment at the hire charge rates set out in the Hire Schedule.

3) OTHER CHARGES

In addition to hire charges, You agree that You will be required to pay:

- a) for any consumables, fuel, or trade materials We supply to You including but not limited to, rotors and stators;
- b) if You require Us to deliver, collect or install the Equipment, the cost of delivery, collection, or installation, as detailed in the Hire Schedule;
- c) if You do not return the Equipment in clean and good working condition, charges for the cleaning and repair of the Equipment; any stamp duty or GST arising out of this Hire Agreement;
- d) any other applicable levies, fines, penalties, and any other government charges arising out of Your use of the Equipment;
- e) charges for payment made by credit card;
- f) an environmental charge in relation to any item of Equipment, as detailed in the Hire Schedule;
- g) if You request operational guidance or training on the use of the Equipment and Our staff are available to provide this, the cost for the provision of these services at rates agreed with Us;
- h) charges in connection with the administration of Your account with Us, as detailed in the Hire Schedule, which may include printing and postage costs;
- i) the charges for Mobilization and Demobilization if agreed in the Hire Schedule;
- j) where the hire charges are expressed on a periodic basis, (i.e., hourly, daily, weekly and or monthly, the hire charges shall be payable for each completed period of hire.

4) PAYMENT

- a) You must pay all fees, charges and costs that become due and payable under this Hire Agreement as per the negotiated



costings agreed upon in the Hire Schedule.

- b) If You do not pay the invoice in full by the payment due date, We reserve the right to charge, in addition to any other costs recoverable under this Hire Agreement including interest, any costs and expenses, (including any commission payable to any commercial or mercantile agents and legal costs) incurred by Us in recovering any unpaid amounts under this Hire Agreement.

5) YOUR OBLIGATIONS TO US

- a) This Hire Agreement is personal to You and so You must not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time, unless expressly agreed by Us in writing.
- b) You agree that before accepting the Equipment, You have satisfied Yourself as to the suitability, condition and fitness for purpose of the Equipment for the job You intend to use it for. We make no representations and give no guarantee or warranty that the Equipment is suitable for Your intended purpose.
- c) To help You stay safe during the Hire Period, You and Your employees, agents and contractors must:
 - i) operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
 - ii) ensure persons operating or erecting the Equipment are suitably trained on its safe and proper use, qualified to use the Equipment and where necessary, hold a current Licence to Perform High Risk Work;
 - iii) wear suitable clothing and protective equipment when operating the Equipment as required or recommended by Us or the manufacturer;
 - iv) ensure that no persons operating the Equipment are under the influence of drugs or alcohol;
 - v) conduct a job safety analysis prior to using the Equipment;
 - vi) ensure that no persons carry illegal, prohibited or dangerous substances in or on the Equipment; and
 - vii) display all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Equipment.
- d) It is important to take care of the Equipment during the Hire Period. You must:
 - i) clean, fuel, lubricate and keep the Equipment in good condition and in accordance with the manufacturers and Our instructions at Your own cost;
 - ii) not in any way alter, modify, tamper with, damage or repair the Equipment without Our prior written consent; and
 - iii) not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment.
- e) At all times during the Hire Period, You must store the Equipment safely and securely and protected from theft, seizure, loss or damage.
- f) You will allow Us to enter Your premises and inspect the Equipment from time to time during the Hire Period. You can also request to conduct a joint inspection of the Equipment with Us at the end of the Hire Period.
- g) Whenever You are moving the Equipment, You must ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturer's guidelines. You (or any contractor You engage) must observe any safety directions advised by Us and/or the manufacturer of the Equipment to ensure its safe loading and handling.
- h) You must not remove the Equipment from the State or Territory in which You hired it without Our written consent.
- i) You must not use the Equipment offshore, in a mine, in an area where friable asbestos is present, or move the Equipment over water without Our prior written consent, which may be reasonably withheld.
- j) You warrant that You will comply with all Environmental Laws from time to time and immediately rectify any breach of an Environmental Law caused by the use of the Equipment.
- k) You must use best endeavours to ensure that the Equipment is not contaminated with any hazardous substances (including asbestos). You must advise Us of any risks of hazardous substance contamination to the Equipment as soon as they become apparent.
- l) Where Equipment may have been subjected to contamination, You must effectively decontaminate the Equipment, as well as

provide Us with written details of decontamination processes applied. If, in Our opinion acting reasonably, the Equipment has not been properly decontaminated or is not capable of being decontaminated, You will be charged for the new replacement cost of the Equipment.

- m) Any electrical Equipment provided by Us will be tested and tagged before it is hired to You, but You are responsible for arranging the re-testing and re-tagging of any electrical Equipment in accordance with the manufacturer's instructions and the applicable Australian Standard(s) and Regulatory Authority requirements at Your cost. We are able to arrange for such re-testing.

6) OWNERSHIP

- a) You acknowledge that We own the Equipment and, in all circumstances, We retain title to the Equipment (even if You go into liquidation or become bankrupt during the Hire Period). Your rights to use the Equipment are as a bailee only.
- b) You are not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Equipment in any way.
- c) In no circumstances will the Equipment be deemed to be a fixture.
- d) You consent to Us affecting and maintaining a registration on the register (in any manner We consider appropriate) in relation to any security interest contemplated or constituted by this Hire Agreement in the Equipment and the proceeds arising in respect of any dealing in the Equipment and You agree to sign any documents and provide all assistance and information to Us required to facilitate the registration and maintenance of any security interest. We may at any time register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest). You waive the right to receive notice of a verification statement in relation to any registration on the register of a security interest in respect of the Equipment.

7) RESPONSIBILITY FOR THE EQUIPMENT

- a) You are responsible for the Equipment for the Hire Period.
- b) **RETURN OF EQUIPMENT**
 - i) You must return the Equipment to Us in the same clean condition and good working order it was in when You received it, ordinary fair wear and tear excluded.
 - ii) If You do not properly clean the Equipment, We will charge You a cleaning cost based on an hourly rate for labour plus parts.
 - iii) It is Your responsibility to return the Equipment in good working condition to WA Grouting Systems Osborne Park workshop during normal business hours. (Mon - Fri 8am to 4pm).
 - iv) If You have requested, and We have agreed, to collect the Equipment from You, You must ensure it is kept safe and secure until the time of collection.
- c) **WHAT TO DO IF EQUIPMENT BREAKS DOWN**
 - i) In the event that the Equipment breaks down or becomes unsafe to use during the Hire Period You must:
 - (1) immediately stop using the Equipment and notify Us;
 - (2) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
 - (3) take all steps necessary to prevent any further damage to the Equipment itself; and
 - (4) not repair or attempt to repair the Equipment without Our written consent.
 - ii) We will:
 - (1) take all steps necessary to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by You;
- d) **WHAT TO DO IF EQUIPMENT IS LOST, STOLEN OR DAMAGED**
 - i) If the Equipment has broken down or become unsafe to use as a result of Your negligence or if the Equipment is lost, stolen or damaged beyond fair wear and tear during the Hire Period, You will be liable for:
 - (1) any costs incurred by Us to recover and repair or replace the Equipment; and
 - (2) the hire charges for that portion of the Hire Period during which the Equipment is being recovered and



repaired or replaced.

e) EQUIPMENT THAT IS COLLECTED OR DELIVERED IN A DAMAGED AND / OR DEFECTIVE CONDITION

- i) If You collect or receive the Equipment (whichever is applicable) and find that it is broken, damaged and/or defective, You must notify Us within 8 hours after You collect or receive the Equipment. If You do not notify Us within this time period, We are entitled to assume that the Equipment You collected or received was in good order and condition.
- ii) For the avoidance of doubt, You remain responsible for daily maintenance and care of all Equipment including but not limited to, daily checking of all fluids (fuel, oil, water, battery levels etc), general tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points.
- iii) If the Equipment breaks down at a Long Distance Location, You will also pay Us the costs associated with any attendance to the Long Distance Location in addition to any other costs payable under this Hire Agreement.

8) INDEMNITIES AND EXCLUSION OF LIABILITIES

- a) In this Hire Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements, or representations whether express or implied, statutory or otherwise, relating to this Hire Agreement or its subject matter are excluded to the maximum extent permitted by law.
- b) Nothing in this Hire Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Australian Consumer Law, which contains guarantees that protect the purchasers of goods and services in certain circumstances.
- c) Where any legislation implies or imposes a guarantee, term, condition, warranty, undertaking, inducement or representation in relation to this Hire Agreement and We are not able to exclude that guarantee, term, condition, warranty, undertaking, inducement or representation ('Non-Excludable Provision'), and We are able to limit Your remedy for a breach of the Non-Excludable Provision, then Our liability for breach of the Non-Excludable Provision is limited to (at Our election):
 - i) in the case of goods, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or
 - ii) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- d) Subject to Our obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, Our maximum aggregate liability for all claims under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, is limited to an amount equal to the fees paid by You under this Hire Agreement. In calculating Our aggregate liability under this clause, the parties must include any amounts paid or the value of any goods or services replaced, repaired or supplied by Us for a breach of any Non-Excludable Provisions.
- e) We will not be liable to You for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs You have incurred, amounts that you are liable to Your customers for or any loss suffered by third parties under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.
- f) You are liable for and indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) in respect of:
 - i) personal injury;
 - ii) damage to tangible property; or (c) a claim by a third party,

in respect of Your hire or use of the Equipment or Your breach of the Hire Agreement. Your liability under this indemnity is diminished to the extent that Our breach of the Hire Agreement or Our negligence causes the liability, claims, damage, loss, costs or expenses.

- g) Each indemnity in this Hire Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Hire Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Hire Agreement.
- h) We will not be liable to You for any acts or omissions of any person supplied by Us where that person is acting under Your direction and control during the Hire Period and you indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) arising from or incurred in connection with such acts or omissions.

9) WHEN THIS HIRE AGREEMENT TERMINATES

- a) Either party may terminate this Hire Agreement and any Hire Period immediately by giving notice to the other party, if:
 - i) that other party breaches any term of the Hire Agreement and fails to remedy the breach within 14 days of written notification of the breach; or
 - ii) that other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business.
- b) We may terminate the Hire Agreement and any Hire Period for any other reason on 24 hours' notice.
- c) These rights of termination are in addition to any other rights either party has under the Hire Agreement and does not exclude any right or remedy under law or equity.

10) RECOVERY OF THE EQUIPMENT

If You are in breach of the Hire Agreement or if the Hire Agreement or a Hire Period has been terminated. We may take all steps necessary (including legal action) to recover the Equipment, including entering Your premises to do so. Upon receiving written notice from Us, You expressly consent to Us entering Your premises for the purposes of recovering Our Equipment.

11) SECURITY

- a) As security for Your obligations and liabilities under this Hire Agreement, You hereby charge for the due and punctual payment and performance of those obligations and liabilities, all of Your legal and equitable interest (both present and future) of whatsoever nature held in any and all real property;
- b) You will indemnify Us on an indemnity basis against all costs and expenses incurred by Us in connection with the preparation and registration of any such charge and mortgage documents.

12) PRIVACY

- a) At WA Grouting Systems, We take Your privacy seriously. We will comply with the National Privacy Principles in all dealings with You.
- b) We may need to collect personal information about You, including but not limited to, Your full name and address, drivers licence, credit card details, date of birth, credit or business history and other personal information. You consent to Us using Your personal information in order to:
 - i) fulfill functions associated with the hire of Equipment to You, including but not limited to assessing Your credit worthiness,
 - ii) provide services to You;
 - iii) prevent theft of Our Equipment;
 - iv) enter into contracts with You or third parties, and
 - v) to market to You and maintain a client relationship with You.
- c) You also consent to Us disclosing Your personal information:
 - i) to any credit provider or credit reporting agency for the purposes of obtaining information about Your consumer or commercial credit or business history or Your commercial activities or credit worthiness; and
 - ii) to Our service providers, contractors and affiliated companies from time to time to help improve and market Our services to You.
- d) You have the right to access the personal information We hold



about You.

e) A copy of Our Privacy Statement is available upon request.

13) SEVERABILITY

If any part of this Hire Agreement becomes void or unenforceable for any reason, then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.

14) GOVERNING LAW

The Hire Agreement is governed by the laws of the State or Territory of Australia where the Hire Agreement is entered into by the parties and each party submits to the non-exclusive jurisdiction of the courts of that State or Territory.

15) ENTIRE AGREEMENT

The Hire Agreement as defined in clause 1(e), comprises the entire agreement between the parties. No additional terms and conditions (including any terms contained in any purchase order) apply to the hire of the Equipment.

16) NO RELIANCE

You acknowledge that neither We nor any person acting on Our behalf have made any representation or other inducement to You to enter into the Hire Agreement and You have not entered into the Hire Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those representations contained in this Hire Agreement.

17) VARIATION

We may need to vary this Hire Agreement. If We intend to do so, We will give You 30 days written notice and clearly set out Our proposed amendments. If You have reasonable grounds to believe the change will be detrimental to Your rights, You may terminate this Hire Agreement without penalty within 30 days of receiving Our written notice.

18) NO WAIVER OF RIGHTS

No delay or omission by a party to exercise any right, power or remedy available to that party as a result of a continuing breach or default under the Hire Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of that party's rights to take action or make a claim in respect of a continuing breach or default.

19) REVIEW OF YOUR CREDIT APPROVAL

- a) From time to time, We may review any Credit Account We have granted to You without notice.
- b) We may, at Our discretion, decide to withdraw credit for any reason, including but not limited to if Your circumstances change, You fail to make payments on time or You fail to use the Equipment in accordance with the terms of the Hire Agreement.
- c) If we withdraw credit you may terminate this Hire Agreement immediately by giving Us written notice. However, if You do so You must:
 - i) pay amounts that were subject to credit in accordance with the terms on which that credit was provided; and
 - ii) still pay all amounts due to Us under this Hire Agreement, including hire charges until the Equipment is back in our custody and possession.

20) INTERPRETATION

In these Terms and Conditions, unless the context indicates a contrary intention:

- a) no rule of construction applies to the disadvantage of a party on the basis that the party put forward these Terms and Conditions or any part of it;
- b) words denoting the singular number include the plural and vice versa;
- c) words denoting individuals include corporations and vice versa;
- d) a reference to any Party to these Terms and Conditions includes their executors, administrators, successors and permitted assigns including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- e) these Terms and Conditions will, if the Customer comprises more than one person, bind such persons jointly and severally;
- f) headings are for convenience only, and do not affect interpretation;
- g) references to clause and sub-clauses are references to clauses and sub-clauses in these Terms and Conditions;
- h) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a

corresponding meaning; the word includes in any form is not a word of limitation; and

- i) a reference to these Terms and Conditions includes any subsequent variation of these Terms and Conditions.