



TERMS OF HIRE

1. HIRE AGREEMENT

1.1 A hire agreement is formed upon:

- (a) receipt by Us of an executed Hire Form from You; or
- (b) written confirmation to Us that You agree to the terms of the Hire Form (**written confirmation**),
(the **Hire Agreement**).

1.2 The Hire Agreement consists of, in order of precedence:

- (a) any Special Conditions specific to the type of Equipment You have hired;
- (b) Hire Form; and
- (c) these Terms of Hire.

1.3 The Hire Agreement applies to all Equipment hired by You.

1.4 A Hire Agreement must be formed prior to the delivery and/or collection of any Equipment.

1.5 Until such a time as a Hire Agreement is formed, We may withdraw any offer to hire the Equipment.

1.6 Any terms contained in any document supplied by You, will not form part of the Hire Agreement.

2. OUR HIRE COMMITMENT TO YOU

2.1 We agree to:

- (a) hire the Equipment to You for the Hire Period;
- (b) provide the Equipment to You in good working order; and
- (c) subject to clause 8.7, allow You to exclusively use the Equipment during the Hire Period.

3. HIRE PERIOD

3.1 The Hire Period commences on the earlier of the following:

- (a) when You take possession of the Equipment; or
- (b) if You request delivery of the Equipment, the time We deliver the Equipment to the site address in the Hire Form.

3.2 The Hire Period is for the period set out in Hire Form. Notwithstanding the Hire Period, the Hire Agreement will continue until the Equipment is back in Our control or possession.

3.3 The Hire Period includes weekends and public holidays.

4. HIRE CHARGES

4.1 You must pay Us the Hire Charge set out in the Hire Form.

4.2 The Hire Form will specify the rate which applies to You.

4.3 You will be charged for the hire of Equipment for the full Hire Period, even where the Equipment is returned early. You must continue to pay the Hire Charges and other charges until you have returned the Equipment to Us.

4.4 If We have agreed to collect the Equipment, it must be available for collection no later than the time at which Your hire commenced. For example, if Your hire commenced at 10am, the Equipment must be ready for collection no later than 10am on the day it is due for collection.

4.5 If the Equipment is not ready for collection as required, We reserve the right to charge additional Hire Charges, including any costs sustained by Us as a consequence of being unable to meet any other contractual obligations to supply the Equipment to any other person.

5. OTHER CHARGES

In addition to the Hire Charges, You agree to pay:

- (a) for any consumables, fuel or trade materials We supply to You;
- (b) if You require Us to deliver, collect or install the Equipment, the cost of delivery, collection or installation, as detailed in the Hire Form;
- (c) any additional Hire Charges payable in accordance with clause 4;
- (d) if You do not return the Equipment in clean and good working condition, charges for excessive cleaning (i.e. where cleaning is required for one hour or more) and repair of the Equipment;
- (e) a charge for pumping out waste tanks or refilling water or fuel tanks;
- (f) any stamp duty or GST arising out of this Hire Agreement and any other applicable levies, fines, penalties and any other government charges arising out of Your use of the Equipment;

- (g) any applicable charges for credit payments;
- (h) charges in connection with the administration of Your Credit Account, as detailed in the Hire Form, which may include printing and postage costs;
- (i) any reasonable charges incurred by Us if we are unable to inspect or carry out maintenance on the Equipment during normal working hours; and
- (j) if applicable, the LTD Waiver Fee.

6. CANCELLATION

6.1 You may submit to us in writing a request to cancel the hiring of Equipment. If such request is made after the delivery of the Equipment as outlined in the Hire Form, You will incur a delivery and collection fee and you must pay 50% of the Hire Charge for the Equipment.. You acknowledge that such charges are a fair assessment of our losses due to your cancellation, including our inability to rehire the Equipment to an alternate customer.

7. PAYMENT

- 7.1 You must pay all Hire Charges and other fees, charges and costs that become due and payable under this Hire Agreement pursuant to the terms of the Hire Form.
- 7.2 The Hire Charges are exclusive of GST and unless otherwise provided in the Hire Agreement are exclusive of all Associated Costs.
- 7.3 If GST is payable on a supply made under or in connection with this Hire Agreement, the party providing the consideration for that supply must also pay, upon the receipt of a valid tax invoice, the GST amount at the prevailing rate as additional consideration.
- 7.4 If We are required by law to make a deduction or withholding from an amount payable to You under this Hire Agreement, whether in respect of tax or otherwise, We will be entitled to make the deduction or withholding and pay that amount in the manner required to the relevant authority entitled to receive it. You agree that You have no claim against Us for any amounts withheld and paid in accordance with law under this clause.
- 7.5 If You do not pay an invoice in full by the payment due date, We may charge, in addition to any other costs recoverable under this Hire Agreement:
- (a) interest, calculated monthly, on the total outstanding balance. The interest rate used to calculate the interest payable for the month is the 90-day Bank Bill Swap Rate published on the first Business Day of that month plus 2%; and
 - (b) 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.
- 7.6 We are entitled to set off against any amount We owe You, any amount owed to Us by You or any amount owed to Us by any of Your Related Bodies Corporate.

8. YOUR OBLIGATIONS TO US

- 8.1 This Hire Agreement is personal to You and You must not allow or 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.
- 8.2 You agree that before taking delivery of the Equipment, You are satisfied as to the suitability and condition of the Equipment. We make no representations and give no guarantee or warranty that the Equipment is suitable for Your intended purpose.
- 8.3 If You find the Equipment is broken, damaged and/or defective, You must notify Us within 24 hours after You collect or receive the Equipment. If You do not notify Us within this time period, the Equipment You collected or received will be deemed to have been in good order and condition on collection or delivery (as applicable).
- 8.4 Without limiting Your obligations at clause 8.3, if we deliver Equipment to You in circumstances where no individual is present to accept the Equipment (**Out of Hours Delivery**) this will be noted on the Hire Form in the Special Conditions. In those circumstances You are required to inspect the Equipment on Your arrival to the site and provide written confirmation that the Equipment included in the Hire form has been received by 12:00pm on the day of delivery.
- 8.5 You must:
- (a) ensure that the Equipment is used only for the purpose for which it was designed by the manufacturer and in accordance with the manufacturer's instructions;
 - (b) operate the Equipment safely and strictly in accordance with all applicable laws and ensure the Equipment is stored safely and securely at all times;
 - (c) ensure persons operating or erecting the Equipment: (i) are suitably trained on its safe and proper use; (ii) are appropriately qualified and where necessary or applicable, hold a current licence and/or Licence to Perform High Risk Work (as required by law) to operate the Equipment; (iii) wear suitable clothing and protective equipment when operating the Equipment as required or recommended by Us or the manufacturer; (iv) are not under the influence of drugs or alcohol and do not carry illegal, prohibited or dangerous substances while in, on or around the Equipment;
 - (d) to the extent required or recommended by Us, the manufacturer or applicable workplace, health and safety laws, conduct a job safety analysis prior to using the Equipment;
 - (e) display all safety signs and instructions (as required by law) and ensure that all instructions and signs are observed by operators of the Equipment;

- (f) clean, fuel, lubricate and keep the Equipment in good condition and in accordance with the manufacturer's and Our instructions at Your own cost;
 - (g) arrange for the emptying of any waste tanks and water carts as required in accordance with the manufacturer's instructions and prior to returning the Equipment to Us; and
 - (h) ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturer's guidelines.
- 8.6 You must not:
- (a) in any way alter, modify, tamper with, damage or repair (or attempt to repair) the Equipment without Our prior written consent;
 - (b) deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment;
 - (c) remove fuel or oil tank caps, bund plugs or seals from the Equipment and ensure that they are in place when You return the Equipment;
 - (d) remove the Equipment from the State or Territory in which You hired it without Our prior written consent;
 - (e) use the Equipment off-shore, in a mine, in an area where friable asbestos is present, or move the Equipment over water without Our prior written consent;
- 8.7 You must allow Us to enter Your premises and inspect and maintain the Equipment from time to time during the Hire Period during ordinary business hours. If We cannot inspect or maintain the Equipment during ordinary business hours, then additional charges may apply.
- 8.8 You warrant that You will comply with all Environmental Laws and immediately rectify any breach of an Environmental Law caused by Your use of the Equipment.
- 8.9 You must:
- (a) ensure the Equipment is not contaminated with any hazardous substances (including asbestos);
 - (b) advise Us of any risks of hazardous substance contamination to the Equipment as soon as they become apparent; and
 - (c) effectively decontaminate the Equipment and provide Us with written details of such decontamination. If, in Our reasonable opinion, the Equipment is not capable of being decontaminated, You must pay the replacement cost of the Equipment.
- 8.10 Any electrical Equipment provided by Us will be tested and tagged before it is hired to You. If, during the Hire Period, the Equipment requires re-testing and re-tagging, You must do so at Your cost. If You are unable to do so, We may re-test and re-tag at Your cost. You are liable for any damage caused to the Equipment resulting from any re-testing or re-tagging carried out by You.

9. OWNERSHIP OF THE EQUIPMENT

- 9.1 Subject to clause 9.4, We own the Equipment and retain title to the Equipment at all times. Your rights to use the Equipment are as a bailee only.
- 9.2 Subject to clause 10, 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.
- 9.3 In no circumstances will the Equipment be deemed to be a fixture.
- 9.4 We may hire or lease Equipment from a third party (a **Third Party Owner**). Title in the Equipment owned by a Third Party Owner remains with the Third Party Owner at all times.

10. PPSA

- 10.1 You acknowledge and agree:
- (a) this Hire Agreement constitutes a security agreement and a PMSI for the purposes of the PPSA; and
 - (b) a security interest is taken in all Equipment previously supplied by Us to You (if any) and all Equipment that will be supplied in the future by Us to You during the parties' relationship.
- 10.2 You agree to do anything (including obtaining consents, signing or producing any further documents, and/or providing any further information) which We ask and consider necessary for the purposes of:
- (a) ensuring that the security interest is enforceable, perfected and otherwise effective; and/or
 - (b) enabling Us to apply for any registration, complete any financing statement, financing change statement or give any notification, in connection with the security interest; and/or
 - (c) enabling Us to exercise rights in connection with the security interest.
- 10.3 Everything that We are required to do under this clause 10 is at Your expense.
- 10.4 You waive any rights you may have:
- (a) to receive notices under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 134(1) and 135 and 157 of the PSSA; and
 - (b) under sections 142 and 143 of the PPSA.
- 10.5 The parties agree that sections 96 and 117 of the PPSA do not apply to these terms and conditions.
- 10.6 Neither party will disclose information of the kind mentioned in section 275(1) of the PPSA, and You will not authorise, and will ensure that no other party authorises, the disclosure of such information.

11. RETURN OF EQUIPMENT

- 11.1 You must return the Equipment to Us in the same condition and good working order as when You received it, Fair Wear and Tear excepted.
- 11.2 If You do not properly clean and decontaminate the Equipment, We will charge You a cleaning cost in accordance with clause 5(d) and You are liable to continue to pay the Hire Charges while the Equipment is being cleaned by Us.
- 11.3 You must return the Equipment to the branch You hired it from during ordinary business hours.
- 11.4 If We have agreed to collect the Equipment from You, You must ensure it is kept safe and secure until the time of collection.

12. BREAK DOWN, LOST, STOLEN OR DAMAGED

- 12.1 If the Equipment breaks down, becomes unsafe to use, is lost, stolen or damaged during the Hire Period You must:
 - (a) in the case of damage, unsafe use or breakdown, immediately stop using the Equipment;
 - (b) immediately notify Us and provide all relevant particulars of the incident;
 - (c) for incidents of theft, promptly report the incident to the police and provided Us with a written police report;
 - (d) take all steps necessary to prevent injury occurring to persons or property and to prevent further damage to the Equipment; and
 - (e) not repair or attempt to repair the Equipment without Our written consent.
- 12.2 If the Equipment:
 - (a) breaks down, becomes unsafe to use or is damaged each as a result of Fair Wear and Tear; or
 - (b) breaks down, becomes unsafe to use or is damaged each in connection with any act or omission of Us,then upon receiving notice from You in accordance with clause 12.1, We will:
 - (c) take all reasonable steps to repair the Equipment or provide a suitable replacement as soon as reasonably possible; and
 - (d) not impose a Hire Charge for that portion of the Hire Period during which the Equipment was broken down or unsafe, or the costs associated with any repair or replacement of the Equipment.
- 12.3 If the Equipment:
 - (a) breaks down, becomes unsafe to use or is damaged each for any reason beyond Fair Wear and Tear;
 - (b) breaks down, becomes unsafe to use or is damaged each in connection with any act or omission of You or any other third party;
 - (c) is lost or stolen during the Hire Period,then, subject to clause 13, You are liable for:
 - (d) the costs and expenses suffered or incurred by Us to recover, repair or replace the Equipment; and
 - (e) the Hire Charges for the portion of the Hire Period during which the Equipment was broken down, unsafe. damaged and/or being recovered, repaired or replaced.

13. DAMAGE WAIVER

- 13.1 You may be required to pay Us the LTD Waiver Fee when You hire Equipment from Us. The LTD Waiver Fee:
 - (a) will be set out in the Hire Form; and
 - (b) will be automatically charged to You in addition to the Hire Charges.
- 13.2 Payment by You of the LTD Waiver Fee is, to the extent permitted by law, non-refundable and amounts to an agreement by Us to limit Your Liability for damage to the Equipment during the Hire Period specified in the Hire Form, subject to the provisions of this clause 13. The limitation of Your Liability does not apply to any damage to the Equipment that occurs during any further period between the end of the Hire Period and when the Equipment is back in Our control or possession, as referred to in clause 3.2.
- 13.3 The LTD Waiver Fee is 20% of the New Replacement Cost.
- 13.4 If You have paid Us the LTD Waiver Fee, We agree to limit Your Liability for damage to the Equipment only if:
 - (a) You have complied with clause 12, as applicable;
 - (b) You have co-operated with Us and provided Us with full details of the incident giving rise to the damage, including any written or photographic evidence We may require; and
 - (c) the damage does not fall into one or more of the circumstances set out in clause 13.5.
- 13.5 We do not agree to limit Your Liability for damage under this clause 13, where the damage:
 - (a) has arisen as a result of Your breach of this Hire Agreement;
 - (b) has been caused by Your misuse, abuse, willful and/or malicious acts, or negligent or reckless act or omission;
 - (c) has arisen as a result of Your use of the Equipment in violation of any laws;
 - (d) has been caused by Your failure to use the Equipment for its intended purpose or in accordance with Our instructions or the manufacturer's instructions;

- (e) has been caused as a result of Your failure to securely store or lock the Equipment, in circumstances where those means to securely store the Equipment were available to You;
 - (f) occurs to the Equipment whilst it is located, used, loaded, unloaded, transported from maritime vessels, on or over water, wharves, bridges or vessels of any kind;
 - (g) has been caused by a lack of lubrication or a failure to properly service or maintain the Equipment, as reasonably expected of the Hirer under this agreement;
 - (h) has been caused by collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object due to insufficient clearance;
 - (i) where the damage is caused while the Equipment is being driven or towed on any unsealed road or a road that is a private road;
 - (j) has been caused by the overloading of the Equipment or any components thereof;
 - (k) is to motors or other electrical Equipment or components within the Equipment caused by electrical overload, a surge in electrical current or the use of under-rated or excessive lengths of extension leads with the electrical Equipment;
 - (l) is caused by exposure to any Harsh Environments including corrosive or caustic substances, cyanide, salt water or acid;
 - (m) arises from theft, loss or damage by whatever causes to tools and/or accessories supplied with the Equipment including, but not limited to, hoses, drills, grease guns, electric leads, tyres and tubes;
 - (n) arises from unexplained disappearance of the Equipment, including theft;
 - (o) is caused by vandalism; or
 - (p) is to windscreens, mirrors, glass, or perspex.
- 13.6 Notwithstanding Our agreement to limit Your Liability in accordance with this clause 13, You will remain liable for all Hire Charges during the period the Equipment is not available due to any damage.

14. DELIVERY, COLLECTION AND INSTALLATION SERVICES

- 14.1 Where we are engaged to deliver, collect and/or install Equipment as outlined in the Special Conditions in the Hire Form, You must:
- (a) ensure We have full access to the site at all reasonable times to provide the relevant services;
 - (b) ensure the site is safe and ready for the installation and/or delivery of Equipment at the date and time included in the Hire Form;
 - (c) ensure all required facilities (including, but not limited to, electrical and water) and cabling are in good working condition prior to the installation of the Equipment;
 - (d) ensure any Equipment installed remains in place at the site for the Hire Period, unless otherwise agreed by Us;
 - (e) ensure any Equipment being collected by us has sufficient charge left to be driven onto the truck during collection; and
 - (f) ensure that where Equipment is installed on another structure or upon other equipment not provided by Us, that the structure and/or equipment is installed correctly and is legally permitted to withstand the load of the Equipment.
- 14.2 We acknowledge delivery, collection and/or installation of Equipment may be dependent upon the performance of work by other contractors. We are not liable for any delay in delivering, installing or collecting the Equipment where delay is caused by the acts or omissions of other contractors.

15. INSURANCE

- 15.1 The Special Conditions in the Hire Form will specify whether You are required to take out and maintain for the Hire Period insurance for the full replacement value of the Equipment.
- 15.2 Where the Hire Form specifies You must take out insurance, such insurance must:
- (a) cover loss, theft or damage to the Equipment arising during the Hire Period from any cause;
 - (b) be for the full replacement value of the Equipment specified in the Hire Form;
 - (c) be taken out with a reputable insurer satisfactory to Us;
 - (d) name Us as an interested party on the policy; and
 - (e) be maintained for the whole Hire Period.
- 15.3 You must provide Us with a certificate of currency evidencing Your compliance with clause 15.2 prior to commencement of the Hire Period.
- 15.4 If You have complied with Your obligations under clauses 15.2 and 15.3, You may not be required to pay the LTD Waiver Fee.
- 15.5 Notwithstanding clause 15.4, You are required to pay Us the LTD Waiver Fee for any portion of the Hire Period where a certificate of currency required to be provided by You pursuant to clause 15.3 remains outstanding.
- 15.6 You are solely responsible for:
- (a) any premiums, excess and any other costs associated with Your insurance;
 - (b) any shortfall in repair or replacement costs of the Equipment to the extent any proceeds received under Your insurance policies do not cover Your total Liability arising under the Hire Agreement.

16. INDEMNITIES AND EXCLUSION OF LIABILITIES

- 16.1 Subject to clause 16.2, and except as expressly set out in this Hire Agreement, all guarantees, terms, conditions, warranties, undertakings or representations whether express or implied, statutory or otherwise, relating to this Hire Agreement are excluded to the maximum extent permitted by law.
- 16.2 Where We are not able to exclude a guarantee, term, condition, warranty, undertaking or representation by law in relation to this Hire Agreement (a **Non-Excludable Provision**), then Our Liability for breach of a Non-Excludable Provision is limited to (at Our option):
- (a) 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
 - (b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- 16.3 Notwithstanding any other clause of this Hire Agreement, to the extent permitted by law and whether arising in contract, tort (including negligence), equity, warranty, indemnity, statute or otherwise:
- (a) Our aggregate Liability arising out of or in connection with this Hire Agreement is limited to an amount equal to the fees paid by You under this Hire Agreement; and
 - (b) We are not liable for any Consequential Loss howsoever caused or for any loss suffered by third parties under or in connection with this Hire Agreement.
- 16.4 You are liable for and indemnify Us and our Related Bodies Corporate against all Liability in respect of:
- (a) personal injury;
 - (b) damage to property; or
 - (c) a claim by a third party,
- in respect of Your hire or use of the Equipment and Your breach of the Hire Agreement. Your Liability under this indemnity is reduced to the extent that Our breach of the Hire Agreement or Our negligence causes the Liability.
- 16.5 We will not be liable to You for:
- (a) for any loss suffered as a consequence of ordering the wrong Equipment or insufficient quantities of the Equipment;
 - (b) late delivery of the Equipment to site or an inability to deliver the Equipment due to Your failure to prepare the site and/or any necessary facilities for delivery or installation of the Equipment; or
 - (c) any acts or omissions of any person supplied by Us, including under clause 14.3, where that person is acting under Your direction and control during the Hire Period and you indemnify Us against all Liability arising from or incurred in connection with such acts or omissions.

17. TERMINATION OF HIRE AGREEMENT

- 17.1 Either party may terminate this Hire Agreement and any Hire Period immediately by giving notice to the other party, if:
- (a) the other party breaches any term of the Hire Agreement and such breach is not capable of remedy; or
 - (b) the other party breaches any term of the Hire Agreement and such breach is capable of remedy, but the other party fails to remedy the breach within 7 days of written notification of the breach; or
 - (c) the other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business, subject to any rights You may have under the *Corporations Act 2001*.
- 17.2 We may terminate the Hire Agreement and any Hire Period for any reason on 24 hours' written notice.
- 17.3 We may terminate the Hire Agreement immediately if You or any third party has made a false statement or breached any provision of the Credit Account completed by You.
- 17.4 These rights of termination are in addition to any other rights either party has under the Hire Agreement and do not exclude any right or remedy available under law or equity.

18. RECOVERY OF EQUIPMENT

- 18.1 If You are in breach of the Hire Agreement or if the Hire Agreement or a Hire Period has been terminated under clause 17, We may, at Your cost, take all steps necessary (including legal action) to recover the Equipment, including entering Your premises to do so and You expressly consent to Us entering Your premises for the purposes of recovering Our Equipment.
- 18.2 In circumstances where We are required to recover the Equipment from the site, You indemnify Us and keep Us indemnified for any Liability suffered as a result of the Equipment recovery, including indemnity for any damage to the site.

19. CONFIDENTIALITY

- 19.1 Each party will, and will ensure that its personnel will, keep any Confidential Information it receives under this Hire Agreement confidential and will not disclose such Confidential Information without the prior written consent of the other party.
- 19.2 The obligations contained in clause 19.1 do not apply to disclosures to the extent that they are:
- (a) required by law (including disclosure to any stock exchange);
 - (b) made to its legal advisers, accountants or auditors; or
 - (c) required to enable the disclosing party to make or defend any claim under this Hire Agreement.

20. FORCE MAJEURE

- 20.1 If a party (the **Affected Party**) is prevented, in whole or in part, from carrying out its obligations under this Hire Agreement other than an obligation to pay money (the **Affected Obligations**) as a result of Force Majeure:
- (a) the Affected Obligations are suspended;
 - (b) the Affected Party must: (i) use reasonable endeavours to overcome the effects of the Force Majeure as soon as reasonably practicable; (ii) take all reasonable steps to mitigate the impact of the Force Majeure on the Affected Obligations; and
 - (c) unless this Hire Agreement is terminated, the Affected Party must resume performance of the Affected Obligations as soon as possible after the Force Majeure ceases.
- 20.2 If an event of Force Majeure continues for a continuous period of 90 days or more, then either party may terminate this Hire Agreement by written notice to the other.

21. REVIEW OF YOUR CREDIT APPROVAL

- 21.1 From time to time We may review any Credit Account We have granted to You without notice.
- 21.2 We may, at Our discretion, decide to withdraw credit for any reason, including 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.
- 21.3 If we withdraw credit You may terminate this Hire Agreement immediately by giving Us written notice. However, if You do so You must:
- (a) pay amounts that were subject to credit in accordance with the terms on which that credit was provided; and
 - (b) pay all amounts due to Us under this Hire Agreement, including hire charges until the Equipment is returned to Us and is in Our possession.

22. AUTHORITY

- 22.1 The person signing or accepting the terms of any document which forms part of the Hire Agreement or Relevant Documents for and on behalf of You hereby warrants that they have Your authority to enter into the Hire Agreement on Your behalf and is empowered to bind You to the Hire Agreement.
- 22.2 The person signing or accepting the terms of this Hire Agreement indemnifies Us against all losses, costs and claims incurred by Us arising out of the person so signing this Hire Agreement not in fact having such power and/or authority.

23. PROVISIONS OF THIS AGREEMENT EXCLUDED FROM CONSUMER CONTRACTS

- 23.1 The following provisions will not apply if the Hire Agreement is a Consumer Contract or a Small Business Contract:
- (a) clause 10.3 (PPSA costs); and
 - (b) clause 17.2 (Termination on 24 hours' notice).

24. CHAIN OF RESPONSIBILITY OBLIGATIONS

- 24.1 You must:
- (a) comply with all Chain of Responsibility Laws and must ensure that any activity relating to the Equipment (including scheduling, load restraint, Transport Movement) is undertaken in accordance with Your Chain of Responsibility obligations;
 - (b) ensure that all of Your subcontractors (where You subcontract any Transport Movement under this Hire Agreement) are contractually bound by similar Chain of Responsibility obligations to those set out in this clause 24.
- 24.2 You will allow Us to audit your Chain of Responsibility Laws compliance and related documents, procedures, policies and records to ensure that you have the appropriate processes in place to manage Your Chain of Responsibility Laws obligations.

25. DISPUTES

- 25.1 Until the parties have complied with this clause 25, a party must not commence any action, bring any proceedings or seek any relief or remedy in a court, except to seek urgent injunctive or declaratory relief.
- 25.2 Where any dispute arises under this Hire Agreement, a party may give notice to the other party setting out the material particulars of the dispute (the **Dispute Notice**).
- 25.3 Within 10 Business Days of the Dispute Notice (or any other period agreed in writing between the parties), the parties (or their nominees) must meet to attempt to resolve the dispute.
- 25.4 If the dispute is not resolved within 20 Business Days of the Dispute Notice, either party may commence legal proceedings.

26. GENERAL

- 26.1 This Hire Agreement constitutes the entire agreement between the parties and supersedes all previous communications or agreements, whether oral or written, relating to the subject matter of this Hire Agreement.
- 26.2 If any provision or part of any provision of the Hire Agreement is invalid, illegal or unenforceable, such provision or part thereof shall be severed from the Hire Agreement and the remainder shall continue in full force and effect.
- 26.3 Any waiver of rights will not be deemed a waiver unless it is in writing and signed by an authorised officer of the party waiving such rights and any such waiver will only operate to the extent so specified.

- 26.4 The Hire Agreement shall be governed by the laws of New South Wales, Australia and the parties agree to submit to the jurisdiction of the courts of that State and any courts having appellate jurisdiction from them.
- 26.5 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 expressly contained in this Hire Agreement.
- 26.6 We may assign this Hire Agreement to any third party without Your consent (including a Related Body Corporate). Where You are an individual acquiring goods or services wholly or predominantly for personal, domestic or household use or consumption, then we may assign this Hire Agreement to a Related Body Corporate provided that Related Body Corporate has the financial and operational resources to comply with the terms of the Hire Agreement.
- 26.7 To the extent that a variation to this Hire Agreement is not detrimental to You, from time to time, We may vary this Hire Agreement. Any other variation of the Hire Agreement must be agreed in writing by You and Us.
- 26.8 Clauses 4, 5, 7, 8.7, 8.8, 9, 11.2, 12.3, 16, 18.1, and 26 and any other provisions which expressly or by implication are intended to survive termination or expiry, survives termination or expiry of this Hire Agreement.

27. DEFINITIONS AND INTERPRETATION

27.1 In these Terms of Hire, unless the context otherwise requires:

- (a) "including" and similar words do not imply any limitation;
- (b) headings are for ease of reference only and shall not affect interpretation;
- (c) singular includes the plural and vice versa;
- (d) a reference to "\$" or "dollars" is a reference to Australian currency;
- (e) references to any party includes that party's executors, administrators, substitutes, successors and permitted assigns; and
- (f) references to statutes include all statutes amending, consolidating or replacing such statutes and includes any subordinate legislation.

27.2 In these Terms of Hire, unless otherwise defined:

Associated Costs means costs, expenses and expenditure associated with manufacturing, packing, transporting, delivering or testing the Equipment, and insurance, duties, taxes and other imposts for which You are liable (except GST).

Business Day means a day that is not a Saturday, Sunday or a public holiday in New South Wales, or 27, 28, 29, 30 or 31 December.

Chain of Responsibility Laws means all laws relating to chain of responsibility obligations including the Heavy Vehicle National Law and any law relating to driver fatigue, fatigue management, vehicle mass and dimension, vehicle maintenance, loading requirements (including load restraint), speed management, towing and coupling requirements, vehicle permits, transport documentation for goods, container weight declarations, dangerous goods and/or any other matters relating to the safe operation of vehicles.

Confidential Information means each party's information made available to the other at any time concerning the business, operations, finances, plans or contractors of the disclosing party (or the disclosing party's Related Bodies Corporate), including customer lists and pricing information and including any information that is derived from such information, but does not include information which:

- (a) is or becomes public knowledge other than by a breach of this Hire Agreement; or
- (b) is independently known to, or developed by, the receiving party as evidenced by the receiving party's written records.

Consequential Loss means indirect or special loss or damage, loss of actual or anticipated profit, loss of business, business interruption, loss of overhead, loss of contract, loss of revenue or loss of opportunity or wasted costs.

Consumer Contract and Small Business Contract has the same meaning as in Australian Consumer Law under the *Competition and Consumer Act 2010 (Cth)*.

Credit Account means any billing arrangement We have extended to You upon Our approval of a credit application.

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 the use or protection of the environment.

Equipment means any equipment provided by Us to You under the Hire Agreement, including any associated or attached tools, accessories and parts available for hire.

Fair Wear and Tear means normal deterioration which could be reasonably expected over the Hire Period under normal operating conditions, where the Equipment is operated by a reasonably competent operator, having regard to the condition, age, existing wear and other specific characteristics of the Equipment, but excludes deterioration to the Equipment caused by use in Harsh Environments and is determined by Us at our absolute discretion.

Force Majeure means events that are beyond the reasonable control of a party and that cause or result in the default or delay in the performance by the Affected Party of any of its obligations under this Hire Agreement and that the Affected Party could not reasonably have been expected to have foreseen, prevented, avoided or overcome including acts of God, pandemics, war, terrorism, civil commotion, riots, embargoes, industrial disputes, 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.

GST means the goods and/or services tax levied in accordance with the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and the expressions "supply" and "tax" have the same meanings as in that Act.

Harsh Environments means sites with exposure to salt water, mine sites or prospective mine sites, underground projects and off shore locations.

Hire Agreement is defined at clause 1.1

Hire Charge means the rates and charges payable by You for the hire of the Equipment.

Hire Form means the document (signed or unsigned) provided by Us to You which includes details of the Equipment You have hired, the Hire Charge, any other applicable charges, and the address for delivery of the Equipment.

Hire Period means the period described in clause 3.

Liability includes all liability, claims, damage, loss, costs and expenses (including legal fees, costs and disbursements on a full indemnity basis) and any environmental loss, cost, damage or expense.

Licence to Perform High Risk Work means a valid 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.

LTD Excess is defined at clause 13.3.

LTD Waiver Fee is the fee charged to You in accordance with clause 13.1.

New Replacement Cost means the cost to replace the Equipment with a new item of the same equipment, or if the same equipment is not available, then the cost to replace the Equipment with a new item of equipment of the same quality, function and capacity.

PPSA means the *Personal Property Securities Act 2009* (Cth) and any other legislation and regulations in respect of it, and the following words have the respective meanings given to them in the PPS Act: *financing change statement, financing statement, purchase money security interest (or "PMSI"), register, registration, security interest, security agreement*.

Related Body Corporate has the same meaning as in the *Corporations Act 2001* (Cth).

Site means the site listed as the delivery address in the Hire Form.

Special Conditions means the special conditions, if any, included in the Hire Form.

Transport Movement means the period of time during a delivery in which Equipment is being transported by road, which is governed by Road Law and is subject to the Chain of Responsibility.

We/Us/Our means Kelm Hire Pty Ltd ACN 630 124 793 and any Related Body Corporate of Kelm Hire Pty Ltd and their successors and assigns.

You/Your refers to the person, firm, organisation, partnership, corporation, trust or other entity hiring Equipment from Us as specified in the Hire Form including any of your employees, agents and contractors.