



SUBCONTRACTOR AGREEMENT

YOUR INFORMATION:

Company Name: _____ ACN: _____
 Trading Name (if any): _____ ABN: _____
 Business Address: _____
 Postal Address (if different to Business): _____
 Telephone: _____ Fax: _____ Mobile: _____
 Email: _____

YOUR INSURANCES:

Type	Insurer	Held	Policy #	Insured Amount	Expiry
Public Liability*		Y/N			
Workcover		Y/N			
Equipment		Y/N			
Contractors Liability		Y/N			
Personal Accident		Y/N			

Please attach copies of Certificates of Currency for each policy outlined above.

*Public Liability must be for 20 million or more.

YOUR BANK INFORMATION (for EFT payments):

Bank: _____ Account Name: _____
 BSB #: _____ Account #: _____

PAYMENT TERMS / COMMISSION STRUCTURE (Tick your preference)

- 12% Guaranteed monthly payment, 45 days from the end of the month of invoice (paid on the 15th day of the month). All paperwork must be submitted by the 10th day of the prior month.
- 16% Guaranteed fortnightly payment, paid on the 15th and last day of each month for all work completed and invoiced by the 15th and last day of each month. All paperwork must be submitted by the 4th or 19th day of the month to be included in pay runs on the 15th and last day of the month.
- 20% Guaranteed payment, paid each Friday for all work completed up to and including the prior Sunday. All paperwork must be submitted by the prior Monday.

_____ (Initial)



Unit 1: Operator Name and Phone Number: _____

TRUCK	Tipper <small>(Please Circle)</small>	Flat Tray	Size (m3):		REGO #:	
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MACHINE TYPE	(1)		Size (tonne):		REGO #:	
	(2)		Size (tonne):		REGO #:	
Height	(1)	Width	(1)		Tracks	Rubber
	(2)		(2)		<small>(Please Circle)</small>	Steel

ATTACHMENTS <small>(Please Circle)</small>	Spreader Bar	Ripper	Rock Grab	Rock Breaker	Broom	Forks
	Tilting Head	Tilt Batter Bucket	Knuckle Boom	Trencher	Compaction Wheel	Profiler
	Bucket Sizes	150, 200, 250, 300, 350, 450, 600, 900, 1000, 1200, 1300, 1400, 1500, 1600, 1800, 2000	Auger Sizes		150, 200, 250, 300, 350, 450, 600, 750, 900	Max Drill Depth
Other Info: (Removable Canopy, Zero Swing)						

Unit 2: Operator Name and Phone Number: _____

TRUCK	Tipper <small>(Please Circle)</small>	Flat Tray	Size (m3):		REGO #:	
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MACHINE TYPE	(1)		Size (tonne):		REGO #:	
	(2)		Size (tonne):		REGO #:	
Height	(1)	Width	(1)		Tracks	Rubber
	(2)		(2)		<small>(Please Circle)</small>	Steel

ATTACHMENTS <small>(Please Circle)</small>	Spreader Bar	Ripper	Rock Grab	Rock Breaker	Broom	Forks
	Tilting Head	Tilt Batter Bucket	Knuckle Boom	Trencher	Compaction Wheel	Profiler
	Bucket Sizes	150, 200, 250, 300, 350, 450, 600, 900, 1000, 1200, 1300, 1400, 1500, 1600, 1800, 2000	Auger Sizes		150, 200, 250, 300, 350, 450, 600, 750, 900	Max Drill Depth
Other Info: (Removable Canopy, Zero Swing)						

_____ (Initial)



PARTIES:

1. The Contractor, whose details are on the front page of this Agreement.
2. Herbies Earthmoving Pty Ltd CAN 159 538 459 of HLB Mann Judd (SE QLD) Pty Ltd, Central Plaza Two, Level 15, 66 Eagle Street, Brisbane, in the State of Queensland ("Herbies").

DETAILS OF AGREEMENT:

See Terms & Conditions attached.

SIGNED BY THE PARTIES AS THEIR AGREEMENT:

EXECUTED by the Contractor in accordance with s127 of the *Corporations Act 2001* and in the presence of:

Directors Name and Signature

Directors Name and Signature

Witness Name and Signature

Witness Name and Signature

Date: _____

Date: _____

EXECUTED by HERBIES EARTHMOVING PTY LTD ACN 159 538 459 in accordance with s127 of the *Corporations Act 2001* and in the presence of:

Director Name and Signature

Witness Name and Signature

Date: _____

Please return via email (accounts@herbiesearthmoving.com.au), post or fax.

Herbies Earthmoving Pty Ltd ACN 159 538 459 Contractor Terms & Conditions

1. In this Agreement :
 - (a) (ajany reference to any statute includes any amendment, replacement or re-enactment for the time being in force, and to include any by-laws, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made under any of these items and any conditions attaching to these items;(b) the singular includes the plural, and vice-versa;(c) reference to a party includes their executors, administrators or permitted assigns or, being a company, its successors or permitted assigns; (d) words defined in the GST Act and used in this Agreement have that meaning as given to them in the GST Act; and
 - (b) unless the context otherwise requires: **Claim** includes any claim, action, judgement, arbitration, proceeding, suit, cause of action, defence, set-off or demand; **Consequential Loss** includes, without limitation: damage to any third party's property; loss of profits; loss of revenue; lost production; loss of business; loss of the benefit of any contract or other agreement or arrangement; damage to reputation; and legal costs; **Customer** means the entity listed on the Job Docket as the customer; **Customer Terms** means the terms accompanying the Job Docket; **Equipment** means the earthmoving equipment required for completion of the Work; **Force Majeure Event** has the meaning given to that term in the Customer Terms; **GST** means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Service Tax) Act 1999* (Cth) (**GST Act**), or an Act of the Parliament of the Commonwealth of Australia substantially in the form or, which has a similar effect to, the GST Act; **Job Docket** means the job docket issued by Herbies with respect to the Work; **Liability** means all liabilities (whether actual, contingent or prospective), loss, damages, costs and expenses of whatever description and however and whenever arising; **Location** means the location at which the Work is to be provided; **Parties** means the parties to this Agreement; **PPR** means the Plant Protection Regulation 2002; **Restricted Area** has the meaning given to that term in the PPR; **Terms** means these terms and conditions; **WHSR** means the Work Health and Safety Regulation 2011; **Work** has the meaning given to that term in the Customer Terms; **Work Period** has the meaning given to that term in the Customer Terms.
2. Herbies has requested that the Contractor conduct the Work, and the Contractor has agreed to perform the Work, each subject to the Terms (**Contractor Engagement**). Herbies acts only as agent for the Contractor with respect to the Customer and, other than as set out in the Terms, has no liability with respect to the Contractor Engagement.
3. The Contractor may not sub-contract the performance of the Work or any part of it.
4. Subject to this Term 4 and Term 13:
 - (a) in consideration of the Contractor performing the Work, Herbies shall pay the Contractor in accordance with the payment terms/commission structure set out on the first page of this Agreement. Payment is conditional upon the Contractor providing to Herbies a Tax Invoice for performance of the Work by the Contractor;
 - (b) Herbies shall reimburse the Contractor for disbursements incurred by the Contractor in the performance of the Work upon production to Herbies of a receipt for such disbursements. The Contractor shall not incur any disbursement in excess of \$80 without first obtaining the consent of Herbies and where that consent has not first been obtained, Herbies shall not be liable to reimburse the Contractor for that disbursement.
5. The Contractor warrants :
 - (a) that the Contractor :
 - (i) holds the Equipment and has the personnel necessary for the conduct of the Work, and is not aware of any fact, matter or thing that will prevent the Contractor from completing the Work in the Work Period;
 - (ii) holds all licences and authorities necessary for the lawful conduct by the Contractor of the Work at the Location (**Authorities**), including, without limitation, all certifications, licences, cards and tickets, and that the Authorities are current for the Work Period;
 - (iii) where the Work is High Risk Construction Work (as defined in the WHSR), holds a current Safe Work Method Statement (as defined in the WHSR) which meets the requirements of the WHSR;
 - (b) to the extent required by law, the Equipment is registered, registrations are current and registrations shall not expire during the Work Period.
6. The Contractor shall immediately notify Herbies if it becomes aware of any fact matter or thing that will or might reasonably prevent the Contractor from completing the Work in the Work Period, or that might reasonably result in an Authority being revoked.
7. Prior to commencing the Work the Contractor shall determine whether the Location is within a fire ant Restricted Area. In the event that the Location is within a fire ant Restricted Area, the Contractor shall do all things required under the PPR for the holding and movement of material in around and out of the Location, including, where necessary, the signing of a Fire Ant Declaration (as defined in the PPR).
8. At all times during the Work Period the Contractor shall hold public liability insurance for a minimum amount of \$10,000,000 for a single event (**Insurance**). The Contractor must provide a copy of the certificate of currency for the Insurance to Herbies upon the reasonable request of Herbies. Herbies may require as a condition of this Agreement that the Contractor obtain additional insurances as set out on the first page of this Agreement, and the Contractor must comply with any request of Herbies to take and maintain such additional insurance(s).
9. The Contractor stores the Equipment at the Location at the risk of the Contractor, including with respect to rights of the Customer, if any, under the *Personal Properties Securities Act 2009* (Cth).
10. Without limiting its obligations at law, to assist in preventing the spread of fire ants, the Contractor shall: (a) properly and fully clean all Equipment before transporting Equipment to the Location; and (b) ensure that as far as reasonably possible, the Contractor cleans all Equipment before the Equipment leaves the Location.
11. The Contractor shall at its cost:
 - (a) observe all safety requirements at the Location;
 - (b) ensure that the Equipment is properly maintained throughout the Work Period, including with respect to all safety and fire fighting devices;
 - (c) ensure that any person operating the Equipment or at the Location at the request or invitation of the Contractor wears personal protective clothing, as required or reasonably necessary.
12. During the Work Period, the Contractor shall:
 - (a) immediately notify Herbies should it become aware that a competent authority requires the suspension or cessation of the Work;
 - (b) immediately notify Herbies should the performance of the Work reasonably endanger property or person;
 - (c) take all reasonable precautions to keep all persons at a safe distance from the Equipment while it is in operation. Without limitation to this, the Contractor shall take all reasonable precautions to prevent bodily injury or damage to property and to comply with all statutory obligations and by-laws and regulations imposed by any public authority for the safety of persons and property in relation to the Work;
 - (d) comply with all safety requests of the Customer.
13. The Contractor shall supply at its cost all consumables necessary for the operation of the Equipment, the Equipment and the operator(s) for the Equipment, and, subject to the Customer Terms, is responsible (at the cost of the Contractor) for the repair and maintenance of the Equipment.
14. Other than in the event of emergency, the Contractor shall not cease the performance of the Work without first obtaining the written consent of Herbies, which consent cannot be unreasonably withheld. Where the Contractor has ceased the performance of the Work without first obtaining the consent of Herbies, it shall as soon as reasonably practical thereafter notify Herbies that it has ceased performance of the Work and provide to Herbies such details as Herbies may request in relation to the cessation.
15. The Contractor may not assign its benefit with respect to the Engagement without the prior written consent of Herbies, which consent can be given or withheld at the discretion of Herbies, and, if given, given with conditions.
16. Herbies may replace the Contractor at any time where Herbies, acting reasonably, believes the Contractor is unable for any reason to complete the Work. If Herbies replaces the Contractor, the Contractor will do all things reasonably required by the Customer and Herbies with respect to completion of the Work by that replacement, including by immediately removing the Equipment from the Location.
17. The Contractor is liable for, and indemnifies Herbies from and against, all Claims, loss or damage (including legal costs on a solicitor and own client basis) incurred or suffered by Herbies in connection with the Contractor's failure to comply with the Terms. This indemnity does not apply to any liabilities of Herbies that are not permitted to be excluded at law.
18. Other than as set out in the Terms, no warranties are provided by or on behalf of Herbies in connection with the Work, including without limitation warranties in relation to the Work Period. Without limiting this, the Contractor acknowledges that in agreeing to conduct the Work the Contractor does not rely on any representations, warranties or information provided or statements made by or on behalf of Herbies other than as set out in the Terms.
19. Subject to any liability which cannot be excluded at law, Herbies accepts no Liability for any personal injury, death, direct loss, indirect loss, Consequential Loss or damage, however caused which the Contractor may directly or indirectly suffer in connection with the Work.
20. The Contractor shall not be obliged to complete or continue the performance of the Work where and to the extent that such performance is prevented or interrupted or delayed by reason of any Force Majeure Event. Where the Contractor fails or is delayed in the performance of the Work by a Force Majeure Event, other than any cause of action that cannot be excluded at law the Contractor shall have no cause of action against Herbies for a breach of any Term or otherwise. If the Contractor is unable to complete the Work as a consequence of a Force Majeure Event, Herbies may terminate the Engagement.
21. Herbies may terminate the Engagement at any time with immediate effect if the performance or completion of the Work would breach any law, regulation or directive of any competent authority by which the Herbies or the Contractor is bound, or if the Contractor:
 - (a) fails to devote to the Work the Equipment and personnel reasonably necessary for the completion of the Work in the Work Period;
 - (b) fails to comply with an essential Term;
 - (c) becomes insolvent or bankrupt, has a receiver or receiver and manager appointed to its assets, enters into any scheme for the payment of its creditors, or execution or distress is levied upon its assets; is the subject of an order or resolution for its winding up or liquidation.
 The Contractor indemnifies and shall keep indemnified Herbies against any Claim or Liability suffered or incurred by Herbies as a consequence of the termination of Engagement arising from a breach by the Contractor of any Term.
- If the Engagement is terminated for any reason, this Agreement is terminated and: neither the Contractor nor Herbies shall have any further obligation under this Agreement subject to this Term 21; and no right or Claim regarding the Agreement which arose before termination will be affected. For the purpose of this Term, Terms 6, 7, 8, 11, 12, 14 and 15 are essential Terms. Terms 17,18, 21, 22, 23 and 24 survive termination of this Agreement.
22. Any Term which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining Terms or the validity of that Term in any other jurisdiction.
23. This Agreement is governed and construed under the law in the State of Queensland. Any legal action in relation to the Terms may be brought in any court of competent jurisdiction in that State. The Parties irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court in the State of Queensland in relation to both itself and its property.
24. Each indemnity of the Contractor given herein is a liability of the Contractor separate and independent of any other liability of the Contractor under these Terms, and survives and continues after performance of the Work and, in the event of termination of this Agreement, that termination.
25. If any payment made by one Party to any other Party under or relating to this Agreement constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this Agreement.

_____(Initial)