



# CASH ACCOUNT APPLICATION

Please complete all fields and return the original application to Monster Hire for assessment accounts@monsterhire.com.au	Kemshead Pty Ltd ACN 137 217 719 as trustee for the Kemshead Family Trading Trust trading as Monster Hire ( <b>"Monster Hire"</b> )  HEAD OFFICE: 1039 Burncluith Hall Road, CHINCHILLA QLD 4413 Phone: 0428 564 665 ABN: 51 709 608 654
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## REGION OF EQUIPMENT USE

Region of equipment use	
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## CLIENT COMPANY DETAILS

Business Structure (Please Tick)	<input type="checkbox"/> Sole Trader	<input type="checkbox"/> Company	<input type="checkbox"/> Partnership	<input type="checkbox"/> Trust
Legal entity name and ACN/ABN (Full name(s) of individual(s) or company)	Name:		ACN/ABN:	
If a Trust, the legal entity name and ACN/ABN of the trustee (Full name(s) of trustee(s) or trustee company) <b>NB: Please attach a copy of the Trust Deed to this Application</b>	Name:		ACN/ABN:	
If a Trust, the ABN allocated to the Trust	ABN:			
Registered Business Name				
Trading Name				
Business Address			Post code	
Postal Address			Post code	
Phone Number		Fax number		
Contact Email Address <b>NB: Invoices will be emailed unless otherwise specified</b>				
Type of Business				
Number of Years Trading				
Date of Registration				
Affiliated or Parent Companies				

## ACCOUNTS PAYABLE CONTACT

Name of Accounts Payable Contact			
Accounts Payable Phone #		Do you use Purchase Orders?	
Accounts Payable Email Address			



## 2. Privacy

2.1 By signing this Cash Account Application, the Customer consents to and authorises Monster Hire to:

- a) Obtain any information about the Customer's commercial activities and credit history for the purpose of assessing this Cash Account Application;
- b) Investigate the guarantor/s credit worthiness in support of the Cash Account application as provided. Monster Hire will obtain a credit report containing information about the Customer and guarantor/s for the purpose of assessment. The Customer and guarantor/s understand Monster Hire may disclose any information about its credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to disclose under the Privacy Act;
- c) unless otherwise prevented by law) collect from, store, use, disclose to or exchange with any of the parties named in this Credit Application or any guarantors with credit reporting agency, third party providers, solicitors, mercantile agents, insolvency administrator, insurers and insurance brokers, persons involved with the collection of trade bills or the factoring of trade debt, information about the Customer's personal or commercial credit worthiness or business history in order to assess the Cash Account Application (including whether to accept as Guarantor any persons signing), monitor the credit worthiness or withdraw cash facilities, notify of the Customer's default, issue trade bills, insure risk, process and payment instructions, direct debit facilities and or cash facilities requested by the Customer and or Guarantor/s to enable the daily operation of the Customer's Cash Account and collect overdue accounts; and
- d) to the extent permitted by law, to disclose the contents of a credit report by a credit reporting agency to Monster Hire's solicitors or mercantile agents.

2.2 Unless otherwise prevented by law, the Customer consents to the use and storing of any personal information provided for the following purposes and any other purposes as shall be agreed between Monster Hire and the Customer from time to time:

- a) the hire of Equipment and associated services by Monster Hire; and
- b) the marketing of hire services by Monster Hire or associated entities, or contactors.
- c) Monster Hire will deal with the information disclosed to it in accordance with Terms and Conditions of hire and the Australian Privacy Principles, the National Privacy Principles, and with the Privacy Act 1988 (Cth)

### **SIGNATURE OF CUSTOMER:**

1. Signature \_\_\_\_\_ Date \_\_\_\_\_  
Print name \_\_\_\_\_ Position \_\_\_\_\_
  
2. Signature \_\_\_\_\_ Date \_\_\_\_\_  
Print name \_\_\_\_\_ Position \_\_\_\_\_



## GUARANTEE AND INDEMNITY

In consideration of Monster Skid Steer & Attachment Hire (or its Related Bodies Corporate or associated entities) (jointly and severally referred to as “**Monster Hire**”) granting an ongoing trade credit facility and refraining from asking for immediate payment of all owing to Monster Hire by the Customer:

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*Print name of Customer*

1. THE GUARANTOR/S UNCONDITIONALLY AND IRREVOCABLY GUARANTEES and INDEMNIFIES to Monster Hire:
  - a) The payment of all monies and the performance of all obligations, including any past, present and future indebtedness or obligation, of and by the Customer (including monies owing under the Hire Agreement, costs, interests and charges); and
  - b) Against all Claims arising directly or indirectly from the GUARANTOR’s failure or a failure by the Customer to pay any monies owing to Monster Hire or to comply with or perform any of their respective obligations or purported obligations arising from any past, present or future dealing with the Customer or the GUARANTOR/s; and
  - c) any representation or warranty made by the GUARANTOR/s or the Customer under or as part of any past present or future dealing with the Customer or the GUARANTOR/s being or becoming untrue or misleading.
2. THE GUARANTOR/S ACKNOWLEDGES AND AGREES that:
  - a) This is a continuing Guarantee and Indemnity which survives termination of any and all agreements with Monster Hire that the Customer or the GUARANTOR/S is bound by, and

continues in full force and effect until all of the obligations imposed on the Customer and the GUARANTOR/s have been irrevocably performed in full (regardless of any intermediate payment or discharge in whole or in part);

- b) the GUARANTOR/s liability under the Guarantee and Indemnity is joint and several and is not affected. Waived or discharged by the reason of any time or indulgences granted by Monster Hire or any grant to any of the GUARANTORS of a release whether in whole or in part from any obligation contained in or implied by this Guarantee and Indemnity;
- c) the GUARANTOR’s liability under this Guarantee and Indemnity is not affected, waived or discharged by the Customer entering into a Deed of Company Arrangement (DOCA) or by Monster Hire voting in favor of or against, or abstaining from voting, in relation to any proposal by the Customer to enter a DOCA;
- d) the Guarantee and Indemnity becomes binding on any person that sign this Guarantee and Indemnity irrespective of whether or not all intended signatories execute this Guarantee and Indemnity;
- e) the GUARANTOR shall pay monies owing on demand to discharge the debt owed by the Customer in full and Monster Hire is entitled to recover against any GUARANTOR/s without having first :
- f) taken steps to recover against the Customer or any other GUARANTOR/s under this Guarantee and Indemnity;
- g) incurred any expense or made any payment;
- h) this Guarantee and Indemnity may only be revoked as to future trading with the Customer and any notice of

revocation may only be given by pre-paid registered mail delivered to 1039 Burncluth Hall Rd, CHINCHILLA, Queensland, 4413 and shall not become effective until the expiration of 14 days from the date of posting;

- i) any payment which is subsequently avoided by law relating to insolvency is deemed not to have been paid;
  - j) the GUARANTOR/s signs both its personal capacity and as Trustee of every Trust of which the GUARANTOR/s is a Trustee; and or Trust Beneficiary.
  - k) The GUARANTOR/s will notify Monster Hire of any changes in the Customer's structure or management including any sale or disposition of any part of the business of the Customer, any change in directorships, shareholders or management or change in partnership or trusteeship within 7 days of the date of any such change, by registered mail.
  - l) The GUARANTOR/s will notify Monster Hire of any changes in address of the Customer or the GUARANTOR
3. THE GUARANTOR/S CHARGES in Monster Hire's favor all the GUARANTOR's estate and interest in any land and in any other assets, whether tangible or intangible, in which the GUARNATOR/s now has any legal or beneficial interest or in which the GUARNATOR/s later acquires any such interest, to secure the payment of all monies owed by the Customer or the GUARANTOR/s and:
- a) Consents to the lodging by Monster Hire of a caveat or caveats which note Monster Hire's interest in or over any such land or other caveatable property;
  - b) Agrees to execute such further documents and take any steps required by Monster Hire to register a financing statement or financing change statement in relation to all of the

GUARANTOR/S assets other than the GUARANTOR's estate and interest in any land on the PPS register and the GUARANTOR/s also agrees to do all things required by Monster Hire to otherwise perfect the Monster Hire's interest in those assets; and

- c) Agrees to pay any stamp duty, registration fees or charges leveled in respect of any security created under this Guarantee and Indemnity.
4. THE GUARANTOR/S FURTHER AGREES that this Guarantee and Indemnity and any claim or dispute between Monster Hire, the Customer or any GUARANTOR/s will be governed by the law applicable in the State of Queensland, Australia and suburbs to the non-exclusive jurisdiction of the Courts of Queensland, Australia.
5. THE GUARANTOR/S ACKNOWLEDGES AND AGREES that in this Guarantee and Indemnity:
- a) "**Related Body Corporate**" has the meaning given to that term in the Corporations Act 2001 (Cth);
  - b) "**Guarantee and Indemnity**" means this full document entitled "Guarantee and Indemnity"; and
  - c) words referencing the singular shall include the plural and vice versa.
6. THE GUARANTOR/S has read and understood this Guarantee and Indemnity and have been advised, and given opportunity, to seek independent legal advice.

**GUARANTOR:**

Name (print):
Date of Birth:
Signature:
Date:

**WITNESS:**

Name (print):
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Signature:
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Date:
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**GUARANTOR:**

Name (print):
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Date of Birth:
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Signature:
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Date:
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**WITNESS:**

Name (print):
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Signature:
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Date:
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**GUARANTOR:**

Name (print):
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Date of Birth:
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Signature:
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Date:
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**WITNESS:**

Name (print):
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Signature:
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Date:
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# TERMS AND CONDITIONS OF HIRE

## HIRE AGREEMENT TERMS & CONDITIONS

Kemshead Pty Ltd ACN 137 217 719 as trustee for the Kemshead Family Trading Trust trading as Monster Hire

### Background

- A. The Customer wishes to place orders to hire Equipment from the Owner from time to time.
- B. The Owner may agree to hire the Equipment to the Customer on these terms and conditions.
- C. This Agreement sets out the terms and conditions that will govern the relationship between the Owner and the Customer for the hire of Equipment by the Customer from the Owner.
- D. The Customer hereby accepts the hire of the Equipment for the Hire Period on the Terms and Conditions set out herein

### Agreed terms

#### 1 Definitions

In this agreement:

<b>Authorisation</b>	means:  a) an approval, authorisation, consent, declaration, exemption, notarisation, licence, quota, permit or waiver, however described, and any condition attaching to it;  b) in the context of anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,  including any renewal or amendment.
<b>Amount owing</b>	means all amounts owing by the Customer to the Owner under in connection with this Agreement.
<b>Bankruptcy Act</b>	means <i>Bankruptcy Act 1966</i> (Cth).
<b>Business Day</b>	means a day that is not a Saturday, Sunday or public holiday in Queensland.
<b>Commencement Date</b>	means the date on which the Equipment is dispatched from the Owner's Location as set out in the Hire Order.
<b>Consumables</b>	means all materials or other items which are consumed in the normal operation of the Equipment, including fuel and oils.
<b>Corporations Act</b>	means <i>Corporations Act 2001</i> (Cth).
<b>Customer</b>	means the person listed as the 'Customer' in the Schedule who is hiring the Equipment and its successors and assigns and where the context requires includes any contractor, subcontractor, employee and agent of the Customer.
<b>Customer's Premises</b>	means the Premises nominated by the Customer as the location for the delivery and collection for the Hire Equipment by the Owner.
<b>Demobilisation</b>	in the case of the Equipment, means the transportation of the Equipment from the Site to the Owner's Location; and in the case of Labour Personnel, means the disengagement and return of the Labour Personnel from the Site.
<b>Equipment</b>	means any item of Equipment, equipment, goods or accessories supplied by the Owner to the Customer, as set out in the Hire Order.
<b>Fair Wear and</b>	means the normal wear associated with

**Tear** the proper use of the Equipment, provided the Equipment has been operated in accordance with the OEM's recommendations.

**General Conditions** means these terms and conditions.

**Government Agency** means:  
a) a government or government department or other body;  
b) a government, semi-governmental or judicial person; or  
c) a person (whether autonomous or not) who is charged with the administration of a law.

**GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Hire Order** means the document issued by the Owner to the Customer in respect of each hire of Equipment setting out the details of the hire, including:

- a) the particulars of the Equipment to be hired by the Customer from the Owner;
- b) the Commencement Date;
- c) the Expected Return Date;
- d) the Site;
- e) the Site location and supervisor contact details
- f) the Owner's Location; and
- g) the Daily Rate, Weekly Rate or Monthly Rate (as applicable),

in such form as the Owner may determine from time to time.

**Hire Agreement** has the meaning given to that term in clause 2.1.

**Hire Payment** means the amount calculated for the Hire Period by applying the Daily Rate, Weekly Rate or Monthly Rate (as applicable) as set out in the Hire Order in respect of the hire of the Equipment during the Hire Period.

**Hire Period** has the meaning set out in clause 4.

**Insolvency Event** means any of the following events concerning a party:  
a) if an administrator, liquidator, receiver, receiver and manager or other controller (as defined in the Corporations Act) is appointed to, or over, any of the property or undertaking of the party;  
b) if the party becomes bankrupt;  
c) if a controlling trustee is appointed to, or over, any of the property or undertaking of the party;  
d) the party or the party's property or undertaking becomes subject to a personal insolvency arrangement under part X Bankruptcy Act or a debt  
e) agreement under part IX Bankruptcy Act;  
f) if the party is unable to pay its debts when they become due and payable;  
g) if the party ceases to carry on business; or

Please initial: \_\_\_\_\_



# TERMS AND CONDITIONS OF HIRE

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Kemshead Pty Ltd ACN 137 217 719 as trustee for the Kemshead Family Trading Trust trading as Monster Hire

- h) if any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition.

governments of any relevant jurisdiction, fires, floods, strikes, lockouts, or other labour difficulties, shortages of or inability to access the Customer's Premises.

**Labour Personnel** means any operator of the Equipment, rigger, dogman, supervisor, engineer or any other personnel supplied by the Owner to the Customer in accordance with these terms and conditions.

**Legislation** means all legislation relevant to the operation of the Equipment at the Site.

**Long distance Location** means any location in excess of 50km of the nearest local branch or servicing depot of the Owner.

**Mobilisation** in the case of the Equipment, means the loading of the Equipment onto its means of transport at the Owner's Location and the transportation from the Owner's Location to the Site; and in the case of the Labour Personnel, means the deployment of the Labour Personnel to the Site.

**OEM** means the original equipment manufacturer.

**Operating Manual** means the manual created by the OEM of the Equipment for the proper operation and maintenance of the Equipment.

**Owner** means Kemshead Pty Ltd ACN 137 217 719 as trustee for the Kemshead Family Trading Trust trading as Monster Skid Steer & Attachment Hire.

**Owner's Location** means the location set out in the Hire Order (or such other location as nominated by the Owner) from which the Equipment will be dispatched and to which the Equipment will be returned at the end of the Hire Period.

**PPSR** means the Personal Property Securities Act 2009 (Cth) and where applicable includes all regulations made pursuant to it.

**Rate** means the daily, weekly or monthly rate payable by the Customer in respect of the hire of the Equipment as set out in the Hire Order (as applicable).

**Related Bodies Corporate** has the meaning given to it in the Corporations Act 2011 (Cth).

**Return Date** means the date on which the Equipment is to be returned to the Owner's Location as set out in the Hire Order and the off hire form is signed, or an off hire number is acquired (or such other date as agreed in writing between the parties).

**Site** means the Site set out in the Hire Order or such other location approved by the Owner to which the Equipment will be delivered.

**Supplier** means the entity making the Supply.

**Transport Costs** means the cost of transporting each item of the Equipment from the Owner's Location to the Site and from the Site to the Owner's Location and includes any transit insurance.

**Unforeseeable Events** means an event beyond the control of the Owner, including, but not limited to, acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations or

## 2 Evidence of Hire Agreement

2.1 The agreement between the Customer and the Owner is comprised of the following documents, which, in case of any ambiguity or inconsistency, shall be interpreted in the following order of precedence:

- a) these General Conditions;
- b) any Hire Order;
- c) any Work Order; and
- d) any other documents expressly referred to in this document or in any Hire Order or Work Order,

(collectively the **Hire Agreement**).

## 3 Hire of Equipment

- 3.1 The Customer will hire the Equipment from the Owner during the Hire Period on the terms of this Hire Agreement.
- 3.2 Any variation to the Hire Period must be agreed to by the Owner in writing. Hire Equipment hired for at least 7 days in a seven day continuous period may be charged the 'weekly rate' where agreed.
- 3.3 The Owner reserves the right to charge a minimum period of hire for certain types of Hire Equipment. Should the Owner elect to exercise its right to charge a minimum period of hire of one day, the Hire Equipment is taken as hired between the hours of 9:00am and 5:00pm.
- 3.4 The Customer must:
  - a) obtain all Authorisations relevant to the use of, or necessary to use, the Equipment;
  - b) use the Equipment in a skilful, proper and safe manner only for the purpose and within the capacity for which it is designed;
  - c) ensure that the Equipment is operated by a suitably qualified and certified operator who must at all times comply with all applicable Legislation;
  - d) no less than daily and before operating the Equipment, inspect and read all oil dipsticks, levels and or gauges and at all times inspect the Equipment and read and understand all instructions and manuals pertaining to the Equipment before operating it;
  - e) store the Equipment safely and securely when not in use;
  - f) at its own expense, clean, fuel, lubricate and keep the Equipment in good condition in accordance with any operating manual or instructions received from the Owner;
  - g) not expose the Equipment to any hazardous substance, including asbestos, without written prior consent;
  - h) not alter, deface, remove any notices, safety information, identifying mark, plate or number on the Equipment;
  - i) keep the Equipment in a clean and presentable condition throughout the Hire Period; and

Please initial: \_\_\_\_\_





# TERMS AND CONDITIONS OF HIRE

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- j) comply with any Legislation relevant or applicable to the Equipment and its use, including the Workplace Health and Safety Act 2011 (Qld) and the Work Health and Safety Regulations 2011 (Qld) and ensure all safety information supplied with the Equipment is displayed and followed at all times.
- 3.5 At the commencement of the Hire Period, the Owner will:
- a) provide and if necessary install the Consumables and or attachments required for the correct operation of the Equipment; and
  - b) (if required) give the Customer instructions and training in the use and fitting of all Consumables and or attachments required for the correct operation of the Equipment, for an additional charge as agreed between the parties. The Customer must comply with those instructions at all times.
- 3.6 If the Equipment is lost, stolen, damaged, involved in any accident, or breaks down, the Customer must immediately notify the Owner. The Customer must indemnify the Owner for:
- a) The full cost of either repairing the Hire Equipment or replacing the Hire Equipment with new equipment, to be determined by the Owner, at its sole discretion.
  - b) Any other costs whatsoever arising from or in connection with the loss, theft or damage to the Hire Equipment; and
  - c) Any lost revenue to the Owner arising from, or in connection with, the loss, theft or damage to the Hire Equipment.
- 3.7 If the Equipment breaks down or becomes unsafe to use, the Customer must:
- 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 or further use of the Equipment; and
  - d) not repair or attempt to repair the Equipment without the prior written consent of the Owner.
- 3.8 In addition to any other remedies that the Owner may have, if the Equipment breaks down due to the Customer's negligence, is involved in any accident or is lost, stolen or damaged, the Customer will pay to the Owner the following amounts:
- a) any costs or expenses incurred by the Owner in locating, recovering, repairing or replacing the Equipment (whether carried out by the Owner or a third party);
  - b) all Hire Payments for the Equipment until the Equipment is located, recovered, repaired or replaced; and
  - c) any other costs incurred by the Owner as a result of the damage to or loss of the Equipment.
- 3.9 The Customer will be responsible for and indemnify the Owner for all accessories pertaining to the Equipment lost or misplaced by the Customer, its servants or agents, and must replace any lost or misplaced accessories with new accessories.
- 3.10 In the event that the Hire Equipment breaks down or becomes unsafe to use (through no act or omission of the Customer, including misuse, recklessness and negligence), the Owner will:
- a) Repair the Hire Equipment or provide suitable substitute Hire Equipment when reasonably possibly after being notified by the Customer;
  - b) Not impose a hire charge for that portion of the Hire Period the Equipment could not be used, nor charge the costs associated with any repair or replacement of the Hire Equipment; and
- c) Not be liable for any expenditure, damages, losses, costs or inconvenience incurred by the Customer arising from a breakdown of Hire Equipment, however caused, including, as a result of the Owner requiring time to assess, repair and/or replace the Hire Equipment.
- 3.11 In the event that the Owner is required to replace the Equipment during the Hire Period, the Hire Period remains the same, and there will be no extension of time unless otherwise agreed between the parties.
- 3.12 The Customer has no right, title, property or interest in the Equipment except as bailee and must not sublet, transfer, dispose of or otherwise deal with any rights or interest in the Equipment.
- 3.13 The Customer shall not allow, nor authorise, any other person or entity to use, re-hire or have possession of the Hire Equipment without the prior, written consent of the Owner.
- ## 4 Hire period
- 4.1 The Hire Period commences on the Hire Start Date outlined in the Hire Order and ends on the Return Date, unless terminated earlier in accordance with this Hire Agreement.
- 4.2 The Customer must contact the Owner when it no longer requires the Hire Equipment and is ready for collection by the Owner. The Customer must make such contact by no later than 9am of the Return Date. The Owner will issue an Off-Hire Number, which must be recorded and kept by the Customer.
- 4.3 Should the Off-Hire Number not be allocation by 9am on the Return Date, or the Owner is unable to access the Customer's Premises for collection, by no fault of the Owner, on the Return Date, Hire Charges will continue to apply until the Hire Equipment has been collected by the Owner.
- 4.4 If the Equipment is not returned by 9:00am on the day following the Return Date, the Equipment is deemed to be rehired for a period of one day or if the Equipment is stolen or damaged beyond repair, the date on which the insurance company confirms that it will accept the Equipment has been stolen or damaged beyond repair.
- ## 5 Maintenance and inspections
- 5.1 The Customer must conduct a pre-start inspection of the Equipment prior to it being used at the Site. The purpose of the inspection is to identify the condition of the Equipment prior to its use by the Customer.
- 5.2 Should no notice be given to the Owner by the Customer of any defect or departure from the Hire Agreement within 24 hours of collection or delivery of the Hire Equipment, the Customer's silence is deemed to be notice that the Hire Equipment was received in good working order and condition.
- 5.3 Should the Customer elect to return the Hire Equipment at a date that is before the Return Date, the Owner may, at its own discretion, revise the hire charges payable by the Customer from the Commencement Date to account for a reduction to the Hire Period.
- ## 6 Payment
- 6.1 The Customer must pay to the Owner the Hire Payment in accordance with this clause.
- 6.2 In addition to the Hire Payment, the Customer must pay the following amounts to the Owner:
- a) any cleaning and refuelling costs incurred by the Owner in relation to the Equipment; any replacement air or cab filters due to improper maintenance whilst out on hire
  - b) any replacement machinery, attachment, equipment or vehicle decals or safety labels due to excessive wear or damage

Please initial: \_\_\_\_\_



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- a) any tax, duty, levy, charge or other expense paid or payable by the Owner to any authority in respect of the use of the Equipment;
  - b) any other costs or expenses which the Customer is required to pay the Owner under this Hire Agreement or Hire Order; or Work Order
  - c) Any additional or special conditions to permit and gain access to the Customer's Premises, including, but not limited to, site inductions;
  - d) Charges for payments made by way of credit card;
  - e) Charges for delivery and collection;
  - f) Costs for changing out equipment and mobilisation and demobilisation costs;
  - g) The costs of any bucket and blade wear or damage caused by conditions which the Owner considers to be adverse or abnormal;
  - h) The costs of all wear and tear to cutting edges, bucket teeth, hardware, ripper teeth, stump grinder teeth, blades and all other ground and timber engaging tools. All ground and timber engaging tools are to be returned in the same condition as they were at the commencement of the Hire Period.
  - i) The costs of repairing or replacing flat or damaged tyres, and for all wear, tear and damage to tyre and tracks which is caused by adverse or abnormal use, at the discretion of the Owner.
  - j) For any variations that are necessary, or requested by the Customer; and
  - k) any expenses incurred by the Owner as a result of a breach by the Customer of this Hire Agreement.
- 6.3 The Owner will, in its discretion, invoice the Customer:
- a) on the last day of the month of the Commencement Date and monthly thereafter; or
  - b) on the Return Date,
  - c) for the Hire Payment and any additional amounts owing under clause 6.2.
- 6.4 The Customer must pay the Owner the full amount of any invoice, no later than 30 days after the date of the invoice.
- 6.5 If the invoice is not paid within the timeframe in clause 6.4, interest at a rate of 2% per month will be payable on the overdue amount, and the Customer indemnifies the Owner against any expenses incurred by the Owner in recovering an unpaid amounts.
- 6.6 The Owner may set-off any monies owing by it to the Customer against any monies owing by the Customer to the Owner.
- 7.3 The Owner may, at its own discretion, be agreeable to collecting the Hire Equipment from the Site. In this event, the Customer must obtain an off-hire number from the Owner and provide access for collection.
- 7.4 The Customer will ensure the safe loading, securing and transporting of all Hire Equipment in accordance with all laws, industry guidelines and manufacturers guidelines.
- 7.5 The Customer must ensure that the Equipment is clean at the Return Date. If, in the Owner's reasonable opinion, the Equipment is not returned in the same state of cleanliness as it was in on the Commencement Date, the Owner may have the Equipment cleaned and the Customer must reimburse the Owner for all costs and expenses incurred in cleaning the Equipment.
- 7.6 The Customer must pay for refilling of all fuels and oils upon return of the Equipment to the Owner and return all Equipment, tools, accessories, electric cords, welding cable, hand pieces, hoses, steels, blades, fuel tanks, drill bits, harnesses and similar type items in good condition.
- 7.7 No later than 14 days after the Return Date, the Owner will arrange for a detailed inspection of the Equipment, including removing any items that the Owner suspects of being damaged.
- 7.8 No later than 14 days after the inspection under clause 7.7, the Owner will prepare a quotation listing the damage and the labour and material costs associated with the repair and must supply the Customer with a copy of the quotation.
- 7.9 The Customer must pay the costs for the repair of the Equipment, other than for damage resulting from Fair Wear and Tear.
- 7.10 Delivery dates and times are an estimate only. The Owner is not responsible for the failures or delays in delivery or installation due to Unforeseeable Events. If the delivery, installation or collection of the Hire Equipment is suspended or delayed to the fault of the Customer, the Customer must reimburse the Owner for its loss and expenditure as a result of the delay.

## 7 Delivery and return of Equipment

- 7.1 The Owner will make the Equipment available to the Customer at the Owner's Location or if requested, deliver the Equipment to the Site, in which case the Customer will pay all Transport Costs.
- 7.2 The Customer will arrange for transportation of the Equipment from the Site to the Owner's Location by the Return Date and the Customer must pay the Transport Costs of returning the Equipment.

## 8 Statutory Guarantees

- 8.1 Clauses 8.2 & 8.3 only apply if the Customer is deemed a "Consumer" for the purposes of Section 3 of the *Australian Consumer Law* ("ACL").
- 8.2 The Owner's Equipment comes with guarantees that cannot be excluded under the ACL. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 8.3 To the extent the Owner's Equipment is not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Owner may limit its liability to repair or replacement of the Equipment or the payment of the cost of repairing or replacing the Equipment, or supplying services again or payment for the costs of supplying services again, in accordance with section 64A of the ACL.

## 9 Indemnity

- 9.1 Nothing in this Agreement is intended to exclude, restrict or modify any guarantee, term, condition or warranty implied or imposed by law (including the ACL) which cannot be lawfully excluded or limited.
- 9.2 To the extent permitted by law (unless otherwise expressly set out in this Agreement), all terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to the Owner's obligations under the Hire Agreement are excluded.

Please initial: \_\_\_\_\_



# TERMS AND CONDITIONS OF HIRE

## HIRE AGREEMENT TERMS & CONDITIONS

Kemshead Pty Ltd ACN 137 217 719 as trustee for the Kemshead Family Trading Trust trading as Monster Hire

- 9.3 The Customer will indemnify the Owner from and against all actions, suits, claims, demands, proceedings, losses, liabilities, damages, costs, charges and expenses incurred by the Owner as a result of:
- a) any breach of this Hire Agreement by the Customer or the Customer's employees, agents, consultants and contractors; or
  - b) any act, error or omission of the Customer or of its employees, agents or contractors, in relation to the obligations of the Customer under this document in respect to the:
    - i. loss, destruction or damage to real or personal property of any persons including the Owner; and
    - ii. injury to, illness or death of persons, except to the extent that such actions, suits, demands, proceedings, losses, liabilities, damages, costs, charges, expenses or claims were contributed to or caused by the Owner.

9.4 In no circumstances will the Owner or its officers, employees or agents be liable to the Customer for any indirect, special, incidental or consequential losses or damages, loss of revenue, loss of profits, labour costs, capital costs, loss of business reputation whether or not such liability arises out of contract, tort (including negligence) or any other cause of action at law or equity which may be sustained by the Customer, its officers, employees or agents.

9.5 In no event will the Owner be liable for any loss or damage, which the Customer suffers as a result of a breach by the Owner of this Hire Agreement, including, but not limited to, loss of profits or revenue, the costs arising from the loss of the use of the Equipment and the cost of any of the substitute Equipment the Customer requires.

9.6 The Customer is always liable for the cost of rectifying any tyre or track damage not attributed to Fair Wear and Tear.

9.7 Each indemnity is a continuing obligation and survives termination or expiration of this Hire Agreement. It is not necessary for the Owner to incur expense or make payment before enforcing a right of indemnity under this Hire Agreement. The Customer must pay on demand under this Hire Agreement.

## 10 Insurance

10.1 The Customer can elect to:

- a) obtain insurance covering the full replacement value of the Hire Equipment; or
  - b) receive the benefit of the Owner's insurance
- in accordance with the terms set out in this clause.

10.2 If the Customer elects to insure the Equipment the Customer must provide to the Owner, prior to the commencement of the Hire Period, a Certificate for the Policy and any renewal must be provided to the Owner, at its request.

10.3 The insurance policy must cover loss or damage to the Hire Equipment for not less than the full new replacement costs of the Hire Equipment ("Hire Equipment Insurance")

10.4 The insurances required by clause 10.3 must name the Owner as a joint insured.

10.5 Should the Customer elect to obtain the benefit of the Owner's Insurance, the Customer does so on the following basis:

- a) In the event of loss, theft or damage, irrespective of who is at fault, the Customer will pay to the Owner, on

demand:

- i. Any excess payable by the Owner to its insurance provider; or
- ii. The full costs of the repair or replacement, along with any other expenses outlaid by the Owner as a result of the theft, loss or damage;

whichever is the greater.

- b) The Customer must submit to the Owner, within 5 Business days of any loss, theft or damage:

- i. a written police report of the loss, theft or damage to the Hire Equipment (unless the Owner provides written notification otherwise); and
- ii. any other written or photographic evidence requested by the Owner (which may include sworn statements and statutory declarations).

## 11 Termination

11.1 The Owner may at any time terminate this document or any Hire Order by notice to the Customer in the following circumstances:

- a) the Customer commits a breach of this Hire Agreement and is unable or unwilling to remedy such breach within 14 days of receiving from the Owner a written notice of the breach that specifies the nature of the breach;
- b) the Customer suffers an Insolvency Event; or
- c) the Customer defaults in any payment due under this document.

11.2 Upon termination, the Owner:

- a) will be entitled to take possession of the Equipment, including entering the Customer's Premises without prior notice to the Customer; and
- b) will be discharged and released from any action, suits, claims or demands by the Customer in accordance with this document.

11.3 The Owner may also terminate the Hire Agreement at any time for convenience by giving the Customer at least 24 hours notice.

11.4 Except as provided in clause 11.2, termination will not affect or prejudice any rights or liabilities of the parties that accrued prior to termination.

## 12 Dispute resolution

12.1 Any dispute or difference whatsoever arising out of or in connection with this document must be submitted to mediation in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Mediation and Conciliation Rules.

## 13 PPSA

13.1 For the purposes of this clause:

- a) the following words have the meaning given to them in the Personal Property Securities Act 2009 (Cth) (PPSA): Accession, Commingled, Financing Statement, Fixture, Personal Property, Proceeds, Purchase Money Security Interest, Security Interest, Serial Number and Verification Statement;
- b) 'PPSA Information' means any information or documents (including copies of such documents), which are in existence or may be entered into in the future, of the kind mentioned in section 275(1) PPSA; and

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# TERMS AND CONDITIONS OF HIRE

## HIRE AGREEMENT TERMS & CONDITIONS

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- c) 'Hired Equipment' means any Equipment, goods or equipment hired by the Customer from the Owner under the terms of this Hire Agreement.
- 13.2 The parties acknowledge that the supply of the Hired Equipment under this Hire Agreement constitutes a Security Interest (which may be a Purchase Money Security Interest) in the Hired Equipment (and any Proceeds in relation to the Equipment) in favour of the Owner.
- 13.3 The Customer agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Owner asks and considers necessary for the purposes of:
- ensuring that the Security Interest is enforceable, perfected and otherwise effective;
  - enabling the Owner to apply for any registration, complete any Financing Statement or give any notification, in connection with the Security Interest; and
  - enabling the Owner to exercise rights in connection with the Security Interest.
- 13.4 The Owner is not required to give any notice, and the Customer waives its rights to receive any notice, under the PPSA (including notice of a Verification Statement) unless the notice is required by the PPSA to be given (even though the parties have waived the right to receive notice).
- 13.5 The Customer must notify the Owner as soon as the Customer becomes aware of any of the following:
- if any Personal Property which does not form part of the Hired Equipment becomes an Accession to the Hired Equipment and is subject to a Security Interest in favour of a third party;
  - if any of the Hired Equipment or Owner's Personal Property is located or situated outside Australia or, upon request by the Owner, of the present location or situation of the Hired Equipment; or
  - if the Customer parts with possession of the Hired Equipment.
- 13.6 The Customer must not without the Owner's prior written consent:
- create any Security Interest or lien over any Personal Property that the Owner has an interest in, including the Hired Equipment (other than Security Interests granted in favour of the Owner);
  - change any Serial Number in respect of any Hired Equipment without first notifying the Owner;
  - permit the Hired Equipment to become an Accession to, Commingled with, or a Fixture to any asset or real property that is not part of the Owner's other Personal Property or real property; or
  - change its name without first giving the Owner 15 Business Days notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.
- 13.7 If the Customer fails to comply with any obligation under this Hire Agreement then without limiting the remedies available to the Owner:
- upon request by the Owner, the Customer must return the Hired Equipment to the Owner;
  - the Customer authorises the Owner and any person authorised by the Owner to enter premises where the Hired Equipment is located to take possession of the Hired Equipment; and
  - the Owner may retain, sell or otherwise dispose of the Hired Equipment.
- 13.8 The Owner agrees to the extent permitted under the PPSA, the Customer waives its rights:
- to receive notice of removal of an Accession under the PPSA; and
  - under Chapter 4 of the PPSA.
- 13.9 Each party agrees to keep the PPSA Information in strict confidence and not disclose that information, except in circumstances required by sections 275(7)(b) or (e) PPSA, provided that where sections 275(7)(b) or (e) require such disclosure, the party that is required to disclose the information gives all available notice to the other party to allow that party to legally challenge the required disclosure and takes all available steps (whether required by the other party or not) to maintain such PPSA Information in confidence.
- 13.10 Each party agrees not to authorise the disclosure of any PPSA Information to any third party pursuant to section 275(7)(c) PPSA or request information under section 275(7)(d) PPSA unless the other party to this document explicitly agrees.
- ## 14 GST
- 14.1 The consideration for a Supply made under or in connection with this document includes GST.
- 14.2 If a Supply made under or in connection with this document is a Taxable Supply, then at or before the time the consideration for the Supply is payable the Supplier must give the Recipient a Tax Invoice for the Supply.
- 14.3 Where a Tax Invoice is given by the Supplier, the Supplier warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.
- 14.4 Any terms capitalised in clause 14 and not already defined in clause 1.1 have the same meaning given to those terms in the GST Act.
- ## 15 Variations
- 15.1 The Owner may at any time, by written notice to the Customer, vary any part of the Hire Agreement, including, without limitation, by adding additional standard terms and conditions to form part of the Hire Agreement.
- ## 16 Notice
- 16.1 A notice, consent or communication under this Hire Agreement is only effective if it is:
- in writing, signed by or on behalf of the person giving it;
  - addressed to the person to whom it is to be given; and
  - given by hand to that person's address, sent by prepaid mail (and by prepaid airmail if the person is overseas) to that person's address, sent by fax to that person's fax number (provided that the sender receives a transmission confirmation report from the despatching machine indicating the transmission was made without error and showing the relevant number of pages and the correct destination fax number or name of recipient) or sent by email to that person's email address.
- 16.2 A notice, consent or communication delivered under clause 16.1 is given and received:
- if it is hand delivered or sent by fax or email by 5.00pm (local time in the place of receipt) on a Business Day, on that day; or

Please initial: \_\_\_\_\_



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- b) if it is hand delivered or sent by fax or email after 5.00pm (local time in the place of receipt) on a Business Day, or at any time on a day that is not a Business Day, on the next Business Day; and
  - c) if it is sent by post, three Business Days after posting.
- 16.3 A party's address, fax number and email address are those set out in the Schedule, or as one party may notify the other of a change of such address or fax number in writing.

## 17 General

- 17.1 The Owner may assign or novate its right, title and interest in this Hire Agreement to any third party upon giving the Customer written notice of its intention to do so. The Customer must not assign or novate its right, title and interest in this Hire Agreement unless they have complied with clause 19 of this Hire Agreement.
- 17.2 This Hire Agreement supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties.
- 17.3 The failure of a party to require full or partial performance of a provision of this Hire Agreement does not affect the right of that party to require performance subsequently.
- 17.4 A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- 17.5 A right under this Hire Agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.
- 17.6 Queensland law governs this Hire Agreement. Each party irrevocably submits to the exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from those courts.
- 17.7 The Customer acknowledges that the Owner has not made any representation or inducement to the Customer to enter into this Agreement, and the Customer has not relied upon any representations or inducements contained in this Agreement.
- 17.8 Any credit accommodation granted by the Owner to the Customer may be reviewed at any time without notice and credit withdrawn. The Hire Agreement may be terminated and the Customer will owe to the Owner any amounts outstanding until the Hire Equipment is back in the possession of the Owner.
- 17.9 Time remains of the essence of all obligation of the Customer under this Agreement.
- 17.10 Any Special Conditions which are annexed to this Agreement, will form a part of the Agreement and will be binding upon all parties.

## 18 Interpretation

- 18.1 In this Hire Agreement except to the extent that the context otherwise requires:
  - a) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
  - b) 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;
  - c) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;

- d) this document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself;
- e) words importing the singular include the plural and vice versa unless the context otherwise requires; and
- f) clause headings are for convenience of reference only and shall not effect the construction of this Hire Agreement.

## 19 Customer's Obligations regarding Sub-Hire

- 19.1 The Customer must not allow nor authorise any other person or entity to use, re-hire or have possession of the Hire Equipment, unless it is Labour Personnel of the Owner, at any time during the Hire Period without the prior written approval of the Owner.
- 19.2 The Customer remains responsible and liable to the Owner for the Hire Equipment irrespective of any sub-hire agreement or arrangement entered into by the Customer.
- 19.3 The Customer is liable to the Owner for the acts and omissions of any Sub-Hirer and the employees, agents, contactors and officers of the Sub-Hirer as if they were acts or omissions of the Customer.
- 19.4 Before sub-hiring the Hire Equipment, the Customer must enter into a written agreement with the Sub-Hirer for the hire of the Hire Equipment. The agreement between the Customer and the Sub-Hirer must incorporate clauses 4, 5, 7, 9, 10, 11, 13 of this Hire Agreement.

## SPECIAL TERMS PERTAINING TO WET HIRE

- A. These additional terms and conditions outline the terms and conditions, pending the availability of the Owner for labour personnel and equipment hire at the commencement of the Hire Period, on which such hire will be offered to the Customer.

## 20 Hire of Equipment and Labour

- 20.1 Subject to availability, the Owner agrees to hire the Equipment and the Labour Personnel to the Customer for the Hire Period on the terms and conditions contained herein. In addition, any relevant terms and conditions as outlined in the Work Order.
- 20.2 The Customer acknowledges that the Hire Period will commence from the time in which the Labour Personnel leaves the Owner's Location and will end at the time the Labour Personnel returns to the Owners Location with the Equipment.

## 21 Mobilisation and Demobilisation

- 21.1 In the event that the Owner has quoted the Customer for Mobilisation and Demobilisation charges, all such charges must be paid to the Owner.
- 21.2 Unless otherwise specified, the Customer acknowledges that such charges are based upon trucks and trailers being unloaded and loaded (as required) as per the timeframes set out within the quote provided. Any delays outside of the control of the Owner will incur additional charges, which will be payable by the Customer.
- 21.3 The Owner holds no liability to the Customer for any late delivery, non-delivery, failure or delay in commencement of the Hire, pick up or any Loss or damage occasioned to the Customer for such late delivery, non-delivery, failure or delay in commencement of the Hire.

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### 22 Stand Down

- 22.1 The Customer will notify the Owner as soon as is practical of their request to stand down any equipment or Labour Personnel due to any inclement weather, operational constraints, or an industrial dispute involving the Customer or the Site, or for any other Customer Delay, which will result in work not being performed at the Site for that Day.
- 22.2 Stand Down may only be granted on the approval of the Owner and done so on a case by case basis. Stand by at a reduced rate of the full hire rate may or may not be offered as an alternative
- 22.3 Failure to notify the Owner, resulting in the Equipment being mobilised and or the Labour Personnel departing base, will be at the full expense of the Customer.

### 23 Payment

- 23.1 In addition to the terms set out in Clause 6 herein. Wet Hire Agreement will also be subject to this Clause 23.
- 23.2 In addition to the Hire and Labour Personnel Payment, the Customer must also pay:
  - a) The charges for Mobilisation and Demobilisation , and for any delay as per clause 21;
  - b) Any costs incurred by the Owner to ensure that all Equipment and Labour Personnel adhere to all Site Requirements, including but not limited to safety modifications, medicals, training and inductions, plus a 10% margin for administrative costs;
  - c) Any additional costs incurred by the Owner which do not form part of the Quote or Hire Order provided to the Customer.

### 24 Obligations of the Owner

- 24.1 The Owner will use its best endeavours to ensure that the Labour Personnel is suitably qualified, trained, experienced and competent as per the requirements of the Occupational Health and Safety legislative requirements, regulations and industry requirements.

Please initial: \_\_\_\_\_



# TERMS AND CONDITIONS OF HIRE

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### Execution

EXECUTED as an agreement

Signed by Kemshead Pty Ltd ACN 137 217 719 as trustee for the Kemshead Family Trading Trust trading as Monster Hire

on / / 20

By its duly authorised officer in the presence of:

\_\_\_\_\_  
Signature of Authorised Officer

\_\_\_\_\_  
Dianne Susan Kemshead  
Full name of Authorised Officer

\_\_\_\_\_  
Director  
Office Held

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of witness (print)

Executed by



on in the presence of:

\_\_\_\_\_  
Signature of Customer

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of Customer

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Office Held

**[#ALTERNATE EXECUTION CLAUSE IF CUSTOMER IS A COMPANY]**

Executed by:

ACN: on: by:

\_\_\_\_\_  
Director (Sign)

\_\_\_\_\_  
Director/Secretary (Sign)

\_\_\_\_\_  
Full Name of Director

\_\_\_\_\_  
Full Name of Director/ Secretary

Please initial: \_\_\_\_\_