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## Hillary Group – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 “HG” means LD & LJ Hillary Pty Ltd T/A Hillary Group its successors and assigns or any person acting on behalf of and with the authority of LD & LJ Hillary Pty Ltd T/A Hillary Group.
- 1.2 “Client” means the person/s requesting HG to provide the Services/Equipment as specified in any invoice, document or order, and if there more than one person requesting the Services/Equipment is a reference to each person jointly and severally.
- 1.3 “Equipment” means all Equipment including any accessories supplied on hire by HG to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by HG to the Client.
- 1.4 “Services” means all Services supplied by HG to the Client at the Client’s request from time to time.
- 1.5 “Incidental Items” means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by HG in the course of it conducting, or supplying to the Client, any Services.
- 1.6 “Minimum Hire Period” means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by HG to the Client.
- 1.7 “Price” means the price payable for the Services and/or Equipment hire as agreed between HG and the Client in accordance with clause 5 of this contract.

### 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services/Equipment provided by HG.
- 2.2 These terms and conditions may only be amended with HG’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and HG.

### 3. Electronic Transactions (Queensland) Act 2001

- 3.1 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.

### 4. Change in Control

- 4.1 The Client shall give HG not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and if the Client is a company, any proposed change to shareholding or where a different person will control the board of directors, 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, or business practice). The Client shall be liable for any loss incurred by HG as a result of the Client’s failure to comply with this clause.

### 5. Price and Payment

- 5.1 At HG’s sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by HG to the Client; or
  - (b) the Price as at the date of delivery of the Services/Equipment according to HG’s current price list; or
  - (c) HG’s quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 HG reserves the right to change the Price:
  - (a) if a variation to the Equipment which are to be supplied is requested; or
  - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed etc) which are only discovered on or after commencement of the Services; or
  - (d) in the event of increases to HG in the cost of labour or other circumstances and events which are beyond HG’s control.
- 5.3 At HG’s sole discretion a non-refundable deposit may be required.
- 5.4 Time for payment for the Services/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by HG, which may be:
  - (a) on delivery of the Services/Equipment;
  - (b) fourteen (14) days from date of invoice;
  - (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 HG.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to three and a half percent (3.5%) of the Price), or by any other method as agreed to between the Client and HG.
- 5.6 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, HG reserves the right to treat all retentions as placing the Client’s account into default.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to HG an amount equal to any GST HG must pay for any supply by HG under this or any other agreement for providing HG’s Services/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 Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 6. Delivery of Services/Equipment

- 6.1 At HG’s sole discretion delivery of the Services/Equipment shall take place when:
  - (a) the Services/Equipment are supplied to the Client at HG’s address; or
  - (b) the Services/Equipment are supplied to the Client at the Client’s nominated address.
- 6.2 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 6.3 At HG’s sole discretion the cost of delivery is in addition to the Price.

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- 6.4 The Client must take delivery by receipt or collection of the Services/Equipment whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Services/Equipment as arranged then HG shall be entitled to charge a reasonable fee for redelivery of the Equipment and/or the storage of the Equipment.
- 6.5 Any time specified by HG for delivery of the Services/Equipment is an estimate only and HG 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 Services/Equipment to be supplied at the time and place as was arranged between both parties. In the event that HG is unable to supply the Services/Equipment as agreed solely due to any action or inaction of the Client then HG shall be entitled to charge a reasonable fee for re-supplying the Services/Equipment at a later time and date.
- 7. Risk**
- 7.1 Irrespective of whether HG retains ownership of any Incidental Items, all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as HG may repossess the Incidental Items in accordance with clause 12.3(f). The Client must insure all Incidental Items on or before delivery with a reputable insurer and must produce evidence of insurance to HG upon request.
- 7.2 HG reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Incidental Items as a result of the Client's failure to insure in accordance with clause 7.1.
- 8. Access**
- 8.1 The Client shall ensure that HG has clear and free access to the work site at all times to enable them to undertake the Services. HG shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of HG.
- 8.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by HG. The Client agrees to indemnify HG against all costs incurred by HG in recovering such vehicles in the event they become bogged or otherwise immovable.
- 9. Underground Locations**
- 9.1 Prior to HG commencing any work the Client must advise HG of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 9.2 Whilst HG will take all care to avoid damage to any underground services the Client agrees to indemnify HG in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 9.1.
- 10. Compliance with Laws**
- 10.1 The Client and HG shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 10.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 10.3 The Client agrees that the site will comply with any relevant work health and safety laws and any other relevant safety standards or legislation.
- 11. Insurance**
- 11.1 HG shall have public liability insurance of at least \$5m. It is the Client's responsibility to ensure that they are similarly insured.
- 12. Title to Incidental Items**
- 12.1 HG and the Client agree that where it is intended that the ownership of Incidental Items is to pass to the Client that such ownership shall not pass until:
- (a) the Client has paid HG all amounts owing for the Services/Equipment; and
- (b) the Client has met all other obligations due by the Client to HG in respect of all contracts between HG and the Client.
- 12.2 Receipt by HG 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 and until then HG's ownership or rights in respect of the Incidental Items shall continue.
- 12.3 It is further agreed that:
- (a) the Client is only a bailee of the Incidental Items and must return the Incidental Items to HG immediately upon request by HG;
- (b) the Client holds the benefit of the Client's insurance of the Incidental Items on trust for HG and must pay to HG the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed;
- (c) the Client must not sell, dispose, or otherwise part with possession of the Incidental Items. If the Client sells, disposes or parts with possession of the Incidental Items then the Client must hold the proceeds of sale of the Incidental Items on trust for HG and must pay or deliver the proceeds to HG on demand.
- (d) the Client should not convert or process the Incidental Items or intermix them with other goods, but if the Client does so then the Client holds the resulting product on trust for the benefit of HG and must dispose of or return the resulting product to HG as HG so directs.
- (e) the Client shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of HG;
- (f) the Client irrevocably authorises HG to enter any premises where HG believes the Incidental Items are kept and recover possession of the Incidental Items.
- 13. Personal Property Securities Act 2009 ("PPSA")**
- 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

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- 13.2 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:
- (a) all Incidental Items/Equipment previously supplied by HG to the Client;
  - (b) all Incidental Items/Equipment will be supplied in the future by HG to the Client; and
  - (c) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to HG for Services – that have previously been provided and that will be provided in the future by HG to the Client.
- 13.3 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 HG 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 13.2(a)(i) or 13.2(a)(ii);
  - (b) indemnify, and upon demand reimburse, HG 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 Incidental Items/Equipment charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of HG;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items/Equipment in favour of a third party without the prior written consent of HG;
  - (e) immediately advise HG of any material change in its business practices of selling Incidental Items which would result in a change in the nature of proceeds derived from such sales.
- 13.4 HG 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.
- 13.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by HG, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Client must unconditionally ratify any actions taken by HG under clauses 13.2 to 13.5.
- 13.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 14. Security and Charge

- 14.1 In consideration of HG agreeing to supply Services/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Client indemnifies HG from and against all HG's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising HG's rights under this clause.
- 14.3 The Client irrevocably appoints HG and each director of HG as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.

### 15. Defects, Warranties and the Competition and Consumer Act 2010 (CCA)

- 15.1 The Client must inspect HG's Services on completion, and the Equipment on delivery and must within seven (7) days notify HG in writing of any evident defect in the Services/Equipment (including HG's workmanship), or any Incidental Items provided, or of any other failure by HG to comply with the description of, or quote for, the Services/Equipment which HG was to supply. The Client must notify any other alleged defect in HG's Services, Equipment or Incidental Items as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Client must allow HG to review the Services, Equipment or Incidental Items that were provided.
- 15.2 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**).
- 15.3 HG acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, HG makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services/Equipment. HG's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Client is a consumer within the meaning of the CCA, HG's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If HG is required to rectify, re-supply, or pay the cost of re-supplying the Services/Equipment under this clause or the CCA, but is unable to do so, then HG may refund any money the Client has paid for the Services/Equipment but only to the extent that such refund shall take into account the value of Services/Equipment and Incidental Items which have been provided to the Client which were not defective.
- 15.7 If the Client is not a consumer within the meaning of the CCA, HG's liability for any defective Services/Equipment or Incidental Items is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by HG at HG's sole discretion;
  - (b) otherwise negated absolutely.
- 15.8 Notwithstanding clauses 15.1 to 15.7 but subject to the CCA, HG 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 Incidental Items;
  - (b) the Client using the Incidental Items for any purpose other than that for which they were designed;
  - (c) the Client continuing to use any Incidental Item after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) interference with the Services/Equipment by the Client or any third party without HG's prior approval;

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- (e) the Client failing to follow any instructions or guidelines provided by HG;
- (f) fair wear and tear, any accident, or act of God.

### 16. Default and Consequences of Default

- 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at HG's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Client owes HG any money the Client shall indemnify HG from and against all costs and disbursements incurred by HG in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, HG's contract default fees, and bank dishonour fees).
- 16.3 Further to any other rights or remedies HG may have under this contract, if a Client has made payment to HG by credit card, 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 HG under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 16.4 Without prejudice to any other remedies HG may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions HG may suspend or terminate the supply of Services/Equipment to the Client. HG will not be liable to the Client for any loss or damage the Client suffers because HG has exercised its rights under this clause.
- 16.5 Without prejudice to HG's other remedies at law HG shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to HG shall, whether or not due for payment, become immediately payable if:
  - (a) any money payable to HG becomes overdue, or in HG's opinion the Client will be unable to make a payment when it falls due;
  - (b) 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
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### 17. Cancellation

- 17.1 HG may cancel any contract to which these terms and conditions apply or cancel delivery of Services/Equipment at any time before the Services are commenced or Equipment provided by giving written notice to the Client. On giving such notice HG shall repay to the Client any money paid by the Client for the provision of the Services/Equipment. HG shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.2 In the event that the Client cancels delivery of the Services/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by HG as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 17.3 Cancellation of orders for Equipment made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once an order has been placed.

### 18. Privacy Act 1988

- 18.1 The Client agrees for HG to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by HG.
- 18.2 The Client agrees that HG 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 years.
- 18.3 The Client consents to HG being given a consumer credit report to collect overdue payment on commercial credit.
- 18.4 The Client agrees that personal credit information provided may be used and retained by HG for the following purposes (and for other agreed purposes or required by):
  - (a) the provision of Services/Equipment; and/or
  - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services/Equipment; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Services/Equipment.
- 18.5 HG may give information about the Client to a CRB for the following purposes:
  - (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 18.6 The information given to the CRB may include:
  - (a) personal information as outlined in 18.1 above;
  - (b) name of the credit provider and that HG 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, 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 HG has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
  - (g) information that, in the opinion of HG, the Client has committed a serious credit infringement;
  - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

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- 18.7 The Client shall have the right to request (by e-mail) from HG:
- (a) a copy of the information about the Client retained by HG and the right to request that HG correct any incorrect information; and
  - (b) that HG does not disclose any personal information about the Client for the purpose of direct marketing.
- 18.8 HG 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 agreement or is required to be maintained and/or stored in accordance with the law.
- 18.9 The Client can make a privacy complaint by contacting HG via e-mail. HG 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](http://www.oaic.gov.au).

### 19. General

- 19.1 The failure by HG to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect HG's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which HG has its principal place of business, and are subject to the jurisdiction of the Bowen courts in that state.
- 19.3 Subject to clause 15 HG shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by HG of these terms and conditions (alternatively HG's liability shall be limited to damages which under no circumstances shall exceed the Price paid for the Services/Equipment).
- 19.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by HG nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.5 HG may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 19.6 The Client agrees that HG may amend these terms and conditions at any time. If HG makes a change to these terms and conditions, then that change will take effect from the date on which HG notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for HG to provide Services/Equipment to the Client.
- 19.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 19.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

### Additional Terms & Conditions Applicable to Hire Only

### 20. Hire Period

- 20.1 For Equipment in which a timing device is installed the hire period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Client's possession.
- 20.2 Where the Equipment does not have a timing device installed hire charges shall commence from the time the Equipment is collected by the Client from HG's premises and will continue until the return of the Equipment to HG's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 20.3 If HG agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves HG's premises and continue until the Client notifies HG that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 20.4 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 20.5 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless HG confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies HG 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.

### 21. Risk to Equipment

- 21.1 HG retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on delivery.
- 21.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies HG for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
- 21.3 The Client will insure, or self-insure, HG'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.
- 21.4 The Client accepts full responsibility for and shall keep HG 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.

### 22. Title to Equipment

- 22.1 The Equipment is and will at all times remain the absolute property of HG.
- 22.2 If the Client fails to return the Equipment to HG then HG or HG's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 22.3 The Client is not authorised to pledge HG's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

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### 23. Client's Responsibilities

- 23.1 The Client shall:
- (a) maintain the Equipment as is required by HG (including, but not limited to, maintaining water, oil and fluid levels and tyre pressures);
  - (b) notify HG 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) satisfy itself at commencement that the Equipment is suitable for its purposes;
  - (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 HG or posted on the Equipment;
  - (e) ensure that 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 HG upon request;
  - (f) comply with all work health and safety laws relating to the Equipment and its operation;
  - (g) 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 HG;
  - (h) 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;
  - (i) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
  - (j) employ the Equipment solely in its own work and shall not permit the Equipment or any part thereof to be used by any other party for any other work;
  - (k) not exceed the recommended or legal load and capacity limits of the Equipment;
  - (l) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
  - (m) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.
- 23.2 Immediately on request by HG the Client will pay:
- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to HG;
  - (b) all costs incurred in cleaning the Equipment;
  - (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;
  - (d) the cost of repairing any damage to the Equipment caused by any wilful act or negligent act or omission of the Client or the Client's agent;
  - (e) any lost hire fees HG would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
  - (f) the cost of repairing any damage to the Equipment caused by vandalism, or (in HG's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
  - (g) the cost of fuels and consumables provided by HG and used by the Client.

### 24. Wet Hire

- 24.1 In the event of "wet" hire of the Equipment the operator of the Equipment remains an employee of HG and operates the Equipment in accordance with the Client's instructions. As such HG shall not be liable for any actions of the operator in following the Client's instructions.