

1. Definitions

1.1 In this Agreement:

Agreement shall mean this agreement for the hire of Equipment comprising the documents set out in clause 3 of this Agreement.

Applicant means the applicant in a Credit Application.

Approvals means any consent, authorisation, registration, filing, lodgement, notification, agreement, certificate, commission, lease, licence, permit, approval or exemption from, by or with an Authority.

Authority means any government department, local government, government or statutory authority or any ministry, department, court, commission, board, agency, institution or similar entity of such government or statutory authority or any other party under legislative requirement which has a right to impose a requirement or whose consent is required in connection with the operation of the Equipment.

Breakdown includes breakdown, loss of use, seizure, full or partial loss or damage to Equipment, or seizure or impoundment of Equipment by operation of law or otherwise.

Business Day means a day that is not a Saturday or Sunday, or a public holiday at the place where the Client's Site is located.

Client shall mean the Applicant in a Credit Application or any person identified in a Schedule that engages the Supplier for the purposes of hiring Equipment, with or without the Supplier's Personnel, or providing the Services.

Client's Site means the Client's site specified in the Equipment Hire Agreement.

Credit Application means any credit application made by the Client to the Supplier and includes the terms and conditions of credit and any guarantee contained in that document.

Corporations Act means the Corporations Act 2001 (Cth).

Dispute means any dispute between the parties.

Dispute Notice means a notice provided by a party claiming that a Dispute has arisen, and which sets out details of the Dispute.

Dry Hire means the hire of Equipment under the exclusive direction and control of the Client.

Equipment means all plant and equipment (including any accessories) supplied on hire by the Supplier to the Client (and where the context permits shall include any incidental supply of services). The Equipment shall be as described on a Schedule provided by the Supplier to the Client, together with such accessories, machinery, tools and associated items, manuals, log books and Supplier vehicles that accompany such Equipment when it is dispatched from or leaves the Supplier's premises.

Equipment and Servicing Schedule means any equipment and servicing requirements set out in a Schedule.

Excess means more than 10 hours in one 24-hour period.

Force Majeure means any one or more of:

(a) lightning strikes, earthquakes, landslides, floods, typhoon, drought, cyclones, storms, bushfires or any other natural disaster or other severe weather event;

(b) any operations of the forces of nature of catastrophic proportion;

(c) epidemic, pandemic, acts of terrorism, riots, civil commotion, hostilities at war (whether declared or not) or explosion; or

(d) events which prevent, hinder or delay the transportation of the Client's Equipment by road, rail or by sea, the occurrence of which could not reasonably have been controlled by the party seeking to rely on the occurrence of such an event or combination of events, but Force Majeure does not include:

(i) a Breakdown, or breakdown of other plant, machinery or equipment;

(ii) wet weather which is not part of an event described in clause (a) or (b);

(iii) strikes, lockouts or industrial disputes; or

(iv) secondary boycotts engaged in by any of the Supplier's personnel.

Hazardous Materials means:

(a) noxious, hazardous, inflammable, explosive, or dangerous materials; or

(b) biological, chemical, radiological, and/or physical materials that have the ability to cause harm to humans, animals, or the environment.

Hire Charges means the charges for the Equipment and Supplier's Personnel and other matters at the rates agreed a Schedule, together with charges set out in clause 4.5.

Hire Period means the hire period in A Schedule.

Insolvency Event means where either party:

(c) is (or states that it is) insolvent (as defined by the Corporations Act);

(d) has a Controller (as defined by the Corporations Act) appointed to any part of its property;

(e) is in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration or wound up or has had a receiver or a receiver and manager appointed to any part of its property;

(f) is subject to any management, assignment, moratorium or composition, protected from creditors under any statute or, dissolved (other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other party to this Agreement);

(g) is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;

(h) is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the other party to this Agreement reasonably deduces it is so subject); or

(i) is otherwise unable to pay its debts when they fall due.

Key Information means sufficient information in writing relating to the task, job site, operating site within the job site, nature of the objects to be moved or lifted, weight and centre of gravity of objects to be moved or lifted, correctly rated lift points of such objects, and schedules.

Minimum Hire Period means the period specified in A Schedule.

Minimum Notice Period means the period specified in a Schedule.

Price means the Hire Charges and other amounts specified in a Schedule as may be adjusted in accordance with this Agreement.

Safety Inspection Levy means any fee that is charged by the Western Australian Government for safety and inspection services provided by the State to mining operations across Western Australia.

Schedule means a schedule, quote, invoice, delivery docket, equipment receipt docket, or other document provided by the Supplier to the Client, which includes details of the Equipment, the Supplier's Personnel, the Price, anticipated off hire date, any other information the Supplier decides to provide, and any variable conditions for the hire of that Equipment and/or the Supplier's Personnel as indicated in any Equipment and any Servicing Schedule in that document.

Services means the functions or task outcomes that the Supplier agrees to supply under this Agreement using the Equipment and/or Supplier Personnel set out in a Schedule.

Space and Amenity means the space and amenity on the site around the Equipment reasonably needed to perform the task(s) and operate the Equipment without damaging the Equipment, the site, or anything on the site, and to ensure the safety of the Supplier's Personnel, all other personnel. **Special Conditions** means the special conditions set out in a Schedule.

Supplier means Titan Heavy Lift Pty Ltd ACN 157 694 641 its subsidiaries, successors and assigns or any person acting on behalf of and with the authority of Titan Heavy Lift Pty Ltd.

Supplier Personnel means the person or persons employed or engaged by the Supplier to operate, drive, use or transport the Equipment provided to the Client under this Agreement including without limitation operators, drivers, riggers, dogmen, supervisors, and any other employee or agent of the Supplier.

Term means the period of supplying the Services in a Schedule which may include weekends and/or public holidays and continues until the supply of the Services is completed or this Agreement is terminated according to these General Hire Conditions.

Wet Hire means the hire of fully maintained Equipment and specified Supplier Personnel to operate the Equipment.

2. Interpretation

2.1 In this Agreement:

(a) a singular word includes the plural and vice versa;

(b) a word which suggests one gender includes the other gender;

- (c) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this Agreement and references to this Agreement include any schedules or annexures;
- (d) a reference to a clause in this Agreement is to a clause within these General Hire Conditions, unless otherwise expressly specified;
- (e) a reference to a party to this Agreement or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (f) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (h) a reference to a document or agreement (including a reference to this Agreement) is to that document or agreement as amended, supplemented, varied or replaced;
- (i) a reference to this Agreement includes the agreement recorded by this Agreement;
- (j) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (k) if any day on or by which a person must do pay any amount under this Agreement is not a Business Day, then the person must pay the amount on or by the next Business Day;
- (l) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity and includes the party's successors, permitted substitutes and permitted assigns;
- (m) this Agreement shall constitute the entire agreement between the parties and supersedes all previous agreements, understandings, representations and negotiations; and
- (n) a reference to 'month' means calendar month.

3. Acceptance

- 3.1 Subject to clause 27 the Supplier will provide the Services to the Client in accordance with this Agreement.
- 3.1 In consideration of the provision of the Services, the Client will pay the Supplier the Price.
- 3.2 Any instructions received by the Supplier from the Client for the Services and/or the Client's acceptance of the Services supplied on hire by the Supplier shall constitute acceptance of the terms and conditions contained herein.
- 3.3 Where more than one Client has entered into this Agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.4 Upon acceptance of this Agreement by the Client the terms and conditions are irrevocable and can only be amended with the written consent of the Supplier.
- 3.5 The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.
- 3.6 Services are supplied by the Supplier based only on the terms and conditions of hire herein to the exclusion of anything to the contrary in the terms of the Client's purchase order notwithstanding that any such purchase order is placed on terms that purport to override this Agreement.
- 3.7 The following documents form the Agreement:
 - (a) any Schedule specified by the Supplier in its absolute discretion
 - (b) Special Conditions
 - (c) these General Hire Conditions
 - (d) Credit Application
 - (e) Guarantee
 - (f) any schedules or annexures to the documents in 3.8-(a)-(e), and in the event of any ambiguity or discrepancy between the documents in 3.8

3.8-(a)-(f), the documents shall be given precedence in the order listed above. For the avoidance of doubt, any purchase order issued to facilitate payment does not form part of this Agreement.71@

3.9 These General Hire Conditions apply to each Schedule provided by the Supplier to the Client, whether signed by the parties or not, together with any Special Conditions in a Schedule.

3.10 The provision or acceptance of a Schedule shall not form a separate agreement between the Supplier and the Client, but shall constitute part of this Agreement.

4. Price And Payment

- 4.1 In consideration of the provision of the Services, the Client will pay the Supplier the Price in accordance with this Agreement.
- 4.2 The Client will be charged for the Services for the full Hire Period. A Schedule will specify the Price (including the Hire Charges) that will apply to the Services and the method of calculation.
- 4.3 If a Minimum Hire Period is specified, the Client must pay the Price applicable to the Minimum Hire Period.
- 4.4 The Supplier reserves the right to change the Price under clause 16.1(e) in relation to a failure to comply with the insurance provisions in clause 26 or in the event of a variation to the Supplier's quotation.
- 4.5 The Supplier may adjust the Price to include the following charges:
 - (a) Mobilisation and demobilisation when the Supplier is required to transport the Equipment to or from the Supplier's premises;
 - (b) Additional charges in respect of the Supplier's Personnel for loadings, penalties, and allowances paid to the Supplier's Personnel pursuant to their terms of engagement, including night shifts, weekends, public holidays, standby, overtime, meals, travel and accommodation;
 - (c) Where Equipment is used by the Client to Excess, any additional charge imposed by the Supplier as reasonable compensation for such Excess;
 - (d) Any applicable fuel levy, administration levy notified to the Client by the Supplier in advance.
- 4.6 At the Supplier's sole discretion, a non-refundable deposit may be required.
- 4.7 At the Supplier's sole discretion, a bond may be required which shall be refunded upon return of the Equipment in a condition acceptable to the Supplier.
- 4.8 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.
- 4.9 The Price is subject to change at the Supplier's discretion in accordance with clause 29.9. The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 4.10 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two percent (2%) of the Price), or by direct credit, or by any other method as agreed to between the Client and the Supplier.
- 4.11 GST and other taxes, charges and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4.12 The Supplier is not required to enter into any Client created tax invoice arrangements with the Client.
- 4.13 No claim for credit will be recognised by the Supplier after five Business Days following the date of a tax invoice issued by the Supplier.
- 4.14 The Client shall not set-off any amounts due under any tax invoice in respect of a request for credit or other disputed amount.
- 4.15 If any Party is required to indemnify or reimburse a part of a cost, expense or liability (Expense) incurred by another Party, then the Expense shall be reduced by the credit or refund of GST to which the party which first incurred the Expense is entitled to claim in respect of the Expense.
- 4.16 If any amount of an invoice is disputed by the Client, the Client must, on or before the date for payment on the invoice (or if no time is stated on the invoice, then thirty (30) days following the date of the invoice):
 - (a) pay the undisputed amount in accordance with this Agreement, and

(b) provide the Supplier with a statement of reasons for the differences in calculation for the disputed amount.

(c) subject to clause # [dispute resolution for matters other than money] if the parties cannot reach agreement on the disputed amount of the invoice within thirty days of the Client's receipt of the invoice, then subject to clause either party may proceed to litigation.

4.17 Subject to clause 19 notwithstanding any dispute as to any amount owed by a party to the other party under this Agreement, each party must continue to perform its obligations and discharge its liabilities and will continue to exercise its rights, powers, and remedies under this Agreement.

5. Hire Period

5.1 For Equipment in which a timing device is installed the hire period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Client's possession.

5.2 Where the Equipment does not have a timing device installed Hire Charges shall commence from the time the Equipment is collected by the Client from the Supplier's premises, or dispatched by the Supplier to the Client's Site, and will continue until the return of the Equipment to the Supplier's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

5.3 If the Supplier agrees with the Client to deliver and/or collect the Equipment, Hire Charges shall commence from the time the Equipment leaves the Supplier's premises and continue until the Client notifies the Supplier that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

5.4 No allowance whatsoever will be made for time during which the Services are not in use for any reason, unless the Supplier confirms special prior arrangements in writing, or unless the provisions of clause 11 apply.

6. Delivery Of Equipment

6.1 At the Supplier's sole discretion delivery of the Equipment shall take place when:

- (a) the Client takes possession of the Equipment, or
- (b) if the Supplier is responsible for delivering the Equipment, the time when the Supplier delivers the Equipment to the Client's nominated address.

6.2 At the Supplier's sole discretion the costs of Delivery are: in addition to the Price; or for the Client's account.

6.3 The Client irrevocably grants the Supplier and the Supplier's agents access to the Client's Site for so long as the Equipment and/or the Supplier's Personnel are on the Client's Site or and the Client shall be responsible for free access by the Supplier to any site on which the Equipment or the Supplier's Personnel are located (including a site owned or occupied by a third party). Where access to such site is dependent on security clearance, the Client undertakes to procure that security clearance for the Supplier's Personnel, the Supplier and the Supplier's Agents. If there are any delays due to free access not being available then the Client shall be responsible and shall reimburse the Supplier for all lost hire fees associated with the Equipment and/or Supplier's Personnel being unavailable. The Client shall also be responsible for all other expenses and costs incurred by the Supplier due to delays in access to the Equipment. The off-hire receipt will be issued when the Equipment is picked up by the Supplier or returned to the Supplier's premises.

6.4 The failure of the Supplier to deliver shall not entitle either party to treat this Agreement as repudiated.

6.5 The Supplier shall not be liable for any loss or damage whatever due to failure by the Supplier to deliver the Services or any part of them promptly, or at all, where due to circumstances beyond the control of the Supplier.

6.6 Where the Supplier transports the Equipment to and from the Client's Site, all costs and risks associated with such transport, including mobilisation at the Client's Site, of the Equipment (including insurance costs) will be the sole responsibility of the Client.

6.7 Unless stated otherwise in a Schedule, the return of the Equipment to the Supplier will be at the Client's risk and expense.

7. Risk

7.1 The Supplier retains ownership in the Equipment nonetheless all risk for the Equipment passes to the Client on delivery.

7.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies the Supplier for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client, except to the extent such loss, theft, or damage is materially caused by the Supplier or the Supplier's Personnel.

7.3 The Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

7.4 The Client must comply with all laws and legislation and safety standards relating to the safe handling of the Equipment during the Term and must ensure that the Equipment does not place the public or the environment at risk of death, injury, illness or damage.

7.5 The Client accepts full responsibility for and shall keep the Supplier indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property

arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons.

7.6 Where the Client has elected for the Supplier to transport the Equipment from the Supplier's premises to the Client's Site, risk will transfer to the Client at the time that the Equipment is delivered to the Client's Site by the Supplier.

7.7 Where the Client has elected to transport the Equipment to its premises or site itself, risk transfers to the Client from the time that possession of the Equipment is transferred to the Client, its employees, agents, contractors or subcontractors.

7.8 Where the Client expressly requests the Supplier to leave Equipment outside the Supplier's premises for collection or to deliver the Equipment to an unattended location then such Equipment shall be left at the Client's sole risk and it shall be the Client's responsibility to ensure the Equipment is insured adequately.

8. Title

8.1 The Equipment is and will at all times remain the absolute property of the Supplier.

8.2 The rights of the Client to use and take possession of the Equipment are those of a bailee only.

8.3 If the Client fails to return the Equipment to the Supplier, then the Client irrevocably authorises the Supplier or the Supplier's agent (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.

8.4 The Client will not sell, lend, pledge, or otherwise dispose of the Equipment or any interest in it, or pledge the Supplier's credit for repairs to the Equipment or create a lien over the Equipment in respect of any repairs.

9. Personal Property Securities Act 2009 ("PPSA")

9.1 In this clause:

- (a) financing statement has the meaning given to it by the PPSA;
- (b) financing change statement has the meaning given to it by the PPSA;
- (c) security agreement means the security agreement under the PPSA created between the Client and the Supplier by these terms and conditions; and
- (d) security interest has the meaning given to it by the PPSA.

9.2 Upon assenting to this Agreement in writing the Client acknowledges and agrees that these terms and conditions:

- (a) constitute a security agreement for the purposes of the PPSA; and
- (b) create a security interest in:

- (i) all Equipment previously supplied by the Supplier to the Client (if any);
- (ii) all Equipment that will be supplied in the future by the Supplier to the Client.

9.3 The Client undertakes to:

(a) 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 the Supplier may reasonably require to:

- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);

(b) indemnify, and upon demand reimburse, the Supplier 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;

(c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;

(d) 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 the Supplier; and

(e) immediately advise the Supplier of any material change in its business practices of selling the Equipment which would result in a change in the nature of proceeds derived from such sales.

9.4 The Supplier and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the

security agreement created by these terms and conditions.

9.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

9.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

9.7 Unless otherwise agreed to in writing by the Supplier, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.

9.8 The Client shall unconditionally ratify any actions taken by the Supplier under clauses 9.3 to 9.5.

10. Defects

10.1 On delivery of the Equipment to the Client's Site, the Supplier will provide the Client with an Equipment condition report setting out the condition of the Equipment identifying in the Supplier's opinion:

- (a) any existing defects in the Equipment,
- (b) any necessary repairs to the Equipment to ensure it meets the requirements of the Equipment and the Servicing Schedule.
- (c) details of accessories, attachments, tools, or documentation for the Equipment, and
- (d) any agreed major component life spans or replacement dates (if any).

10.2 The Client shall inspect the Equipment on delivery and shall within forty-eight (48) hours notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote.

The Client shall afford the Supplier an opportunity to inspect the Equipment within a reasonable time following delivery if the Client believes the Equipment is defective in any way. If the Client raise any objection to the equipment condition report in clause 10.1 within five Business Days of receipt of the report, the equipment condition report is deemed to be agreed. For defective Equipment, which the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability is limited to either repairing or replacing the Equipment, except where the Client has hired Equipment as a consumer within the meaning of the Competition and Consumer Act (Cth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the hire price of the Equipment, or repair of the Equipment, or replacement of the Equipment.

10.3 If following receipt of the Equipment condition report in clause 10.1 the Client believes that there are any necessary repairs to the Equipment to ensure the Equipment meets the requirements of the Equipment, it must notify the Supplier and the Client and the Supplier will negotiate and agree:

- (a) what if any repairs need to be made, and
- (b) if the repairs are likely to involve delays, and
- (c) an adjusted commencement date to the Hire Period.

10.4 The cost of carrying out any repairs to the Equipment, including additional transportation costs, will be borne by the Supplier.

10.5 If the Supplier and the Client cannot agree on the repairs to be made to the Equipment within 5 Business Days of the receipt of the equipment condition report in clause 10.1, the Client may, as its sole remedy, terminate this Agreement by notice in writing to the Supplier and no Price will be payable by the Client, provided the Services in relation to that Equipment have not been used by the Client.

10.6 As soon as reasonably practicable after the end of the hire period, the Equipment will be inspected at the Client's Site by the Client and at the election of the Supplier, the Supplier. If the Supplier elects to inspect the Equipment at the Client's Site:

- (a) the Supplier must provide the Client with reasonable notice as to the timing of the post-hire inspection.
- (b) the Supplier must provide to the Client a report including photographs concerning any repairs for which the Supplier believes the Client is responsible.

10.7 If the Supplier does not elect to inspect the Equipment at the Client's Site, the Client will return the Equipment to the Supplier and the Supplier must provide to the Client a report (including photographs) concerning repairs for which the Supplier believes that the Client is responsible.

10.8 The Client will not be responsible for fair wear and tear at the end of the hire period.

11. Breakdown of Equipment

11.1 In the event of a Breakdown, the Client shall notify the Supplier immediately by telephone of the full circumstances of any Breakdown. If Supplier Personnel are present, then advising such Supplier Personnel is sufficient notice. The

Client is not absolved from the requirements to safeguard the Equipment by giving such notification.

11.2 Upon notifying the Supplier of a Breakdown, the Client must secure the Equipment and keep it safe, comply with all laws and legislative requirements, cease using the Equipment, and take all reasonable steps to prevent death or injury to any persons or damage to property that could result from the Breakdown. The Supplier is not responsible for any liability arising from or in connection with such prevention or steps taken pursuant to this clause. For the avoidance of doubt, the Client remains responsible for the Equipment until it is returned to the Supplier's premises.

11.3 From the time the Client gives the Supplier the notice in clause 11.1 and subject to clause 11.4, the Hire Charges shall be suspended in full until the Equipment is replaced or, at the Supplier's election, repaired and returned to an operating condition.

11.4 If the Client, its employees, agents, contractors or subcontractors materially contributed to or caused the Breakdown (including by giving directions to the Supplier's Personnel) through misuse of the Equipment, accident, misconduct, negligence, fraud, breach of this Agreement, failure to comply with laws or legislative requirements, or failure to comply with warning signs, safety directions, safety systems or any manufacturer's instruction whether supplied by the Supplier or posted on the Equipment, then the Client must:

- (a) continue to pay the Price until the Equipment is returned to service, and
- (b) pay the reasonable costs of repair incurred by the Supplier or its agent.

11.5 The Client may not repair the Equipment without the written consent in writing of the Supplier.

11.6 The Supplier shall take reasonable steps to replace the Equipment with Equipment of a similar type but is under no obligation to do so.

12. The Competition and Consumer Act ("CCA") and Fair Trading Acts ("FTA")

12.1 Nothing in this Agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

13. Warranty

13.1 To the full extent permitted by law, no warranty is provided by the Supplier in respect of the Supplier's Personnel, the condition of the Equipment or their fitness for any particular purpose and the Supplier excludes all implied warranties and conditions of any type including as to the fitness of the Equipment or the Supplier's Personnel for any use to which they are employed by the Client.

13.2 The Client shall indemnify and hold harmless the Supplier in respect of all claims arising out of use of the Equipment or the Supplier's Personnel.

14. Dry Hire

14.1 Unless otherwise provided in the Equipment Servicing Schedule or any Special Condition, the Client shall:

- (a) Only use the Equipment for a proper purpose and for which it is designed and supplied;
- (b) be responsible for operating the Equipment;
- (c) be responsible for lift studies, Approvals necessary to allow the Equipment to be hired, and job safety analyses;
- (d) at its cost be responsible for lubricating, refuelling, maintaining and daily servicing and pre-start checks of the Equipment (as per the manufacturers recommendations), replacing the tyres where necessary due to negligence in respect of the Equipment, and keeping the Equipment in a clean working order and condition;
- (e) for each pre-start undertaken, email the pre-start check documents to the Supplier within one Business Day;
- (f) provide competent and appropriately qualified and experienced personnel to comply with its obligations to maintain, service, and repair the Equipment;
- (g) keep written records of the service history of the Equipment and must make those records available to the Supplier on request;
- (h) Ensure that the Equipment is operated by appropriately qualified, skilled and experienced personnel, and in a manner which complies with all laws and legislative requirements;
- (i) satisfy itself at commencement that the Equipment is suitable for its purposes;
- (j) Prior to each use, fully inspect the Equipment and the site, complete the Supplier's pre-start checks, review the Equipment manuals, review safety alerts and inspection reports, and take all steps to ensure the Equipment is suitable for the proposed work;
- (k) operate the Equipment safely, strictly in accordance with all laws and legislative requirements, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by the Supplier or posted on the Equipment;
- (l) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold any required current certificate of competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to the Supplier upon request;
- (m) comply with all occupational health and safety laws relating to the Equipment and its operation. The Client's responsibility for the safety of the Client's personnel is not affected in any way by any supervision, oversight, direction or assistance provided by the Supplier or the Supplier's Personnel in relation to the hire of the Equipment;

(n) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear excepted, to the Supplier;

(o) keep the Equipment in its own possession and control and shall not assign the benefit of this Agreement nor be entitled to a lien over the Equipment;

(p) 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;

(q) employ the Equipment solely in its own work and shall not permit the Equipment or any part thereof to be used by any third party for any purpose;

(r) not exceed the recommended or legal load and capacity limits of the Equipment;

(s) not use or carry any illegal or prohibited substance in or on the Equipment;

(t) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.

14.2 Immediately on request by the Supplier the Client will pay:

(a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to the Supplier;

(b) all costs incurred in cleaning the Equipment;

(c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to 10% of the new list price of the Equipment;

(d) the cost of repairing any damage to the Equipment caused by the negligence of the Client or the Client's agent;

(e) the cost of repairing any damage to the Equipment caused by vandalism, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;

(f) the cost of fuels and consumables provided by the Supplier and used by the Client.

15. Wet Hire

15.1 In the event of Wet Hire of the Equipment:

(a) the Supplier's Personnel shall operate the Equipment in accordance with the Client's instructions;

(b) The Client must consult with and fully instruct the Supplier's Personnel on the proposed task, the site, and matters affecting the health and safety of the Supplier's Personnel. The Supplier's Personnel may request a lift study before commencing work and are entitled to refuse directions from the Client if they reasonably believe that such directions may adversely affect the Equipment, the Supplier's Personnel, the Client's personnel, the public, or property;

(c) The Client shall not permit any person other than the Supplier's Personnel to operate the Equipment without the written consent of the Supplier;

(d) The Supplier must ensure that the Equipment is operated by the Supplier's Personnel who are appropriately qualified, skilled and experienced personnel, and in a manner which complies with all laws and legislative requirements;

(e) The Supplier must do all things reasonably practicable to ensure that the Supplier's Personnel: (i) Review operating manuals and take steps to be familiar with the safe operation of the Equipment;

(ii) Be fit for work and not under the influence of alcohol or drugs;

(iii) Be reasonably briefed by the Client as to the Client's Site, safety systems, and lift plans or studies;

(iv) Wear protective and high visibility clothing on the Client's Site; and (v) Operate the Equipment to a reasonable standard of skill and competence of an experienced operator of the Equipment;

(f) The Supplier shall not be liable for any actions of the Supplier's Personnel in following the Client's instructions;

(g) The Client shall be responsible for lift studies, Approvals necessary to allow the Services to be performed, and job safety analyses;

- (h) The Supplier shall at its cost be responsible for lubricating, refuelling, maintaining and daily servicing and pre-start checks of the Equipment (as per the manufacturers recommendations), replacing the tyres where necessary except due to negligence in respect of the Equipment, and to keep the Equipment in a clean working order and condition;
- (i) The Supplier shall provide competent and appropriately qualified and experienced personnel to comply with its obligations to maintain, service, and repair the Equipment;
- (j) The Client's responsibility for the safety of the Client's personnel is not affected in any way by any supervision, oversight, direction or assistance provided by the Supplier or the Supplier's Personnel in relation to the hire of the Equipment;
- (k) If specified in a Schedule, the Client shall, on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear excepted, to the Supplier;
- (l) The Client shall keep the Equipment in its own possession and control and shall not assign the benefit of this Agreement nor be entitled to a lien over the Equipment;
- (m) The Client shall 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;
- (n) The Client shall employ the Services solely in its own work and shall not permit the Services or any part thereof to be used by any third party for any purpose;
- (o) The Client shall not require the Equipment or the Supplier's Personnel to exceed the recommended or legal load and capacity limits of the Equipment;
- (p) The Client shall not require the Equipment or the Supplier's Personnel to use or carry any illegal, prohibited or dangerous substance in or on the Equipment.

16. Wet Hire or Dry Hire

- 16.1 In any Wet Hire or Dry Hire, the Client agrees as follows:
- (a) The Client must do all things reasonably practicable to ensure that the Client's personnel and/or the Supplier's Personnel:
- Review operating manuals and take steps to be familiar with the safe operation of the Equipment;
 - Be fit for work and not under the influence of alcohol or drugs;
 - Be reasonably briefed by the Client as to the Client's Site, safety systems, and lift plans or studies;
 - Wear protective and high visibility clothing on the Client's Site; and
 - Operate the Equipment to a reasonable standard of skill and competence of an experienced operator of the Equipment;
- (b) The Client must obtain all Approvals required for the use or transport of the Equipment during the Term and comply with all laws, legislation, and industry standards whilst in possession of the Equipment;
- (c) The Client must inform the Supplier of any incident, accident, safety breach, fine, penalty or investigation during the Term which involves the Equipment, the Supplier, or the Supplier's Personnel;
- (d) The Client shall secure and protect the Equipment during the Term.
- (e) The Client will comply with the insurance provisions in clause 26 or the Supplier may at its absolute discretion either charge an amount in addition to the Price or decline to provide the Equipment and/or the Services in whole or in part.
- (f) The Client shall specify the operating site for the Equipment and the route to the operating site.
- (g) The Client shall specify weight, centre of gravity, correctly rated lift points, and nature of the goods to be lifted.
- (h) The Client shall supply all Key Information.
- (i) The Client shall ensure there is sufficient Space and Amenity for the Equipment.
- (j) The Client shall ensure that there is clear access and suitable load bearing area to accommodate the loads of the Equipment at the required driving positions.

- (k) The Client acknowledges that no allowance is made for the construction of any ground preparation, pads, or access roads that may be required; or for the removal of precast concrete barriers, obstructions including scaffolding and/or traffic management changes.
- (l) The Client shall provide all weather access and compacted ground to accommodate the loads of Equipment and other vehicles or equipment at the required operational positions.
- (m) The Client is responsible for locating all underground services and obtaining approval for operating on or over such services.
- (n) The Client acknowledges that the Supplier is not responsible for damage to existing pavements or roads where Equipment or other equipment or vehicles are required to move.
- (o) The Client is responsible for notification of local businesses or persons that may be affected by the operation of the Equipment.
- (p) The Client is responsible for removal or isolation of overhead or underground services, including electrical spotters, supervision, and reconnection.

17. Hazardous Materials

17.1 The Client must comply with all laws, registrations and obtain all Approvals to use the Equipment to lift or transport Hazardous Materials.

18. Cancellation

18.1 The Supplier may cancel this Agreement or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice. On giving such notice the Supplier shall repay to the Client any sums paid in respect of the Price. The Supplier shall not be liable for any loss or damage whatever arising from such cancellation.

18.2 In the event that the Client cancels delivery of the Equipment the Client shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation.

19. Default & Consequences of Default

- 19.1 Interest on overdue invoices will be at a rate equal to the Reserve Bank of Australia cash rate from time to time plus 8% per annum, calculated daily and compounding monthly, on any amounts unpaid after the payment date, and allows the Supplier to suspend the Client's credit facility in its absolute discretion.
- 19.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Supplier.
- 19.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in pursuing the debt including legal costs on a solicitor and own client basis and the Supplier's collection agency costs.
- 19.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies the Supplier may have and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
- any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to meet its payments as they fall due; or
 - the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20. Security And Charge

- 20.1 Despite anything to the contrary contained herein or any other rights which the Supplier may have howsoever:
- where the Client is the owner of land, realty or any other asset capable of being charged, the Client agrees to mortgage and/or charge all of its joint and/or several interest in the said land, realty or any other asset to the Supplier or the Supplier's nominee to secure all amounts and other monetary obligations payable under the terms and conditions.

The Client acknowledges and agrees that the Supplier (or the Supplier's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.

(b) should the Supplier elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client shall indemnify the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis.

(c) the Client agrees to irrevocably nominate constitute and appoint the Supplier or the Supplier's nominee as the Client's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 20.1.

21. Privacy Act 1988

21.1 The Client agrees that the Supplier may obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by the Supplier.

21.2 The Client agrees that the Supplier may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or (d) to assess the creditworthiness of the Client.
- (d) The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

21.3 The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

21.4 The Client agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other purposes as shall be agreed between the Client and Supplier or required by law from time to time):

- (a) the provision of Services; and/or
- (b) the marketing of Services by the Supplier, its agents or distributors; and/or analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (d) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the provision of Services.

21.5 The Supplier may give information about the Client to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Client;
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

21.6 The information given to the credit reporting agency may include:

- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;
- (b) details concerning the Client's application for credit or commercial credit and the amount requested;
- (c) advice that the Supplier is a current credit provider to the Client;
- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;

(f) information that, in the opinion of the Supplier, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);

(g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once; (h) that credit provided to the Client by the Supplier has been paid or otherwise discharged.

22. Goods and Services Tax

22.1 Words or expressions used in this clause 22.1 which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Act) have the same meaning in this clause.

(a) Recipient means the party acquiring the relevant supply.

(b) Provider means the party providing the relevant supply.

22.2 Unless otherwise stated, the consideration for any supply made under or in connection with this Agreement does not include an amount on account of GST.

22.3 If the Provider makes a supply under or in connection with this Agreement on which GST is imposed, in whole or in part (not being a supply the consideration for which is specifically described in this Agreement as inclusive of GST) then:

(a) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause (GST exclusive consideration) is increased by, and the Recipient of the supply must also pay to the Provider, an amount equal to the GST payable on the supply (GST Amount); and

(b) the GST Amount must be paid to the Supplier by the Provider without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided, subject to the Provider giving the Recipient a tax invoice in respect of that taxable supply.

22.4 If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party, or the representative member of a GST group of which that party is a member, is entitled for that loss, cost or expense.

(a) If a payment is calculated by reference to, or as a specified percentage of, another amount or revenue stream, that payment shall be calculated by reference to, or as a specified percentage of, the amount or revenue stream exclusive of GST.

22.5 If an adjustment event arises in respect of a supply made under or in connection with this Agreement, then:

(a) the Provider must issue an adjustment note to the Recipient within 7 days of the adjustment event occurring or otherwise as soon as it becomes aware of the adjustment event, outlining the revised amount of GST payable in respect of that supply (Corrected GST Amount);

(b) if the Corrected GST Amount is less than the previously attributed GST Amount, the Provider shall refund the difference to the Recipient within 15 days of the adjustment note being issued by the Provider; and

(c) if the Corrected GST Amount is greater than the previously attributed GST Amount, the Recipient shall pay the difference to the Provider within 15 days of the adjustment note being issued by the Provider.

23. Dispute Resolution

23.1 The parties agree that it is a condition precedent to the commencement of any litigation proceedings by a party in respect of a Dispute under this agreement that the party has complied fully with the Dispute resolution process (regardless of the level or levels on which the Dispute has previously been considered), whether the Dispute is first raised during or after the Term, except where:

- (a) The Party seeks urgent interlocutory, injunctive or declarative relief;
- (b) the other party has failed to observe the requirements of this clause and the party seeks to enforce compliance with it; or
- (c) the Dispute concerns the non-payment of money.

24. Dispute Notice

- 24.1 A Party must give a notice (**Dispute Notice**) to the other Party:
- (a) setting out details of the Dispute, the reason why the Dispute should be resolved in favour of the notifying party and any other matter that may, in the reasonable opinion of that party, be relevant to the resolution of the Dispute;
 - (b) requiring the other Party to, in good faith, resolve the Dispute within 5 Business Days of the date of the notice; and
 - (c) nominate a representative of the party who is authorised to negotiate and settle the Dispute on the party's behalf.
 - (d) The other party must within five Business Days after receipt of a Dispute Notice nominate in writing to the other party a representative authorised to negotiate and settle the Dispute on its behalf.
 - (e) The parties' representatives must negotiate in good faith with a view to resolving the Dispute within 5 Business Days after the receipt of the Dispute Notice (or such longer period as those representatives agree) failing which, the mediation process set out in clause 24.2 will be followed.
- 24.2 If resolution of the Dispute is not achieved after following the negotiation procedures set out in clause 24.1 then each of the parties must ensure that the Dispute is referred to mediation in Perth to be administered by the Resolution Institute, who will:
- (a) appoint a mediator to facilitate the negotiation by the Parties for a resolution of the Dispute;
 - (b) arrange a conference between the Parties in the presence of that mediator with a view to resolution of the Dispute in accordance with the Resolution Institution Mediation Rules unless an alternative frame of reference is agreed by the Parties in writing at that meeting.
- 24.3 If resolution of the Dispute is not achieved within thirty Business Days (or such longer period agreed to by the Parties) of the first mediation conference, then either Party may commence court proceedings.
- 24.4 Each party must continue to perform its obligations under this Agreement despite the existence of the dispute.
- 24.5 This clause 24 survives the termination or expiry of this Agreement.

25. Indemnity

- 25.1 The Client indemnifies the Supplier against all claims, losses, damages, costs (including legal costs on a solicitor and own client basis) and expenses of any kind whatsoever (including statutory to the extent permitted by law) suffered or incurred by the Supplier to the extent arising out of or in connection with any act or omission of the Client or its officers, employees, subcontractors or agents in connection with this Agreement or breach of this Agreement by the Client, except to the extent that the claims, losses, damages, costs or expenses are caused by a grossly negligent act or omission of or material breach of an essential term of this Agreement by the Supplier's Personnel, the Supplier, its officers, employees, subcontractors or agents.
- 25.2 This clause 25 survives the termination of this Agreement.

26. Insurance

- 26.1 Each party must obtain and maintain:
- (a) workers' compensation insurance as required by law against liability for the death or bodily injury of any person employed by that party, including liability under statute and at common law.
 - (b) public liability insurance against third party risks, including liability for damage or injury to property or person, for the amount of \$20,000,000 for any one occurrence.
- 26.2 The Client must maintain transit insurance for the market value of the Equipment and against any loss or damage arising from an insurable cause during the transport or delivery of Equipment.
- 26.3 The Client must maintain insurance covering the Equipment to market value of the Equipment and against any loss or damage arising from an insurable cause during the Term.
- 26.4 Prior to the commencement of this Agreement, and upon annual renewal of each policy of insurance and whenever otherwise requested in writing, a party who has taken out any insurance under this clause 26

must provide to the other party copies of all certificates of currency relating to the insurances.

- 26.5 Provision of the certificates of currency relating to the insurance in this clause 26 is a condition precedent to the Client's hire of the Equipment.
- 26.6 Each party must comply with the conditions stipulated in each of the insurance policies required under this clause 26.
- 26.7 To the extent possible at law, the insurance policies required under this clause 26.1 must note the interests of the other party.
- 26.8 If a party fails to obtain or maintain any insurance that is its responsibility under this clause 26 or fails to provide copies of the certificates of currency of insurance the other party may obtain the relevant insurance and the costs incurred by that party in doing so will be a debt due from the party that failed to obtain or maintain the insurance to the other party. Nothing in this clause relieves a party of its obligations to arrange insurance or imposes an obligation on the other party to obtain such insurance.
- 26.9 Nothing in this clause limits the obligations, responsibilities or liabilities of the parties under this Agreement.
- 26.10 The insurance policies required to be maintained by the Client shall include a waiver of subrogation clause which acts to waive all rights of subrogation against the Supplier and the Supplier's insurers.
- 26.11 The deductible or excess payable on any claim shall be at the Client's cost.
- 26.12 The Supplier is not a common carrier and is not responsible for any loss or damage to the Client's property or goods in transit. The responsibility and risk for insurance of goods in transit is with the Client.
- 26.13 This clause 26 survives the termination of this Agreement.

27. Termination

- 27.1 The Client may terminate this Agreement immediately by written notice to the Supplier specifying the date of termination if:
- (a) the Supplier is subject to an Insolvency Event;
 - (b) the Supplier breaches any law that, in the reasonable opinion of the Client, may place the Client's business or reputation at risk; or
 - (c) the Supplier fails to remedy a breach of any other term of this Agreement within 10 Business Days of being directed in writing to do so by the Client.
- 27.2 The Supplier may terminate this Contract immediately if:
- (a) the Client is subject to an Insolvency Event;
 - (b) the Client breaches any law that, in the reasonable opinion of the Supplier, may place the Supplier's business or reputation at risk;
 - (c) the Client breaches clause 14(m);
 - (d) The Client permits any act or thing to be done which in the reasonable opinion of the Supplier may prejudice, diminish or alienate the Supplier's right to or in the Equipment;
 - (e) Ceases to carry on business; or
 - (f) The Client fails to remedy a breach of any other term of this Agreement within ten Business Days of being directed in writing to do so by the Supplier.
- 27.3 The Client may, without incurring liability of any kind to the Supplier and without being in breach of this Agreement, at any time after the Minimum Hire Period and in its absolute discretion and without cause or regard for the Supplier's circumstances, terminate a Schedule by giving prior written notice to the Supplier equal to at least the Minimum Notice Period as applies to that Schedule, or if no Minimum Notice Period is stated in the Schedule, then at least 5 Business Days' written notice. Following any such termination, the Client may hire from any other person or acquire equipment that is of an equivalent purpose or utility as the Equipment in substitution for the Equipment.
- 27.4 On termination under clause 27.1 or clause 27.3 the Client will cease using the Services, and return the Equipment to the Supplier unless otherwise provided in the Special Conditions or the terms of any Schedule accepted by the Supplier. The costs of returning or collecting the Equipment (as applicable) will be borne by the Client unless provided in the Special Condition or the terms of any Schedule accepted by the Supplier.

27.5 Except as expressly provided in this Agreement, termination of this Agreement does not limit any other rights, powers or remedies of a party under this Agreement or at law or in equity.

28. Trusts

28.1 If the Client or any of them (Trustees) execute this Agreement as trustee of any trust fund (Trust) then this clause applies to that Trustee.

28.2 The Trustees declare that:

- (a) the Trustees have full power and authority under the terms of the Trust to enter into and perform this Agreement, that the terms of the Trust have been complied with in respect of this Agreement and that all consents of the beneficiaries or other persons required under the terms of the Trust have been obtained and not revoked;
 - (b) the Trustees are the only trustees of the Trust;
 - (c) the Trustees are entitled to be fully indemnified out of the assets of the Trust in respect of all liabilities incurred by the Trustees under or in connection with this Agreement and the Trustees have not waived, released or in any way diminished or limited those rights of indemnity
- 28.3 The Trustees promise that during the continuance of this Agreement:

- (a) The Trustees will not waive, release or in any way diminish or limit any of the Trustees' right of indemnity as trustees of the Trust against the assets of the Trust or the beneficiaries of the Trust and charges all such rights of indemnity with the due performance of this Agreement.
- (b) The Trustees will not retire as trustees of the Trust nor do any act or thing whereby the Trustees may be removed as trustees of the Trust.
- (c) The Trustees will not consent to the appointment of any new or additional trustee of the Trust without prior written approval of the Supplier and will give written notice to the Supplier in the event that any new or additional trustee is to be appointed.
- (d) Neither the Trustees nor any other person will exercise any of the following powers relating to the Trust without the Supplier's prior written consent (which will not be unreasonably withheld if in the opinion of the Supplier the above proposed action will not adversely affect the security or the rights of the Supplier):
 - (i) any power to change the trustee or trustees of the Trust whether by resignation appointment or otherwise,
 - (ii) any power to vary the terms of the Trust,
 - (iii) any power to resettle the Trust property, or
 - (iv) any power to distribute any income or capital of the Trust unless there has been a default.

28.4 The Trustees acknowledge that even though the Trustees have entered into this Agreement as trustees of the Trust, in addition, the Trustees are personally liable for all money payable to the Supplier pursuant to this Agreement and for the due performance and compliance with all of the Trustees' obligations under this Agreement.

29. General

29.1 A notice, request, demand, consent or approval given by one party to another under this Agreement must be in writing addressed to the recipient at the address shown in the Hire Order (or to the address designated by a party by written notice).

29.2 A notice is treated as having been received:

- (a) if left at the other party's address during business hours, when delivered; or
- (b) if sent by pre-paid mail, on the third Business Day after posting;
- (c) if sent by email, on dispatch of the email, unless the sender's server indicates a malfunction or error in transmission or the recipient immediately notifies the sender of an incomplete transmission; or
- (d) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire notice unless, within eight business hours after the transmission, the recipient informs the sender that it has not received the entire notice.

29.3 If any provision of this Agreement shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

29.4 If any provisions of this Agreement are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.

29.5 This Agreement shall be governed by the laws of Western Australia and are subject to the jurisdiction of the courts of Western Australia.

29.6 Except to the extent that liability cannot be limited or excluded by law, the Supplier shall be under no liability whatever to the Client for any indirect loss and/or consequential loss and/or expense (including loss of profit) suffered by the Client for any reason whatsoever, including (without limitation) arising out of a Breakdown or accident, or breach by the Supplier of this Agreement. This clause survives the termination of this Agreement.

29.7 In the event of any breach of this Agreement by the Supplier and whether by way of an indemnity or statute, in tort (for negligence or otherwise) or on any other basis in law, the remedies of the Client shall be limited to (at the Supplier's option):

- (a) the Supplier taking reasonable steps to facilitate the repair or replacement of the Equipment, or
- (b) resupply of the Supplier's Personnel, or
- (c) damages not exceeding \$10,000 in aggregate.

29.8 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Supplier.

29.9 The Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent.

29.10 These General Hire Conditions (including, without limitation, the Price) may be revised by the Supplier and any such revision shall then be notified to the Client in writing. The Client agrees that from the date of receipt of such revision it shall be legally bound by such revised terms and its sole remedy in the event that it does not agree to the revision shall be to give the Supplier immediate notice to terminate this Agreement without penalty. This does not affect any breaches or defaults by the Client accruing up to the date of termination by the Client.

29.11 Subject to clause 29.9 this Agreement may only be amended by written agreement between all parties.

29.12 Each attorney executing this Agreement declares that the attorney has no notice of the revocation of the power appointing that attorney.

29.13 The person signing this Agreement on behalf of the Client hereby covenants with the Supplier that such person has the authority of the Client to enter into this Agreement.

29.14 This Agreement may be executed in any number of counterparts. All counterparts together make one instrument.

(a) The Client must pay all stamp duty on or in respect of this Agreement.

(b) Each party must pay its own costs in connection with the preparation, completion and carrying into effect of this Agreement.

(c) Notwithstanding any other clause in this Agreement, the Client will pay any safety and inspection levy that is applicable to the operations on the Client's Site.

29.15 The Client must not assign, transfer, delegate or otherwise deal with this Agreement or any right, obligation, duty or responsibility under it except with the prior written consent of the Client. The Supplier may assign, transfer, delegate or otherwise deal with this Agreement and any right, obligation, duty or responsibility under it without the prior written consent of the Client.

29.16 This Agreement embodies the entire agreement between the parties as to its subject matter and supersedes:

- (a) all previous agreements, hire orders, representations and documents relating to the Equipment, the Services or this Agreement; and
- (b) Purchase orders or similar or documents relating to the Equipment, the Services or this Agreement provided by or on behalf of the Client to the Supplier (**Documents**).

To the extent that any Documents purport to require written notice or acceptance by the Client that this Agreement takes precedence over any such Documents, this Agreement constitutes such written notice or acceptance.

29.17 To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion has no effect except to the extent expressly set out or incorporated by reference in this Agreement.

29.18 Nothing in this Agreement is to be constitutes a joint venture, agency or partnership between the Supplier and the Client.

(a) No delay by a party and no failure by a party not in default to require the other party to perform and comply with any provision, condition or requirement of this Agreement constitutes a waiver of strict and literal performance and compliance with any other provision, condition or requirement of this Agreement. Any waiver of any breach, right or entitlement under this Agreement must be in writing signed by the party purporting to give such waiver.

29.19 If a party (Affected Party) becomes unable by reason of a Force Majeure event to carry out an obligation under this Agreement or, in the case of the Client, is unable to use the Equipment:

(a) the Affected Party must give to the other party prompt written notice of the occurrence of the Force Majeure event which:

(i) includes a description of the Force Majeure event and its effect on the Affected Party's operations;

(ii) identifies the obligations that the Affected Party will be unable to perform, or will be delayed in performing, in accordance with this Agreement because of the Force Majeure event.

(b) Except for the obligation to pay the Price, non-performance by any party shall be excused to the extent that performance is rendered impossible or impractical by the Force Majeure event.

30. Legal advice

30.1 The Client acknowledges that it has either:

(a) sought independent legal advice on this document, or

(b) has had the opportunity to seek such advice and warrants to the Supplier that it was not necessary because the client understood the effect and consequences of, and obligations in, this Agreement before executing it, and

(c) enters into this Agreement freely after considering such advice or electing not to obtain advice.

31. Binding contract

31.1 Notwithstanding that a party does not sign this document, if the Client accepts delivery of the Services, the terms of the Agreement in this document are, and will be, binding on the parties. Without limiting any other way in which the Client accepts delivery of the Services, the Client is deemed to have accepted delivery of the Services if it receives, and does not reject, delivery of the Services to the Client's Site or if the Client pays all or any part of the Price to the Supplier before delivery of the Services to the Client's Site.