

BACKGROUND

- A) The Customer wishes to place orders to hire Equipment from the Owner from time to time on a credit account.
- 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.

1 DEFINITIONS**1.1 "Authorisation"** means:

- A) an approval, authorisation, consent, declaration, exemption, notarisisation, licence, quota, permit or waiver, however described, and any condition attaching to it; and
- 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.

1.2 "**Amount owing**" means all amounts owing by the Customer to the Owner under in connection with this Agreement.

1.3 "**Bankruptcy Act**" means *Bankruptcy Act 1966* (Cth).

1.4 "**Business Day**" means a day that is not a Saturday, Sunday or public holiday in Queensland.

1.5 "**Commencement Date**" means the date on which the date equipment is dispatched from the Owner's Location as set out in the Hire Contract.

1.6 "**Consumables**" means all materials or other items which are consumed in the normal operation of the Equipment, including fuel and oils.

1.7 "**Corporations Act**" means *Corporations Act 2001* (Cth).

1.8 "**Customer**" 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.

1.9 "**Customer's Premises**" means the Premises nominated by the Customer as the location for the delivery and collection for the Hire Equipment by the Owner.

1.10 "**Demobilisation 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

1.11 "**Labour Personnel**", means the disengagement and return of the Labour Personnel from the Site.

1.12 "**Equipment**" means any item of Equipment, equipment, goods or accessories supplied by the Owner to the Customer, as set out in the Hire Contract.

1.13 "**Fair Wear and Tear**" means the normal wear associated with the proper use of the Equipment, provided the Equipment has been operated in accordance with the OEM's recommendations.

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

1.15 "**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.

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

1.17 "**Hire Contract**" 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
H) Monthly Rate (as applicable), in such form as the Owner may determine from time to time.

1.18 "**Hire Agreement**" has the meaning given to that term in clause 2.21.

1.19 "**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 Contract in respect of the hire of the Equipment during the Hire Period.

1.20 "**Hire Period**" has the meaning set out in clause 7.4.

1.21 "**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
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

1.22 "**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.

1.23 "**Legislation**" means all legislation relevant to the operation of the equipment all on site

1.24 "**Long Distance Location**" means any location in excess of 50km of the nearest local branch or servicing depot of the owner

1.25 "**Mobilisation**" in the case of 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.

1.26 “**OEM**” means the original equipment manufacturer
1.27 “**Operating Manual**” means the manual created by the OEM of the equipment for the proper operation and maintenance of the equipment
1.28 “**Owner**” means Kemshead Pty Ltd ACN 137 217 719 as trustee for the Kemshead Family Trading Trust trading as Monster Hire
1.29 “**Owner’s Location**” means the location set out in the Hire Contract (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.
1.30 “**PPSR**” means the *Personal Property Securities Act 2009* (Cth) and where applicable includes all regulations made pursuant to it.
1.31 “**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 Contract (as applicable).
1.32 “**Related Bodies Corporate**” has the meaning given to it in the *Corporations Act 2011* (Cth).
1.33 “**Return Date**” means the date on which the Equipment is to be returned to the Owner’s Location as set out in the Hire Contract 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).
1.34 “**Site**” means the Site set out in the Hire Contract or such other location approved by the Owner to which the Equipment will be delivered.
1.35 “**Supplier**” means the entity making the Supply.
1.36 “**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.
1.37 “**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 governments of any relevant jurisdiction, fires, floods, strikes, lockouts, or other labour difficulties, shortages of or inability to access the Customer’s Premises.

2 ACCEPTANCE OF HIRE AGREEMENT

2.1 Any orders received by the Owner from the Customer for the Equipment shall constitute a binding contract and acceptance of these General Conditions.
2.2 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 Contract;
- C) Any Work Order; and
- D) Any other documents expressly referred to in this document or in any Hire Contract or Work Order, (collectively the Hire Agreement).

3 PRECEDENCE

3.1 The customer acknowledges that these General Conditions take precedence over any terms and conditions contained in any other document provided by the Customer.

4 CREDIT FOR BUSINESS PURPOSES ONLY

4.1 The Customer expressly warrants and acknowledges that if at any time credit is provided to the Customer by the Owner it is to be used for wholly (or predominantly) business purposes.

5 PRIVACY POLICY AND CREDIT REPORTING POLICY NOTIFICATION

5.1 The Owner collects personal information about the Customer (if a sole trader, individual trustee, or partnership of individuals) for the purposes set out in its Privacy Policy and its Credit Reporting Policy. Both of these policies may be located at [www.monsterhire.com.au]. A hardcopy of these policies can also be provided to the Customer free of charge, upon request.

- A) The Privacy Policy sets out: the personal information that the Owner collects; how the Owner collects and uses this information; how the Customer may access or correct it; and how the Customer may make a complaint in respect of Owner’s management of the information.
- B) The Credit Reporting Policy sets out: the types of credit related personal information the Owner collects; how it is collected, why it is collected; how the Owner may use and disclose the credit-related personal information, including the credit reporting bodies to which Owner is likely to disclose the Customer’s credit related personal information to; and how a complaint may be made in respect of the Owner’s management of the credit related personal information.
- C) By the Customer completing the Application for Commercial Credit or providing orders to the Owner for the supply of Equipment, the Customer is consenting to the Owner collecting, handling, using, disclosing and otherwise dealing with the Customer’s personal information (including credit-related personal information) in accordance with the terms of the Owner’s Privacy Policy, its Credit Reporting Policy and in accordance with Australia’s privacy laws.

6 HIRE OF EQUIPMENT

6.1 The Customer will hire the Equipment from the Owner during the Hire Period on the terms of the Hire Agreement.
6.2 Any variation to the Hire Period must be made in writing to the Owner and is not approved until agreed to by the Owner in writing.
6.3 Hire Equipment hired for at least seven (7) days in a seven-day seven (7) day continuous period may be charged the ‘weekly rate’ where agreed.
6.4 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.
6.5 The Customer is responsible for ensuring that

- A) they obtain all Authorisations relevant to the use of, or necessary to use, the Equipment;
- B) They 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) They store the Equipment safely and securely when not in use;
- F) at its own expense they are to 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 or damaging substance, including asbestos and salt; without written prior consent;
- H) not alter, deface, remove any notices, safety information, identifying mark, plate or number on the Equipment;
- I) They keep the Equipment in a clean and presentable condition throughout the hire period.
- J) They 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.

6.6 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.

6.7 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.

6.8 If the Equipment breaks down or becomes unsafe to use, the Customer must:

- A) immediately stop using the Equipment and notify the Owner;
- 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.

6.9 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 agrees and acknowledges that it will be responsible for 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.

6.10 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.

6.11 In the event that the Hire Equipment breaks down or becomes unsafe to use (through no act or omission of the Customer, not including misuse, recklessness or 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.

6.12 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 reduction of time unless otherwise agreed between the parties.

6.13 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.

6.14 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.

7 HIRE PERIOD

7.1 The Hire Period commences on the Hire Start Date outlined in the Hire Contract and ends on the Return Date, unless terminates earlier in accordance with this Hire Agreement

7.2 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.

7.3 Should the Off-Hire Number not be allocated 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 and the Customer will be responsible for payment of the ongoing Hire Charges in accordance with this clause.

7.4 If the Equipment is not returned by 9:00am on the day following the Return Date, the Equipment is deemed to be re-hired 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.

8 LOSS OF PRODUCTION

8.1 The Owner is not liable for any loss of production, delay costs, business interruption, loss of profits, loss of opportunity, or consequential loss arising from or in connection with:

- A) the unavailability, breakdown, malfunction, or repair time of the Equipment;
- B) delays in delivery, mobilisation, demobilisation or replacement of Equipment;
- C) delays caused by weather, access issues, Site conditions, industrial disputes, or Customer scheduling.

8.2 The Customer acknowledges and agrees that:

- A) hire charges continue to apply during any period of breakdown, repair, loss, damage or replacement caused directly or indirectly by the Customer or its personnel;
- B) No claim may be made against the Owner for downtime, stand down, labour costs, loss of efficiency, or similar losses.

9 MAINTENANCE AND INSPECTIONS

9.1 The Customer is responsible for ensuring it undertakes a 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.

9.2 The Customer must notify the Owner in writing within 24 hours from when the Equipment was collected or delivered of any defects or concerns. 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 is taken to have acknowledged and agreed that its silence is deemed to be notice that the Hire Equipment was received in good working order and condition.

9.3 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.

10 RATE OF EQUIPMENT

10.1 The Rate shall be:

- A) If the Owner has provided a quotation for the hire of Equipment, as stated on any relevant quotation (subject to clause 12);
- B) As agreed to (in writing) by the Owner; or
- C) pursuant to the Hire Contract or Hire Agreement.

11 PAYMENT

11.1 The Customer acknowledges and agrees that payment is to be made to the Owner on a credit basis upon delivery and/or collection.

11.2 Upon request by the Customer, the Owner may issue a statement of account to the Customer on the last day of each month which provides evidence of each payment received under Hire Agreement for the Equipment.

11.3 Where the Owner has agreed to payment on credit, the Owner will, at its sole discretion, invoice the Customer for payment of the Hire Payment on either:

- A) the last day of the month of the Commencement Date and monthly thereafter; or
- B) the Return Date.

11.4 In addition to the Hire Payment, the Customer must pay to the Owner the following amounts (Additional Charges):

- A) any cleaning and refueling costs incurred by the Owner in relation to the Equipment;
- B) any replacement air or cab filters due to improper maintenance whilst out on hire any replacement machinery, attachment, equipment or vehicle decals or safety labels due to excessive wear or damage;
- C) 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;
- D) any other costs or expenses which the Customer is required to pay the Owner under this Hire Agreement or Contract; or Work Order
- E) any additional or special conditions to permit and gain access to the Customer's Premises, including, but not limited to, site inductions;
- F) charges for payments made by way of credit card;
- G) charges for delivery and collection;
- H) costs for changing out equipment and mobilisation and demobilisation costs;
- I) the costs of any bucket and blade wear or damage caused by conditions which the Owner considers to be adverse or abnormal;
- J) the costs of all wear and tear to cutting edges, bucket teeth, hardware, ripper teeth, hammer 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.
- K) 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.
- L) for any variations that are necessary, or requested by the Customer; and

M) any expenses incurred by the Owner as a result of a breach by the Customer of this Hire Agreement.

11.5 Where Additional Charges are due pursuant to clause 11.4 of these General Conditions, the Owner will, at its sole discretion, invoice the Customer for the Additional Charges on either:

- A) immediately upon Additional Charges being incurred; or
- B) the last day of the month; or
- C) the Return Date.

11.6 Payment of such invoices issued to the Customer in accordance with clause 11.3 and 11.4 are to be paid to the Owner on any of the following dates (as determined by the Owner):

- A) the due date specified on the Owner's invoice;
- B) in the absence of any notification of the due date by the Owner; it shall be due 30 days from the date of invoice.

11.7 Payment for any amount outstanding shall be deemed immediately due and payable in any of the following circumstances:

- A) there is non-payment of any sum by the due date;
- B) the Customer is bankrupted or enters administration, liquidation or receivership;
- C) there is a change in the financial position of the Customer which materially adversely affects its ability to pay for the Equipment.

11.8 Unless prohibited by law, all payments to be made by the Customer to Owner shall be made without set-off (whether arising at law or in equity) or counterclaim (whether arising at law or in equity) and free and clear of any withholding or deduction whatsoever.

11.9 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until it results in the Owner receiving cleared funds for the entire amount of the negotiable instrument. In respect of cheques, the Owner will present the cheques within a reasonable time.

11.10 The Owner reserves the right to not accept payment by credit card (including Mastercard, Visa, Diners Club or American Express) as credit card providers will charge the Owner a merchant fee that is deducted from the payment.

11.11 In the event the Owner does accept payment by credit card, the Customer agrees that it shall be liable to pay the Owner a surcharge to cover the merchant fees incurred by the Owner and/or deducted from the payment by the credit card company ("Surcharge").

11.12 The Owner may invoice the Customer for any Surcharge separately to the Equipment.

12 INTEREST AND COSTS

12.1 Interest accrues on any amount owing after the due date at the rate of 2% per month, calculated from the first day overdue until payment.

12.2 In the event that the Customer breaches any of these General Conditions, the Customer shall pay (on a full indemnity basis) any and all expenses, disbursements, collection and legal costs which the Owner incurs or is liable to pay (including contingently liable to pay), in connection with the enforcement of any and all rights

and/or preservation of any and all rights contained in this contract.

12.3 For the purposes of clause 12.2, the Customer acknowledges that collection agents' costs may be calculated on a commission basis at a percentage rate of up to 20% of the overdue debt and be contingent upon payment of the Customer's overdue debt (or any portion thereof), irrespective of the amount of work performed by the collection agent before the payment is made. The Customer agrees that it will pay any such commission or fees as liquidated damages on demand when making any payment of the overdue debt or part thereof.

13 QUOTATION

13.1 Where a quotation is given by the Owner for the Equipment:

- A) unless otherwise agreed in writing, the quotation shall be valid for no longer than 30 days from the date of issue;
- B) The Owner reserves the right, until the quote is accepted, to alter the quotation because of circumstances beyond its control, including and in no way limited to, increases in the price charged by its Owners for products, services, freight and/or insurance.

14 DELIVERY AND RETURN OF EQUIPMENT

14.1 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.

14.2 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.

14.3 The Owner may, at its own discretion, agree to collect 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.

14.4 Where the Owner agrees to collect and/or deliver the Hire Equipment, the Customer agrees and acknowledges that the date and time for collection and/or delivery is an estimate only and does not constitute a contractual term or legally binding representation. The Owner shall not be liable for any loss or damage to the Customer or any third party if the Equipment is not delivered by a nominated delivery date.

14.5 The Customer will ensure the safe loading, securing, and transporting of all Hire Equipment in accordance with all laws, industry guidelines and manufacturers' guidelines.

14.6 The Customer is responsible for unloading the Equipment at the point of delivery.

14.7 The Customer is responsible for ensuring the Equipment is returned to the Owner in a clean state at the Return Date (as it was provided to the Customer on the Commencement Date). If the Equipment is not returned in the same state of cleanliness as it was in on the Commencement Date, the Owner may arrange to have the Equipment cleaned and the Customer must reimburse the Owner for all costs and expenses incurred in cleaning the Equipment.

14.8 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.

14.9 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.

14.10 No later than 14 days after the inspection under clause 13.8, the Owner will prepare a quotation listing any damage and the labour and material costs associated with the repair of such damage and must supply the Customer with a copy of the quotation.

14.11 The Customer must pay the costs for the repair of the Equipment, other than for damage resulting from Fair Wear and Tear.

14.12 Delivery dates and times are an estimate only. The Customer acknowledges and agrees that the Owner is not responsible for the failures and/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.

14.13 The cost of freight and insurance to the point of the delivery address shall be at the Customer's expense and shall form part of the Price.

14.14 Where the Customer arranges freight to its nominated location, risk in any Equipment shall pass when its nominated agent/carrier collects the Equipment from the Owner.

15 LIMITATIONS OF LIABILITY AND INDEMNITY

15.1 All implied conditions, warranties and undertakings other than the statutory guarantees set out in Schedule 2 of the *Competition and Consumer Act 2010* ("CCA") are expressly excluded to the extent permitted by law.

15.2 Where the Equipment is of a kind other than the Equipment ordinarily acquired for personal, domestic or household use, then the Owner's liability is limited, at its option, to anyone or more of the following:

- A) repairing the Equipment;
- B) the costs of repairing the Equipment;
- C) the replacement or supply of the equivalent of the Equipment;
- D) the payment of the costs of replacing the Equipment or acquiring their equivalent; or
- E) the payment of the costs of supplying the

Equipment again.

15.3 Subject to the Customers rights under Schedule 2 of the CCA, 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:
 - 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.

15.4 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.

15.5 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.

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

15.7 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.

15A COMPULSORY GUARANTEE

15A.1 Customer are required to completed credit application facility is required to provide a customer guarantee and indemnity. Where the customer is a corporation one or more directors, officers or trustees are required to provide a personal guarantee and indemnity in favour of the Owner as a condition of providing Equipment on hire or extending credit.

15A.2 Any required guarantee must be executed and returned to the Owner prior to commencement of any hire period. Failure to do so entitles the Owner to refuse delivery or suspend any Hire Agreement.

15A.3 Each guarantor:

- A) is jointly and severally liable for all monies owing under the Hire Agreement;
- B) acknowledges the guarantee is a continuing and unconditional security;
- C) agrees that the Owner may enforce the guarantee without first demanding payment from the Customer.

15A.4 The Owner may enforce the guarantee at any time without the need to first exhaust remedies against the Customer.

16 INSURANCE

16.1 During the Hire Period, 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.

16.2 If the Customer elects to insure the Equipment, they 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.

16.3 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")

16.4 The insurances required by clause 15.3 must name the Owner as a joint insured.

16.5 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: any excess payable by the Owner to its insurance provider or 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: a written police report of the loss, theft or damage to the Hire Equipment (unless the Owner provides written notification otherwise) OR any other written or photographic evidence requested by the Owner (which may include sworn statements and statutory declarations).

17 DAMAGE WAIVER

17.1 Damage Waiver or Insurance Requirement

The Customer must either:

- A) Pay the Damage Waiver Fee; or
- B) Provide Monster Hire, before the hire period commences, with a valid certificate of currency for an insurance policy that covers physical loss, theft, or damage to the Equipment, for not less than the full new replacement value of the Equipment.

If no proof of insurance is provided, the Damage Waiver Fee will be automatically applied to the Customer's account in addition to the standard hire charges.

Monster Hire reserves the right to reject any insurance policy it considers inadequate or non-compliant with this clause.

17.2 Coverage under Damage Waiver

Where the Customer has paid the Damage Waiver Fee, Monster Hire agrees to waive its right to claim for loss, theft, or damage to the Equipment, strictly subject to the following conditions: -

- A) The loss occurred during the hire period and was a result of from one of the following: -
 - i. Fire
 - ii. Storm
 - iii. Burglary or theft (only where the Equipment was reasonably locked and secured); and
- B) The Customer has provided Monster Hire with prompt written notification and, in the case of theft or criminal damage, a written police report.

17.3 Customer Contribution (Excess)

Where a valid waiver applies, the Customer remains responsible for the following excess: -

- A) \$10,000 plus 7 days' hire fees for the affected Equipment.

B) A higher amount notified in writing by Monster Hire, where applicable under Monster Hire's insurance policy

C) This amount is non-negotiable unless varied in writing by Monster Hire prior to hire commencement

D) This amount may be amended in writing by prior agreement between Monster Hire and the Customer.

17.4 Damage Waiver Exclusions

The Damage Waiver does not apply, and the Customer will remain fully liable for any costs related to loss or damage caused by or resulting from:

- A) Misuse, abuse, negligence, or wilful damage or reckless acts, or overloading of the Equipment but the customer or it's personnel;
- B) Use contrary to Monster Hire's or the manufacturer's operating instructions
- C) Failure to conduct proper maintenance, lack of lubrication, or pre-start inspections
- D) Unauthorised repairs, modifications or interference with the Equipment
- E) Breach of any statutory laws, regulations, or hire conditions
- F) Theft or loss where the Equipment was not properly secured when unattended or where reasonable site security was available but not used
- G) Damage during transportation not conducted by Monster Hire
- H) Use of Equipment on. Under or over water, wharves, bridges, or vessels without Monster Hire's written approval
- I) Use in marine, forestry, or underground activities without prior written permission
- J) Loss due to unexplained disappearance or failure to return Equipment
- K) Sub-hiring to a third party without written authorisation from Monster Hire
- L) Loss or damage to any tools, accessories or components including but not limited to) hoses, grease guns, drill bits, cords, leads, tyres, tubes, glass, teeth, picks, augers, decals, paint work, tracks or electrical components
- M) Damage to tyres (including punctures, cuts and abrasions), windscreens, headlights or underbody.
- N) Damage or loss resulting from the immersion in water or exposure to corrosive or contaminated substances or;
- O) Any loss or damage that occurs prior to the full payment of Damage Waiver fee.

The Customer remains fully responsible for all associated repair, replacement and recovery costs in these circumstances.

17.5 No Compensation or Insurance Cover

The Damage Waiver is not insurance. It does not provide any cover for:

- A) Personal injury, third-party damage, or consequential loss;
- B) Provides no entitlement to compensation, delay cost or downtime; and
- C) Professional cleaning, deodorising, or biohazard removal costs

All risks associated with the use, possession, and operation of the Equipment remains with Customer at all times.

17.6 Payment Obligations

Any amount payable by the Customer under this clause – including but not limited to the Damage Waiver Fee, any excess, excluded damage, insurer shortfall or related costs – are due and payable within seven (7) days or receiving a written invoice from Monster Hire.

Failure to pay within this timeframe constitutes a default under all legal and collection costs incurred

17.7 Equipment Remains on Hire

In the event of loss or damage to the Equipment, the Equipment will remain on hire and chargeable to the customer until: -

- A) The Equipment is fully repaired to Monster Hire's satisfaction and available for re-hire; or
- B) The Customer has paid Monster Hire the full cost of replacement or repair (as applicable) in accordance with this clause.

This ensure Monster Hire is compensated for all downtime arising from damage, loss or misuse.

17.8 Monster Hire's Discretion

Monster Hire may, at its absolute discretion, refuse, withdraw, or revoke the benefit of the Damage Waiver at any time by written notice if it reasonably suspects: -

- A) The Equipment has been used in a manner inconsistent with this Agreement
- B) Misuse, negligence, or dishonest conduct by the Customer or its personnel; or
- C) Breach any hire term or condition,

In such the circumstance, Monster Hire retains all rights to recover the full cost of repair, replacement and associated expenses from the Customer.

18 TERMINATION

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

- A) the Customer defaults under this Hire Agreement and is unable or unwilling to remedy such default within 14 days of receiving from the Owner a written notice of the breach that specifies the nature of the breach; or
- B) the Customer suffers an Insolvency Event; or
- C) the Customer defaults in any payment due under this document; or
- D) the Equipment is no longer able to be hired or is faulty or broken.

18.2 Upon termination, the Owner:

- A) will be entitled to take possession of the Equipment, including entering the Customer's Premises upon providing the Customer with notice of such entry; and
- B) will be discharged and released from any action, suits, claims or demands by the Customer in accordance with this document.

18.3 Except as provided in clause 18.2, termination will not affect or prejudice any rights or liabilities of the parties that accrued prior to termination.

19 DISPUTE

19.1 The Customer must, within 24 Hours of the relevant Equipment being provided, raise any issue associated with incomplete, damaged or incorrect and/or late supply (Complaint). The Customer acknowledges that post this 24-Hour period, the owner has a seven (7) day timeframe in which to make contemporaneous enquiries and investigations about the issue and its causes.

19.2 In the event a Complaint is made, the Customer must, upon request of the Owner, allow the Owner's nominated representative to attend the premises where the Equipment is located in order to inspect the Equipment.

19.3 If the Customer fails to give notice of any claim within the 24-Hour period specified in clause 19.1 and/or fails to allow the Owner to inspect the Equipment in accordance with clause 18.2, then, to the extent permitted by law, the Equipment is deemed to be accepted by the Customer.

20 TITLE AND PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

20.1 Whilst risk in using the Equipment passes on delivery to the Customer, legal and beneficial title in the Equipment shall remain, at all times, with the Owner.

20.2 Upon assenting to these Terms, the Customer acknowledges and agrees that these Terms constitute a Security Agreement (which may be a Purchase Money Security Interest) for the purposes of the PPSA.

20.3 The Customer undertakes to do anything (such as obtaining consents, producing documents, producing receipts and getting documents completed and signed) which the Owner asks and considers reasonably necessary for the purposes of:

- A) ensuring that a PMSI and/or Security Interest is enforceable, perfected and effective;
- B) enabling the Owner to apply for any registration, or give any notification, in connection with the Security Interest created under this Agreement so that the PMSI and/or Security Interest has the priority required by the Owner.

20.4 To the extent permitted by law, the Customer irrevocably waives its right to:

- A) receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
- B) redeem the Equipment under section 142 of the PPSA;
- C) reinstate this Agreement under section 143 of the PPSA;
- D) receive a Verification Statement.

20.5 The Customer must notify the Owner as soon as the Customer becomes aware of any of the following:

- A) 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;
- B) 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
- C) with possession of the Hired Equipment.

20.6 The Customer must not without the Owner's prior written consent:

- A) 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);
- B) change any Serial Number in respect of any Hired Equipment without first notifying the Owner;
- C) 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
- D) 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.

20.7 If the Customer fails to comply with any obligation under this Hire Agreement, then without limiting the remedies available to the Owner:

- A) upon request by the Owner, the Customer must return the Hired Equipment to the Owner;
- B) 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
- C) the Owner may retain, sell or otherwise dispose of the Hired Equipment.

20.8 The Owner agrees to the extent permitted under the PPSA; the Customer waives its rights:

- A) to receive notice of removal of an Accession under the PPSA; and

20.9 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.

20.10 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.

21 SECURITY AND CHARGES

21.1 The Customer hereby charges in favour of the Owner all of the Customer's estate and interest in any real property (whether held in its own right or in the capacity as trustee) that the Customer now has, or which it may later acquire any such interest in, with payment of all moneys owed by the Customer to the Owner now and in the future and hereby consents to the Owner lodging a caveat(s) which note the Owner's interest.

21.2 The Customer also charges all of its present and after-acquired personal property with payment of all moneys owed by the Customer to the Owner now and in the future.

21.3 Where the Customer has previously granted a charge, mortgage and/or other security interest to the Owner in any previous agreement, that charge, mortgage and/or security interest will continue, and shall be in addition to and separate from the charges and security interests created in this agreement, they and shall secure all indebtedness and obligations of the Customer under this Agreement.

21.4 The Owner will not seek to enforce the charges in clause 19.1, 19.2 and 19.3 unless it reasonably holds the view that there will still be a shortfall on recovery under its retention of title rights in clauses 18.1, 18.2 and 18.3.

22 GST

22.1 The consideration for a Supply made under or in connection with this document includes GST.

22.2 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.

22.3 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.

22.4 Any terms capitalised in clause 21 and not already defined in clause 1.1 have the same meaning given to those terms in the GST Act.

23 VARIATIONS

23.1 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.

24 CUSTOMER'S OBLIGATIONS REGARDING SUB-HIRE

24.1 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.

24.2 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.

24.3 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.

24.4 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 contained in the General Conditions of this Hire Agreement.

25 GENERAL

25.1 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.

25.2 The Customer must not assign or novate its right, title and interest in this Hire Agreement unless they have complied with clause 23 of this Agreement.

25.3 This agreement constitutes the entire agreement between the parties relating to its subject matter. All previous negotiations, representations and understandings are merged into this agreement. No oral representation or information provided by the Owner constitutes a legally binding representation, contractual term or collateral agreement.

25.4 Failure by the Owner to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of its rights or obligations under this agreement.

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

25.6 If an order is placed as an agent of a principal (whether disclosed or undisclosed) both the agent and the principal shall be joint and severally liable to pay for the Equipment and the relevant contracts shall be governed by these Terms

25.7 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.

25.8 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.

25.9 A notice, consent or communication under this Hire Agreement is only effective if it is:

- A) in writing, signed by or on behalf of the person giving it;
- B) addressed to the person to whom it is to be given;
- C) given by hand to that person's address, sent by prepaid mail to that person's address, sent by fax to that person's fax number or sent by email to that person's email address.

25.10 A notice, consent or communication delivered under clause 23.9 is given and received:

- A) if it is hand delivered or sent by fax or email by 5:00pm (local time) on a business day; or
- B) if it is hand delivered or sent by fax or email after 5:00pm (local time) on the next business day; or
- C) If it is sent by post, three business days after posting.
- D) any Special Conditions which are annexed to this Agreement, will form a part of the Agreement and will be binding upon all parties.

25A PRICING CONFIDENTIALITY

25A.1 All pricing, rates, quotations and commercial terms provided by the Owner to the Customer are strictly confidential and must not be disclosed to any third party without the Owner's prior written consent.

25A.2 The Customer must not use pricing or rate information for benchmarking, competitive tendering, or disclosure to any competing supplier.

25A.3 A breach of this clause entitles the Owner to revise pricing, suspend supply or terminate the Hire Agreement immediately or close the customer account.

25B ELECTRONIC SIGNATURES

25B.1 The parties agree electronic signatures are legally binding for the purposes of entering into, executing this account application, the terms and conditions of hire, Hire Agreements, Hire Contracts, Work Orders, or any related document.

25B.2 An electronic signature includes:

- A) typing a name into a signature field;
- B) scanned signatures;
- C) signatures executed using DocuSign, AdobeSign or equivalent;
- D) any method demonstrating the intention to be legally bound.
- E) signatures signed using a stylus, finger, or similar instrument to produce a signature

25B.3 No party may dispute the enforceability of a document solely on the basis that it was executed electronically.

26 SPECIAL TERMS PERTAINING TO WET HIRE

26.1 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.

27 HIRE OF EQUIPMENT AND LABOUR

27.1 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 here in addition, any relevant terms and conditions as outlined in the Work Order.

27.2 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.

27.3 If the customer makes an offer of employment to a Monster Hire employee (either temporary or permanent) or engages to contract the employee through another provider:

- (i) within 12 months of the contract employee being introduced by the supplier or
- (ii) within 12 months of the last date the contract employee was placed with the customer the customer must pay a placement fee of \$15,000. Once the payment is made and the employment with Monster Hire is terminated, the employees career decisions are no longer responsibility of Monster Hire

28 PAYMENT

28.1 In addition to the terms set out in Clause 11 herein.

Wet Hire Agreement will also be subject to Clause 27.

28.2 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 28;

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, Booking or Contract provided to the Customer.

29 MOBILISATION AND DEMOBILISATION

29.1 In the event that the Owner has quoted the Customer for Mobilisation and Demobilisation charges, all such charges must be paid to the Owner.

29.2 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.

29.3 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.

30 CHAIN OF RESPONSIBILITY

30.1 This clause applies to services associated with the collection, handling, loading, unloading and delivery of equipment by the customer.

30.2 The customer acknowledge and agree that you will comply with and will ensure that employees and approved sub-contractors comply with chain of responsibility law and all applicable laws relating to the licencing, driving, operational and maintenance of vehicles and equipment used under this rental agreement.

30.3 If the customer considers that they are unable to use the equipment in accordance with:

A) the start date specified and the rental agreement or the hire period or

B) any other request made by Monster Hire

C) without breaching the chain of responsibility law, you must immediately notify us in writing and advise us in writing of any proposed variation to ensure that you comply with chain of responsibility law.

30.4 If the customer considers that loading, unloading, or carrying particular equipment or any load of equipment would or may cause you to breach chain of responsibility law, you must immediately notify us in writing and seek further instructions from us.

30.5 The customer is responsible for:

A) loading, unloading and securing equipment safely and in accordance with the load restraint guide published by the National Transport Commission;

B) ensuring that any vehicle used is not overloaded and does not exceed mass or dimension limits; and

C) ensuring that you and any drivers employed or engaged by you hold any necessary permits and licenses in relation to the equipment.

31 STAND DOWN

31.1 The Customer will notify the Owner via email by 9am daily 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.

31.2 Stand Down may only be granted on the approval of the Owner and done so on a case-by-case basis. Standby at a reduced rate of the full hire rate may or may not be offered as an alternative.

31.3 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.

33 OBLIGATIONS OF THE OWNER REGARDING WET HIRE

33.1 The Owner will use its best endeavors 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.

34 INSPECTIONS OF EQUIPMENT

34.1 We may conduct an inspection or request copies of the records off you that relate to the equipment. You must cooperate with any inspection requested or carried out by us and at your cost provide copies of any records within 5 working days with receiving a request from us.