

## 1. EQUIPMENT AND SERVICES

1.1 The Company agrees to provide the Equipment and / or Services based on the parties' Agreement for the Hire period and the Client agrees to pay the Hire Charges / fee in accordance with these Terms and Conditions.

1.2 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.

1.3 The hourly rate or quoted charges are based upon the Equipment / Services being hired for a minimum Hire Period in accordance with 1.6 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 lineal metre rates.

1.4 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.

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

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

Equipment	Normal Hours	After Hours
❖ EMI Locator /2D GPR	3 hours	4 hours
❖ 3D GPR	8 hours	8 hours
❖ Vacuum Excavation Unit	4 hours	5 hours
❖ Other	❖ Refer to quotation	

[GPR: Ground Penetrating Radar]

1.7 For night work a 30% surcharge is levied on top of quoted rates. For weekend work a 30% surcharge is levied on top of quoted rates. For public holidays a 35% surcharge is levied on top of quoted rates.

## 2. SALES ORDERS AND CANCELLATION

2.1 Upon placing an order the Client is to provide an executed Client Purchase Order in a form acceptable to the Company 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 the Client to pay a deposit equivalent to 40% of the likely cost of the hire of the Equipment / Services or alternatively require the Client to make payment in full of the likely cost of the hire of the Equipment / Services.

2.2 Where the Company receives notification from the Client 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 1.6 and will be applied to day and night shift minimum charges depending on when the job was scheduled to take place.

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

## 3. BREAKDOWN

3.1 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.

3.2 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.

3.3 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.

3.4 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 howsoever arising is limited to the monetary value of the Client Purchase Order.

## 4. TERMS OF PAYMENT

4.1 The Company will issue to the Client an invoice for the Equipment / Services, based on the charges / costs in the Client Purchase Order and all other amounts for which the Client is liable including stamp duty, financial institutions duty, fees, outgoings, 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.

4.2 (a) The company reserves the right to apply a ten dollar (\$10) fee for each invoice that is re-issued to cover administration and other associated costs.

(b) The Client is required to make payment of the invoice within 21 days from the end of month in which the services were provided.

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

4.4 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.

4.5 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.

4.6 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.

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

4.8 If the Client does not make payment of an invoice within the time stated at clause 4.2(b), the Company acknowledges that amount is a debt due and the Company may notify the Client that the amount is outstanding and either suspend the Services or terminate the Agreement. Any costs for the reinstatement of the Services that is incurred by the Company will be also be a debt due from the Client to the Company.

## 5. CLIENTS WARRANTIES

The Client warrants that:

5.1 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.

5.2 The Client will not breach any copyright or other restriction in relation to or in connection with, the Equipment / Services including the matters at clause 14.

5.3 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 and these Terms and Conditions comply with their description, are in merchantable condition and are fit for the Client's purpose.

5.4 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:

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

5.5 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.

5.6 The Client will not hold the Company liable for any inaccuracies in the plans provided, or in the event that the information and data forming part of the Services do not cover the site in its entirety (e.g. Private property).

5.7 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.

5.8 The Client acknowledges that the information and data forming part of the Services of the Equipment used by the Company cannot be guaranteed for 100% accuracy. As a minimum, all information and data will be provided in accordance with AS 5488 "Classification of Sub-surface Utility Information" (SU) as updated and amended.

5.9 The Client acknowledges that:

- some services are untraceable or unidentifiable in accordance with AS 5488 because they are for example:
  - Optic Fibre;
  - PVC piping; or
  - other non-ferrous material substances, and
- there are geotechnical conditions (including voids and anomalies) which cannot be identified.

In these instances, the provisions in clause 11.4 shall apply.

5.10 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 Services in any way whatsoever.

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

5.12 The Client acknowledges and agrees that it is liable for any direction given by it or a representative of the Client to transport or move the Equipment of the Company which results in damage, repairs or the need for recovery, or alternatively if such damage, repairs or recovery arises from the Site Conditions. The Client hereby indemnifies the Company for any cost, recovery cost, expense, loss or damage or claim arising out of such a direction, unless the Company was acting negligently in complying with such a direction for which the Client's indemnity will be reduced proportionately to the extent that such an act or omission contributes to the cost, recovery cost, expense, loss or damage or claim.

5.13 The Client hereby indemnifies the Company from any liability or alternatively any cost, loss, damage, or expense sustained by the Company by reason of any damage or disruption to, without limitation, easements, entranceways, right of ways, driveways, pavements or any other feature caused by sub-surface conditions.

## 6. COMPANY SUPPLY OBLIGATIONS

The Company will ensure that:

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

6.2 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.

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

6.4 All safety and operating instructions and notices are observed.

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

6.6 A risk assessment is conducted prior to operating any mechanical Equipment to ensure safe working methods apply.

6.7 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.

## 7. LABOUR

7.1 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 are due to be paid to the employee, these costs where appropriate will be charged to the Client.

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

## 8. DAILY JOB DOCKETS

8.1 Daily Job Dockets are completed for every project. The Company will provide the Client with electronic copies of these at the completion of each project. For projects extending past one (1) day a Job Docket will be completed for every day on site.

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

8.3 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.

## 9. DISPOSAL OF EXCAVATED MATERIAL

9.1 (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.

9.2 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.

9.3 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.

## 10. TERMINATION OF HIRE AND RECOVERY OF EQUIPMENT

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

10.1 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.

10.2 Without notice, if the Client shall commit any breach of these Terms and Conditions, or do or permit to be done any act or deed 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 any of its assets 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.

10.3 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.

## 11. EXCLUSION OF CONDITIONS, WARRANTIES AND LIABILITY

11.1 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.

11.2 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 or Regional legislation.

11.3 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.

11.4 The Company will take all due care with regards to the information and data it provides, including the location and identification of services. The Company expressly disclaims any warranty, whether expressed or implied:

- (a) in the event the Company is unable to locate or identify a service or condition which causes subsequent damage in any way whatsoever; and
- (b) for the interpretation and use of any information/data provided to the Client arising from or in connection to the Equipment/ Services.

## 12. SITE CONDITION CHARGES

12.1 If and to the extent that the Company encounters any adverse Site Conditions or the existence of a Latent Condition necessitates a change to the Services that causes the Company to incur additional cost than it would otherwise have occurred the Company shall be entitled to claim an adjustment in the Hire Charge/fee to reflect the direct and actual additional costs incurred.

## 13. ROAD TRAFFIC MANAGEMENT

13.1 Where relevant, control of traffic will be managed to comply with Traffic Control Devices Manual 2008. Sites will also adhere to the relevant legislation or Code of Practice.

13.2 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.

## 14. CONFIDENTIALITY & INTELLECTUAL PROPERTY

14.1 (a) Except to the extent required by law, the Client must not disclose any Confidential Information it obtains from the Company to any person without the consent of the Company.

(b) When requested by the Company or the Company's Representative the Client must promptly return to the Company any documents provided to the Client under the Agreement.

14.2 The Company shall retain the Intellectual Property Rights in any original, existing, or future: idea, process, equipment or system created in or outside this Agreement and relevant to or disclosed as part of the performance of the Services.

## 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.

15.9 Each indemnity in the Agreement is a continuing obligation, separate and independent from the other obligations of the Client and survives termination of the Agreement.

## 16. PRIVACY STATEMENT

The Company in dealing with the Client will comply with the Privacy Act (and any relevant Codes or Regulations) in relation to any Personal Information (as defined in the Act).

## 17. WAIVER

17.1 Time is of the essence in 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.

17.2 Waiver, partly or wholly, of any terms of the Agreement will:

- (a) be effective only if in writing and signed by the Company; and
- (b) apply only to a particular occasion (unless otherwise noted).

## 18. ENTIRE AGREEMENT

The Agreement consists of the Quotation Letter, Schedule of Rates (SOR), Client Purchase Order and these Terms and Conditions, which is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter of the Agreement are merged in and superseded by the Agreement.

## 19. AMENDMENT

The Agreement can only be amended by written agreement between the Parties.

## 20. INTERPRETATION

In this Agreement:

'Agreement' means the documents comprising the entire agreement between the parties as set out at clause 18.

'Company' means Vac-U-Digga NZ Ltd (NZ Business no. 942 903 058 3368) of 10 Tenahaun Place, Wigram, Christchurch 8042, New Zealand, its associated companies, substitutes, successors, permitted assigns and its licensees, franchisees and/or its agents, and Earth Radar Pty Ltd and the Earth Radar operating entities;

'Client' means any person who signs this Agreement personally or by an agent;

'Client Purchase Order' means a purchase order in a form acceptable to the Company to be executed by the Client.

'Confidential Information' means all information pertaining to the Company, including all confidential, non-public or proprietary information of or relating to the Company and its Equipment relating to the business, finances, technology or other affairs of the Company whether in writing, in electronic form or any other form including but not limited to any document, plan, drawing, design, calculation, formula, model, methodology, process, photograph procedure or secret exchanged between parties under this Agreement or during the negotiations preceding any agreement between the Company and the Client, which may be exchanged orally, in written, or in electronic form.

'Equipment' means all Plant & Operator(s) provided by the Company and includes all items stated in the Quotation Letter, SOR and Client Purchase Order.

'GST' has the same meaning as in the as in the Goods & Services Tax Act 1985.

'Intellectual Property Rights' means all present and future rights anywhere in the world, including copyright, trademarks, logos, domain names, patents, designs, trade secrets, eligible layout rights, moral rights, processes, inventions, specifications, databases, confidential information, know how, research data, discoveries and similar rights and any other intangible proprietary rights whether registered or unregistered, together with all improvements to, and applications for, the protection of those rights.

'Latent Conditions' means all physical conditions and characteristics of the site and it's near surrounds, including below ground conditions, that could not be identified by the Company by reasonable observations or investigations of the site or the information in any tender documentation. These include all natural and artificial things, asbestos, contamination and other environmental hazardous substances, concrete cracking and spalling, facilities and Utility Services and, if the site includes a building, on and

within the building (including those things obscured behind walls, ceilings and beneath the floor).

'Services' means the totality of those services, requirements, obligations, tasks and activities and any information and data which the Company is required to perform or provide in accordance with the Agreement and that are described or set out in or can be reasonably inferred in this Agreement with such other services as would ordinarily be provided by the Company exercising all due skill, care and diligence in the performance of services similar to the Services.

'Site Conditions' means all physical, climatic and atmospheric conditions and characteristics of the site and the environment whether on, in, above or below the surface of the site, including:

- (a) all land, sub-surface and geological conditions including soil, ground water and hydrology, the effect of any de-watering, topography, rock, ground formations or materials (whether artificial or naturally occurring) and all other physical and structural conditions;
- (b) the existence, location or condition of any structures or installations;
- (c) contamination;
- (d) biological factors of plant and animals; the availability and condition of roads and all other means of access to and egress from the site;
- (e) the existence, location, availability and condition of services infrastructure and services;
- (f) artefacts; and
- (g) all other physical conditions and characteristics of land on, above or below the surface (including improvements) which may affect the performance by the Company of its obligations arising out of the Agreement;

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