

1. Definitions

- 1.1 **"Charges"** means the cost of the hire of the Equipment (plus any GST where applicable) as agreed between JC Hire and the Client subject to clause 5 of this Contract.
- 1.2 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting JC Hire to provide the services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.4 **"Contract"** means the terms and conditions contained herein, together with any quotation, Hire form, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.5 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when using JC Hire's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.6 **"Equipment"** means all Equipment (including any accessories) supplied on hire by JC Hire to the Client (and where the context so permits shall include any incidental supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by JC Hire to the Client.
- 1.7 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.8 **"Hire Period"** means the period between the Commencement Date and the Termination Date.
- 1.9 **"Hire Schedule"** means a document which JC Hire may require the Client to sign (or accept in a way JC Hire requires) including particulars of the Client, Equipment and Hire Period and such other information as JC Hire may decide to require.
- 1.10 **"JC Hire"** means Largenlawn Pty Ltd (ABN: 67 010 861 702) T/A JC Hire and/or PB & NM Young Pty Ltd (ACN: 076 043 939) ATF Peter B Young Family Trust (ABN: 20 469 916 825) T/A JC Hire, its successors and assigns or any person acting on behalf of and with the authority of Largenlawn Pty Ltd (ABN: 67 010 861 702) T/A JC Hire and/or PB & NM Young Pty Ltd (ACN: 076 043 939) ATF Peter B Young Family Trust (ABN: 20 469 916 825) T/A JC Hire.
- 1.11 **"Minimum Hire Period"** means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by JC Hire to the Client.
- 1.12 **"Site"** means the location/s at which the Equipment is to be operated.
- 1.13 **"Termination Date"** means the date and time when the Client must return the Equipment to the possession of JC Hire.

2. Acceptance

- 2.1 The parties acknowledge and agree that:
 - (a) they have read and understood the terms and conditions contained in this Contract; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Equipment.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges and accepts that the hire of Equipment on credit shall not take effect until the Client has completed a credit application with JC Hire and it has been approved with a credit limit established for the account.
- 2.5 In the event that:
 - (a) the hire of Equipment requested exceeds the Client's credit limit and/or the account exceeds the payment terms, JC Hire reserves the right to refuse delivery; and
 - (b) the Equipment originally booked by the Client is unavailable due to breakdown, late return, or any other reason beyond JC Hire's reasonable control, JC Hire reserves the right to supply Equipment of an equivalent or similar type and specification to fulfil the hire agreement. JC Hire will use reasonable efforts to ensure the substitute Equipment meets the Client's operational requirements.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that JC Hire shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
 - (a) resulting from an inadvertent mistake made by JC Hire in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by JC Hire in respect of the Equipment hire and/or services.
- 3.2 In circumstances where the Client is required to place an order for the Equipment, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for the Equipment ("**Client Error**"). The Client must pay for all Equipment it orders from JC Hire notwithstanding that such Equipment suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take Delivery of such Equipment. JC Hire is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.

4. Change in Control

- 4.1 The Client shall give JC Hire not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by JC Hire as a result of the Client's failure to comply with this clause.

5. Charges and Payment

- 5.1 At JC Hire's sole discretion, the Charges shall be either;
- (a) as indicated on invoices provided by JC Hire to the Client upon placement of an order for the Equipment; or
 - (b) JC Hire's quoted Charges (subject to clause 5.2) which shall be binding upon JC Hire provided that the Client shall accept in writing JC Hire's quotation within twenty-eight (28) days.
- 5.2 JC Hire reserves the right to change the Charges in the event of a variation to JC Hire's quotation (including, but not limited to, additional charges for rigging, assembling, installing, erecting, dismantling Equipment or where access to the Site is delayed or unavailable). Variations will be charged for on the basis of JC Hire's quotation, and will be detailed in writing, and shown as variations on JC Hire's invoice. The Client shall be required to respond to any variation submitted by JC Hire within ten (10) working days. Failure to do so will entitle JC Hire to add the cost of the variation to the Charges. Payment for all variations must be made in full at the time of their completion.
- 5.3 At JC Hire's sole discretion, a reasonable deposit (in the form of a bond) shall be required at the commencement of this Contract in accordance with any quotation provided by JC Hire or as notified to the Client prior to the placement of an order for the Equipment, which shall be refunded to the Client by within thirty (30) days of the return of the Equipment, provided that the Client has complied with their obligations hereunder. The deposit may be used to offset any applicable Charges payable by the Client under clause 15.3, and any outstanding balance thereof shall be due as per clause 5.4.
- 5.4 Time for payment for the Equipment being of the essence, the Charges will be payable by the Client on the date/s determined by JC Hire, which may be:
- (a) on or before delivery of the Equipment; or
 - (b) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices; or
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by JC Hire.
- 5.5 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge per transaction may apply) or by any other method as agreed to between the Client and JC Hire.
- 5.6 JC Hire may in its discretion allocate any payment received from the Client towards any invoice that JC Hire determines and may do so at the time of receipt or at any time afterwards. On any default by the Client JC Hire may re-allocate any payments previously received and allocated. In the absence of any payment allocation by JC Hire, payment will be deemed to be allocated in such manner as preserves the maximum value of JC Hire's Purchase Money Security Interest (as defined in the PPSA) in the Equipment.
- 5.7 The Client shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Client by JC Hire nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify JC Hire in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as JC Hire investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in JC Hire placing the Client's account into default and subject to default interest in accordance with clause 19.1.
- 5.8 The Client acknowledges and agrees that the Client's obligations to JC Hire for the supply of Equipment on hire shall not cease until:
- (a) the Client has paid JC Hire all amounts owing for the hire of the Equipment; and
 - (b) the Client has met all other obligations due by the Client to JC Hire in respect of all contracts between JC Hire and the Client.
- 5.9 Receipt by JC Hire of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 5.10 Unless otherwise stated the Charges does not include GST. In addition to the Charges the Client must pay to JC Hire an amount equal to any GST JC Hire must pay for any supply by JC Hire under this or any other agreement for the hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Charges. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.

6. Additional Hire Charges

- 6.1 Additional hire Charges as set out in the Hire Schedule will apply if the Equipment is used for more than eight (8) hours per day.
- 6.2 In accordance with clause 7, the Client will be charged for the hire of Equipment for the full Hire Period. The Client shall continue to pay the Charges and other charges after the off-hire date if the Client has not returned the Equipment to JC Hire by the end of the Hire Period. This obligation survives termination of the hire agreement.
- 6.3 Hire Charges will commence from the Hire Period and continue until the date the Client notifies JC Hire that the Equipment will be available for collection (the "**Off Hire Date**"). At this time, JC Hire will give the Client a number as verification that the Client's request has been received ("**Off-Hire Number**"). The Equipment must be available for collection by no later than the time of day at which the Client's hire commenced (e.g., if the Client's hire commenced at ten (10) am, then the Equipment must be ready for collection by no later than ten (10) am on the off-hire date), otherwise JC Hire reserves the right to charge additional hire Charges and charge a waiting time or additional labour costs where access to the Site is delayed or unavailable at the agreed time. The off-hire date is not considered to be the Client's notice to JC Hire that the Equipment is available for collection.
- 6.4 Off-hire receipts will only be issued when the Equipment has been either collected by JC Hire or returned to JC Hire's premises, (including where the Client has contacted JC Hire for return freight of the Equipment).

7. Hire Period

- 7.1 Hire Charges shall commence from the time the Equipment departs from JC Hire's premises and will continue until the return of the Equipment to JC Hire's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

JC Hire - Terms & Conditions of Hire

- 7.2 Where the Client has agreed to a specific hire period or Minimum Hire Period with JC Hire and the hire period expires or is terminated, the Client acknowledges and agrees to promptly pay JC Hire for all lost hire Charges that JC Hire would otherwise have been entitled to under this Contract.
- 7.3 Hire Charges shall be calculated on the following basis:
- (a) for the four (4) hour rate to apply the Equipment shall be returned within four (4) hours from hire commencement or twenty-four (24) hourly rates shall apply;
 - (b) in accordance with clause 5.1, 7.1 and 7.3(a) the minimum hire Charge may be set out in JC Hire's hire shop book from time to time for each item.
- 7.4 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 7.5 Hire rates do not include the cost of fuel, detergents, abrasives, cutting and grinding wheels, cartridges, nails etc. These items shall be purchased at the time of hire.
- 7.6 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason unless JC Hire confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies JC Hire immediately, hiring Charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.
- 8. Delivery**
- 8.1 Delivery ("Delivery") of the Equipment is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Equipment at JC Hire's premises; or
 - (b) JC Hire (or JC Hire's nominated carrier) delivers the Equipment to the Client's nominated address even if the Client is not present at the address.
- 8.2 The cost of Delivery will be payable by the Client in accordance with the quotation provided by JC Hire to the Client, or as otherwise notified to the Client prior to the placement of an order for the Equipment.
- 8.3 The Client acknowledges and accepts that JC Hire may charge a waiting time or additional labour where access to the Site is delayed or unavailable at the agreed time and shall be shown as a variation to the Charges in accordance with clause 5.2.
- 8.4 Any time specified by JC Hire for Delivery of the Equipment is an estimate only and JC Hire will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Equipment to be supplied at the time and place as was arranged between both parties. In the event that JC Hire is unable to supply the Equipment as agreed solely due to any action or inaction of the Client, then JC Hire shall be entitled to charge a reasonable fee for re-supplying the Equipment at a later time and date, and/or for storage of the Equipment.
- 8.5 In accordance with clause 8.4: if JC Hire is unable to:
- (a) complete Delivery of the Equipment as scheduled due to the Client's Site not being ready, lack of access, or changes to Delivery instructions provided by the Client, JC Hire reserves the right to charge the Client additional fees for any diversion, redelivery, waiting time, or delays incurred; and
 - (b) unload or deliver the Equipment due to Work Health and Safety (WHS) restrictions, unsafe Site conditions, or the Client's failure to provide required Site inductions or access, JC Hire may charge the Client for any associated labour costs, waiting time, or redelivery fees incurred as a result of such delays or diversions.
- 9. Risk**
- 9.1 JC Hire retains ownership of the Equipment nonetheless all risk for the Equipment passes to the Client on Delivery.
- 9.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies JC Hire for all loss, theft, or damage to the Equipment howsoever to the extent caused by the Client.
- 9.3 The Client will insure, or self-insure, JC Hire's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 9.4 The Client accepts full responsibility for and shall keep JC Hire indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons.
- 10. Access and Inspection**
- 10.1 JC Hire and JC Hire's representatives have the right to enter the location at any time upon giving prior reasonable notice to the Client to inspect, maintain, repair and/or repossess the Equipment.
- 11. Title**
- 11.1 The Equipment is and will at all times remain the absolute property of JC Hire, and the Client must return the Equipment to JC Hire upon request to do so.
- 11.2 If the Client fails to return the Equipment to JC Hire as is required under this Contract or when requested to do so, then JC Hire or JC Hire's agent may (as the invitee of the Client) enter upon and into any land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, while taking reasonable care to avoid damage. Any costs incurred by JC Hire as a result of JC Hire so repossessing the Equipment shall be charged to the Client.
- 11.3 The Client is not authorised to pledge JC Hire's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
- 12. Personal Property Securities Act 2009 ("PPSA")**
- 12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

JC Hire - Terms & Conditions of Hire

- 12.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Equipment that has previously been supplied and that will be supplied in the future by JC Hire to the Client.
- 12.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which JC Hire may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii).
 - (b) indemnify, and upon demand reimburse, JC Hire for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Equipment charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of JC Hire; and
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without the prior written consent of JC Hire.
- 12.4 JC Hire and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 12.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by JC Hire, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Client must unconditionally ratify any actions taken by JC Hire under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.
- 12.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 12 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 12 will apply generally for the purposes of the PPSA.
- 13. Security and Charge**
- 13.1 In consideration of JC Hire agreeing to supply the Equipment on hire, the Client grants JC Hire a security interest by way of a floating charge (registerable by JC Hire pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Client or owned by the Client in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Equipment on hire under this Contract and/or permit JC Hire to appoint a receiver to the Client in accordance with the *Corporations Act 2001* (Cth).
- 13.2 The Client indemnifies JC Hire from and against all JC Hire's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising JC Hire's rights under this clause.
- 13.3 In the event that the Client defaults or breaches any term of this Contract and as a result, the security provided in clauses 5.8, 12.2 and 13.1 as applicable, is deemed insufficient by JC Hire to secure the repayment of monies owed by the Client to JC Hire, the Client hereby grants JC Hire a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Client now, or owned by the Client in the future, to secure the performance of the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14. Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")**
- 14.1 The Client must inspect the Equipment on Delivery and must within twenty-four (24) hours of Delivery notify JC Hire in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow JC Hire to inspect the Equipment.
- 14.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
- 14.3 JC Hire acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, JC Hire makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Equipment. JC Hire's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Client is a consumer within the meaning of the CCA, JC Hire's liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.6 If JC Hire is required to rectify, re-supply, or pay the cost of re-supplying any services or Equipment under this clause or the CCA, but is unable to do so, then JC Hire may refund any money the Client has paid for the services or Equipment but only to the extent that such refund shall take into account the value of any services or Equipment and consumables which have been provided to the Client which were not defective.
- 14.7 If the Client is not a consumer within the meaning of the CCA, JC Hire's liability for any defect or damage in the services or Equipment is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by JC Hire at JC Hire's sole discretion;
 - (b) limited to any warranty to which JC Hire is entitled, if JC Hire did not manufacture the Equipment; or
 - (c) otherwise negated absolutely.
- 14.8 Notwithstanding clauses 14.1 to 14.7 but subject to the CCA, JC Hire shall not be liable for any defect or damage which may be caused or partly caused by, or arise as a result of:
- (a) the Client failing to properly maintain or store any Equipment;
 - (b) the Client interfering with the Equipment in any way without JC Hire's written approval to do so;
 - (c) the Client using the Equipment for any purpose other than that for which it was designed;

JC Hire - Terms & Conditions of Hire

- (d) the Client continuing the use of the Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (e) the Client failing to follow any instructions or guidelines provided by JC Hire; or
- (f) fair wear and tear, any accident, or act of God.

15. Client's Responsibilities

15.1 The Client shall:

- (a) satisfy itself at commencement that the Equipment is suitable for its purposes;
- (b) notify JC Hire immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
- (c) maintain the Equipment as is required by JC Hire (including, but not limited to, maintaining (where applicable) water, oil and fluid levels, hydraulic hoses and tyre pressures);
- (d) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by JC Hire or posted on the Equipment;
- (e) ensure that:
 - (i) all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to JC Hire upon request;
 - (ii) the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;
 - (iii) all reasonable care is taken by the driver in handling and/or parking the Equipment and that the Equipment is left locked and/or securely stored when not in use.
- (f) be liable for any parking or traffic infringement, impoundment, towage and storage costs incurred during the hire period and will supply relevant details as required by the Police and/or JC Hire relating to any such matters or occurrences;
- (g) comply with all work health and safety laws relating to the Equipment and its operation;
- (h) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to JC Hire;
- (i) refuel the Equipment prior to its return from hire. In the event the Equipment needs to be refuelled upon its return from hire then the costs of refuelling shall be charged to the Client in addition to the costs of the Equipment hire;
- (j) keep the Equipment in their own possession and control and shall not assign the benefit of the hire Contract nor be entitled to lien over the Equipment;
- (k) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work; and
- (l) indemnify and hold harmless JC Hire in respect of all claims arising out of the Client's use of the Equipment.

15.2 The Client shall not:

- (a) alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (b) exceed the recommended or legal load and capacity limits of the Equipment (including the recommended number of passengers (if applicable));
- (c) carry Equipment over water without the prior written permission of JC Hire;
- (d) use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
- (e) use unsuitable electric leads; or
- (f) fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.

15.3 Immediately on request by JC Hire the Client will pay:

- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to JC Hire;
- (b) all costs incurred in cleaning the Equipment including contamination (e.g. concrete, slurry, paint, mud, chemicals, plaster etc.); and/or
- (c) all costs of repairing any damage caused by:
 - (i) the ordinary use of the Equipment;
 - (ii) the negligence of the Client or the Client's agent; or
 - (iii) vandalism, or (in JC Hire's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client.
- (d) the cost of fuels and consumables provided by JC Hire and used by the Client; and
- (e) missing accessories or attachments (e.g. buckets, hoses, tools, keys, straps, augers) which are separately chargeable in the event these items are not returned; and
- (f) any:
 - (i) lost hire fees JC Hire would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
 - (ii) costs incurred by JC Hire in picking up and returning the Equipment to JC Hire's premises if the Client does not return the Equipment to JC Hire's premises or any pre-agreed pickup location when it was originally agreed that the Client would do so; and/or
 - (iii) insurance excess payable in relation to a claim made by either the Client or JC Hire in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or JC Hire's.

16. Long Distance Maintenance and Breakdowns

16.1 This clause 16 applies should the Client hire Equipment for use at a long-distance location.

16.2 Scheduled services for all Equipment located at a long-distance location will be subject to a per kilometre charge both to and from the premises nominated by the Client. There will be no charge for the first fifty (50) km either way.

16.3 Scheduled services for multiple items of Equipment which are located at the long-distance location will only be charged as one call out.

16.4 The Client remains responsible for maintenance and care of all Equipment in accordance with clause 15, including, but not limited to, checking of all fluids (fuel, oil, water, battery levels, waste tanks etc.), checking of all hoses (hydraulic, fuel and water), general tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points.

- 16.5 If the Equipment breaks down at a long-distance location, the Client will pay JC Hire the costs associated with any attendance to the long-distance location in addition to any other costs payable under this Contract and shall be shown as a variation as per clause 5.2.
- 17. Damage Waiver**
- 17.1 The Hire Charge may include a charge for the damage waiver. The damage waiver is charged at ten percent (10%) of the value of the total hire costs. Damage waiver is not insurance but is an agreement by JC Hire to limit the Client's liability in certain circumstances for loss, theft, or damage to the Equipment to an amount called the damage waiver excess fee. The damage waiver excess fee is explained in clause 17.5 notwithstanding the limitations set out in clause 15.
- 17.2 For the purpose of this clause the term "Equipment" does not include any tools, accessories, parts, grease guns, hoses, electrical cords, lights, light globes, and other similar accessories, ground engaging tools, tracks, tyres, windscreens, mirrors, glass, and perspex.
- 17.3 The Client is not required to pay the damage waiver fee from the date the Client produces a certificate of currency for an appropriate policy of insurance that covers loss, theft, or damage to the Equipment during the hire period for an amount not less than the replacement value of the Equipment. For the avoidance of any doubt, the Client is liable to pay the damage waiver fee for that portion of the hire period where a certificate of currency required pursuant to the clause remains outstanding ("Uninsured Period") and the Client is not entitled to any credit and/or reimbursement of the damage waiver fee charged and/or paid that relates to the Uninsured Period. The Client is responsible for any excess and any other costs associated with the Client's insurance and the Client is responsible for any shortfall in repair or replacement costs of the Equipment following payment of any amount received under the Client's insurance, including any loss JC Hire suffers as a result of not being able to hire the Equipment.
- 17.4 Where the Client has paid the damage waiver fee, JC Hire will waive its right to claim against the Client for loss, theft, or damage to the Equipment if:
- (a) for theft, the Client has promptly reported the incident to the police and provided JC Hire with a written police report;
 - (b) the Client has co-operated with JC Hire in providing information, photos, statements or police reports where required for theft, damage or insurance matters; and
 - (c) the loss, theft or damage does not fall into one or more of the circumstances set out in clause 15.
- 17.5 The damage waiver excess per item of Equipment is the amount calculated as follows:
- (a) *replacement* – where the Equipment is lost, stolen, or damaged beyond repair:
 - (i) subject to clause 17.5(a)(ii), the damage waiver excess fee per item of Equipment that is lost, stolen, or damaged beyond repair, will be the amount equal to the greater of:
 - A. five hundred (\$ 500.00) Australian Dollars + GST or;
 - B. ten percent (10%) of the new replacement cost.
 - (ii) where the new replacement cost is less than five hundred (\$ 500.00) Australian Dollars, the damage waiver excess fee will be an amount equal to the new replacement cost.
 - (b) *repair* – where the Equipment is partially damaged and can be repaired:
 - (i) subject to clause 17.5(b)(ii), the damage waiver excess fee per item of Equipment that is partially damaged and can be repaired will be the amount equal to the greater of:
 - A. five hundred (\$ 500.00) Australian Dollars + GST or;
 - B. ten percent (10%) of the new replacement cost.
 - (ii) where the repair cost of the Equipment is less than five hundred (\$500.00) Australian Dollars, the damage waiver excess will be an amount equal to the lesser of the repair cost and the new replacement cost.
- 17.6 Even if the Client has paid the damage waiver fee, JC Hire will not waive its rights to claim against the Client for loss, theft or damage to the Equipment and the damage waiver will not apply if the loss, theft, or damage has arisen from anything referred to in clause 15 or if the loss, theft or damage:
- (a) has arisen as a result of the Client's breach of a clause of this Contract;
 - (b) has been caused by the Client's negligent act or omission;
 - (c) has arisen as a result of the Client's use of the Equipment in violation of any laws;
 - (d) has been caused by the Client's failure to use the Equipment for its intended purpose or in accordance with JC Hire's instructions or the manufacturer's instructions;
 - (e) occurs to the Equipment whilst it is located, used, loaded, unloaded, transported on or over water, dams, pools, wharves, bridges or vessels of any kind;
 - (f) has been caused by a lack of lubrication or a failure to properly service or maintain the Equipment ;
 - (g) has been caused by collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object due to insufficient clearance;
 - (h) has been caused by the overloading of the Equipment or any components thereof;
 - (i) is to motors or other electrical Equipment or components within the Equipment caused by electrical overload, a surge in electrical current or the use of under-rated or excessive lengths of extension leads with the electrical Equipment;
 - (j) is caused by exposure to any corrosive or caustic substance, such as cyanide, salt water, acid, etc;
 - (k) is caused by vandalism;
 - (l) is to tyres or tubes; or
 - (m) is to windscreens, mirrors, glass, or perspex.

18. Cancellation

- 18.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("**the Breaching Party**") the other party may suspend or terminate the supply of Equipment on hire to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party shall be liable for any costs associated with a party suspending/cancelling the Contract under this clause 18.1.
- 18.2 If JC Hire, due to reasons beyond JC Hire's reasonable control, is unable to deliver any Equipment to the Client, JC Hire may cancel any Contract to which these terms and conditions apply or cancel Delivery of the Equipment at any time before the Equipment are delivered by

JC Hire - Terms & Conditions of Hire

giving written notice to the Client. On giving such notice, JC Hire shall repay to the Client any money paid by the Client for the Equipment to be hired. JC Hire shall not be liable for any loss or damage whatsoever arising from such cancellation.

- 18.3 The Client may cancel Delivery of the Equipment by written notice:
- (a) if cancellation occurs within twenty-four (24) hours of the scheduled Delivery time, the Client shall be liable to pay one (1) full day's hire fee as a cancellation charge; and
 - (b) if cancellation occurs earlier than twenty-four (24) hours before the scheduled Delivery time, no cancellation fee shall apply.
- 18.4 Any deposit paid under clause 5.3 shall be refunded in full unless otherwise agreed in writing.

19. Default and Consequences of Default

- 19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at the RBA cash rate plus eight percent (8%) p.a. (and at JC Hire's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes JC Hire any money, the Client shall indemnify JC Hire from and against all costs and disbursements:
- (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Client would be liable;
- in regard to legal costs on a solicitor and own client basis incurred in exercising JC Hire's rights under these terms and conditions, internal administration fees, JC Hire's contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 19.3 Further to any other rights or remedies JC Hire may have under this Contract, if the Client has made payment to JC Hire, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by JC Hire under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 19.4 Without prejudice to JC Hire's other remedies at law JC Hire shall be entitled to cancel all or any part of any order of the Client which remains unperformed and all amounts owing to JC Hire shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to JC Hire becomes overdue, or in JC Hire's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client has exceeded any applicable credit limit provided by JC Hire;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20. Compliance with Laws

- 20.1 The Client and JC Hire shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Equipment.
- Modern Slavery*
- 20.2 For the purposes of this clause:
- (a) "**Act**" means the *Modern Slavery Act 2018 (cth)*
 - (b) "**Modern Slavery**", "**Modern Slavery Statement**" and "**Reporting Entity**" have the meanings given by the Act.
- 20.3 If the Client is a Reporting Entity, it shall comply with all of its obligations under the Act.
- 20.4 Whether the Client is a Reporting Entity or not, the Client shall:
- (a) use reasonable endeavours to identify, assess and address risks of modern slavery practices in its operations and supply chains;
 - (b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery;
 - (c) use its reasonable endeavours to ensure that if at any time the Client becomes aware of Modern Slavery practices in its operations and supply chains, the Client must as soon as reasonably practicable take all reasonable steps to address or remove these practices;
 - (d) provide to JC Hire a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and
 - (e) within seven (7) days of JC Hire's request (or such longer period as JC Hire agrees), provide to JC Hire any information or assistance reasonable requested by JC Hire;
 - (i) concerning the Client's compliance with the Act;
 - (ii) concerning the Client's operations and supply chains;
 - (iii) to enable JC Hire to prepare a Modern Slavery Statement or otherwise comply with the Act; or
 - (iv) to enable JC Hire to assess and address risks of Modern Slavery practices in its operations and supply chains.
- 20.5 The parties agree that in the circumstances a breach arises pursuant to this clause or the terms of the Act, the parties will try and resolve the breach by way of remediation and JC Hire will be able to terminate the Contract for any breach by the Client.
- 20.6 The Client warrants that any information supplied to JC Hire is true and accurate and may be relied upon for the purposes of the Act.
- 20.7 The Client shall indemnify JC Hire against any loss or liability suffered by JC Hire as a result of the Client's breach of this clause 20.

21. Privacy Policy

- 21.1 All emails, documents, images or other recorded information held or used by JC Hire is Personal Information, as defined and referred to in clause 21.3, and therefore considered Confidential Information. JC Hire acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). JC Hire acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by JC Hire that may result in serious harm to the Client, JC Hire will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

JC Hire - Terms & Conditions of Hire

- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to JC Hire in respect of Cookies where the Client utilises JC Hire's website to make enquiries. JC Hire agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to JC Hire when JC Hire sends an email to the Client, so JC Hire may collect and review that information ("collectively Personal Information").
- If the Client consents to JC Hire's use of Cookies on JC Hire's website and later wishes to withdraw that consent, the Client may manage and control JC Hire's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 21.3 The Client agrees for JC Hire to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by JC Hire.
- 21.4 The Client agrees that JC Hire may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 21.5 The Client consents to JC Hire being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 21.6 The Client agrees that personal credit information provided may be used and retained by JC Hire for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Equipment; and/or
 - (b) the use of GPS tracking and telematics systems on JC Hire's Equipment to collect data relating to the Equipment's location, movement, and usage. This information may be used by JC Hire for purposes including, but not limited to, security, operational efficiency, billing accuracy, and compliance with safety requirements; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Equipment; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the collection of amounts outstanding in relation to the Equipment.
- 21.7 JC Hire may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report; and/or
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 21.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 21.3 above;
 - (b) name of the credit provider and that JC Hire is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults (provided JC Hire is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and JC Hire has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of JC Hire, the Client has committed a serious credit infringement; or
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 21.9 The Client shall have the right to request (by e-mail) from JC Hire:
- (a) a copy of the Personal Information about the Client retained by JC Hire and the right to request that JC Hire correct any incorrect Personal Information; and
 - (b) that JC Hire does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 21.10 JC Hire will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 21.11 The Client can make a privacy complaint by contacting JC Hire via e-mail. JC Hire will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

22. Service of Notices

- 22.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission; or
 - (e) if sent by email to the other party's last known email address.

- 22.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 23. Trusts**
- 23.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not JC Hire may have notice of the Trust, the Client covenants with JC Hire as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not during the term of the Contract without consent in writing of JC Hire (JC Hire will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust fund or trust property.
- 24. General**
- 24.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 24.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland the state in which JC Hire has its principal place of business and are subject to the jurisdiction of the courts in Marchooydre, Queensland.
- 24.4 JC Hire may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.
- 24.5 The Client cannot assign or licence without the written approval of JC Hire.
- 24.6 JC Hire may elect to subcontract out any part of the provision services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of JC Hire's sub-contractors without the authority of JC Hire.
- 24.7 The Client agrees that JC Hire may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for JC Hire to provide Equipment on hire to the Client.
- 24.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to JC Hire, once the parties agree that the Force Majeure event has ceased.
- 24.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 24.10 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.
- 24.11 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.