

BROOKS

MASTER SERVICES AGREEMENT



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***Note to Customers:** Any alterations, cross-outs, or handwritten modifications to this contract are not automatically accepted and will be treated as suggestions only. No departure from the original terms shall be binding unless formally agreed upon and documented in writing by Brooks.

FORMAL INSTRUMENT OF AGREEMENT

Date: This Agreement is made and commences on the date the Customer signs this Agreement and Brooks provides confirmation.

Parties:

Brooks Details **Brooks Mechanical Services Pty Ltd** (ABN: 12 688 742 949) 39-43 Murray Road North, Welshpool. WA. 6106

Telephone: 1300 276 657

Email: applications@brooksgroup.au

Contact: As specified on the individual quotes.

Hirer Details **A.** Individual, Sole Trader or Partnership (please include date of birth) | **B.** Company (please include ABN) | **C.** Trusts (please include Trust Name & Trust ABN)

A. Individual Full Name: _____ **DOB:** _____

B. or C. Company or Trust Name: _____ **ABN:** _____

Address: _____

Postal Address: _____
(If different from above)

Telephone: _____

Email: _____

Primary Contact: _____

Telephone: _____
(If different from above)

Email: _____
(If different from above)

1. DEFINITIONS

1.1. In this Master Services Agreement, unless otherwise defined:

Accepted Quotes means a quotation issued by Brooks that has been accepted by the Customer, whether by written confirmation, purchase order, payment, or other form of acceptance agreed by Brooks to for the Agreed Services.

ACL means the Australian Consumer Law which is contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

Agreed Services means the Services Brooks has agreed to provide to the Customer, as described in the Accepted Quote (as varied by any Scope Variations agreed in writing between the parties).

Australian Privacy Principles means the Australian Privacy Principles set out in the Privacy Act 1988 (Cth).

Business Day means a day that is not a Saturday, Sunday, or a public holiday in the state in which the Services are performed.

Cash Account means any billing arrangement Brooks may have extended to Customer upon Brooks approval of a cash account application.

Claim means any claim made (whether in the form of an allegation, demand, suit, action or other proceeding of any kind) under or in connection with these terms and conditions or its subject matter, whether arising under contract (including under any warranty or indemnity or any other breach, actual or anticipatory), in equity, in restitution, negligence or any other tort, strict liability, under statute or otherwise at all.

Confidential Information means each party's information made available to the other at any time concerning the business, operations, finances, plans or contractors of the disclosing party (or the disclosing party's Related Bodies Corporate), including customer lists and pricing information and including any information that is derived from such information, but does not include information which:

- a. is or becomes public knowledge other than by a breach of this Agreement; or
- b. is independently known to, or developed by, the receiving party as evidenced by the receiving party's written records.

Credit Account means any billing arrangement Brooks may have extended to Customer upon Brooks approval of a credit account application.

Early Termination Fee has the meaning given under Clause 21.7.

Environmental Laws means any statute, regulations or other laws made or issued by a regulatory body or government regulating or otherwise relating to the environment including the use or protection of the environment.

Equipment means any equipment provided by Brooks to the Customer under the Agreement, including any associated, accompanying or attached tools, accessories, and parts.

Fair Wear and Tear means normal superficial deterioration which could be reasonably expected over the Services period under normal operating conditions, where the Equipment is operated by a reasonably competent operator, having regard to the condition, age, existing wear and other specific characteristics of the Equipment.

Force Majeure events beyond a party's reasonable control that cause delays or failure to meet obligations under this Agreement, which the affected party could not reasonably foresee, prevent, or overcome. Examples include natural disasters, pandemics, war, terrorism, riots, government actions, fires, floods, strikes, labour disputes, or transportation shortages.

GST means the goods and/or services tax levied in accordance with the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the expressions "supply" and "tax" have the same meanings as in that Act.

Intellectual Property Right means any copyright, patent, registered and unregistered design, circuit layout, trademark or name or other protected right, both present and future.

Liability includes all liability, claims, damage, loss, costs and expenses (including legal fees, costs and disbursements on a full indemnity basis) and any environmental loss, cost, damage or expense.

Master Services Agreement has the meaning given to it in clause 3.

Personnel mean in relation to a party, that party's officers, employees, agents, contractors, and subcontractors (and the officers, employees, agents, contractors, and subcontractors of those contractors and subcontractors).

PPSA means the Personal Property Securities Act 2009 (Cth) and any other legislation and regulations in respect of it, and the following words have the respective meanings given to them in the PPS Act: financing change statement, financing statement, purchase money security interest (or "PMSI"), register, registration, security interest, security agreement.

Related Body Corporate has the same meaning as in the Corporations Act 2001 (Cth).

Relevant Documents means:

- a. any credit or cash application for a Credit or Cash Account completed by Customer; and
- b. any guarantee, indemnity, or charge (including the Security) which guarantees all monies owing by Customer to Brooks.

Scope Variations means any change to the Services (including their nature, extent, method, timing, sequence, or quantity) from those originally agreed or described in the Brooks' quote, order confirmation, or other written agreement with the Customer.

Services means the services, including any installation, commissioning, maintenance, repair, inspection, consultancy, or other work, provided or to be provided by Brooks to the Customer, as described in Brooks' quotation, Scope Variation, order confirmation, invoice, or other written agreement between the parties.

Site means the location where the Services are performed or Equipment is delivered, including any land, building, structure, or premises owned, occupied, or nominated by the Customer, and any other place the Customer directs the Supplier to access for the purposes of this Agreement

Special Conditions means any agreed additional terms or conditions that alter, add to, or are required to take precedence over the provisions of this Agreement as mutually agreed by the parties.

Telemetry Data Systems means the technological frameworks, devices, and software platforms used to collect, transmit, store, and analyse data generated by remote or mobile assets for monitoring and operational purposes. As an example, In-Vehicle Management Systems.

Workplace Health and Safety Laws means all work health and safety related acts and regulations (including any Law enacted with the aim of harmonising work health and safety legislation between the states), in respect of the location where any part of the Services are being performed.

2. INTERPRETATION & HEADINGS

2.1. In this Agreement, unless the context otherwise requires:

- a. The singular includes the plural and vice versa, and a gender includes other genders.
- b. Other grammatical forms of a defined word or expression have corresponding meanings.
- c. A reference to a clause, paragraph, schedule, or annexure is to a clause or paragraph of, a special condition or schedule or annexure to, this agreement, and a reference to this agreement includes any schedules and annexures.
- d. A reference to a document or instrument includes the document or instrument as novated, altered, supplemented, or replaced from time to time.
- e. A reference to money, charges, rates, dollars, \$ is a reference to Australian dollars.
- f. A reference to time is to the time in the State or Territory in Australia where Brooks's office or branch is located from where the Customer collected (or arranged collection of) the Equipment.
- g. A reference to party includes the party's executors, administrators, successors, assigns and substitutes.
- h. A reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity.
- i. A reference to a statute, ordinance, code, or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments, or replacements of any of them.
- j. The meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions.
- k. Any agreement, representation, warranty, or indemnity by two or more parties (including where two or more persons are included in the same defined term) is for the benefit of these parties and binds them jointly and severally.
- l. A rule of construction does not apply to the disadvantage a party if that party was responsible for the preparation of this Agreement or any part of it.
- m. The words "include", "includes" and "including" are not words of limitation.
- n. If an obligation falls on a day that isn't considered a Business Day, then the obligation must be completed on the next following Business Day.

2.2. Headings are for ease of reference only and do not affect interpretation.

3. MASTER SERVICES AGREEMENT

3.1. Unless otherwise specifically agreed in writing all Services performed by Brooks are done so in accordance with the following terms and conditions, and the Customer agrees to be bound by the following terms and conditions.

3.2. The Agreement consists of the following documents in the corresponding order or precedence:

- a. Special Conditions (If applicable).
- b. Accepted Scope Variations (Mutually agreed changes to scope of services performed).
- c. Accepted Quotes (Individually mutually agreed services to be performed).
- d. Master Services Agreement (This Agreement).
- e. Any other annexures, Credit or Cash Account Applications or agreements attached or working in conjunction with this Agreement (If applicable or required).

- 3.3. This Agreement is the complete and final agreement between the parties, replacing any prior arrangements, proposals, or communications, whether oral or written about its subject matter. Any terms from the Customer, including those in a purchase order, will only be part of this Agreement if agreed in writing.

4. TERM OF AGREEMENT

- 4.1. If this is for a one-off performance of Agreed Services, Clauses 4.2 through 4.4 will not apply. If this Agreement is being applied under either a Cash or Credit Account, Clauses 4.2 through 4.4 will apply.
- 4.2. This Agreement begins upon execution and, unless terminated earlier, will remain in effect for an initial three (3) years. If there are no changes, it will then automatically renew for successive three (3)-year terms unless either party provides thirty (30) days' notice that they wish the Agreement to expire.
- 4.3. If Brooks proposes amendments (which will be notified to the Customer in writing) during any renewal term, the Customer will have thirty (30) days to respond in writing. Failure to do so will be deemed acceptance of the revised Agreement. The Customer's continued use of this Agreement through accepting new quotes, will also constitute acceptance of the updated and revised terms.
- 4.4. If Agreed Services are continuing after or supplied Equipment remains in the possession of the Customer after expiry date, the rights, obligations and conditions of the associated Agreement version will continue to govern that arrangement until the completion of Services or the Equipment is returned to Brooks.

5. ORDERING & ACCEPTANCE BY THE CUSTOMER

- 5.1. If the Customer wishes Services performed by Brooks, the Customer must request a quote from Brooks.
- 5.2. The request must specify amongst other things:
- A description of plant or equipment involved including as much detail as possible.
 - A description of the problem including as much detail as possible.
 - The nature of the Services required including as much detail as possible.
 - The location of the Services including any site-specific requirements.
 - Any timings or deadlines associated or required.
 - Any other relevant information.
- 5.3. Upon receiving the request for quote from the Customer, Brooks will prepare a quote and provide it to the Customer.
- 5.4. If the Customer accepts the quote, the Customer must notify their acceptance of the quote in writing to Brooks before the expiry of the validity period of the relevant quote.
- 5.5. Upon the Customer providing written acceptance of the quote, Brooks will provide confirmation that it can perform the Services requested.
- 5.6. If the Customer does not accept the quote before the end of the validity period, the quote will expire, and the Customer must submit a new request for quote to Brooks.

6. PERFORMANCE OF SERVICES

- 6.1. Upon receiving written acceptance from the Customer within the quote validity period, Brooks will provide the Personnel to perform the Services as specified in the Accepted Quote, provided that Brooks has notified the Customer that:
- The Customer has been approved for either a Cash or Credit Account or,
 - In the case of a one-off performance of Services, the Customer has paid an agreed deposit as stated on the quote.
- 6.2. For the avoidance of doubt, Brooks will not be required to provide the Personnel or perform any Services unless and until the Customer has an approved Cash or Credit Account or, where relevant, paid the agreed deposit.
- 6.3. Any date or dates for the provision of, or access to, any Services specified in the Quote are estimates only.
- Brooks will use its best endeavours to provide the Personnel and Services by those dates and will not be liable for any delay in providing the Personnel or the Services, or other non-performance of the Services, other than as directly caused by a breach of this Agreement by Brooks.

7. VARIATION OF SCOPE OF SERVICES

- 7.1. Either party may request a Scope Variation to the Services, including changes to scope, timing, access, or other requirements.
- 7.2. Brooks will, as soon as practicable, notify the Customer of any change in price, timeframe, or other impact resulting from the requested Scope Variation.
- 7.3. A Scope Variation will not take effect unless and until agreed in writing (which may include by email) by both parties.
- 7.4. If, during the performance of the Services, Brooks identifies conditions or faults that differ from those described by the Customer, or circumstances outside Brooks' reasonable control arise (including lack of access to the site or equipment), Brooks may suspend the Services and propose a Scope Variation under Clause 7.1.

- 7.5. Upon agreement of a Scope Variation, the scope of the Services and the price, timeframe, and any other affected terms of this Agreement will be adjusted accordingly.

8. STANDARD OF SERVICE

- 8.1. Brooks will provide the Services in accordance with all Laws and will ensure that Personnel have the necessary skills, training and required qualifications to perform the Services.

9. SUBCONTRACTORS

- 9.1. Brooks may provide the Services itself or through a subcontractor.
- 9.2. If Brooks uses a subcontractor to provide the Services, the Customer must provide to the subcontractor the same assistance, information, access, rights and benefits (other than payment of any money) that it is required to grant to Brooks in connection with the Services.

10. CUSTOMER RESPONSIBILITIES - PERSONNEL

- 10.1. The Customer warrants that it is entitled to grant Personnel access to the Site.
- 10.2. Unless otherwise specified in a quote, the Customer must at its own expense adequately supervise the Personnel at all times and ensure that the Personnel:
- Have access to the Site and other resources as are reasonably necessary to perform the obligations under this Agreement; and
 - Have access to a Customer representative at the relevant Site to liaise with as necessary to support in performing its obligations under this Agreement.
- 10.3. The Customer is responsible for providing at its own expense a safe workplace and safe systems of work for all Personnel and must:
- Comply with, and must ensure its personnel and Personnel comply with, all Laws, including Work Health and Safety or Environmental Laws that are applicable or relevant to the Site (including providing all appropriate personal protection equipment and safety inductions) (WHSE Requirements);
 - Promptly, and in any event not less than five (5) Business Days prior to any requirement for Personnel to enter the Site:
 - notify Brooks of entry conditions,
 - arrange any induction procedures, and
 - any other requirements of the Site so as to enable Brooks to perform its obligations under this Agreement.
 - Provide the Personnel entering into the Site all appropriate safety inductions including in relation to WHSE Requirements relating to the Site and general workplace health and safety matters.
 - Ensure that any direction given to any Personnel can be carried out safely and in compliance with the WHSE Requirements.
- 10.4. Provide Brooks, promptly upon request, with any information required to enable Brooks to confirm the provision of a safe and healthy work environment to Personnel and meet any duties that Brooks has under applicable WHS Requirements; and
- 10.5. As soon as possible, but no later than twenty-four (24) hours, advise Brooks of any workplace incidents involving Personnel.
- 10.6. If, in Brooks' reasonable opinion, the Customer has not provided a safe workplace and safe systems of work for provision of the Services in accordance with Clause 10, Brooks may:
- Suspend or refuse to perform part or all of the affected Services without liability; and
 - Invoice the Customer, and the Customer must pay, the reasonable costs and expenses resulting from the suspension or non-performance of the Services.
- 10.7. The Customer acknowledges that:
- They must comply with all of its obligations under this Agreement at its own expense; and
 - Brooks will not be required to pay any amount to the Customer or a third party as a condition of providing the Services.

11. PLANT & EQUIPMENT

- 11.1. Brooks may decline to supply Equipment in its discretion, however, if Brooks is to provide any Plant and Equipment as specified in the Accepted Quote, the Customer agrees to the terms of this Clause 11 and accepts the responsibilities as detailed under Clause 12.
- 11.2. If agreed to supply Equipment Brooks will supply the Plant and Equipment to the Customer at the Site and if applicable, exercise reasonable endeavours to deliver the Equipment to the Site on the date specified in the Accepted Quote.
- 11.3. Upon Brooks delivering the Equipment to the Site in accordance with Clause 11.2, the Customer must accept delivery of the Equipment and satisfy itself as to the identity, condition and merchantable quality of the Equipment.
- 11.4. The Equipment is at the Customer's risk from the time of acceptance under Clause 11.3 until the Equipment is returned to Brooks in accordance with this Agreement.
- 11.5. Title in the Equipment at all times remains with Brooks.

- a. The Customer must not sell, part with possession or otherwise dispose of, lease or licence the Equipment or give anyone any Security Interest in or other rights over the Equipment.
- b. The Customer acknowledges that any disposal or dealing in breach of this Agreement is not authorised by Brooks and that Brooks' Security Interest continues in the Equipment despite the disposal or dealing.
- 11.6. The Customer must not make any alteration or addition to the Equipment which may adversely affect its value, nor alter any identifying number or mark on the Equipment.
 - a. Any addition to the Equipment will become part of the Equipment which is the subject of Brooks' Security Interest.
- 11.7. The Customer must not deface or conceal any identifying decals, nameplates, words, markings or numbers, on the Equipment and the Customer must upon request affix to the Plant and Equipment a readily visible plate or sign that identifies Brooks' interest in the relevant Equipment.
- 11.8. The Customer must not without Brooks' prior written consent allow the Equipment to become affixed to any other item (including land) in which a person other than Brooks has a Security Interest.
- 11.9. The Customer must ensure that no lien of any nature arises in respect of the Equipment.

12. CUSTOMER RESPONSIBILITIES – PLANT & EQUIPMENT

- 12.1. The Customer must keep the Equipment secure from theft and damage and not do or allow anything to be done which is likely to jeopardise the safety, condition or value of the Equipment.
- 12.2. The Customer must notify Brooks immediately if the Equipment is lost, stolen or damaged or the Customer parts with possession of the Equipment.
- 12.3. The Customer must not remove the Equipment from the relevant Site without Brooks' consent in writing.
- 12.4. The Customer must ensure that the Equipment is only used:
 - a. For the purpose for which it was designed.
 - b. By persons with proper qualifications and experience.
 - c. In accordance with this Agreement and any manufacturer instructions or manuals notified by Brooks.
 - d. In accordance with any applicable Laws, and must:
 - i. comply with all Laws relating to the Equipment or the use, operations, storage, possession or licensing of the Equipment; and
 - ii. if applicable, operate, service, maintain and store the Equipment in good condition and repair, and in accordance with the manufacturer's specifications and recommendations and to Brooks' satisfaction.
- 12.5. The Customer is liable for or any loss of, or damage to, the Equipment while in its possession, custody, or control, except to the extent caused by:
 - a. Fair Wear and Tear; or
 - b. Negligence or breach of this Agreement by Brooks.
- 12.6. The Customer must ensure Brooks has access to the Equipment.
 - a. Where the Equipment is located on premises the Customer does not occupy, the Customer must procure access for Brooks to those premises at any time, in order to exercise any of Brooks's rights, including:
 - i. In respect of a Default Event
 - ii. To repair, inspect or test the Equipment or otherwise check whether the Customer has complied with its obligations under this Agreement.
- 12.7. Without limiting any other provision under this agreement, the Customer authorises Brooks to enter any premises where the Equipment is located for these purposes.
 - a. Brooks will give the Customer reasonable notice before doing so, unless Brooks considers that it must act quickly in order to protect Brooks' interest in the Equipment.
- 12.8. Upon the termination or expiry of this Agreement, Brooks is entitled to possession of the Equipment, and the Customer must immediately return the Equipment to the place specified by Brooks.
- 12.9. If the Equipment is not returned to Brooks when the Customer is required to do so, the Customer must pay Brooks an amount equal to one day's proportion of the relevant Fees for each day until the Equipment is returned to Brooks.
 - a. If the Plant and Equipment is not thereafter returned to Brooks within a reasonable time (determined by Brooks in its sole discretion).
 - b. Brooks may declare the Equipment to be lost and the Customer must:
 - i. pay Brooks the current market value for the Equipment (as notified by Brooks),
 - ii. pay any other money which the Customer owes to Brooks.
- 12.10. The Customer's liability under this clause is in addition to, and not in substitution for, any other liability it may have under this Agreement.

13. BILLING & PAYMENT

- 13.1. Where applicable under a one-off performance of Services, the Customer must pay to Brooks a deposit as stated on the quote upon acceptance and prior to the performance of and Services.
 - 13.2. The Customer acknowledges and agrees that any deposit paid will be forfeited to Brooks if:
 - a. The Customer breaches this agreement.
 - b. The Customer changes its mind for convenience.
 - c. Any part of the Services has been performed.
 - 13.3. Forfeiture of any deposit will not affect any other rights of Brooks under this agreement.
 - 13.4. the Customer must pay charges, fees, and costs due under this Agreement in accordance with the following:
 - a. For a one-off purchase, the deposit in accordance with this Clause 13, and remaining balances will be due on issue of invoice, which may occur at the commencement, periodically and after completion of Services depending on the nature and duration of the Services requested.
 - 13.5. If the Customer has opted for a Cash Account:
 - a. Payment will be due on issue of invoice, which may occur at the commencement, periodically and after completion of Services depending on the nature and duration of the Services requested.
 - 13.6. If the Customer has opted for a Credit Account:
 - a. Payment will be due within thirty (30) days end of month, without deduction or set off, from the invoice date.
 - 13.7. Any credit accommodation granted by Brooks in connection with this agreement or associated credit application, is done so at its discretion and may be altered or withdrawn at Brooks's discretion.
 - 13.8. If any amount becomes overdue, all outstanding amounts will immediately become due and payable by the Customer. The Customer agrees to reimburse Brooks for all costs and fees, including legal expenses on an indemnity basis, incurred in recovering the overdue amounts.
 - 13.9. Brooks may charge interest on any amounts unpaid by the Customer after the due date at a rate of 3% per annum plus the Australian Tax Office (ATO) benchmark interest rate, as published by the ATO from time to time. If the benchmark rate is unavailable, Brooks may apply a reasonable equivalent rate. This interest applies regardless of whether Brooks notifies the Customer.
 - 13.10. Brooks may set-off any monies owing by the it, to the Customer, with notice and supporting documentation, against any amounts owing.
- 14. NO SOLICITATION**
- 14.1. The Customer must not, and must ensure that its Related Bodies Corporate do not, without the prior written consent of Brooks:
 - a. solicit, entice away or attempt to entice away any Personnel or other employee of Brooks either on behalf of the Customer or any of its Related Bodies Corporate or any other person; or
 - b. Engage or employ any person within twelve (12) months of the person ceasing to be engaged or employed by Brooks.
 - 14.2. If the Customer engages or employs any person in breach of Clause 14, Brooks may invoice the Customer, and the Customer must pay to Brooks, at Brooks' current hourly rate to that applicable person's role, the hours such person has been engaged or employed by the Customer for the first three (3) months of such employment or engagement.
 - 14.3. This Clause 14 in no way limits or prevents the Customer from making an offer of employment to any person who has responded to a job advertisement without individual solicitation by the Customer.
- 15. PERSONAL PROPERTY & SECURITIES ACT (PPSA)**
- 15.1. The Customer acknowledges and agrees that:
 - a. This Services Agreement constitutes a 'security interest' for the purposes of the PPSA; and
 - b. A security interest may be taken in all Equipment previously supplied by Brooks to the Customer (if any) and in all Equipment that will be supplied in the future during the parties' relationship.
 - 15.2. The Customer agrees to do anything (including obtaining consents, signing, or producing any further documents, and/or providing any further information) which Brooks requests and considers necessary for the purposes of:
 - a. Ensuring that the security interest is enforceable, perfected, and otherwise effective; and/or
 - b. Enabling Brooks to apply for any registration, complete any financing statement, financing change statement or give any notification, in connection with the security interest; and/or
 - c. Enabling Brooks to exercise rights in connection with the security interest.
 - 15.3. The Customer waives any rights they may have:

- a. To receive notices under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 134(1) and 135 and 157 of the PPSA and
 - b. Under sections 142 and 143 of the PPSA.
- 15.4. The parties agree that sections 96 and 117 of the PPSA do not apply to these terms and conditions.
- 15.5. Neither party will disclose information of the kind mentioned in section 275(1) of the PPSA, and the Customer will not authorise, and will ensure that no other party authorises, the disclosure of such information.
- 15.6. Nothing in this Agreement may be taken as an agreement that any Security Interest provided for by this Agreement attaches later than the time contemplated by section 19(2) of the PPSA.

16. INSURANCE

- 16.1. The Customer must maintain at its own expense all appropriate policies of insurance against:
- a. Public and product liability insurance for a minimum of \$10,000,000.00 for any one occurrence.
 - b. worker's compensation (including occupational disease where required by law) and employer's indemnity insurance, which comply with the relevant Laws applicable to the Site where the Services are being performed.
- 16.2. Where Services include the provision of Equipment, the Customer must:
- a. Provide insurance that covers all loss, theft, or damage to or arising out of the provision and use of the Equipment (including while in transit) in an amount not less than the fair market value of the Equipment at the time of loss, theft or damage, howsoever occurring.
 - b. Provide insurance that covers any liability for loss or damage to third party property and death or injury to any third-party person arising out of or in connection with the Equipment (whether they are used for the purpose of conveying people or property or otherwise and whether they are licensed or unlicensed).
 - c. Be maintained until the Equipment is returned to or is in the possession of Brooks.
- 16.3. The insurance cover obtained by the Customer must be taken out with a reputable and solvent insurer recognised by the Australian insurance industry.
- 16.4. The Customer, prior to Services commencing or upon request, must provide a certificate of currency evidencing the appropriate insurance coverage, pay all premiums and permit Brooks to receive insurance money payable with respect to Equipment provided.
- 16.5. If Brooks is not reasonably satisfied that the Customer has adequately insured the Equipment, Brooks may take out such insurance as Brooks considers appropriate and the Customer must reimburse Brooks for its costs of doing this on demand.
- 16.6. The Client must not do or fail to do anything which would:
- a. Result in any insurance claim being refused or not met in full.
 - b. Vary any insurance in any material respect, enforce, conduct, settle or compromise any insurance claim without Brooks' written consent.
 - c. The Customer must notify Brooks immediately of any circumstances which may entitle a claim to be made under any insurance.
 - d. The Customer must forward to Brooks any proceeds or any payment of any entitlement sent to the Customer under any insurance, unless Brooks otherwise agrees in writing. Any such amount may be applied by Brooks towards the repair or replacement of the Equipment or the reduction of the Customers liability to Brooks, at Brooks' discretion.

17. RELEASE & INDEMNITY

- 17.1. The Customer releases Brooks from, and indemnifies Brooks against, all third-party claims, actions, suits, demands, losses, costs, and expenses (including legal costs on a full indemnity basis) arising directly or indirectly from the performance or supply of the Services, including but not limited to:
- a. Any defect, deficiency, or delay in the Services to the extent caused by information, instructions, materials, or access provided (or not provided) by the Customer.
 - b. Any condition of the Customer's site, equipment, or facilities.
 - c. Any negligent or unlawful act or omission by the Customer or its personnel.
 - d. Any breach by the Customer of these terms or of any applicable law.

18. LIABILITY & CONSEQUENTIAL LOSSES

- 18.1. Neither Party shall be liable for any consequential, indirect, or special damages, including loss of profits or business opportunities. Each Party's liability is limited to direct damages and shall not exceed the total amount paid or payable under this Agreement.

19. EXCLUSION OF WARRANTIES & LIABILITIES

- 19.1. Where the Australian Consumer Law (ACL) applies, the Customer has the benefit of guarantees in relation to the Services which cannot be excluded.

- 19.2. To the extent that the ACL (or any other law which cannot be excluded) does not apply, Brooks makes no representations and gives no warranties other than those set out in this Agreement and will not be liable to the Customer for any damages, costs or other liabilities whatsoever in relation to the Services or supply of Equipment to the Customer.

- 19.3. Brooks acknowledges that, in some circumstances, the Customer may have rights under the *Competition and Consumer Act 2010 (Cth)* including the Australian Consumer Law or other laws which cannot be excluded, modified or restricted (Consumer Rights). The Consumer Rights may relate to conditions, warranties, undertakings and guarantees (including the Consumer Guarantees) which apply in relation to this Agreement.

- 19.4. To the extent that it is not lawful or possible to exclude conditions, warranties or rights implied or given in respect of this Agreement, Brooks's liability for any breach of such Consumer Rights will (but only to the extent allowed by law) be limited (at Brooks' option):

- a. In the case of goods supplied, to the replacement or repair of the goods or the supply of equivalent goods, the payment of the cost of repairing or replacing the goods or of acquiring equivalent goods; and
- b. In the case of services supplied to the supplying of the services again or the payment of the cost of having the services supplied again.

- 19.5. All other implied conditions, warranties and rights, together with any implied by custom or other circumstances, are excluded.

- 19.6. Subject to the provisions of Clause 19 and despite any implication arising from any other clause in this Agreement, Brooks' liability in connection with this Agreement, however arising other than liability dealt with under Clauses 19 is limited to the aggregate Fees paid by the Customer in the 12 months preceding the events giving rise to the Customer's claim against Brooks that results in such liability.

20. BREACH OF AGREEMENT

- 20.1. If the Customer breaches this Agreement and does not remedy the breach within a reasonable period of time (having regard to the nature of the breach), or becomes bankrupt or insolvent as that term is defined in the Corporations Act 2001 or ceases to carry on its business, then Brooks may:
- a. Terminate this agreement; and/or
 - b. Sue the Customer for recovery of all monies owing by the Customer; and/or
 - c. Repossess the Equipment (and Brooks is authorised to enter any premises where the Equipment is located in order to do so).
- 20.2. The Customer indemnifies and must keep indemnified Brooks against any and all damages, liabilities, loss, costs, and expenses incurred by Brooks arising from or contributed to by a breach by the Customer of any provision of this agreement.

21. TERMINATION

- 21.1. Brooks may at any time and in its unfettered discretion terminate the Agreement, whereupon the Customer must immediately address any of their obligations remaining under this Agreement and make Equipment available for collection.
- 21.2. Either party may terminate this Agreement and any Agreed Services immediately by giving notice to the other party, if:
- a. The other party breaches any term of the Agreement and fails to remedy the breach within seven (7) days of written notification of the breach.
 - b. The other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to continue business, subject to any rights either party may have under the Corporations Act 2001.
- 21.3. Brooks may terminate the Agreement immediately if the Customer or any Customer controlled third party has made a false statement or breached any provision of the relevant Agreement documents.
- 21.4. Upon termination of the Services or this Agreement, Brooks is entitled to take possession of the Equipment and for this purpose the Customer irrevocably appoints Brooks as its agent and authorises and licences Brooks to:
- a. Enter upon any land or premises upon which the Equipment is situated or where Brooks has any reason to believe that the Equipment may be situated; and
 - b. Disconnect, dismantle, and remove the Equipment whether or not it is affixed to the land or the premises, connected to property or equipment not owned by Brooks, in use by the Customer or any other person.
- 21.5. After termination of the Services, and until the Equipment has been returned to or collected by Brooks, the Equipment shall remain at the sole risk of the Customer, and the Customer will indemnify Brooks in respect to any loss of or damage to the Equipment in those circumstances, until Brooks regained possession of the Equipment.
- 21.6. These rights of termination are in addition to any other rights either party has under the Agreement and do not exclude any right or remedy available under law or equity.

- 21.7. Where this Agreement or any Agreed Services are terminated ahead of schedule, the customer may be charged an Early Termination Fee which is the total of the following amounts:
- a. Any Fees and any other money then due for payment but which is unpaid as at the date of termination.
 - b. For all shifts scheduled to complete the Services that have commenced or are due to commence within forty-eight (48) hours of the termination, the sum of all Fees which, but for the termination, would have been payable by the Customer under this Agreement had those shifts been completed.
 - c. Any demobilisation costs specified in the quote, or if none are specified, Brooks's expenses actually incurred in demobilisation of the Equipment and Personnel from the Site.
 - d. Brooks' expenses actually incurred in repossessing the Equipment, which includes any expenses incurred in attempting to repossess the Equipment and satisfying any lien claimed over them, as well as any legal expenses paid by Brooks on a solicitor and client basis in relation to the repossession.
- 21.8. Brooks agrees to provide upon written request by the Customer such information as the Customer reasonably requests in relation to the calculation of the Early Termination Fee or any other amount payable by the Customer under this Agreement.

22. TELEMETRY DATA

- 22.1. Brooks uses Telemetry Data Systems on the Equipment to capture data, including telemetry, usage rates, attachment usage, breakdowns, and negligent behaviour (e.g., failure to service or excessive engine revving). This data is monitored for reporting, determining Equipment usage, and troubleshooting repairs.
- 22.2. Brooks is not liable with respect to the Customer's use or reliance on any data provided in relation to the Equipment.
- 22.3. The Customer acknowledges that:
- a. Brooks owns all rights, title, and interest (including intellectual property rights) in the data.
 - b. The Customer must secure Brooks' prior written consent for the intended use of the data and must not share the data with any third party.
 - c. Brooks does not warrant the accuracy of any data or guarantee that such data will be available throughout the Services period.
 - d. Brooks is not required to retain any data, and such data may not be available for retrieval after the Services period.
 - e. Brooks may disclose, within reason and if required, any data to a relevant third party who is not a party to this Agreement (for example, location and utilisation data with respect to the Equipment to a contractor) and is not required to obtain the Customer's prior consent with respect to such disclosure and such a disclosure will not constitute a breach of this Agreement by Brooks.
- 22.4. The Customer agrees to indemnify and releases Brooks with respect to all liability incurred in relation to use and reliance on any data, arising with respect to the disclosure of data to, and use of data by, a third party arising under or in connection with this clause.

23. PRIVACY

- 23.1. Brooks will comply with the Australian Privacy Principles in all dealings with Customer.
- 23.2. Brooks may need to collect personal information about the Customer, including full name, address, drivers licence details, credit card details, date of birth, and credit or business history. The Customer consents to Brooks using the Customer's personal information in order to:
- a. Fulfill functions associated with the Services to Customer, including assessing Customer credit worthiness, or exercising Brooks rights under Clause 16.
 - b. Provide services to Customer.
 - c. Prevent theft of Brooks Equipment.
 - d. Enter into contracts with Customer or third parties.
 - e. Market to the Customer and maintain a Customer relationship with the Customer.
- 23.3. The Customer consents to Brooks disclosing the Customer's personal information:
- a. To any credit provider or credit reporting agency for the purposes of obtaining information about Customer's consumer or commercial credit or business history or Customer's commercial activities or credit worthiness; and
 - b. To Brooks service providers, contractors, and affiliated companies from time to time to help improve and market Brooks services to the Customer.
- 23.4. Copies of Brooks' Privacy Policy are available upon request or visit www.brookshire.com.au.

24. CONFIDENTIALITY

- 24.1. Each party will, and will ensure that its personnel will, keep any confidential information it receives under this Agreement as confidential and will not disclose such information without the prior written consent of the other party.

- 24.2. The obligations contained in Clause 24.1 do not apply to disclosures to the extent that they are:
- a. Required by law (including disclosure to any stock exchange).
 - b. Made to its legal advisers, accountants, or auditors.
 - c. Required to enable the disclosing party to make or defend any claim under this Agreement.

25. INTELLECTUAL PROPERTY

- 25.1. All Intellectual Property Rights in the Equipment, any material provided by Brooks to Customer or created by Brooks for the purposes of this Agreement, including Processed Equipment or Telemetry Data which is created by Brooks's intellectual effort ("Brooks IP") are and shall remain the property of Brooks at all times. Nothing in this Agreement contemplates or effects an assignment of Brooks IP or any legal or equitable interest in Brooks IP to the Customer whether that Brooks IP was or will be created for the purposes of this Agreement or otherwise.
- 25.2. Brooks grants Customer a non-exclusive, non-transferrable, royalty free, revocable, licence to Brooks IP provided by Brooks solely for the purpose of operating, repairing, or maintaining (to the extent applicable) the Equipment for such period as Customer operates the Equipment, provided this licence does not extend to:
- a. Intellectual Property Rights that Brooks does not own that is licensed by Brooks from a third party.
 - b. Intellectual Property Rights that are governed by a separate agreement between the parties (if any).
 - c. Any Intellectual Property Rights that are developed by Brooks or by a third party and which are installed, or which are available for installation on or in the Equipment but not included on or in the scope of this Agreement, at the date of Services to the Customer.
- 25.3. The Customer shall not breach or infringe the Intellectual Property Rights or Moral Rights of others in connection with the Equipment or this Agreement.
- 25.4. The Customer warrants that it and its employees, agents and subcontractors shall not infringe or use Brooks's trademarks or logos.
- 25.5. If requested by Brooks, the Customer must, at its own expense, conduct any litigation, arbitration, or settlement negotiations in connection with this Clause 25 and must keep Brooks continually informed of these.

26. FORCE MAJEURE

- 26.1. If a party (the Affected Party) is prevented, in whole or in part, from conducting its obligations under this Agreement (the Affected Obligations) as a result of Force Majeure:
- a. The Affected Obligations are suspended.
 - b. The Affected Party must:
 - i. use reasonable endeavours to overcome the effects of the Force Majeure as soon as reasonably practicable.
 - ii. take all reasonable steps to mitigate the impact of the Force Majeure on the Affected Obligations.
 - c. Unless the agreed Services are terminated, the Affected Party must resume performance of the Affected Obligations as soon as possible after the Force Majeure ceases.
- 26.2. If an event of Force Majeure continues for a continuous period of ninety (90) days or more, then either party may terminate the agreed Services by written notice to the other.
- 26.3. Unless agreed otherwise, the Customer remains liable to pay charges for the Services performed up until the termination.
- a. Where Equipment has been provided by Brooks, the responsibilities and charges for the Equipment will continue until the Equipment has been returned to Brooks in accordance with Clauses 11 and 12.

27. DISPUTE RESOLUTION

- 27.1. Until the parties have complied with this Clause 27, a party must not commence any action, bring any proceedings, or seek any relief or remedy in a court, except to seek urgent injunctive or declaratory relief.
- 27.2. Where any dispute arises under this Agreement, a party may give notice to the other party setting out the material particulars of the dispute (the Dispute Notice).
- 27.3. Within twenty-eight (28) business days of the Dispute Notice (or any other period agreed in writing between the parties), the parties (or their nominees) must meet to use their best endeavours to attempt to resolve the dispute.
- 27.4. If at the end of the twenty-eight (28) day period the parties have been unable to resolve the dispute, the matter shall be referred to an independent arbitrator agreed by the parties (or failing an agreement, an appointed mediator by the Chairman of the Western Australian Chapter of the Institute of Arbitrators and Mediators).
- 27.5. If the dispute is not resolved after mediation, either party may commence legal proceedings.

28. GOVERNING LAW & JURISDICTION

- 28.1. This Agreement is governed by the laws of Western Australia, and each party submits to the nonexclusive jurisdiction of that jurisdiction.

29. SURVIVAL

- 29.1. Any provision of the Agreement which is capable of having effect after the expiry or termination of the Agreement (or any part thereof) survives and remains in full force and effect after the expiry or termination of the Agreement.

30. MISCELLANEOUS

- 30.1. If any provision or part of any provision of the Agreement is invalid, illegal or unenforceable, such provision or part thereof shall be severed from the Agreement, and the remainder shall continue in full force and effect.
- 30.2. Any waiver of rights will not be deemed a waiver unless it is in writing and signed by an authorised officer of the party waiving such rights and any such waiver will only operate to the extent so specified.
- 30.3. Failure by Brooks to insist upon strict performance of any terms contained herein, or to exercise in whole or in part any right that it may have under this agreement at law, shall not be a waiver of any rights that Brooks may have and shall not be deemed a waiver of any subsequent breach of any term in this agreement.
- 30.4. The Customer acknowledges that neither Brooks nor any person acting on Brooks' behalf have made any representation or other inducement to the Customer to enter into the Agreement, and the Customer has not entered into the Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those expressly contained in this Agreement.
- 30.5. Brooks may assign this Agreement to any Related Body Corporate without the Customer's consent or a third party with the Customer's consent.
- 30.6. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

EXECUTED BY CUSTOMER

Date: _____

Please sign section as applicable: A – Individual, Sole Trader or Partnership | B – Company | C – Trust.

A. Individual / Sole Trader / Partnership

Name of Signatory

Signature

Title / Position of Signatory

Witness Name

Witness Signature

B. Company *(In accordance with section 126 of the Corporations Act by its authorised officers)*

Name of Director *(or Authorised Representative*)*

Director Signature *(or Authorised Representative*)*

Name of Director / Secretary *(or Authorised Representative*)*

Director / Secretary Signature *(or Authorised Representative*)*

Witness Name *(If Sole Director or Authorised Representative signing*)*

Witness Signature *(If Sole Director or Authorised Representative signing*)*

C. Trustee (Corporation) *(In accordance with section 126 of the Corporations Act by its authorised officers)*

Option 1 (Corporation) _____ Pty Ltd

Option 2 (First Name, Last Name) _____

As Trustee for the : _____ Trust

Name of Director / Trustee *(or Authorised Representative*)*

Director / Trustee Signature *(or Authorised Representative*)*

Name of Director / Secretary *(or Authorised Representative*)*

Director / Secretary Signature *(or Authorised Representative*)*

Witness Name *(If Sole Director or Authorised Representative signing*)*

Witness Signature *(If Sole Director or Authorised Representative signing*)*

**Authorised representative signatures will be accepted with supporting evidence of the signatory's ability to enter into and bind their entity but must be accompanied by a witness signature.*

A grayscale photograph of a construction site with various pieces of machinery and structures.

EXECUTED BY BROOKS

Date: _____

Name of Signatory

Signature

Title / Position of Signatory

Witness Name

Witness Signature

BROOKS



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