

Hire Schedule Standard Terms and Conditions

1. DEFINITIONS

1.1 In these terms and conditions, the following shall mean:

'Actual Hire Period' means the period commencing on the date on which Owner actually provides the Equipment to Hirer (being the mobilisation from Owner's depot or place of repair, inspection or storage) and ending on the date on which Hirer returns the Equipment to Owner in accordance with this Agreement.

'Agreed Hire Period' means the period commencing on the Commencement Date of Hire and concluding on the Completion Date of Hire.

'Agreement' means these Standard Terms and Condition and the Hire Schedule.

'Claim' means any action, suit, proceeding or demand of any kind.

'Commencement Date of Hire' means the date specified in the Hire Schedule (as amended by Owner in writing) stipulating when the charges for the Equipment will commence.

'Completion Date of Hire' is the date stipulated in the Hire Schedule (as amended by the Parties by agreement) stipulating when Hirer is to return the Equipment to Owner.

'Consequential Loss' means any loss of profit, revenue, business, contracts or anticipated savings, loss of expectation, loss of recourse to finance, loss of or inability to use equipment, loss of data, down time costs, loss of goodwill, wasted overheads or punitive or exemplary damages; any special, indirect or consequential loss or damage of any nature whatsoever; or loss not arising naturally according to the usual course of things.

'Default Rate' means 15% per annum.

'Demobilisation Location' means the location to which the Party responsible for demobilising the Equipment must demobilise the Equipment.

'Dry Hire' means the hire of the Equipment without an operator as indicated in the Hire Schedule.

'Equipment' means the machinery or equipment or Vehicle the subject of this Agreement as is more particularly described in the Hire Schedule, including all attachments, accessories, and tools and supporting documentation.

'Hire Charges' means the hire charges nominated in the Hire Schedule.

'Hire Schedule' means the Hire Schedule sheet together with any attachments in which these Standard Terms and Conditions are referred in or to which these Standard Terms and Conditions are attached.

'Hirer' means the person identified as such in the Hire Schedule.

'Insolvency Event' means in relation to a Party: the bankruptcy, winding up or insolvency of that Party; or that Party enters into any scheme of arrangement or composition; or a receiver or administrator is appointed to any property of that Party.

'Insurance Policies' means the insurance policies that Hirer is required to effect and maintain, in accordance with this Agreement.

'Liabilities' means damages, Claim(s), losses, liabilities, costs, fees and expenses of any kind (including legal costs on a full recovery basis).

'Location' means the site location identified in the Hire Schedule, being the place where Hirer will use the Equipment.

'Major Repair' means:

a) all servicing and maintenance that is not included in the definition of Minor Repair, which must be carried out in accordance with the original equipment manufacturer specifications, including to the following parts or items:

- i.) engine;
- ii.) torque converter and pumps;
- iii.) transmission and pumps;
- iv.) differentials and planetaries, including brakes;
- v.) chassis and frame;
- vi.) hydraulic pumps and cylinders;
- vii.) starter motors, air conditioning compressor, alternators and emergency steering motors;
- viii.) suspension;
- ix.) steering components;
- x.) electrical harnesses;
- xi.) hydraulic motors and drive boxes;
- xii.) equalizer bar;
- xiii.) body and panels; and

b) any repair to a value of more than that specified in the Hire Schedule.

'Major Servicing' means all required logbook servicing in accordance with the Equipment manufacturer's requirements / operator's manual and includes the supply of all required oils and SOS samples, filters and belts.

'Minor Repair' means:

a) items covered by the manufacturers or suppliers maintenance instructions and recommendations – including filters and breathers;

b) repairing or replacing the following items:

- i.) any adjustments and applications mechanisms;
- ii.) minor electrical components including switches, fuses, circuit breakers, warning lights and globes;
- iii.) miscellaneous minor leaks;

- iv.) air conditioner hoses, switches and service items;
- v.) grease lines and fittings;
- vi.) windows, tyres and wipers, Damage from misuse etc.;
- vii.) other similar type of minor repairs; and

c) a repair to a value of less than or equal to that specified in the Hire Schedule.

'Mobilisation Location' means the location to which the Party responsible for mobilising the Equipment must mobilise the Equipment.

'Operator' means any person that operates the Equipment.

'Owner' means AllWest Plant Hire Australia Pty Ltd (ACN 164 500 083) or the entity named as the supplier in the Hire Schedule and each of their successors and assigns.

'Parties' means both Owner and Hirer, and "Party" means either Owner or Hirer.

'PPE' means appropriate apparel, attire and personal protective equipment for the operator in order to comply with any law that affects the operation of the Equipment or the Location and the HSE Requirements such as apparel including high visibility shirts, long pants, safety helmets, ear defenders, safety glasses, safety boots and jackets.

'PPSA' means the Personal Property Securities Act 2009 (Cth) as amended from time to time.

'Project' means the project specified in the Hire Schedule.

'SMU Hours' means the engine hours based on the Service Meter Unit for each piece of Equipment.

'Standard Terms and Conditions' means these standard terms and conditions as may be amended from time to time in accordance with the provisions of these Standard Terms and Conditions.

'Vehicle' means the vehicle designed to carry loads or a small number of passengers, licensed for use on public roads as described in the Hire Schedule (or any substitute vehicle) and includes its parts, components, accessories and contents supplied by the Owner.

'Wet Hire' means the hire of the Equipment with an operator as indicated in the Hire Schedule.

1.2 In this Agreement unless the context otherwise applies the following rules of interpretation apply:

- a) headings in this Agreement shall not be used in the interpretation of this Agreement;
- b) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any authority;
- c) a reference to the word "including" and similar expressions are not words of limitation;
- d) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- e) a reference to a Party to a document includes that Party's successors and permitted assigns;
- f) if a Party consists of more than one person this Agreement binds them jointly and each of them severally;
- g) a reference to a clause or schedule or annexure is a reference to a clause or schedule or annexure to this Agreement;
- h) references to any legislation, or to any section or provision of any legislation, includes any statutory modification or re-enactment or any statutory provision substituted for it, and any ordinances, by-laws, regulations and other statutory instruments issued under such legislation;
- i) references to payments to any Party shall be construed to include payments to another person upon the direction of such Party;
- j) where a party executes this Agreement in its capacity as a trustee, a reference to that party includes any substituted or additional trustee; and
- k) the singular will include the plural and vice versa and a reference to any gender includes all genders;
- l) a reference to dollars or \$ is to Australian Dollars;
- m) no rule of construction applies to the disadvantage of a party merely because that Party was responsible for the preparation of this Agreement or any part of it.

2. CONTRACT DOCUMENTS

- 2.1 This Agreement comprises the Hire Schedule, any attachments and annexures to the Hire Schedule and these Standard Terms and Conditions.
- 2.2 Hirer is deemed to have accepted these Standard Terms and Conditions if Hirer places an order for or accepts hire of the Equipment regardless of whether or not they have signed a written agreement with Owner.
- 2.3 If there is any conflict or inconsistency between the documents comprising this Agreement then the Hire Schedule will take precedence over these Standard Terms and Conditions.
- 2.4 If Hirer enters into this Agreement as trustee, Hirer warrants that it has full authority and power to enter into this Agreement and bind the trust and the obligations in this Agreement will be binding on the trust.
- 2.5 Hirer's terms including any purchase order shall not form part of the Agreement unless accepted in writing by Owner.
- 2.6 Owner may amend these Standard Terms and Conditions from time to time, at its discretion, upon written notice to Hirer. Notice is deemed to have been given when Owner sends the amended Standard Terms and Conditions to Hirer at the postal address provided in the Hire Schedule or such other address advised by Hirer in writing. If Hirer hires the Equipment from Owner after notice of the amended terms and conditions has been given then this is deemed to be an acceptance of the amended terms and conditions by Hirer.

3. HIRE OF EQUIPMENT

- 3.1 Owner agrees to hire the Equipment to Hirer for the Agreed Hire Period and Hirer accepts such hire in accordance with the provisions of this Agreement.
- 3.2 These Standard Terms and Conditions shall apply to all hires of Equipment from Owner to Hirer for the Actual Hire Period.

4. CONDITION OF EQUIPMENT, INSPECTION AND MAINTENANCE

- 4.1 On or prior to the Commencement Date of Hire, the Parties may inspect and examine the Equipment to agree and make a written note of the condition of the Equipment (Condition Inspection Report). Such inspection or examination shall not relieve Hirer of any of its obligations under this Agreement.
- 4.2 Unless Hirer notifies Owner during the inspection, all Equipment shall be deemed to have been delivered:
- in good working order in accordance with any specifications agreed by the Parties;
 - in a good and clean condition, with any existing damage noted on the Condition Inspection Report;
 - with manufacturer's supplied tools, tyres, accessories, equipment, and keys;
 - where the Equipment is a Vehicle, with the seal of the odometer unbroken;
 - where the Equipment is a Vehicle, with the odometer and fuel reading at the Commencement Date of Hire; and
 - in a condition suitable for the purpose for which it is hired.
- 4.3 The Equipment shall be returned to Owner in the same condition as it was in at the Commencement Date of Hire, reasonable fair wear and tear excluded.
- 4.4 For the purposes of this clause, "fair wear and tear" for Equipment which is powered mobile plant, means wear and tear which would be normal for similar equipment operating in a civil construction environment and shall include:
- superficial scratches and scuffing to bodywork;
 - stone chipping to paintwork on front and lower areas of the Equipment; and
 - wear to parts of the Equipment which are sacrificial,
- But shall not include:
- dents or other impact damage;
 - damage to glass or instrumentation; and
 - panel or structural damage from collision or abuse and damage to the drive system.
- 4.5 Each Party shall service, maintain and repair the Equipment in accordance with their individual obligations under this Agreement.
- 4.6 Except as expressly set out in these Standard Terms and Conditions and to the extent permitted by law, Owner makes no warranties or representations about the Equipment including but not limited to the quality or suitability of the Equipment. Owner's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 4.7 Nothing in this clause 4 is intended to limit or exclude the application of any relevant law that cannot be excluded at law.
- 4.8 Owner is not obliged to supply equipment in replacement of the Equipment for any reason whatsoever including, without limitation because the Equipment may have been damaged or because Hirer may have ceased for any other reason to have the use of the Equipment; or because the Equipment may not or may have ceased to function as contemplated by Owner or Hirer at the date of execution of this Agreement.

5. TYRES, TRACKS AND GET – POWERED MOBILE PLANT

- 5.1 If the Equipment utilises tyres and/or tracks, the parties shall compare the actual wear on the tyre or track on the Equipment at the Completion Date of Hire with the figures in the Condition Inspection Report. Hirer shall be responsible for all wear of tyres and/or tracks during the Actual Hire Period and shall pay for all tyre / track wear as a percentage of new tyre / track cost.
- 5.2 If the Equipment utilises ground engaging tools, the parties shall compare the actual wear on the ground engaging tools on the Equipment at the Completion Date of Hire with the figures in the Condition Inspection Report. Hirer shall be responsible for all wear of ground engaging tools during the Actual Hire Period and shall pay for all ground engaging tools wear as a percentage of new ground engaging tools cost.

6. HIRER'S OBLIGATIONS

- 6.1 In addition to any other responsibilities of Hirer agreed by the Parties relating to the Equipment, Hirer must:
- Provide clear access to the part or parts of the Location to enable Owner to comply with its obligations under this Agreement;
 - Make the Equipment available for inspection, examination and testing whenever reasonably required by Owner (or Owner's agents or employees) during the Actual Hire Period;
 - Notify Owner immediately by telephone or email of the full circumstances of any mechanical breakdown or accident and Hirer is not absolved from the requirements to safeguard the Equipment by giving such notification; Hirer must never operate/drive Equipment if it is damaged or unsafe;
 - Satisfy itself prior to the commencement of the Actual Hire Period that the Equipment is suitable for Hirer's intended purposes and acknowledges that it has not relied in anyway on the skill, judgement or any representation made by Owner and not contained in the Hire Agreement;
 - Under no circumstances operate Equipment if Owner has directed it not to;
 - Operate the Equipment safely, strictly in accordance with all relevant laws (including any applicable seat belt or child restraint laws);
 - Use Equipment only for its intended use, and in accordance with any manufacturer's instruction whether provided by Owner, posted on the Equipment or otherwise.
 - Not carry, or permit to be carried, any animals, persons for hire or reward, and must not carry a greater number of persons than the Equipment has seat belts;
 - Never propel or tow any vehicle (not being a trailer), or to propel or tow any trailer with a load in excess of the capacity of the trailer or towing mechanism of the Equipment;
 - Never race, pace, enter reliability trials or hill climb with the Vehicle, or test in preparation for those purposes;

- k) Ensure that all persons operating or erecting the Equipment: are listed as authorised drivers in the Hire Schedule, are not under the influence of drugs or alcohol, are twenty-one (21) years of age or over, are suitably instructed in its safe and proper use and where necessary hold a current certificate of competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to Owner upon request. All licenses must contain a valid name, age, address, and any other relevant details, and must not have been cancelled, endorsed or suspended within the last three (3) years;
 - l) Comply with all occupational health and safety laws relating to the Equipment and its operation;
 - m) On termination or expiration of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to Owner;
 - n) Protect Owner's interest in the Equipment and must not do anything inconsistent with that interest including attempting to sell, dispose of or grant any interest (including a security interest as defined in the PPSA) in or over or part with possession of the Equipment;
 - o) Not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
 - p) Obtain, maintain and pay as if they were Owner of the Equipment, all registrations, licences, permits, certificates and regulations governing or relating to the Equipment, or to any part of it, or any use of it;
 - q) Employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work (including sub-hire by the Hirer), unless specifically permitted by the Owner;
 - r) Not exceed the recommended or legal load and capacity limits of the Equipment;
 - s) Not use the Equipment for the purposes of demolition or in adverse environments such as salt, underground, fertilisers etc without prior written approval;
 - t) Not drive/operate Equipment:
 - i) in national parks in which snow falls or areas in which snow chains are required to be fitted by the relevant authority;
 - ii) off-shore or underground without prior written permission from Owner;
 - iii) on beaches or through streams, rivers, creeks, dams or floodwaters;
 - iv) where the Equipment is a Vehicle, on a road which is not properly formed and constructed as a sealed, metalled, or graded gravel & tracked road.
 - u) Not carry flammable, explosive, corrosive, prohibited or dangerous substance in, on or with the Equipment;
 - v) Not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any land;
 - w) Indemnify and hold harmless Owner and its agents and employees against, all losses, liabilities, costs and expenses (including, without limitation, legal expenses on a full indemnity basis) and taxes, of whatever kind or nature arising as in respect of all Claims arising out of Hirer's use of the Equipment, any damage to property or death of or injury to any person which may be suffered or sustained in connection with the Equipment;
 - x) Indemnify Owner for any loss of the Equipment and Owner's inability to repossess the Equipment in accordance with these Standard Terms and Conditions;
 - y) Immediately on demand, pay for the cost of fuels and consumables provided by Owner and used by Hirer (subject to the Hire Schedule);
 - z) Immediately on demand, pay for all costs incurred in cleaning the Equipment (subject to the Hire Schedule); and
 - aa) Advise Owner in writing of the Equipment's engine SMU/odometer reading at the end of each calendar month, and at the end of the Actual Hire Period.
- 6.2 Immediately on request by Owner Hirer will pay:
- a) The costs of replacing the Equipment that is for whatever reason destroyed, written off or not returned to Owner;
 - b) All costs of repairing any damage caused by the ordinary use of the Equipment (fair wear and tear excepted);
 - c) The cost of repairing any damage to the Equipment caused by the negligence of Hirer or Hirer's agent (including the cost of any associated transport);
 - d) The cost of repairing any damage to the Equipment caused by vandalism, or (in Owner's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by Hirer (including the cost of any associated transport).
- 6.3 In the event of any Equipment sustaining any damage during the Actual Hire Period, Hirer must advise Owner immediately of:
- a) The date, time and location that the damage occurred;
 - b) Name and license of operator and any relevant operator tickets;
 - c) Circumstances under which damage occurred; and
 - d) Environmental conditions at time of damage occurrence.
- ("Damage Incident Report")
- 6.4 Prior to any damage repair being carried out either by Hirer or Owner, Owner must receive a completed Damage Incident Report. Upon receiving this report, Owner will then assess how, where, when and whom the damages will be remedied by. Any repairs to the Equipment not properly authorised by Owner shall be at Hirer's expense, regardless of the cause of the damage. If Hirer is entitled to be reimbursed any repair costs under this Agreement, Owner is only obligated to do so if it received verification of the cost of repairs from the Hirer (such as original tax invoice). If Owner cannot verify the cost of the repair works, those repair works will be at Hirer's expense.

7. OPERATION MAINTENANCE AND STORAGE OF EQUIPMENT

7.1 Unless otherwise specified in the Agreement, Hirer shall at its own expense:

- a) Except for Wet Hire, keep and maintain the Equipment in proper working order and condition and in good and substantial repair (including, but not limited to, daily servicing and maintenance of the Equipment, checking all fluid levels, greasing, air cleaner checks, securing any loose bolts or components);
- b) Operate, maintain and store the Equipment with due care and diligence and in compliance with the instructions and

- c) recommendations of Owner and/or manufacturer of the Equipment as to operation, maintenance and storage thereof;
- c) Repair flat tyres, damaged undercarriages (tracks, rollers etc). Damage to tyres and undercarriages will be charged to Hirer's account on a pro rate basis including transporting and fitting;
- d) Maintain all ground engaging tools;
- 7.2 Unless stated otherwise in the Hire Schedule, Hirer must carry out and pay for Major Servicing. Where Hirer is responsible for Major Servicing, Hirer must maintain a complete service history throughout the Actual Hire Period and provide such to Owner with the return of the Equipment.
- 7.3 Any service callouts by Hirer to Owner shall be at the cost of Hirer, unless the fault or damage requires a Major Repair and was not caused by Hirer misuse or failure to perform the correct pre-start checks and / or services.
- 7.4 If equipment is to be based in a remote area more than 200 kilometres from an Owner depot with limited servicing/mechanical agents, Hirer is responsible to source suitably qualified personnel to carry out any repairs/servicing.
- 7.5 The Party(ies) nominated in the Hire Schedule will be responsible to carry out and pay for Minor Repairs and Major Repairs, respectively. If the Hire Schedule does not contain this information, then Hirer will be responsible to carry out and pay for Minor Repairs and Owner will be responsible to carry out Major Repairs. For the avoidance of doubt, Hirer will always be responsible to pay for the cost of Minor Repairs and Major Repairs where the damage was caused by Hirer misuse or failure to perform the correct pre-start checks and or services.
- 7.6 Hirer shall ensure the Equipment is locked (when applicable), and stored in a safe, secure location with keys under the personal control of an authorised driver listed in the Hire Schedule at all times.
- 7.7 Any cost incurred by Owner during or after the Actual Hire Period for any repairs/maintenance works for which Hirer was responsible will be charged back to Hirer at actual cost plus 15%.

8. INSURANCE

- 8.1 Hirer must effect and maintain at all times during the Actual Hire Period and/or whilst the item/equipment is in your possession and any extension of this Agreement or holding over under this Agreement the following insurances:
 - a) Unless stated otherwise in the Hire Schedule, plant and equipment insurance that provides cover for:
 - 1. All loss of and damage to the Equipment for its replacement value, in which case Owner will be entitled to receive all moneys payable by the insurer under the insurance policy; and
 - 2. Road Risk Liability that provides cover of at least \$20 million.
 - b) Public and Products liability insurance that provides cover of at least \$20 million, per event and in the aggregate for Products in relation to liability arising out of personal injury, death, disease or illness or liability to third parties for loss or damage to property caused by or in connection with the use or the hiring of the Equipment;
 - c) Any other insurance that Owner reasonably requests, or as required by State/Federal legislation.
- 8.2 Conditions of insurance:
 - a) The insurances required by clause 8.1 must be taken out in the names of Owner and Hirer for their respective rights and interests. Hirer must be shown as the named insured and Owner as the joint named insured. Each policy must expressly provide that all of its provisions, except the limits of liability, operate in the same manner as if they were a separate policy covering each insured.
 - b) The insurances must be taken out with an insurer approved by Owner in writing. Owner's approval of an insurer will not be unreasonably withheld.
- 8.3 If Hirer fails to comply with any provisions relating to insurance, Owner may, but is not obliged to, effect, renew, or pay the premium due in respect of the relevant insurance policies, and may recover the cost of doing so as a debt due from Hirer.
- 8.4 Hirer is liable to pay all applicable excesses under its insurance policies, irrespective of whichever party is at fault.

9. WET HIRE

- 9.1 If at the request of Hirer Owner agrees to provide an Equipment operator, that operator remains an employee of Owner but shall operate the Equipment in accordance with the manufacturer's instructions and Hirer's reasonable instructions.
- 9.2 Owner shall not be liable in any manner whatsoever for any Claim by Hirer or third party for any loss or damage suffered as a result of any actions of the operator in following Hirer's instructions.
- 9.3 The Equipment operator's PPE will be provided by and paid for by Hirer, unless stated otherwise in the Hire Schedule.

10. DAMAGE, BREAKDOWN AND LOSS OF EQUIPMENT

- 10.1 Subject to other provisions of this Agreement, for any time during the Actual Hire Period Hirer will be solely responsible for loss or damage to the Equipment.
- 10.2 For any time during the Actual Hire Period in which the Equipment is in Owner's possession and control, Owner shall be responsible for any loss or damage of the Equipment, but only to the extent not covered by Hirer's insurance (had Hirer complied with the insurance requirements of this Agreement) and provided that the loss or damage is not due to any act or omission of Hirer, a pre-existing defect in the Equipment or any mechanical fault not caused by Owner's failure to service the equipment in accordance with this Agreement.

11. RISK AND TITLE

- 11.1 Title to the Equipment remains at all times the absolute property of Owner and Hirer only has the right to use the Equipment in accordance with these Standard Terms and Conditions.
- 11.2 All risk in the Equipment passes to Hirer upon delivery of the Equipment to, or collection of the Equipment by, Hirer.
- 11.3 Hirer is responsible for theft, loss and damage to the Equipment and/or its attached tools and accessories whilst on hire until the Equipment is collected by Owner, or returned to Owner by Hirer, and the costs of replacement or repairs to such will be charged to Hirer.

12 LIABILITY

- 12.1 Hirer must indemnify Owner against any Liabilities which Owner suffers or incurs, and against any Claim against Owner, or any officer, employee, contractor or agent of Owner in respect of:
- a) the personal injury to, or disease or illness affecting, or death of, any person, arising out of the performance of this Agreement, whether occurring at the Location or elsewhere;
 - b) a breach of this Agreement by Hirer;
 - c) any act or omission of Hirer (whether negligent or otherwise) which results in Liabilities to Owner either through Owner's own Liabilities or Liabilities of third parties claimed against Owner, arising directly or indirectly as a consequence of this Agreement, provided that the loss or damage is not solely due to a negligent act or omission of Owner or its personnel; or
 - d) Hirer's use of the Equipment.
- 12.2 Notwithstanding any provision to the contrary and to the full extent permitted by law, Owner will not be liable to Hirer (including in respect of any indemnity), on any basis (including negligence, tort, contract, statute or otherwise), for any Consequential Loss suffered or incurred by Hirer, or suffered or incurred by a third party for which Hirer is liable, directly or indirectly arising out of or in connection with the hire of the Equipment or this Agreement, and Owner is released from any liability to Hirer in respect of such Consequential Loss. Notwithstanding any provision to the contrary and to the full extent permitted by law, Hirer will indemnify (and will keep indemnified) Owner (and its officers, employees and contractors) from and against any Liabilities claimed or made on any basis (including negligence, tort, contract, statute or otherwise) by third parties for Consequential Loss against Owner (and its officers, employees and contractors) directly or indirectly arising out of or in connection with the hire of the Equipment or this Agreement.
- 12.3 It is agreed that to the extent permitted by law, the operation of Part 1F of the Civil Liability Act 2002 WA (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations and liabilities of either party under this Agreement whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- 12.4 If any of the provisions of Part 1F of the Civil Liability Act 2002 (WA) (and any equivalent statutory provision in any other state or territory) relating to proportionate liability apply to any claim between Hirer and Owner whether in contract, tort or otherwise, Hirer will indemnify Owner against:
- a) any liability to or claim by any other person; and
 - b) any cost, loss, expense or damage incurred by Owner, for which Hirer would be liable but for the operation of Part 1F of the Civil Liability Act 2002 WA (and any equivalent statutory provision in any other state or territory).

13. PAYMENT AND OTHER COSTS

- 13.1 Hirer must pay the Hire Charges incurred during the Actual Hire Period.
- 13.2 Where the Equipment has a Service Meter Unit, unless stated otherwise in the Hire Schedule, the total Hire Charges due and payable for a specific period will be calculated by multiplying the actual SMU Hours worked/registered during the specific period. If the Hire Charges are calculated on an hourly basis, the minimum hire hours for each item of Equipment are stipulated in the Hire Schedule (Minimum Hours). These Minimum Hours are multiplied by the applicable Hire Charges (Minimum Monthly Hire Fee). Where the actual Hire Charges based on actual SMU Hours for a month do not exceed the Minimum Monthly Hire Fee in respect of each item of Equipment, Hirer must pay Owner the Minimum Monthly Hire Fee.
- 13.3 Where the Equipment is hired with the Hire Charges based on a daily rate, the Equipment is agreed to be used by Hirer for no more than eight (8) hours in a calendar day. Where the Equipment is used by Hirer for more than eight (8) hours in a calendar day, proportionate additional Hire Charges are payable by Hirer.
- 13.4 Owner will invoice Hirer for the Hire Charges and any other costs payable by Hirer in accordance with these Standard Terms and Conditions at either monthly or weekly intervals (as nominated by Owner).
- 13.5 Unless otherwise stated on the invoice, all invoices must be paid in full by Hirer without deduction or set off within thirty (30) days of the end of the month for which the invoice was issued.
- 13.6 Unless otherwise stated on the invoice, the Hire Charges do not include GST which is payable by Hirer to Owner at the same time as the Hire Charges.
- 13.7 Hirer is responsible for any other taxes and duties that may be applicable in respect of its hire of the Equipment.
- 13.8 Each payment must be made in immediately available funds by close of business on its due date at such place and in such manner as Owner may from time to time direct in writing. Receipt by Owner of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 13.9 Where any, or any part of any Hire Charges or other moneys payable by Hirer under this Agreement is not paid to Owner in the manner required or by its due date for payment, default interest will be payable on the outstanding amount. Default interest will be calculated at the Default Rate for the period for which such outstanding amount is overdue.

14. STAND-DOWN

- 14.1 If Hirer wishes to place the equipment on stand-down, Hirer must notify Owner in writing giving the reason for the stand-down and the estimated period of the stand-down before 10.00AM of the first day of the requested stand-down period. Stand-down periods in excess of one (1) week allow Owner to cancel the hire of the relevant Equipment and, if Owner exercises this right, Hirer must return Equipment to the Owner as if the Hire had come to an end in accordance with this Agreement.
- 14.2 Stand-down will be charged at half (1/2) rate for the first calendar day and three quarter (3/4) rate for all consecutive days there-after.

15. GST

- 15.1 The Hire Charges detailed in the Hire Schedule are exclusive of any Goods and Services Tax (GST) unless expressed otherwise.
- 15.2 In this clause:
- a) GST means GST within the meaning of the GST Act and includes penalties and interest; and

- b) GST Act means the A New Tax System (Equipment and Services Tax) Act 1999 (as amended).
- 15.3 Expressions used in this clause and in the GST Act have the same meanings as when used in the GST Act.
- 15.4 Except where this Agreement specifies otherwise, an amount payable by a party under this Agreement in respect of a taxable supply by the other party represents the value of the supply or the net amount under this clause.
- 15.5 The recipient of the supply must, in addition to that amount and at the same time, pay to the supplier the amount of GST payable in respect of the supply.
- 15.6 If this Agreement requires a party to pay for, reimburse or compensate against any expense or liability (reimbursable expense) incurred by the other party (payee) to a third party, the amount to be paid, reimbursed or compensated is the amount of the reimbursable expense net of any input tax credit to which the payee is entitled in respect of the reimbursable expense (net amount).

16. DEFAULT AND TERMINATION

- 16.1 Without prejudice to any other remedies Owner may have, if at any time Hirer is in breach of any obligation (including those relating to payment) under the Agreement, Owner may immediately suspend or terminate the supply of Equipment to Hirer.
- 16.2 If Owner chooses to terminate the hire then it may enter the premises where the Equipment is held for the purposes of repossession and Owner will not be liable to Hirer for any loss or damage that Hirer suffers because Owner has exercised its rights under this clause. Hirer grants Owner an irrevocable licence for Owner to enter Hirer's premises for the purpose of repossessing any Equipment pursuant to this Agreement.
- 16.3 Without prejudice to Owner's other remedies at law, Owner shall be entitled to cancel all or any part of any order of Hirer which remains unfulfilled and all amounts owing to Owner shall, whether or not due for payment, become immediately payable if:
- any money payable to Owner becomes overdue, or in Owner's opinion Hirer will be unable to make a payment when it falls due;
 - an Insolvency Event occurs; or
 - Hirer fails to rectify a breach (other than the obligation to pay money) within 7 days of request by Owner to do so.

17. RETURN OF EQUIPMENT

- 17.1 Hirer must confirm in writing within 24 hrs of the Completion Date of Hire to Owner that the Equipment is being returned. Return to place of hire must be completed within 24hrs in the case of local hires, or 5 calendar days in the case of remote hires.
- 17.2 If under the Hire Schedule, Hirer is responsible for demobilising the Equipment, then Hirer must, within 24 hours after the Completion Date of Hire (if the Location is within 200km of Owner's premises) or otherwise within five (5) calendar days, return the Equipment to Owner's premises (during normal working hours) in the same condition that Hirer received the Equipment from Owner (save for fair reasonable wear and tear).
- 17.3 If under the Hire Schedule, Owner is responsible for demobilising the Equipment, Hirer must make the Equipment available to Owner for collection and notify Owner that the Equipment is ready (failing which Hirer shall not be deemed to have notified Owner that the Equipment is ready for collection).
- 17.4 Upon receiving notification referred to in clause 17.1, Owner may then enter the premises that the Equipment is located at and may disconnect, dismantle and remove the Equipment from any part of the premises to which they may be situated or affixed.
- 17.5 Hirer is to ensure the Equipment is cleaned prior to loading when off-hiring or moving machinery in accordance with relevant road safety legislation (as loose materials can strike other traffic) and Hirer will be held liable if machine is loaded with loose material still on the Equipment. Any delay on site due to Equipment requiring cleaning to make it roadworthy will be regarded as the Equipment still being hired and the relevant Hire Charges and resulting transport charges will apply.

18. APPLICATION OF PPSA

- 18.1 In this clause 18 financing statement, financing change statement, security agreement, and security interest have the meaning given to those terms by the PPSA.
- 18.2 Hirer acknowledges and agrees that the Agreement constitutes a security agreement for the purposes of the PPSA and creates a security interest in all Equipment that has previously been supplied and that will be supplied in the future by Owner to Hirer.
- 18.3 Hirer undertakes to:
- Promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Owner may reasonably require to:
 - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - register any other document required to be registered by the PPSA; or
 - correct a defect in a statement referred to in clause 18.3a)i) or 18.3a)ii);
 - Indemnify, and upon demand, reimburse Owner for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Equipment charged thereby;
 - Not register a financing change statement in respect of a security interest without the prior written consent of Owner;
 - Not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without the prior written consent of Owner;
- 18.4 Owner and Hirer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by the Agreement.
- 18.5 Hirer waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 18.6 Hirer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 18.7 Unless otherwise agreed to in writing by Owner, Hirer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 18.8 Hirer must unconditionally ratify any actions taken by Owner under clauses 18.3 to 18.5.

18.9 Subject to any express provisions to the contrary, nothing in this Agreement is intended to have the effect of contracting out of any of the provisions the PPSA.

19. DISPUTE RESOLUTION

19.1 Notwithstanding the existence of a dispute or disagreement between the Parties (a "dispute") Hirer shall continue to perform its obligations under this Agreement (including, but not limited to, its payment obligations).

19.2 If a dispute arises out of or relates to the Agreement, or the breach, termination, validity or subject matter of the Agreement, or as to any claim in tort, in equity or pursuant to any domestic or international statute or law, the Parties expressly agree to settle the dispute as follows:

- a) The Party claiming that a dispute has arisen, must give written notice to the other Party to the dispute specifying the nature of the dispute.
- b) Within 10 calendar days of a Party receiving the written notice a delegate of Owner and Hirer shall meet and in good faith, attempt to resolve the dispute.
- c) If within 10 calendar days of the first meeting under subclause 19.2b), the dispute is not resolved, the dispute shall be referred to the relevant State Manager of Owner and the Chief Executive Officer of Hirer who shall meet within 5 calendar days of the dispute being referred to them and, in good faith, attempt to resolve the dispute.
- d) Unless otherwise agreed, if within 10 calendar days of the meeting under subclause 19.2c), the dispute is not resolved then either party may proceed to litigation.

19.3 Nothing in this clause will prejudice the right of a Party to seek urgent injunctive or declaratory relief.

20. NOTICES

20.1 A notice, demand, certification, process or other communication relating to this Agreement must be in writing, in English and may be given by an agent of the sender. In addition to any other lawful means, a communication may be given by being:

- a) personally delivered;
- b) left at the Party's current address for notices;
- c) sent to the Party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
- d) sent by email to the Party's current email address for notices; or
- e) sent by fax to the Party's current fax number for notices.

20.2 The particulars for delivery of notices are initially those of the contact person of each Party as set out in the Hire Schedule. Each Party may change its particulars for delivery of notices by notice to the other.

21. MISCELLEANOUS

21.1 This Agreement is governed by the laws of Western Australia and the parties submit to the exclusive jurisdiction of the courts of Western Australia.

21.2 A delay by Owner to enforce its rights under this Agreement shall not be deemed to be a waiver of that right and a right may only be waived by Owner in writing.

21.3 Every provision of this Agreement shall be deemed to be severable and if any provision of this Agreement is void, illegal or unenforceable for any reason then the same shall be deemed to be severed and omitted and this Agreement with such provision(s) thus severed and omitted and with such consequent amendment as may be necessary shall otherwise remain in full force and effect.

21.4 This Agreement constitutes the entire, final and concluded agreement between the parties in respect of the hire of the Equipment. Subject to the other express terms of this Agreement, no prior or subsequent representation or agreement (whether verbal or in writing) by Hirer or Owner, or any of their respective employees or agents, will bind the Parties.

21.5 Nothing in this Agreement constitutes a partnership, a joint venture or employment relationship between the Parties, or authorise a Party to assume or create any obligations on behalf of another Party except as specifically permitted under this Agreement.

21.6 This Agreement comes into existence and becomes binding on the first to occur of:

- a) Hirer signing the Hire Schedule; and
- b) Hirer requesting Owner to mobilise any of the Equipment to the Location.

21.7 For valuable consideration and by way of security for the interest of Owner in the Equipment and for the performance of the obligations owed by Hirer to Owner under this Agreement, Hirer irrevocably appoints Owner and its successors and assigns, and every director, secretary, and officer of Owner whose title includes the word "manager" severally as the attorney of Hirer for the purpose of doing all acts and things which Hirer is obliged to do or which Owner is empowered or authorised to do under this Agreement.