

TERMS AND CONDITIONS OF DRY HIRE AGREEMENT

Operative Provisions

1. Definitions

1.1 In this Agreement unless the contrary intention appears:

- (a) **Agreement** means together:
 - (i) these terms and conditions;
 - (ii) the Agreement Details;
 - (iii) the Hire Schedule; and
 - (iv) if applied for and approved by the Owner, the Credit Application.
- (b) **Agreement Details** means details on page 1 of this Agreement.
- (c) **Booklet** means a booklet containing the Prestart checklist/Plant Maintenance Report, to be provided by the Owner to the Hirer in respect of each piece of Equipment and, at all times kept with the Equipment and returned to the Owner at the end of the Hire Period.
- (d) **Credit Application** means the Application for Credit Account contained in Schedule B to these terms and conditions.
- (e) **GET** means 'Ground Engaging Tools'.
- (f) **Hire Charges** means the fee exclusive of GST which the Hirer has by this Agreement agreed to pay to the Owner for the hire of the Equipment for the Hire Period as calculated in accordance with the Hire Schedule and clause 3.
- (g) **Hire End Date** means in respect of a hire the date specified in the relevant Hire Schedule. If no date is specified the hire continues until terminated in accordance with this Agreement.
- (h) **Hire Period** means a period commencing on the Hire Start Date and expiring on the Hire End Date.
- (i) **Hire Schedule** means a schedule which the Owner may require the Hirer to sign to hire particular Equipment and which includes particulars of the Equipment, the Hire Period for a hire and such other information as the Owner may decide to require. An indicative form of schedule is attached in Annexure "C" to this Agreement.
- (j) **Hire Start Date** means in respect of a hire the date specified in the relevant Hire Schedule.
- (k) **Hirer** means the person identified as the Hirer in the Agreement Details and includes, its successors, permitted assigns, employees, agents and any person claiming through, under or in trust for such person.
- (l) **Equipment** means the goods hired to the Hirer under this Agreement which may include:
 - (i) equipment including but not limited to access equipment; air and air compression equipment; compaction equipment; concrete & masonry equipment; earthmoving equipment ; floor & cleaning equipment, generators and power distribution equipment; ground and shoring equipment; ladders & scaffolding; propping; lighting; materials handling equipment; offshore pumps & fluid management equipment; safety equipment; site accommodation including portable buildings and portable toilets; tools & similar goods; traffic management equipment including road barriers; trucks, vehicles & trailers; welding equipment; any other goods hired under or in respect of any security interest; and any related goods including parts and accessories for the foregoing; and
 - (ii) vehicles and their associated parts, accessories and equipment, including but not limited to, motor vehicles and trailers and including access vehicles; air and air compression vehicles; compaction vehicles; earthmoving vehicles; generators and power distribution vehicles; lighting vehicles; materials handling vehicles; offshore vehicles; pumps & fluid management vehicles; traffic management & road barrier vehicles.
- (m) **Maintenance Planner** means Annexure "A" to this Agreement.

- (n) **Off Hired** means the Hirer advises the Owner that the Equipment is no longer required and the Owner issues the Hirer with an Off-Hire number in accordance with clause 9.3.
- (o) **Prestart** means a review of the Equipment to ensure its safety and functionality for use and that all systems operate as intended, and includes the completion of a Prestart checklist/Plant Maintenance Report that shall be provided by the Owner, in respect of each piece of Equipment.
- (p) **PPS Law** means the Personal Property Securities Act 2009 (Cth).
- (q) **Weed and Seed Equipment** means equipment that requires special cleaning for the purpose of complying with an industry standard.

2. Hire

- 2.1 The Owner agrees to hire Equipment to the Hirer under this Agreement. The Hirer must complete and sign a Hire Schedule and such other documents as the Owner may require. Each Hire Schedule is not a separate contract but forms a part of this hire Agreement between the Owner and the Hirer, together with any Owner approved Credit Application, facility applications, guarantee or other contractual documents. The Owner may decline to hire Equipment in its discretion.
- 2.2 A Hire Schedule may contain further details of matters in respect of the hire. If so those apply as part of this Agreement. If there is any inconsistency between the Hire Schedule and this Agreement the terms of the Hire Schedule will prevail to the extent of the inconsistency.

3. Billing and Payment

- 3.1 Unless otherwise agreed, Hire Charges will commence from the time the Equipment leaves the Owner's premises on the Hire Start Date (if collected by the Hirer) or from the time it arrives at the destination the Hirer specified (if delivered by the Owner) until expiration termination of the hire in accordance with clause 9. Hire Charges start to accrue if the Hirer fails for any reason to collect the Equipment at the agreed time.
- 3.2 Hire Charges will be based on the minimum hours per month or the minimum hours per day and the minimum days per week, as specified in the relevant Hire Schedule. If the Equipment is used in excess of the specified hours, an additional hiring charge will be applied.
- 3.3 Hire Charges will apply on public holidays, irrespective of whether or not the Equipment is being used.
- 3.4 If the Equipment Hire Charges are based on the minimum hours per day and the minimum days per week, the Hirer may stand down the Equipment for up to six days per month of hire. The first day will be free of charge, the remainder five days will be charged at fifty percent of the minimum hours per day. The Hirer may not stand down water trucks. If the Equipment Hire Charges are based on the minimum hours per month, the Hirer is not entitled to stand down the Equipment. The Hirer may not stand down the Equipment in the event of severe weather.
- 3.5 In the event that the Equipment breaks down or is Off Hired, the Hirer must notify the Owner immediately. The Hirer must notify the Owner prior to 9.00am on the day the Equipment is Off Hired, to avoid incurring the minimum hours per day charge. The minimum hours per month charge will be prorated for Equipment that breaks down or is Off Hired.
- 3.6 If the Equipment is found to be operating on a day that was notified by the Hirer as broken-down, Off Hired or stand down, hiring charges will apply. The Owner has installed an electronic tracking system to monitor daily the Equipment usage, please refer to clause 6.2.
- 3.7 The Hirer must specify, prior to the commencement of hire, the days of the week the Equipment will be in use. Should the Hirer wish to use the Equipment on a day other than those specified, they must notify the Owner at least 24 hours prior. Failure to do so will result in additional hiring charges. The minimum hours per day charge will apply to the additional or varied day of hire as otherwise provided by this Agreement.
- 3.8 The Hirer must identify in writing the specifications of the Equipment they are hiring. In the event that the Hirer incorrectly orders the Equipment and requires a replacement of that Equipment, the Owner will charge the Hirer a replacement fee as determined by the Owner from time to time and the minimum hours per day charge or prorated minimum hours per months charge for the time taken to deliver the incorrectly ordered Equipment to the Owner.

- 3.9 The rate of Hire Charge will be as specified by the Owner from time to time and may be varied by the Owner at its sole discretion. Variations will apply from the time of notification to the Hirer.
- 3.10 If the Hirer is responsible for wear and tear of the tyres and/or the Ground Engaging Tools (GET), the Owner may charge the Hirer a repair or replacement fee, proportionate to the Hirer's usage, as determined by the Owner from time to time.
- 3.11 Weed and Seed Equipment hires must be hired by the Hirer of minimum of 5 days. The Hirer cannot stand down the Equipment during the 5 days. In the event that the Hirer Off Hires the machine prior to the end of the 5 days, the Owner will still charge the Hirer for the 5 days of hire. It is the Hirer's responsibility to check that Equipment meets any applicable standard for Weed and Seed Equipment.
- 3.12 The Hirer will pay a deposit if required by the Owner which will be forfeited to the Owner if the Hirer breaches this Agreement. Forfeiture will not affect any other rights of the Owner under this Agreement.
- 3.13 In addition to the charges specified by the Owner, the Hirer will pay to the Owner the amounts of any tax, levy, charge or other expense paid or payable by the Owner to any government authority in respect of the use of the Equipment, together with the Owner's standard delivery and/or collection charges from time to time together with any expenses incurred by the Owner as a result of a breach by the Hirer of its obligations pursuant to this Agreement (including legal costs on an indemnity basis).
- 3.14 The Hirer agrees to pay the Owner's hire and other charges at the times and in the manner specified by the Owner or, if not specified within seven days of the date of the relevant invoice without set-off or demand. The Owner may at its option render invoices to the Hirer at the commencement or completion of the hire period or periodically throughout the hire period.
- 3.15 Where any amount becomes overdue all unpaid amounts will immediately become due and payable by the Hirer to the Owner.
- 3.16 The Owner may charge interest on all amounts not paid by the Hirer by the due date at the rate of 1% per annum plus the Bankwest's commercial overdraft interest rate on accommodation in excess of \$100,000, calculated on a daily basis from and including the due date to the actual receipt of payment. If that rate is not readily ascertainable the Owner may apply what the Owner reasonably considers to be an equivalent rate. The rate applies whether or not the Owner notifies it to the Hirer. A certificate signed by the manager of the Owner's bank will be conclusive evidence of the rate charged by the bank to the Owner for the overdraft accommodation during the period of default.
- 3.17 Where in any Hire Schedule the Owner has agreed to give a discount on Hire Charges to the Hirer, then if the Hirer does not pay the total amount of the tax invoice (as discounted) with GST and duty within the payment period identified in the Hire Schedule, then the discount is forfeited by the Hirer and the Owner has the right to reissue a replacement tax invoice to the Hirer for the full Hire Charge plus GST and any duty without any discount. This will apply not only to the Equipment but also to all additional Equipment which the Hirer may require after the initial Hire Schedule has been accepted, with the intent that should such additional Equipment not be paid for within the time stated in the Hire Schedule (for that Equipment) such non-payment in respect of the additional Equipment will cause the Hirer to lose the right to the discount in respect of all Equipment.
- 3.18 The Owner reserves the right to change the Hire Charges and to add additional amounts to the Hire Charges either by way of a replacement tax invoice or otherwise to the Hirer in circumstances where there is a change in the Owner's costs due to changes in statutory, government, local government charges, taxes, levies etcetera which are outside the control of the Owner. Payment for any increase in costs changing the Hire Charges are payable on the payment day that is stated in the Hire Schedule or if that is not applicable within thirty (30) days of the issuance of any tax invoice or replacement tax invoice containing those further increased costs.
- 3.19 No allowance has been made in the price for the deduction of retentions. In the event that retentions are made the Owner reserves the right to treat all retentions as placing the Hirer's account into default.
- 3.20 If the Owner approves a Credit Application, the Owner can, in their absolute discretion, place a limit on the credit available to the Hirer at any stage. Should such limit be reached, the Owner has the right to cease any

Equipment hire without notice until the Hirer brings its account within credit limits and complies with its obligations for timing of payment in this Agreement.

4. Property

- 4.1 Ownership of the Equipment will at all times remain with the Owner.
- 4.2 No person will be entitled to use, dispose of or otherwise deal with the Equipment in any way which is inconsistent with the Owner's rights or these conditions.
- 4.3 Neither payment of compensation nor any other circumstance or event will amount to, constitute or result in any transfer of property or interest in the Equipment from the Owner.
- 4.4 This Agreement is personal to the Hirer and the Hirer will not:
- (a) Assign or sub-contract its rights and obligations;
 - (b) Sell or offer for sale, assign, mortgage, pledge, lend or otherwise part with possession of the Equipment;
 - (c) Allow any other person to use or have possession of the Equipment; or
 - (d) Allow any lien to be levied upon the Equipment whether for repairs or otherwise, without the prior written consent of the Owner, which may be withheld at the Owner's absolute discretion.
- 4.5 The Hirer acknowledges that the Owner may inspect the Equipment at any time during the period of hire, whether notice of such inspection is given to the Hirer or not, and the Hirer shall provide to the Owner all assistance and co-operation necessary to facilitate such inspection of the Equipment. The Hirer shall indemnify the Owner in relation to any action for trespass in the course of the Owner reasonably exercising its right to inspect the Equipment.
- 4.6 The Hirer will protect the Equipment against execution or seizure and will indemnify the Owner against all resultant losses (including any consequential losses), costs, charges, damages and expenses (including any legal costs on an indemnity basis) incurred by the Owner as a result of a breach of clause 4 by the Hirer.
- 4.7 The Hirer will maintain the Equipment on a daily basis in compliance with the requirement of the Owner.
- 4.8 The Owner may assign or sub-contract its rights and obligations under this Agreement without notice to the Hirer.
- 4.9 The Hirer agrees to notify the Owner in writing of any changes in its details set out in the Credit Application, within five (5) days of the date of any such change.

5. Loss of or damage to Equipment

- 5.1 If the Equipment is lost, breaks down or is damaged, the Hirer must immediately notify the Owner of the details. Notification shall not absolve the Hirer from its obligations under this Agreement to safeguard the Equipment.
- 5.2 In the event that the Equipment breaks down or becomes unsafe to use, the Hirer shall:
- (a) Immediately stop using the Equipment;
 - (b) Take all steps necessary to prevent the Equipment from sustaining any further damage;
 - (c) Take all steps necessary to prevent injuries from occurring to any person or property as a result of the condition of the Equipment; and
 - (d) Not repair or attempt to repair the Equipment without the Owner's prior written consent.
- 5.3 The Owner shall endeavour to repair the Equipment or provide substitute Equipment (if available to the Owner) as soon as is reasonably practicable in the circumstances after receipt of a request from the Hirer.
- 5.4 If the Equipment is lost or damaged, and the loss of or damage to the Equipment is caused by the negligence of the Hirer or the breach of any term of this Agreement by the Hirer, the Hirer shall be liable for the following:
- (a) Any costs incurred by the Owner in repairing or replacing the Equipment;
 - (b) Hire charges for the Equipment until the Equipment is repaired or replaced; and

- (c) Any other costs whatsoever incurred by the Owner as a result of the damage to or loss of the Equipment.

5.5 If the Owner is required by any relevant authority, is requested by the Hirer, or elects in its unfettered discretion to salvage the Equipment, than all salvage costs shall be payable by the Hirer.

6. The Hirer's obligations

6.1 The Hirer will:

- (a) pay all Hire Charges together with any other charges or amounts that may become due and payable to the Owner under the terms of this Agreement;
- (b) upon delivery or collection of the Equipment immediately examine the Equipment to satisfy itself as to its condition and suitability and fitness for the purpose to which it requires the Equipment. In accepting the Equipment the Hirer acknowledges that it has not in any way relied upon the skill or judgement of any representations made by or on behalf of the Owner in respect of the Equipment, its purpose, use or performance;
- (c) use the Equipment in a skilful, proper, safe and prudent manner and only for the purpose and within the capacity for which it was designed;
- (d) notify the Owner of any breakdown, stand down and Off Hire;
- (e) perform service and maintenance routines for the Equipment as per the Maintenance Planner;
- (f) ensure that the Equipment is operated by a suitably licensed, qualified, trained, experienced and (if necessary) certified operator. If the Owner supplies an operator to operate the Equipment the operator shall be under the sole direction and control of the Hirer and for the purpose of this Agreement shall be deemed to be the employee of the Hirer. The Hirer shall be responsible for any claims whatsoever arising in connection with the operation of the Equipment by such an operator or any third party and, if an operator is provided by the Owner, the Hirer shall not allow any other person to operate the Equipment without the Owner's prior written consent;
- (g) at its own expense, clean, fuel, lubricate and keep and maintain Equipment in good condition and repair failing which the Hirer will reimburse the Owner for any costs, claims, loss, damage or expenses (including legal expenses on an indemnity basis) incurred by the Owner;
- (h) repair or replace at its own cost any flat and/or damaged tyres;
- (i) clean the Equipment thoroughly on the expiry of the hire period. If the Hirer fails to clean the Equipment properly in the Owner's opinion then the Owner may undertake the cleaning and the Hirer shall be liable for a cleaning charge;
- (j) ensure that the Equipment is stored safely, securely and protected from theft;
- (k) not alter, make additions to, deface or erase any identifying mark, plate, trademark writing or number on or in the Equipment or interfere with or modify the Equipment in any other manner;
- (l) be liable for the cost of freight to retrieve Equipment that has been abandoned for any reason;
- (m) comply at its own expense with all local authority, State and Federal laws, ordinances and regulations including in particular any occupational health and safety laws which may affect the Equipment while it is in the possession of or being used by the Hirer;
- (n) not without prior written consent of the Owner keep or store in the Equipment or on or near any of the Equipment any volatile spirits or explosive goods or goods that are or may become dangerous, corrosive, highly combustible, offensive (including radioactive materials) or likely to encourage any vermin or pests. Any such goods stored in or near the Equipment may at any time be destroyed, disposed of, abandoned or rendered harmless by the Owner without compensation to the Hirer and without effecting the Owner's rights under this Agreement. The Hirer authorises the Owner to have unrestricted access to the Equipment for the purpose of exercising the Owner's rights under this clause;
- (o) supply the operator of the Equipment with all necessary manuals and instructions (both written and oral) necessary for the safe use of the Equipment and the appropriate safety clothing;

- (p) must notify the Owner if they intend to use a hydraulic attachment that has not been supplied by the Owner. The Hirer may be charged an hourly rate for attachment usage as determined by the Owner;
- (q) return the Equipment at the end of the hire period with a full tank of fuel; and
- (r) ensure an Equipment Prestart is conducted daily and that a Prestart checklist / Plant Maintenance Report is maintained and the top copy (white) is provided to the Owner on the last business day of each month, and at the end of each Hire Period. The bottom copy (blue) should remain in the Booklet.

7. Release and Indemnity

- 7.1 The Hirer released the Owner from and is liable for and indemnifies the Owner against all liability, claims, damage, loss, costs and expenses (including without limitation legal fees, costs and disbursements on a full indemnity basis) whether incurred or awarded against the Owner in respect of:
- (a) personal injury; and
 - (b) damage to property;
 - (c) a claim by a third party,
- arising directly or indirectly out of the Hirer's breach of this Agreement or the hire or use of the Equipment by the Hirer, whether caused by the negligence of the Owner, the Hirer or any other person, or the breakdown, failure, operation, misdelivery or non-delivery of the Equipment..
- 7.2 Each indemnity in this Hire Agreement is a continuing obligation separate and independent from other obligations of the parties insofar as determination, completion and expiration of this Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Agreement.
- 7.3 The Owner will not be liable to the Hirer for any acts or omissions of any person supplied by the Owner where that person is acting under the Hirer's direction and control during the Hire Period, and the Hirer indemnifies the Owner against all liability, claims, damage, loss, costs and expenses including without limitation legal fees, costs and disbursements (on a full indemnity basis) arising from or incurred in connection with any such acts or omissions.

8. Theft and damage waiver

- 8.1 The Hirer acknowledges that the Hire Charges include a damage waiver of 10%. The Owner agrees to waive its rights to claim from the Hirer the sum of money in excess of an amount (being the greater of \$1000 and a specified proportion of the up to date list price from time to time of the Equipment) in respect of any loss, destruction of or damage to Equipment which is caused by fire, storm, earthquake, collision, accident, theft or burglary. The specified proportion is 10% unless otherwise specified. Notwithstanding anything in this clause 8, the Hirer is responsible for and indemnifies the Owner against payment of any excess (in respect of the Equipment) under the Owner's insurance policy, payable as a result of any loss, destruction of or damage to Equipment which is caused by fire, storm, earthquake, collision, accident, theft or burglary
- 8.2 This waiver only applies provided that in the case of theft or burglary the Hirer has supplied to the Owner satisfactory evidence that:
- (a) the Hirer has promptly reported the theft or burglary to the police; and
 - (b) the Hirer has taken adequate and reasonable precautions to protect the Equipment against theft or burglary. As a minimum, the Hirer must keep the Equipment in a safe secure locked private compound when not in use.
- 8.3 In addition the theft and damage waiver contained in clause 8.1 will not apply to loss of or damage to the Equipment in the following circumstances:
- (a) loss or damage resulting from overloading, exceeding rated capacity, failure to maintain, misuse, abuse or improper servicing of the Equipment;
 - (b) loss or damage due to mysterious disappearance of the Equipment;

- (c) loss or damage caused by misappropriation or wrongful conversion of the Equipment by the Hirer;
- (d) loss or damage by the operation of the Equipment in contravention of any of these conditions;
- (e) loss or damage caused by the use or operation of the Equipment in violation of any law, regulation or by-law.
- (f) damage to tyres;
- (g) glass breakage;
- (h) loss or damage occurring whilst the Equipment is being carried over water;
- (i) damage to equipment during transit or while the goods are being loaded or unloaded from any vehicle;
- (j) loss or damage to accessories, grease guns, hoses and similar;
- (k) damage caused by exposure to any corrosive substance, including and hazardous, caustic or toxic materials, cyanide, salt water or acid;
- (l) loss or damage relating to lack of lubrication or other normal servicing of the Equipment;
- (m) loss or damage to the Equipment whilst located, used, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
- (n) loss or damage to the Equipment whilst being used for harvesting, logging, forestry or rail work.
- (o) loss or damage to motors or other electrical appliances or devices caused by overloading or artificial electrical current, including use of underrated or excessive length of extension leads on electrical powered tools and machine;
- (p) theft of the Equipment unless reasonably locked and secured;
- (q) loss or damage during transport, except where transported by Owner;
- (r) loss or damage to items on which the damage waiver for hired plant premium is not charged; or
- (s) loss or damage caused by the negligence of the Hirer.

8.4 The Hirer acknowledges that nothing in this clause derogates from the Hirer's obligations contained in clause 6.

9. Termination of Hire

9.1 The Owner may at any time and in its unfettered discretion terminate the hire of the Equipment to the Hirer where upon the Hirer shall immediately attend to any of the obligations remaining under this Agreement and make the Equipment available for collection.

9.2 The Hirer may terminate the hire of the Equipment by:

- (a) delivering the Equipment to the Owner at a time acceptable to the Owner during normal working hours; or
- (b) notifying the Owner that the Equipment is ready for collection.

9.3 When the Hirer, wants to Off Hire Equipment, the Hirer must obtain an "Off Hire" number, failing which the Hirer will not be deemed to have notified the Owner that the Equipment is ready for collection and the Hire will incur charges until this number has been obtained.

9.4 Subject only to clause 5.5 if the Equipment is returned to or collected by the Owner in a state which the Owner (acting reasonably) deems unsatisfactory, or in breach of the terms of this Agreement, then the hire period will be deemed to continue until the Equipment is in a state which is satisfactory to the Owner, or any breach of this Agreement has been remedied (whichever is the later). The Owner undertakes to take all reasonable steps to put the Equipment into a satisfactory state as soon as is reasonably possible after the return or collection of the Equipment.

9.5 Upon termination of hire, the Owner is entitled to take possession of the Equipment and for this purpose the Hirer irrevocably appoints the Owner as his agent and authorises and licences the Owner to:

- (a) enter upon any land or premises upon which the Equipment is situated or where the Owner has any reason to believe that the Equipment may be situated;

(b) disconnect, dismantle and remove the Equipment whether or not it is affixed to the land or the premises, connected to property or equipment not owned by the Owner, in use by the Hirer or any other person or containing property not owned by the Owner.

9.6 The Hirer releases the Owner from and indemnifies the Owner against any claims arising from removal and collection of the Equipment in accordance with this clause. Should the Equipment contain any property not owned by the Owner, the Owner shall store that property for a period of 14 days from the termination of hire. The Owner may charge the Hirer reasonable storage fees for the storage of that property. Should the property not be collected at the expiration of 14 days after the termination of the hire of the Equipment the Owner may sell the property and the Hirer releases the Owner from and indemnifies the Owner against any claims which any person may have directly or indirectly arising from the sale of the property or whether through negligence, sale at under value, sale of property owned by a third party or howsoever.

9.7 After termination of hire, and until the Equipment has been collected by the Owner, the Equipment shall remain at the sole risk of the Hirer, and the Hirer will indemnify the Owner in respect of any loss of or damage to the Equipment those circumstances and where an Off Hire number has been obtained but the Owner has not collected the Equipment.

9.8 If the hire is prematurely terminated, the Owner may apply hiring charges from the day the Equipment is prematurely Off Hired until the end of the hire term as indicated in the Hire Schedule.

10. Insurance

10.1 Notwithstanding the damage waiver in clause 8, the Hirer will maintain at its own expense all appropriate policies of insurance:

(a) for all damage to or arising out of the hire of the Equipment in an amount not less than the full new replacement cost of the Equipment howsoever occurring, to the extent the loss or damage is not covered by the waiver in clause 8; and

(b) for all third party and public liability risks in respect of the hire or use of the Equipment by the hirer for not less than \$10 million for any one occurrence.

10.2 The Hirer must ensure that the Owner is noted as an interested party on the insurance policy and a copy of the insurance policy must be provided to the Owner at the commencement of the Hire Period and within 24 hours of any written request to produce same by the Owner during the Hire Period.

11. PPS Law

11.1 This clause applies to the extent that the Owner's interest in respect of a hire provided for in this Agreement is a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) (PPS Law"). References to PPS Law in this Agreement include references to amended, replacement and successor provisions or legislation.

11.2 The Owner may register any actual impending or likely security interest. The Hirer may not make any Claim against the Owner in respect of any registration even if it is determined that the Owner should not have registered a security interest. The Hirer must do anything (such as obtaining consents and signing documents) which the Owner requires for the purposes of:

(a) ensuring that the Owner's security interest is enforceable, perfected and otherwise effective under the PPS Law;

(b) enabling the Owner to gain first priority (or any other priority agreed to by the Owner in writing) for its security interest; and

(c) enabling the Owner to exercise rights in connection with the security interest.

11.3 The rights of the Owner under this document are in addition to and not in substitution for the Owner's rights under other law (including the PPS Law) and the Owner may choose whether to exercise rights under this document, and/or under such other law, as it sees fit. To avoid any doubt about it the Owner's security interest will attach to proceeds.

11.4 To the extent that Chapter 4 of PPSA applies to any security interest under this Agreement, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted

out” of this Agreement in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires the Owner to give a notice to the Hirer); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 121(4) (notice of grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires the Owner to give a notice to the Hirer); section 129(2) and 129(3); section 132(3)(d)(contents of statement of account after disposal); section 132(4)(statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re-instatement of security Agreement).

- 11.5 The following provisions of the PPS Law; section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral) may, if applicable, confer rights on the Owner. The Hirer agrees that in addition to those rights, the Owner shall, if there is default by the Hirer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the Hirer agrees that the Owner may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 11.6 The Hirer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law. This waiver also extends to any verification statement in respect of security interests arising or provided for under security Agreements prior to the date of this Agreement.
- 11.7 The Owner and the Hirer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Hirer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The Agreement in this sub-clause is made solely for the purpose of allowing to the Owner the benefit of section 275(6)(a) and the Owner shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this sub-clause.
- 11.8 The Hirer must not dispose or purport to dispose of, or create or purport to create or permit to be created any ‘security interest’ (as defined in PPS Law) in the Equipment other than with the express written consent of the Owner. The Hirer must not lease, hire, bail or give possession (‘sub-hire’) of the Equipment to anyone else unless the Owner (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to the Owner and must be expressed to be subject to the rights of the Owner under this Agreement. The Hirer may not vary a sub-hire without the prior written consent of the Owner (which may be withheld in its absolute discretion).
- 11.9 The Hirer must ensure that the Owner is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment.
- 11.10 The Hirer must take all steps including registration under PPS Law as may be required to:
- (a) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
 - (b) enabling the Hirer to gain (subject always to the rights of the Owner) first priority (or any other priority agreed to by the Owner in writing) for the security interest; and
 - (c) enabling the Owner and the Hirer to exercise their respective rights in connection with the security interest.
- 11.11 To assure performance of its obligations under this Agreement, the Hirer hereby gives the Owner an irrevocable power of attorney to do anything the Owner considers the Hirer should do under this Agreement. The Owner may recover from the Hirer the cost of doing anything under this clause, including registration fees.
- 12. Sub-Hire or Cross-Hire**
- 12.1 The Hirer must not under any circumstances sub-hire or cross-hire the Equipment to any person or entity without the prior written consent of the Owner.

12.2 The Owner may assign this Hire Agreement to any third party without the Hirer's consent.

13. Force Majeure

13.1 Neither party will be responsible for any delays in delivery due to causes beyond their control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, rights embargos, orders or regulations of government of any relevant jurisdiction, fires, floods, strikes, lock outs or other latent difficulties, shortage of or an inability to obtain shipping space or land transportation.

13.2 Nothing in clause 13.1 will limit or exclude the Hirer's responsibility and liability under the Agreement for Equipment that is lost, stolen or damaged beyond fair wear and tear during the Hire Period, or has broken down or become unsafe to use as a result of the Hirer's conduct or negligence.

14. Security and Charge

14.1 In consideration of the Owner agreeing to provide the Equipment, the Hirer charges all of its right, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Hirer either now or in the future, to secure the performance by the Hirer of its obligations under these terms and conditions (including but not limited to the payment of any money).

14.2 The Hirer indemnifies the Owner from and against all the Owner's costs and disbursements including the legal costs on an indemnity basis incurred in exercising the Owner's rights under this clause.

14.3 The Hirer irrevocably appoints the Owner and each director of the Owner as a the Hirer's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause including but not limited to signing any document on the Hirer's behalf.

15. Provisions of this Agreement Excluded From Consumer Contracts and Small Business Contracts

15.1 Where the Hirer:

- (a) is an individual acquiring goods or services wholly or predominantly for personal, domestic or household use or consumption; or
- (b) is a small business and the upfront price payable under the Hire Agreement is:
 - (i) no more than \$300,000; or
 - (ii) \$1,000,000 if the Hire Agreement is for more than twelve (12) months

(or such other amount as prescribed by the ACL), the following provisions of this Agreement will not apply for the purposes of this Agreement:-

- (c) Clause 9.1 - Immediate termination;
- (d) Clause 12.2 - Assignment; and
- (e) Clause 14 - Security charge.

16. Warranties

16.1 Except where otherwise provided by this Agreement, the Owner gives no warranty express or implied in respect of the Equipment, its fitness for purpose or the condition thereof.

16.2 All warranties implied by the Competition and Consumer Act 2010 (Cth) and any other Statutes (if any) that can be expressly excluded are hereby expressly excluded.

16.3 Where permitted by statute, the Owner's liability for breach of any warranty is limited to:

- (a) The supply to the Hirer of substituted equivalent equipment; or
- (b) The payment of the costs of supplying to the Hirer substituted equivalent equipment; or
- (c) The repayment to the Hirer of the Hire Charges,

and such warranties are otherwise negated absolutely.

16.4 Notwithstanding clauses 16.1 to 16.3 but subject to the *Competition and Consumer Act 2010* (Cth) the Owner shall not be liable for any non-performance of the Equipment which may be caused or partly caused by or arise as a result of:

- (a) the Hirer failing to properly maintain or store the Equipment;

- (b) the Hirer using the Equipment for any purpose other than that for which it was designed;
- (c) the Hirer continuing to use the Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) interference with the Equipment by the Hirer or any third party without the Owner's prior approval;
- (e) the Hirer failing to follow any instructions or guidelines provided by the Owner;
- (f) fair wear and tear, any accident, or act of God.

17. Miscellaneous

- 17.1 This Agreement replaces and supersedes all other terms and conditions of hire, previously in force between the Owner and the Hirer and no variation of these conditions will bind either party unless confirmed by the Owner in writing.
- 17.2 The Owner may from time to time give notice to the Hirer amending any provision in this Agreement. However the variation will not take effect in respect of any hire that has commenced before the notice is given to the Hirer.
- 17.3 Any notice or invoice which by this Agreement may be served or rendered by the Owner may be served or rendered by leaving it at or posting it to the address or email address of the Hirer as stated in this Agreement or last notified in writing by the Hirer to the Owner and will be deemed to have been served or rendered at the time of leaving or, if posted, on the business day following the day of postage and any notice may be signed by a manager, director or solicitor of the Owner on behalf of the Owner.
- 17.4 The person signing this Agreement for and on behalf of the Hirer agrees with the Owner that he or she has the authority of the Hirer to make this Agreement on the Hirer's behalf and is empowered by the Hirer to bind the Hirer to this Agreement and hereby indemnifies the Owner against all losses and costs incurred by the Owner arising out of the person signing this Agreement failing to have such power and/or authority.
- 17.5 If this Agreement or any part of it becomes void or unenforceable for any reason then that part will be severed from this Agreement to the intent that all parts that do not become void or unenforceable will remain in full force and effect and be unaffected by any severance of other parts.
- 17.6 The rights and obligations of the Hirer and the Owner will continue and not be affected by termination of the Hirer of the Equipment. Termination of the hire of the Equipment will be without prejudice to any action already given to the Hirer or Owner in respect of any breach of this Agreement by the other party.
- 17.7 Subject to clause 17.1, the parties acknowledge that this Agreement contains the entire Agreement concluded between the parties notwithstanding any prior or subsequent negotiations or discussions or representations. Any such conditions, warranties or representations are hereby expressly excluded.
- 17.8 Time is to be of the essence of all obligations of the Hirer in this Agreement.
- 17.9 Failure by the Owner to insist upon strict performance of any terms contained herein, or to exercise in whole or in part any right that it may have under this Agreement at law, shall not be a waiver of any rights that the Owner may have and shall not be deemed a waiver of any rights that the Owner may have and shall not be deemed a waiver of any subsequent breach of any term in this Agreement.
- 17.10 A statement in writing made up from the books of the Owner and signed by any director, secretary or credit manager of the Owner of the amount owing by the Hirer as at the date mentioned in that statement will be prima facie evidence that the amount is due and owing without it being necessary to produce any books or vouchers to verify the same.
- 17.11 Any credit accommodation granted may be withdrawn at any time for any reason without notice.
- 17.12 The Agreement is governed by the laws of Queensland and each party submits to the non-exclusive jurisdiction of the Courts of the State of Queensland irrespective of where proceedings arise in connection with the Agreement.

18. PRIVACY ACT 1988

- 18.1 This clause 18 applies only if a Credit Application is made by the Hirer.

- 18.2 The Hirer agrees for the Owner to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Hirer in relation to credit provided by the Owner.
- 18.3 The Hirer agrees that the Owner may exchange information about the Hirer with those credit providers and with related body corporates for the following purposes:
- (a) to assess any Credit Application by the Hirer; and/or
 - (b) to notify other credit providers of a default by the Hirer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Hirer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Hirer including the Hirer's repayment history in the preceding two (2) years.
- 18.4 The Hirer consents to the Owner being given a consumer credit report to collect overdue payment on commercial credit.
- 18.5 The Hirer agrees that personal credit information provided may be used and retained by the Owner for the following purposes (and for other agreed purposes or required by):
- (a) analysing, verifying and/or checking the Hirer's credit, payment and/or status in relation to the provision of Equipment; and/or
 - (b) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Hirer; and/or
 - (c) enabling the collection of amounts outstanding in relation to the Agreement.
- 18.6 The Owner may give information about the Hirer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Hirer including credit history.
- 18.7 The information given to the CRB may include:
- (a) personal information as outlined in 18.1 above;
 - (b) name of the credit provider and that the Owner is a current credit provider to the Hirer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Hirer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Hirer no longer has any overdue accounts and the Owner has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of the Owner, the Hirer has committed a serious credit infringement;
 - (h) advice that the amount of the Hirer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 18.8 The Hirer shall have the right to request (by e-mail) from the Owner:
- (a) a copy of the information about the Hirer retained by the Owner and the right to request that the Owner correct any incorrect information; and
 - (b) that the Owner does not disclose any personal information about the Hirer for the purpose of direct marketing.

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- 18.9 The Owner will destroy personal information upon the Hirer's request (by e-mail) if it is no longer required unless it is required in order to fulfil the obligations of this Agreement or is required to be maintained and/or stored in accordance with the law.
- 18.10 The Hirer can make a privacy complaint by contacting the Owner via e-mail. The Owner will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Hirer is not satisfied with the resolution provided, the Hirer can make a complaint to the Information Commissioner at www.oaic.gov.au.

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Annexure A - Maintenance Planner

Annexure B - Credit Application

**APPLICATION FOR CREDIT ACCOUNT
COMPANY / TRUST**

Hirer Trading As:.....
Address: Phone No: Fax No:
..... Established since:
Email: ACN:
No of Directors: ABN:
Estimated Monthly Credit Limit Required: \$ Bank:
Branch:

DIRECTORS

1. Surname: 2. Surname:
Given Names: Given Names:
Driver's Licence No: Driver's Licence No:
Residential Address: Residential Address:
.....
3. Surname: 4. Surname:
Given Names: Given Names:
Driver's Licence No: Driver's Licence No:
Residential Address: Residential Address:
.....

FOUR BUSINESS REFERENCES

1. Name: 2. Name:
Phone No: Phone No:
3. Name: 4. Name:
Phone No: Phone No:

The Hirer requests the Owner to approve this application for credit account to hire Equipment from time to time on a credit account at the Owner's absolute discretion. The Hirer agrees that upon acceptance of this application by the Owner the Hirer will be bound by the terms and conditions which apply to all transactions and dealings between the Hirer and the Owner. The Hirer acknowledges receipt of a copy of the terms and conditions and has read and understood them. A larger print version of the terms and conditions for hire of goods is available from the Owner on request. I confirm that the information provided by the Hirer and Guarantors is correct. I agree that if this application for credit account is approved by the Owner, the Hirer and Guarantors will be bound by and observe all the terms and conditions.

**APPLICATION FOR CREDIT ACCOUNT
PARTNER / SOLE TRADER**

Hirer: Trading As:.....
Address: Phone No: Fax No:
..... Established since:
..... ACN:
Email: ABN:
Sole Trader () Partnership () Bank:
No of Partners..... Branch:
Estimated Monthly Credit Limit Required: \$

PARTNERS

1. Surname: 2. Surname:
Given Names: Given Names:
Driver's Licence No: Driver's Licence No:
Residential Address: Residential Address:
.....
3. Surname: 4. Surname:
Given Names: Given Names:
Driver's Licence No: Driver's Licence No:
Residential Address: Residential Address:
.....

FOUR BUSINESS REFERENCES

1. Name: 2. Name:
Phone No: Phone No:
3. Name: 4. Name:
Phone No: Phone No:

The Hirer requests the Owner to approve this application for credit account to hire Equipment from time to time on a credit account at the Owner's absolute discretion. The Hirer agrees that upon acceptance of this application by the Owner the Hirer will be bound by the terms and conditions which apply to all transactions and dealings between the Hirer and the Owner. The Hirer acknowledges receipt of a copy of the terms and conditions and has read and understood them. A larger print version of the terms and conditions for hire of goods is available from the Owner on request. I confirm that the information provided by the Hirer and Guarantors is correct. I agree that if this application for credit account is approved by the Owner, the Hirer and Guarantors will be bound by and observe all the terms and conditions.



SHORE (QLD) PTY LTD
 PLUMBING & DRAINAGE SERVICES
 QBCC: 1144528 NSW Lic: 237099e

ABN: 30 130 731 832

ACN: 130 731 832

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Tel: 07 5576 2028 / Mob: 0450 398 986

SIGNED BY THE PARTNER/SOLE TRADER
..... (Signature)
FULL NAME:
who certifies that he/she is duly authorised to sign this application on behalf of the Hirer.
Signature of Witness:
Full Name of Witness:
Date:.....

SIGNED BY THE PARTNER
..... (Signature)
FULL NAME:
who certifies that he/she is duly authorised to sign this application on behalf of the Hirer.
Signature of Witness:
Full Name of Witness:
Date:.....



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SIGNED BY THE PARTNER
..... (Signature)
FULL NAME:
who certifies that he/she is duly authorised to sign this application on behalf of the Hirer.
Signature of Witness:
Full Name of Witness:
Date:.....

SIGNED BY AUTHORISED OFFICER
..... (Signature)
FULL NAME:
who certifies that he/she is duly authorised to sign this application on behalf of the Hirer.
Signature of Witness:
Full Name of Witness:
Date:.....



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Guarantee and Indemnity

1. The Guarantors agree that if this Credit Application is approved by the Owner, the Guarantors will be bound by and observe all the terms and conditions and this Guarantee and Indemnity.
2. In consideration of the Owner agreeing to supply Equipment and/or services on credit to the Hirer, the Guarantors guarantee to the Owner and indemnify it for the payment to the Owner of all moneys now, or at any time due to the Owner by the Hirer for any Equipment or services on credit and indemnify the Owner for all costs, including legal costs, on a full indemnity basis incurred by the Owner in enforcing payment by the Hirer or enforcing its rights under this Guarantee and Indemnity.
3. This Guarantee and Indemnity is:-
 - a. continuing and is not wholly or partially satisfied by the payment at any time of any sum on account of, or in payment of, any moneys owing by the Hirer to the Owner; and
 - b. not limited and the Owner may grant to the Hirer any extension of credit or time for payment or other indulgence or consideration without affecting or discharging the Guarantors' liability.
4. Each Guarantor charges in favour of the Owner all the Guarantor's estate or interest in any land and in any other assets whether tangible or intangible in which the Guarantor has any legal or beneficial interest or which the Guarantor may later acquire, with the payment of all monies owed by the Hirer or any Guarantor. Each Guarantor will on request by the Owner execute any document requested by the Owner to further secure the liability of each Guarantor.
5. The Guarantors may by one month's notice in writing to the Owner at any time revoke this Guarantee and Indemnity as to all future transactions by the Owner with the Hirer but such notice does not prejudice the Owner's rights against it with respect to any existing indebtedness.
6. Any notice or demand under this Guarantee and Indemnity may be served on the Owner and the Hirer at its respective addresses as shown in the Agreement by prepaid post or other method authorised by law.
7. The Guarantors acknowledge that prior to signing the Credit Application they have read and understood their obligations and liabilities under this Guarantee and Indemnity and agree to be bound by and observe all those terms and conditions.
8. In this Guarantee and Indemnity, words importing the singular shall include the plural and vice versa.
9. Where there shall be more than one guarantor, this Guarantee and Indemnity binds them jointly and each of them severally and is binding even if this Guarantee and Indemnity is not signed by each of them, if any of them dies or becomes incapable or if for any reason any of them ceases being liable under this Guarantee and Indemnity.
10. The Guarantors acknowledge that prior to signing this document a larger printed version of the terms and conditions for Hire was available from the Owner on request.

The Guarantors confirm that the information provided by the Guarantors is correct.

GUARANTORS	
Signed:	Signed:
Full Name:	Full Name:
Residential Address:	Residential Address:
Driver's licence number:	Driver's licence number:
Witness:	Witness:



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Full Name:	Full Name:
Date:	Date:
Signed:	Signed:
Full Name:	Full Name:
Residential Address:	Residential Address:
Driver's licence number:	Driver's licence number:
Witness:	Witness:
Full Name:	Full Name:
Date:	Date:

Annexure C - Hire Schedule Standard Form (Sample only) – refer to Actual Hire Agreement

Plant Particulars			
Plant Type:			
Plant Make:			
Plant Model:			
Rated Capacity (Tonne):			
Registration:			
Attachments included:			
Optional attachments:			
VIN/Serial No.:			
Engine No.:			
Hour Meter Reading at commencement of hire:			
Hour Meter Reading at end of hire:			
Project Particulars			
Job Site - Name & Address			
Commencement Date		Expected Completion Date	
		Actual Completion Date	
Mobilisation by		Demobilisation by	
Plant Origin		Return location	
Responsibilities			
Party responsible for safe storage of plant	Hirer	Party responsible to accommodate Owner's mechanics	Hirer
Party responsible for keeping plant in good working order	Hirer	Party responsible for fair wear and tear on tyres or tracks	Owner
Party responsible for daily service and top up fluids and daily pre-start Plant Maintenance Report (example attached)	Hirer	Party responsible for damage to tyres or tracks	Hirer
Party responsible for completing scheduled servicing	Owner	Party responsible for supply of GET	Hirer
Party responsible for supplying material for scheduled servicing	Owner	Party responsible for fitting of GET	Hirer
Party responsible for scheduled oil sampling and analysis	Owner	Party responsible for cleaning plant at the completion of hire	Hirer
Party responsible for fuel supply	Hirer. Owner will supply machine with a full tank of fuel and must be returned full at end of hire, otherwise charges will apply.		
Hire Rates			
Machinery Hire Rates (minimum one day charge)	includes damage waiver	per hour/week	\$
Attachment Hire Rate (minimum one day charge)	includes damage waiver	per hour/week	\$
Mobilisation rate		Demobilisation Rate	
Payment Terms			



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Executed by the Parties as an Agreement

Signed by Hirer's duly authorised representative:

Signature:

Name:

Date:

Signed by Owner's duly authorised representative:

Signature:

Name:

Date:

SAMPLE