

**BROOKS**

# MASTER EQUIPMENT HIRE 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 the Owner.

## FORMAL INSTRUMENT OF AGREEMENT

**Date:** This Agreement is made and commences on the date the Hirer signs this Agreement and the Owner provides confirmation.

**Parties:**

**Owner Details** The "Owner" for the purposes of this agreement is any one or more of the following entities described as providing Equipment for hire as set out in the individual Hire Schedule:

<b>Brooks Hire Service Pty Ltd</b>	(ABN: 20 008 975 988)	30 Coulson Way, Canning Vale, WA. 6155
<b>Brooks Site Services Pty Ltd</b>	(ABN: 87 677 376 966)	25 Glassford Road, Kewdale, WA. 6105
<b>Brooks Fleet Pty Ltd</b>	(ABN: 47 677 368 633)	25 Glassford Road, Kewdale, WA. 6105
<b>Brooks Access Pty Ltd</b>	(ABN: 78 648 186 065)	30 Coulson Way, Canning Vale, WA. 6155
<b>Brooks Cranes Pty Ltd</b>	(ABN: 79 652 678 772)	30 Coulson Way, Canning Vale, WA. 6155
<b>Brooks Mining Pty Ltd</b>	(ABN: 89 677 376 975)	30 Coulson Way, Canning Vale, WA. 6155
<b>Brooks OBR MAIA Pty Ltd</b>	(ABN: 39 668 842 537)	39-43 Murray Road North, Welshpool, WA. 6106
<b>Telephone:</b>	1300 276 657	
<b>Email:</b>	applications@brooksgroup.au	
<b>Contact:</b>	As specified on the individual Hire Schedules.	

**Hirer Details:** The Hirer is the Individual, Sole Trader, Partnership, Company, or other entity (such as Local Government Agency) completing the accompanying Credit or Cash Application.

**Documentation:**

This Application and the details or conditions contained within, works in conjunction with and not separately to the Owner's Master Equipment Hire Agreement (MEHA), including any applicable Special Conditions and Annexures or Addenda to form an 'Agreement' between the Owner and Applicant. The documents shall be interpreted in the following order of precedence:

1. Special Conditions 1-to-6 *(If applicable)*.
2. Hire Schedules *(Created at time of Hire to capture hire specifics such as pricing)*.
3. Master Equipment Hire Agreement.
4. Annexures, Credit or Cash Applications or Agreements *(As applicable)*.

The Applicant acknowledges that in completing the Application, it has read, understood and accepted the Owner's MEHA, which forms part of this Agreement and the terms and definitions within have the same meaning when used in this Application. The Hirer agrees that by signing this Application or accepts delivery or takes collection of the Equipment it gives rise to an Agreement which will govern all hires.

The terms and conditions of this Application and Agreement will take precedence over any other external terms and conditions, including existing and any future Purchase Orders. Any other terms and conditions arising prior to execution of this Agreement (including any terms and conditions provided by the Hirer), are superseded by this Agreement, are void, have no effect and shall not form part of the Agreement, unless agreed to in writing and included in this Agreement.

Any waiver of rights will not be deemed a waiver, unless agreed in writing by an authorised officer of the party waiving its rights and will only apply to the extent specified.

## 1. DEFINITIONS

1.1. In these Terms of Hire, unless otherwise defined:

**Accidents** means any collision between the Equipment and any other object, including another vehicle or piece of Equipment, or any other incident or occurrence that results in the Equipment being damaged, lost or destroyed and/or an incident that results in damage or injury to a person or property.

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

**Approved Unsealed Road** means an Unsealed Road which Brooks and any Authority has expressly agreed in writing is an Approved Unsealed Road and must be a gravel road which is well formed, graded, well maintained and in good condition for vehicles to drive on it.

**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 Equipment is initially hired.

**Cash Account** means any billing arrangement the Owner may have extended to Hirer upon the Owner 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.

**Condition Report** means the report prepared by the Owner on the condition of Equipment prior to the start of the Hire Period and upon return of the Equipment post hire.

**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 Hire Agreement; or
- b. is independently known to, or developed by, the receiving party as evidenced by the receiving party's written records.

**CPI** means Consumer Price Index being the weighted average of the All-Groups Price Index Numbers for the eight capital cities of the states and territories of Australia published from time to time by the Australian Bureau of Statistics or, if that index number is no longer published, its substitute as a cumulative indicator of the inflation rate in Australia.

**Credit Account** means any billing arrangement the Owner may have extended to Hirer upon the Owner approval of a credit account application.

**Dangerous Goods** means any goods that are or may become noxious, dangerous, flammable, or damaging or that may harbour or encourage vermin or other pests, or that cause or may cause damage to any property whatsoever.

**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 Owner to Hirer under the Hire Agreement, including any associated or attached tools, accessories, and parts available for hire.

**Fair Wear and Tear** means normal superficial deterioration which could be reasonably expected over the Hire 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 Hire 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.

**Gazetted Road** means a Sealed Road, or an Unsealed Road regularly maintained by an Authority and upon which the general public have unlimited rights of access.

**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.

**Harsh Environments** means sites with exposure to any corrosive and hazardous substances, including but not limited to, caustic or toxic materials, cyanide, salt water or acid and mine sites or prospective mine sites, underground projects and offshore locations.

**Hire Agreement** has the meaning given to it in clause 3.

**Hire Charge** means the rates and charges payable by the Hirer for the hire of the Equipment.

**Hire Period** means the period described in clause 5.

**Hire Schedule** means the document agreed between the Owner and Hirer which includes details of the Equipment hired, the Hire Charge, any other applicable charges, and the address for delivery of the Equipment.

**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.

**Long Distance Remote Locations (LDRL)** is a location in excess of 300km from Owner's nearest branch.

**Loss Theft & Damage (LTD) Waiver** has the meaning given to it in Clause 18.

**Moral Right** means "moral rights" in the Copyright Act 1968 (Cth) and "droit moral" in Article 6b of the Berne Convention for the Protection of Literary and Artistic Work 18868

**New Replacement Cost** means the cost to replace the Equipment with a new item of the same Equipment, or if the same Equipment is not available, then the cost to replace the Equipment with a new item of equipment of the same quality, function and capacity.

**Off Road** means and includes:

- a. Any road which is not a Sealed Road or a Gazetted Road or an Approved Unsealed Road and includes driving surfaces which are not traditionally paved or sealed or bituminised such as beaches, sand, gravel, riverbeds, mud, snow, rocks, and other natural terrain.
- b. Any road for which an access permit is required from a Relevant Authority unless the Hirer first obtains such access permit.
- c. Any road which is not graded, well maintained and in good and safe condition for vehicles to be driven on it.

**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 Hirer; and
- b. any guarantee, indemnity, or charge (including the Security) which guarantees all monies owing by Hirer to Owner.

**Sealed Road** means a road sealed with a hard material such as tar, bitumen, or concrete.

**Single Vehicle Accident (SVA)** means any Accident in which no other vehicle is involved including but not limited to rollovers, contact with animals, an accident materially contributed to by avoiding contact with animals, and/or crashing into trees or similar, but does not include an Accident involving parking or car parks and does not include reversing into stationary things.

**Special Conditions** means the Brooks Special Conditions in Special Conditions 1-to-6.

**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.

**Undercarriage** means the system of components that support and provide mobility to tracked machinery. This includes elements such as tracks, track frames, rollers, idlers, sprockets, and track shoes.

## 2. INTERPRETATION & HEADINGS

2.1. In this Hire 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 the Owner's office or branch is located from where the Hirer 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 Hire 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. THE HIRE AGREEMENT**

- 3.1. Owner agrees to hire the Equipment to the Hirer for the Hire Period and the Hirer agrees to hire the Equipment and pay the Owner in accordance with this Agreement.
- 3.2. The Agreement consists of the following documents in the corresponding order or precedence:
  - a. Special Conditions (If applicable).
  - b. Hire Schedule (Individual Equipment Particulars) created at time of hire.
  - c. Master Equipment Hire Agreement (This Agreement).
  - d. Any other annexures, Credit or Cash Account applications or agreements attached to 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 Hirer, including those in a purchase order, will only be part of this Agreement if agreed in writing.
- 3.4. The Owner may decline to hire Equipment in its discretion.

**4. TERM OF AGREEMENT**

- 4.1. This Agreement begins upon execution and, unless terminated earlier, will remain in effect for an initial three (3) years. 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.
- 4.2. If the Owner proposes amendments (which will be notified to the Hirer in writing) during any renewal term, the Hirer will have thirty (30) days to respond in writing. Failure to do so will be deemed acceptance of the revised Agreement. The Hirer's continued use of this Agreement through forming new Hire Schedules will also constitute acceptance of the updated and revised terms.
- 4.3. If Equipment remains in the possession of the Hirer after the Hire Schedule expiry date, the rights, obligations and conditions of the associated Agreement version and Hire Schedule will continue to govern that arrangement until the Equipment is returned to the Owner.

**5. HIRE PERIOD**

- 5.1. The Hire Period commences when the Hirer collects the Equipment, or if requested delivery of the Equipment, the Owner delivers the Equipment to the specified address.
- 5.2. The Hire Period includes weekends and public holidays and is irrespective of the time the Equipment is being used.
- 5.3. The Hirer may extend the Hire Period with the Owner's prior written consent, provided notice is given before the scheduled expiry date.
- 5.4. While the expected duration is noted in the Hire Schedule, the Hire Period remains indefinite and continues until off-hire is confirmed in accordance with Clause 5.5.
- 5.5. Off hire is verified by the earlier of:
  - a. The Hirer notifying the Owner in writing prior to 09:00am and obtaining confirmation that Equipment is no longer required and is ready for collection, or,
  - b. The Equipment has been returned to the Owner.
- 5.6. A minimum Hire Period may apply to certain Equipment. If the Hirer returns the Equipment before this period ends, they must still pay the full Hire Charges for the minimum period, as outlined in the Hire Schedule.

**6. HIRER'S OBLIGATIONS**

- 6.1. The Hirer must not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time during the Hire Period without prior written approval of the Owner.
  - a. If the Owner agrees, the Hirer remains fully responsible and liable to the Owner, regardless of any sub-hire agreement or arrangement made by the Hirer. The Hirer is also liable for the actions and omissions of any Sub-Hirer, including their employees, agents, contractors, and officers, as if they were the Hirer's own.
- 6.2. Before requesting or accepting the Equipment, the Hirer agrees they have independently assessed its suitability and fitness for purpose without relying on the Owner's advice. The Hirer acknowledges that the Owner has made no guarantees about the Equipment's suitability, condition, or fitness for purpose, except where stated in writing.

- 6.3. The Hirer must inspect the Equipment upon delivery or collection to satisfy itself as to the suitability and condition of the Equipment. The Owner makes no representations and gives no guarantee, or warranty that the Equipment is suitable for the Hirer's intended purpose.
  - a. If Equipment is found to be broken, damaged and/or defective, the Hirer must notify the Owner within twenty-four (24) hours after collecting or receiving the Equipment. Failure to notify within this time period, will be deemed Equipment to be in good order and condition.
- 6.4. The Hirer warrants it will at all times:
  - a. Transport, erect, install, and operate Equipment safely, in accordance with all relevant laws, for its intended purpose, and following both the Owner's and manufacturer's instructions.
  - b. Ensure personnel involved in transporting, erecting, installing, or operating the Equipment are suitably qualified, trained, licensed, and compliant with relevant laws and the manufacturer's recommendations.
  - c. Prohibit operation of the Equipment by anyone under the influence of drugs (prescribed or illicit) or alcohol.
  - d. Prevent use of the Equipment for carrying dangerous, hazardous, or illegal substances.
  - e. Comply with all applicable laws and ensure the Equipment is not used for illegal purposes or in a prohibited manner.
  - f. Ensure operators (or persons working on the Equipment) wear suitable protective clothing and Equipment as required by law, industry standards, and manufacturer's instructions.
  - g. Display and maintain all safety signs and ensure they are observed by all operators (or persons working on the Equipment).
  - h. Conduct a job safety analysis or other similar measures prior to using the Equipment, as required, or recommended by law or the manufacturer.
  - i. Effect and maintain suitable insurance of the Equipment during the Hire Period (if not, agrees to pay the LTD waiver fee as per Clause 18).
  - j. Notify the Owner of any Equipment loss, theft, breakdown, stand-down, or off-hire in accordance with Clauses 5, 11, 12, 13, and 18, as applicable.
- 6.5. With respect to cleaning, scheduled servicing, and ongoing maintenance, unless otherwise agreed and stated in a Hire Schedule responsibility matrix, the Hirer must:
  - a. Clean, fuel, lubricate, maintain fluid levels, and keep Equipment in good condition and in accordance with the manufacturers and Owner's instructions at the Hirer's cost.
  - b. Perform all scheduled services and maintenance routines in accordance with manufacturers and Owner's instructions and specifications.
  - c. Not in any way alter, modify (including removing any identifying mark, plate, decals, stickers, or branding material), use Hirer supplied attachments, tamper with, damage or repair the Equipment without Owner's prior written consent.
  - d. If required, provide access to the Owner to maintain and service Equipment or undertake statutory inspections when necessary, during business hours, failing which additional charges for out of hours service and maintenance may apply.
  - e. Arrange for the emptying or disposal of any diesel, grease, oil or similar substances from the service module of service trucks, fuel truck, fuel tanks, waste tanks and water from water carts.
  - f. Return Equipment to the Owner in the same good and clean condition it was in when the Customer received it, ordinary Fair Wear and Tear excepted.
- 6.6. At all times the Hirer must adhere to the manufacturer's recommended tyre pressure and track tension and is responsible for wear and tear that is considered to be adverse or abnormal including:
  - a. The cost of repairing or replacing flat or damaged tyres and,
  - b. For all wear and tear and damage to tyres and tracks caused by conditions which the Owner, acting reasonably, considers to be adverse or abnormal.
- 6.7. All Ground Engaging Tools (GET) must be returned in the same condition as supplied, accounting for Fair Wear and Tear. Usage will be measured by comparing the percentage of use at the start and end of the Hire Period. The Hirer is responsible for any costs related to GET wear or damage deemed abnormal or adverse by the Owner, acting reasonably.
- 6.8. The Hirer must store the Equipment safely and securely, protecting it from theft, vandalism, seizure, damage, and harmful conditions like corrosion, sea salt, or flooding. The Equipment must not be exposed to hazardous substances, including asbestos, without prior written consent.
- 6.9. At the time of requesting Equipment, prior to commencement of the Hire Period, the Hirer must advise the Owner of any risks (real or perceived) of corrosive or hazardous substances and/or contamination to Equipment. If the Owner agrees to the use in an environment that contains or may contain hazardous or corrosive substances, then:
  - a. Special Conditions 1 – Corrosive & Hazardous Substances and Environments will apply.



- b. The Hirer is to provide to Owner its Asbestos Register or similar applicable documentation upon request.
- c. The Hirer is to fully decontaminate the Equipment and provide to Owner details of the process applied.
- 6.10. The Hirer consents to the Owner inspecting the Equipment with reasonable notice during the Hire Period. In addition, the Hirer may arrange a joint inspection with Owner.
- 6.11. The Hirer is responsible for transporting the Equipment and must ensure its safe loading, securing, and transport in compliance with all laws, industry standards, manufacturer's guidelines, and Chain of Responsibility legislation. The Hirer, and any transport contractor, must follow all laws and safety directions from the Owner and/or manufacturer.
- 6.12. Hirer must return the equipment during normal business hours to the branch the Hirer hired it from, unless an alternative time or place is agreed in writing by the Owner.
- 6.13. The Hirer must not remove the equipment from the Australian State or Territory in which it was hired or use the Equipment offshore, underground, or in a mine, without the Owners prior written consent. If consent is provided:
  - a. The Equipment must be returned to the original Owner location from where the Equipment was sourced unless agreed otherwise.
  - b. The Hirer agrees to pay any costs associated with the Owner's attendance for breakdown and maintenance.
- 6.14. The Owner will supply all Equipment requiring electrical testing, tagging, or fire suppression certification in compliance with relevant standards. During the Hire Period, the Hirer is responsible for re-testing and re-tagging at its own cost, in accordance with manufacturer's instructions, laws, Australian Standards, and regulatory requirements. The Hirer bears the cost of any damage caused by incorrect testing or certification.
- 6.15. The Hirer is responsible for ensuring any Equipment is returned to Owner with a full tank of fuel or agrees to pay the charges to refuel.
- 6.16. The Hirer must comply with all Environmental Laws applying during the Hire Period and immediately rectify any breaches caused by the use, possession or storage of the Equipment.

**7. HIRE RATES & CHARGES**

- 7.1. The Hirer must pay the Owner the Hire Charges, including any applicable GST set out in the Hire Schedule. The Hire Schedule will specify the rate which applies and the method of calculation.
- 7.2. Hire charges apply for the duration of the Hire Period (Clause 5), with additional charges determined upon inspection, work performed or return of the Equipment (Clause 8). Hire Charges will accrue if the Hirer fails to collect the Equipment at the agreed time and does not provide notice within twenty-four (24) hours of the missed collection.
- 7.3. The Owner in its sole discretion may vary its rates and charges from time to time. Variations will apply from the time of notification to the Hirer and only apply to new Hire Schedules formed.

**8. CONDITIONAL CHARGES**

- 8.1. In addition to the Hire Charges, the Hirer may be charged any of the following additional charges:
  - a. An environmental levy as stated in the Hire Schedule. Charged at the rate noted in the Hire Schedule.
  - b. Extra hours usage charges if Equipment registers usage outside nominated days or above stated minimum hours at the assets hourly rate noted in the Hire Schedule.
  - c. Fuel required to return the tank to full upon return to the Owner (Clause 6). Charged at a rate per litre as noted in the Hire Schedule.
  - d. Transportation charges including demurrage, pilots, permits, and any additional charges from delays or futile deliveries/collections (Clause 10).
  - e. Cleaning charges if the Equipment is returned unclean based on condition reports (Clause 6). Labour charged at the hourly rate as noted in the Hire Schedule.
  - f. Repair charges for any damages found post hire based on condition reports (Clause 6). Parts plus labour charged at the hourly rate as noted in the Hire Schedule.
  - g. Scheduled servicing fees apply if performance is requested by the Hirer or if the Hirer fails to meet its servicing obligations (Clause 6).
  - h. A charge for pumping out waste, fuel or water from service units and storage tanks (Clause 6).
  - i. If applicable, excess wear & tear or damages to Ground Engaging Tools (GET), tyres or tracks and glass (Clause 6).
  - j. Any stamp duty or GST and any other applicable levies, tolls, fees, fines, penalties, offences, or other government charges that arise out of the hire of the Equipment (Clause 6).

- k. Any charges for enhanced preparation or increased site compliance beyond the Owner's standard operations (discussed before hire confirmation or during performance)
- l. Charges in connection with the administration of the Hirer's account if they fall beyond normal operational provisions (If applicable) will be charged at the rate noted in the Hire Schedule.
- m. Reasonable charges apply if the Owner is unable to inspect or maintain the Equipment during normal work hours (Agreed at the time or upon performance of activity).
- n. Replacement of decals, stickers or branding if removed by the Hirer.
- o. Replacement of tools, accessories, manuals or ancillary items supplied with the Equipment.
- p. The Loss, Theft & Damage (LTD) Waiver as per Clause 18 if insurance is not supplied in accordance with Clause 17, charged at the rate noted in the Hire Schedule.
- q. Any applicable charges in connection with Long Distance and Remote Locations in accordance with Clause 14, charged at the rate noted in the Hire Schedule.
- r. Fees for data utilization over and above any stated periodical caps associated with Telemetry Data Systems, charged at the rate noted in the Hire Schedule.
- s. The Hirer acknowledges that the Owner may impose a charge for accepting payments by credit card charged at the rate determined by the bank or financial institution.

**9. BILLING & PAYMENT**

- 9.1. The Hirer must pay all hire charges, fees, and costs due under this Agreement in accordance with their account conditions:
  - a. For Credit Accounts, within 30 days from end of month of the invoice date.
  - b. For Cash on Delivery accounts, the Owner will issue invoices at the start, periodically and end of the hire period, with payment due on invoice.
- 9.2. Any credit accommodation granted by the Owner in connection with this agreement or associated credit application, is done so at its discretion and may be altered or withdrawn at the Owner's discretion.
- 9.3. If any amount becomes overdue, all outstanding amounts will immediately become due and payable by the Hirer. The Hirer agrees to reimburse the Owner for all costs and fees, including legal expenses on an indemnity basis, incurred in recovering the overdue amounts.
- 9.4. The Owner may charge interest on any amounts unpaid by the Hirer 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, the Owner may apply a reasonable equivalent rate. This interest applies regardless of whether the Owner notifies the Hirer.
- 9.5. The Owner may set-off any monies owing by the it, to the Hirer, with notice, against any amounts owing.
- 9.6. The Hirer may be required to pay a deposit in the amount stated on the Hire Schedule, which will be forfeited to the Owner if the Hirer breaches this agreement. Forfeiture will not affect any other rights of the Owner under this agreement.

**10. COLLECTION & DELIVERY**

- 10.1. If the Owner agrees to deliver or collect the Equipment, it must be ready and accessible at the specified time and location. If not, the Owner may, acting reasonably charge additional Hire Charges and associated transportation fees due to delays or futile deliveries/collections.
- 10.2. Delivery times and dates are estimates only. The Owner is not responsible for the failure or delays in delivery or installation due to an unforeseen event.
- 10.3. The Owner will notify the Hirer of any delay in transportation of hired Equipment.
- 10.4. If the Owner has agreed to collect the Equipment from the Hirer, the Hirer must ensure it is kept safe and secure until the time of collection.

**11. STAND DOWN POLICY**

- 11.1. Stand down of the Equipment may be agreed to by the Owner as follows:
  - a. Requests must be made in writing (email acceptable) by 09:00am on the day required and will not be applied retroactively.
  - b. The Hirer remains responsible for the security of the Equipment while stood down.
  - c. Stand downs will not apply to Equipment that attracts a minimum hire period. This will be noted on the Hire Schedule.
  - d. Equipment determined to be in use (via remote monitoring) during a stand down period will incur the full hire charge for that period.
- 11.2. Unless otherwise agreed, the Hirer may stand down the Equipment for up to six (6) days per month. The first day will be at 100% rate reduction, with the remaining five (5) days at 50% rate reduction.

## 12. EQUIPMENT BREAKDOWN

- 12.1. If the Equipment breaks down, becomes damaged or unsafe to use during the hire period the Hirer must:
- Immediately stop using the Equipment.
  - Take all steps necessary secure the Equipment to prevent injury, damage to property or prevent further damage to the Equipment.
  - Immediately notify Owner and provide all relevant particulars of the incident. The Owner will provide a break down confirmation and may require a report form to be completed.
  - For incidents involving theft or vandalism, promptly report the incident to police and provide Owner with the written police report.
  - Not repair or attempt to repair the Equipment without the Owner written consent.
- 12.2. If the Equipment breaks down, becomes unsafe, or is damaged due to Fair Wear and Tear or the Owner's actions, upon receiving notice from the Hirer (Clause 12.1), the Owner will:
- Take all reasonable steps to repair the Equipment or provide a suitable replacement, at the Owners cost, as soon as reasonably possible.
  - Not impose a Hire Charge for that portion of the Hire Period during which the Equipment was broken down or unsafe.
- 12.3. If the Equipment breaks down, becomes unsafe, or is damaged for reasons other than Fair Wear and Tear or the Owner's actions, the Owner will take reasonable steps to repair or replace it promptly after receiving notice from the Hirer (Clause 12.1). The Hirer will be liable for:
- The costs and expenses suffered or incurred by the Owner to recover, repair or replace the Equipment, and
  - The Hire Charges for the portion of the Hire Period during which the Equipment was broken down, unsafe, damaged and/or being recovered, repaired or replaced.

## 13. LOST, STOLEN & DAMAGED EQUIPMENT

- 13.1. If the Equipment is lost, stolen, or damaged, the Hirer must notify the Owner in writing within twenty-four (24) hours, explaining the details of the event. The Hirer remains responsible for all Hire Charges until the Owner is notified.
- 13.2. Despite any other provision in this agreement, if the Equipment is lost, stolen or damaged the Hirer is responsible for:
- The cost of the repairs or,
  - Replacement (if it cannot be repaired) at the Owner's reasonable discretion and,
  - Continuing Hire Charges until the repair or replacement of the Equipment and,
  - Other reasonable costs and expenses associated with the repair and/or replacement of the Equipment.
- 13.3. If the Hirer has paid the LTD waiver, the Hirer's liability for the repair or replacement cost of the Equipment is limited, subject to Clause 18.

## 14. LONG DISTANCE & REMOTE LOCATIONS

- 14.1. This clause applies if the Hirer hires Equipment for use at a Long Distance and Remote Location (LDRL).
- 14.2. In this clause, LDRL means any location which is outside a radius of 300 kilometres from the nearest Owner hire location premises.
- 14.3. If the Equipment breaks down for any reason at a LDRL, the Hirer must also pay the Owner the reasonable costs associated with any attendance to the LDRL, which include travel by vehicle charged at the per kilometre rate shown in the Hire Schedule (both to and from location), flights, meals, accommodation and subcontractors (if required) in addition to any other costs payable under this agreement.
- 14.4. The Hirer remains responsible for daily maintenance and care of all Equipment located at a LDRL, including but not limited to, checking of all fluids (fuel, oil, water, battery levels, waste tanks etc.).

## 15. TITLE & RISK IN EQUIPMENT

- 15.1. The Hirer acknowledges that the Owner always retains ownership of the Equipment, even if the Hirer goes into liquidation or bankruptcy during the Hire Period. The Equipment will never be considered a fixture, and the Hirer's only interest in it is as a bailee.
- 15.2. Risk in the Equipment passes to the Hirer upon collection or delivery of the Equipment and remains with the Hirer until the Equipment is collected by or returned to the Owner.
- 15.3. The Owner may hire or lease Equipment from third parties ("cross-hirers") to supply to the Hirer and if this occurs title in the Equipment remains with the cross-hirer.
- 15.4. Except with the prior written consent of The Owner, the Hirer will not be entitled to offer, transfer, sell, assign, sub-let, encumber, charge, mortgage, pledge, create a security interest or otherwise deal with the Equipment in any way whatsoever.
- 15.5. The Hirer must protect the Equipment against execution or seizure and will indemnify the Owner against all resultant losses, costs, charges, damages and

expenses (including reasonable legal costs) incurred by the Owner as a result of a breach of this Clause 15 by the Hirer.

## 16. PERSONAL PROPERTY & SECURITIES ACT (PPSA)

- 16.1. The Hirer acknowledges and agrees that:
- this Hire Agreement constitutes a 'security interest' for the purposes of the PPSA; and
  - a security interest may be taken in all Equipment previously supplied by the Owner to the Hirer (if any) and in all Equipment that will be supplied in the future during the parties' relationship.
- 16.2. The Hirer agrees to do anything (including obtaining consents, signing, or producing any further documents, and/or providing any further information) which the Owner requests and considers necessary for the purposes of:
- ensuring that the security interest is enforceable, perfected, and otherwise effective; and/or
  - enabling the Owner to apply for any registration, complete any financing statement, financing change statement or give any notification, in connection with the security interest; and/or
  - enabling the Owner to exercise rights in connection with the security interest.
- 16.3. The Hirer waives any rights they may have:
- 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
  - under sections 142 and 143 of the PPSA.
- 16.4. The parties agree that sections 96 and 117 of the PPSA do not apply to these terms and conditions.
- 16.5. Neither party will disclose information of the kind mentioned in section 275(1) of the PPSA, and the Hirer will not authorise, and will ensure that no other party authorises, the disclosure of such information.

## 17. INSURANCE

- 17.1. The Hirer must maintain at its own expense all appropriate policies of insurance against:
- All loss (including theft) or damage to or arising out of the hire of the Equipment (including while in transit) in an amount not less than the full new replacement cost of the Equipment howsoever occurring.
  - 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).
  - Public liability risk in respect to the hire of Equipment for a minimum of \$10,000,000.00 for any one occurrence.
- 17.2. The insurance cover obtained by the Hirer must:
- Cover loss, theft and damage to the Equipment arising during the Hire Period from any cause.
  - Be for the full new replacement value of the Equipment specified in the Hire Schedule.
  - Be taken out with a reputable and solvent insurer recognised by the Australian insurance industry.
  - Show the Owner as an interested party on the policy.
  - Be maintained until the Equipment is returned to or is in the possession of the Owner.
- 17.3. The Hirer must provide a certificate of currency evidencing insurance coverage for the Equipment prior to commencement of the Hire Period.
- 17.4. Failure or refusal to maintain and provide proof of suitable insurance coverage means the Hirer elects to take the benefits and associated fees of the LTD waiver as per Clause 18.
- 17.5. Regardless of the provisions in Clause 17, the Hirer must pay the Owner the LTD waiver fee for any part of the Hire Period during which the Hirer has not provided the required certificate of currency

## 18. LOSS, THEFT & DAMAGE (LTD) WAIVER

- 18.1. Unless the Hirer has demonstrated that the Hirer maintains insurance in accordance with Clause 17, the Hirer chooses to take the benefit of the Loss, Theft and Damage (LTD) waiver option (and agrees to pay the additional amount calculated as a percentage and specified in the Hire Schedule). The LTD Waiver is not insurance.
- 18.2. If the Hirer is entitled to receive the benefit of the LTD waiver, the Hirer will be responsible to pay to the Owner for all loss or damage to the Equipment in an amount which is the greater of:
- \$5,500.00; or
  - 10% of the new replacement cost (for Equipment lost, stolen or damaged beyond repair) or the repair cost (for Equipment partially damaged that can be economically repaired).

*By way of example only:*

*The new replacement cost for the Equipment is \$10,000.00, the Hirer will be responsible to pay \$5,500.00 for the loss or damage to the Equipment, or*

*If the new replacement cost for the Equipment is \$900,000.00, the Hirer will be responsible to pay \$9,000.00 for the loss or damage to the Equipment.*

*(being the greater amount between \$5,500.00 and 10% of \$900,000.00).*

- 18.3. The LTD waiver only applies provided that the Hirer has supplied to the Owner satisfactory evidence (including any requested written or photographic proofs) that:
- Notice has been provided in writing as soon as reasonably practicable but no later than twenty-four (24) hours upon the occurrence of any loss, destruction or damage.
  - The Hirer has immediately reported the theft, or burglary to the police and obtained and provided the Owner with a copy of the report.
  - The Hirer has taken adequate and reasonable precautions to protect the Equipment against theft or burglary. As a minimum, the Hirer must keep the Equipment in a safe secure locked private compound when not in use.
- 18.4. In addition, the LTD waiver will not apply to loss of or damage to the Equipment in the following circumstances:
- Loss or damage resulting from overloading, exceeding rated capacity, failure to maintain, misuse, abuse or improper servicing of the Equipment.
  - Loss or damage caused by misappropriation or wrongful conversion of the Equipment by the Hirer.
  - Loss or damage by the operation of the Equipment in contravention to the terms of this Agreement, the manufacturers or the Owner's instructions.
  - Loss or damage caused by the use or operation of the Equipment in violation of any law, regulation or by-law.
  - Loss or damage to accessories, grease guns, hoses and similar.
  - Loss or damage relating to lack of lubrication or other normal servicing of the Equipment, including the use or misuse of AdBlue.
  - Loss or damage to the Equipment whilst located, used, loaded/unloaded, transported on, in or over water, wharves, bridges or vessels of any kind.
  - Loss or damage to motors or other electrical appliances or devices caused by overloading or artificial electrical current, including use of underrated or excessive length of extension leads on electrically powered tools and machinery.
  - Loss or damage during transport including the unloading and loading process from any vehicle, except where being transported by the Owner.
  - Loss or damage caused by the negligence of the Hirer.
  - Loss or damage to tyres, tubes, windscreens, mirrors, glass, and Perspex.
  - Loss or damage caused by exposure to any Harsh Environments, any corrosive substance, including and hazardous, caustic, or toxic materials, cyanide, salt water or acid, mine sites or prospective mine sites, underground projects, and offshore locations.
  - Loss or damage as a result of vandalism.
- 18.5. For the avoidance of doubt, the Hirer will be solely responsible for all loss or damage to the Equipment and must not make a claim to the Owner under the LTD waiver if the Hirer has not complied with the requirements of Clause 18.3 or as the result of circumstances of Clause 18.4.
- 18.6. The Hirer acknowledges that nothing in this Clause derogates from the Hirer's obligations contained in Clause 6 and does not apply to the Hirer's liability with respect to indemnity under Clause 19.

**19. RELEASE & INDEMNITY**

- 19.1. The Hirer hereby releases the Owner from, and agrees to indemnify the Owner in respect to, any third party claims, actions, suits, demands, costs and expenses for damage or injury to any person or property arising directly or indirectly out of the Hire or use of the Equipment by the Hirer under this agreement whether caused by the negligence of the Hirer or any other person, or the breakdown, failure, operation, mis-delivery or non-delivery of the Equipment or any other matter.

**20. LIABILITY & CONSEQUENTIAL LOSSES**

- 20.1. 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.

**21. EXCLUSION OF WARRANTIES & LIABILITIES**

- 21.1. Where the Australian Consumer Law (ACL) applies, the Hirer has the benefit of guarantees in relation to the hire of the Equipment which cannot be excluded.
- 21.2. To the extent that the ACL (or any other law which cannot be excluded) does not apply, the Owner makes no representations and gives no warranties other than those set out in this agreement and will not be liable to the Hirer for any damages, costs or other liabilities whatsoever in relation to the hiring of the Equipment by the Hirer.

- 21.3. Liability under this Agreement is limited to the specific Owner entity named on the relevant Hire Schedule. No other Owner entity, affiliated or otherwise, shall bear any responsibility or liability for obligations arising from that Hire Schedule. Each Owner entity's liability is several and not joint.
- 21.4. The aggregate liability for the Owner arising out of or in connection with this agreement is limited to an amount equal to the hire charges actually paid by the Hirer under this Agreement.

**22. BREACH OF AGREEMENT**

- 22.1. If the Hirer 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 the Owner may:
- Terminate this agreement; and/or
  - Sue the Hirer for recovery of all monies owing by the Hirer; and/or
  - Repossess the Equipment (and the Owner is authorised to enter any premises where the Equipment is located in order to do so), and any loss, theft and damage waiver referred to in clause 12 is immediately invalidated.
- 22.2. The Hirer indemnifies and must keep indemnified the Owner against any and all damages, liabilities, loss, costs, and expenses incurred by the Owner arising from or contributed to by a breach by the Hirer of any provision of this agreement.

**23. TERMINATION**

- 23.1. The Owner may at any time and in its unfettered discretion terminate an individual Hire Schedule to the Hirer, whereupon the Hirer must immediately address any of the obligations remaining under this agreement and make the Equipment available for collection.
- 23.2. The Hirer may terminate the individual Hire Schedule for equipment by following the off-hire verification process under Clause 5 and completing all obligations in accordance with this Agreement.
- 23.3. Either party may terminate this Hire Agreement and any Hire Period immediately by giving notice to the other party, if:
- The other party breaches any term of the Hire Agreement and fails to remedy the breach within 7 days of written notification of the breach.
  - 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.
- 23.4. The Owner may terminate the Agreement immediately if the Hirer or any third party has made a false statement or breached any provision of the relevant documents.
- 23.5. Upon termination of a Hire Schedule or this Agreement, the Owner is entitled to take possession of the Equipment and for this purpose the Hirer irrevocably appoints the Owner as its agent and authorises and licences the Owner to:
- Enter upon any land or premises upon which the Equipment is situated or where the Owner has any reason to believe that the Equipment may be situated; and
  - 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 the Owner, in use by the Hirer or any other person.
- 23.6. After termination of Hire, and until the Equipment has been returned to or collected by the Owner, the Equipment shall remain at the sole risk of the Hirer, and the Hirer will indemnify the Owner in respect to any loss of or damage to the Equipment in those circumstances, including where an off-hire verification has been obtained but the Owner regained possession of the Equipment.
- 23.7. 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.

**24. RECOVERY OF EQUIPMENT**

- 24.1. If the Hirer breaches this Agreement or a Hire Schedule and fails to remedy it within 7 days of receiving written notice, or if the Hire Period is terminated under Clause 23.3, the Owner may, at the Hirer's expense, take necessary steps to recover the Equipment. This includes legal action and entering the Hirer's premises, which the Hirer expressly consents to for recovery purposes.
- 24.2. The Hirer shall indemnify the Owner in relation to any action for trespass in the course of the Owner reasonably exercising its right to inspect or reclaim the Equipment under this Clause 24.
- 24.3. The Hirer will be liable for the cost of any salvage, transport or freight required to retrieve abandoned Equipment.

**25. TELEMETRY DATA**

- 25.1. The Owner 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.

- 25.2. The Owner is not liable with respect to the Hirer's use or reliance on any data provided in relation to the Equipment.
- 25.3. The Hirer acknowledges that:
- The Owner owns all rights, title, and interest (including intellectual property rights) in the data.
  - The Hirer must secure the Owner's prior written consent for the intended use of the data and must not share the data with any third party.
  - The Owner does not warrant the accuracy of any data or guarantee that such data will be available throughout the hire period.
  - The Owner is not required to retain any data, and such data may not be available for retrieval after the Hire Period.
  - The Owner 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 repair contractor) and is not required to obtain the Hirer's prior consent with respect to such disclosure and such a disclosure will not constitute a breach of this Agreement by the Owner.
- 25.4. The Hirer agrees to indemnify and releases the Owner 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.

## 26. PRIVACY

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

## 27. CONFIDENTIALITY

- 27.1. 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.
- 27.2. The obligations contained in Clause 27.1 do not apply to disclosures to the extent that they are:
- Required by law (including disclosure to any stock exchange).
  - Made to its legal advisers, accountants, or auditors.
  - Required to enable the disclosing party to make or defend any claim under this Agreement.

## 28. INTELLECTUAL PROPERTY

- 28.1. All Intellectual Property Rights in the Equipment, any material provided by the Owner to Hirer or created by the Owner for the purposes of this Agreement, including Processed Equipment or Telemetry Data which is created by the Owner's intellectual effort ("Owner IP") are and shall remain the property of the Owner at all times. Nothing in this Agreement contemplates or effects an assignment of the Owner IP or any legal or equitable interest in the Owner IP to the Hirer whether that Owner IP was or will be created for the purposes of this Agreement or otherwise.
- 28.2. The Owner grants Hirer a non-exclusive, non-transferrable, royalty free, revocable, licence to the Owner IP provided by the Owner solely for the purpose of operating, repairing, or maintaining (to the extent applicable) the Equipment for such period as Hirer operates the Equipment, provided this licence does not extend to:
- Intellectual Property Rights that the Owner does not own that is licensed by the Owner from a third party.
  - Intellectual Property Rights that are governed by a separate agreement between the parties (if any).

- Any Intellectual Property Rights that are developed by the Owner 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 hire to the Hirer.
- 28.3. The Hirer shall not breach or infringe the Intellectual Property Rights or Moral Rights of others in connection with the Equipment or this Agreement.
- 28.4. The Hirer warrants that it and its employees, agents and subcontractors shall not infringe or use the Owner's trademarks or logos.
- 28.5. If requested by the Owner, the Hirer must, at its own expense, conduct any litigation, arbitration, or settlement negotiations in connection with this Clause 28 and must keep the Owner continually informed of these.

## 29. FORCE MAJEURE

- 29.1. If a party (the Affected Party) is prevented, in whole or in part, from conducting its obligations under this Agreement (other than an obligation to pay Hire Charges during the hire period) (the Affected Obligations) as a result of Force Majeure:
- The Affected Obligations are suspended.
  - The Affected Party must:
    - use reasonable endeavours to overcome the effects of the Force Majeure as soon as reasonably practicable.
    - take all reasonable steps to mitigate the impact of the Force Majeure on the Affected Obligations.
  - Unless this Hire Agreement is terminated, the Affected Party must resume performance of the Affected Obligations as soon as possible after the Force Majeure ceases.
- 29.2. If an event of Force Majeure continues for a continuous period of ninety (90) days or more, then either party may terminate this Agreement by written notice to the other.
- 29.3. Nothing in this Clause 29 will limit or exclude the Hirer's responsibility and liability under Clauses 6, 12 and 13.
- 29.4. Unless agreed otherwise, the Hirer remains liable to pay Hire Charges for the Hire Period whilst the Equipment is not in the Owner's possession.

## 30. DISPUTE RESOLUTION

- 30.1. Until the parties have complied with this Clause 30, 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.
- 30.2. 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).
- 30.3. 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.
- 30.4. 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).
- 30.5. If the dispute is not resolved after mediation, either party may commence legal proceedings.

## 31. GOVERNING LAW & JURISDICTION

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

## 32. SURVIVAL

- 32.1. 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.

## 33. MISCELLANEOUS

- 33.1. 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.
- 33.2. 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.
- 33.3. Failure by the Owner 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 the Owner may have and shall not be deemed a waiver of any subsequent breach of any term in this agreement.
- 33.4. The Hirer acknowledges that neither the Owner nor any person acting on the Owner's behalf have made any representation or other inducement to the Hirer to enter into the Agreement and the Hirer 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.

- 33.5. The Owner may assign this Agreement to any third party without the Hirer's consent (including a Related Body Corporate).

**SPECIAL CONDITIONS 1: CORROSIVE & HAZARDOUS ENVIRONMENTS**

These Special Conditions will only apply to the extent that the Equipment is used in conditions as defined by Special Condition 1 Clause 1.3.

**1. AGREEMENT**

- 1.1. The Hirer has advised that the hired Equipment will be used in conditions that contain hazardous or corrosive material including but not limited to asbestos, salt or acidic compounds that will have severe adverse effects on the Equipment.
- 1.2. The Hirer agrees to hire the Equipment from the owner incorporating these Special Conditions in conjunction with terms and conditions contained within the Owner's Master Equipment Hire Agreement (MEHA), accompanying Hire Schedules along with any Annexures, as applicable. For the avoidance of doubt, these Special Conditions take precedence over any other terms and shall take priority in the event any terms or definitions in other documents give rise to an ambiguity or inconsistency between them.
- 1.3. Corrosive and hazardous environments or substances include but are not limited to:
  - a. Any environment or condition that involves exposure to substances or elements that can cause the deterioration, degradation, or destruction of materials or living tissue. This includes environments with high levels of moisture, acids, bases, or salts, which may lead to rust, corrosion, or similar damage. Including, environments containing high concentrations of salt (e.g., marine, or coastal environments) which are considered corrosive due to the potential for accelerated metal corrosion.
  - b. Any material, whether solid, liquid, or gas, which poses a significant risk to health, safety, or the environment. This includes toxic, flammable, reactive, or otherwise dangerous substances.
  - c. Hazardous substances classified under this contract, characterized by its fibrous nature and potential to cause severe health issues upon inhalation, such as asbestosis, mesothelioma, and lung cancer. The presence of asbestos in any material, product, or environment shall be treated as a hazardous condition, requiring appropriate safety measures, removal, and disposal in accordance with applicable regulations.

**2. ADDITIONAL OR AMENDED HIRER OBLIGATIONS & RESPONSIBILITIES**

- 2.1. The Owner, at the Hirer's cost, will make as many proactive preventative measures as reasonably able to ensure the longevity of the Equipment when preparing the asset for hire. These will include but are not limited to additional taping and covering of electrical components and application of protective lubricants such as lanolin or similar.
- 2.2. It is the Hirer's responsibility to ensure that these preventative measures are continued with, remain in place, or are reinstated if found to be missing.
- 2.3. At a minimum, the Hirer must wash down with fresh water daily at the end of each shift.
- 2.4. The Owner will have applied a protective lubricant such as lanolin or similar to some surfaces. It is the responsibility of Hirer to ensure the integrity of such products and reapply at a minimum of weekly, or as proactively required on a schedule or as needed.

**3. DAMAGES, MINOR & MAJOR REPAIRS**

- 3.1. The Hirer is responsible for all damages, repairs, both minor and major, associated with the hire. If the Hirer cannot perform the required repairs, the Owner will conduct required repairs and on-charge to the Hirer. The amount charged will include any transportation to and from site, as necessary.
- 3.2. The hire charges will continue to accumulate until the Equipment is repaired.

**4. REFURBISHMENT UPON RETURN**

- 4.1. The Hirer is responsible for any refurbishment upon return to restore the Equipment to its original hireable state. The refurbishment will include but is not limited to replacing filters, replacement of damaged components and final cleaning to removal all contaminants to the satisfaction of the Owner.
- 4.2. If the Hirer cannot perform the required refurbishments, the Owner will conduct required actions and on-charge to the Hirer. The amount charged will include any transportation to and from specialist services, as necessary.
- 4.3. The Hire Charges will continue to accumulate until the Equipment is refurbished and ready for hire again.

**5. REPLACEMENT**

- 5.1. If upon joint assessment the Equipment is deemed to be uneconomical or impractical to refurbish or repair, the Hirer will be required to replace the Equipment. The Equipment shall be replaced with a new matching model or

where a new model is no longer available, a suitable equivalent model agreed by the Owner.

**SPECIAL CONDITIONS 2: ELECTRONIC TRAFFIC CONTROL EQUIPMENT & PORTABLE TRAFFIC LIGHTS**

These Special Conditions will only apply to the extent that the Equipment hired is identified as those categories under Special Condition 2 Clause 1.1.

**1. AGREEMENT**

- 1.1. If the Equipment on the Hire Schedule is identified as electronic traffic control Equipment and/or portable traffic lights, the following additional conditions shall apply to the Hire.
- 1.2. The Hirer agrees to hire the Equipment from the owner incorporating these Special Conditions in conjunction with terms and conditions contained within the Owner's Master Equipment Hire Agreement (MEHA), accompanying Hire Schedules along with any Annexures, as applicable. For the avoidance of doubt, these Special Conditions take precedence over any other terms and shall take priority in the event any terms or definitions in other documents give rise to an ambiguity or inconsistency between them.
- 1.3. The Hirer agrees not to use the Equipment for advertising or marketing purposes where such use contravenes any laws, government, or local council regulations. The Hirer is liable for any fines that may be issued from any incorrect use or placement of the Equipment.

**2. HIRER ACKNOWLEDGEMENTS**

- 2.1. The Hirer acknowledges that the Owner has given to the Hirer the opportunity to read and familiarise itself with the operating and safety instructions for the Equipment that the Hirer has hired.
- 2.2. The Hirer acknowledges that if Equipment malfunctions, the failsafe system will revert the Equipment to a flashing amber signal. The Hirer further acknowledges and agrees that the Owner is not liable to the Hirer for any loss or damage suffered by the Hirer from any malfunction, or interruption of or to any Equipment unless it is caused by any negligent act or omission of the Owner.

**3. ADDITIONAL HIRER OBLIGATIONS**

- 3.1. The Hirer is responsible for the safe placement and operation of the Equipment in accordance with all relevant laws and statutory regulations.
- 3.2. In the event that the Hirer instructs the Owner to place the Equipment on its behalf, the Hirer will provide the Owner with all information relevant and available for the safe placement of the Equipment. The Hirer is liable for and indemnifies the Owner against all Liability, claims, damage, costs, and expenses arising from the placement and operation of the Equipment.

**SPECIAL CONDITIONS 3: PUMPS & DEWATERING EQUIPMENT**

These Special Conditions will only apply to the extent that the Equipment hired is identified as those categories under Special Condition 3 Clause 1.1.

**1. AGREEMENT**

- 1.1. If the Equipment on the Hire Schedule is identified as pumps and/or fluid management equipment (together "Pump"), the following additional conditions shall apply to the Hire.
- 1.2. The Hirer agrees to hire the Equipment from the owner incorporating these Special Conditions in conjunction with terms and conditions contained within the Owner's Master Equipment Hire Agreement (MEHA), accompanying Hire Schedules along with any Annexures, as applicable. For the avoidance of doubt, these Special Conditions take precedence over any other terms and shall take priority in the event any terms or definitions in other documents give rise to an ambiguity or inconsistency between them.

**2. PUMP SELECTION & PURPOSE IDENTIFICATION**

- 2.1. Equipment selection shall be made in accordance with and based on the completed Brooks Pump Design Form. If during the Hire Period, the Hirer wishes to vary or adjust the purpose or use of the Equipment then the Hirer must consult with the Owner in writing at operations@brookssiteservices.com.au.

**3. ADDITIONAL HIRER OBLIGATIONS**

- 3.1. The Hirer must at all times ensure that the Equipment operation complies with OEM specifications as set out in the operations manual and the Hirer must follow safe operating procedure. Failure to do so will result in damage to the Equipment. The Hirer will be liable to the Owner for any damage.

## SPECIAL CONDITIONS 4: PORTABLE BUILDING HIRE

These Special Conditions will only apply to the extent that the Equipment hired is identified as those categories under Special Condition 4 Clause 1.1.

### 1. AGREEMENT

- 1.1. If the Equipment on the Hire Schedule is identified as portable buildings, portable toilets and ablation facilities (together "Portable Buildings") the following additional Special Conditions shall apply to the Hire.
- 1.2. The Hirer agrees to hire the Equipment from the owner incorporating these Special Conditions in conjunction with terms and conditions contained within the Owner's Master Equipment Hire Agreement (MEHA), accompanying Hire Schedules along with any Annexures, as applicable. For the avoidance of doubt, these Special Conditions take precedence over any other terms and shall take priority in the event any terms or definitions in other documents give rise to an ambiguity or inconsistency between them.

### 2. MINIMUM HIRE PERIOD

- 2.1. Unless expressly agreed in writing, the minimum Hire Period for Portable Buildings is ninety (90) days. A cancellation fee of fifty percent (50%) of the Hire Charges will apply if delivery is cancelled with less than twenty-four (24) hours' notice before the delivery date.
- 2.2. Hire charges will apply from the Hire Period start date and no deduction will be given for any delay in the Hirer or the Owner obtaining access to the site at which the Portable Buildings are to be located for the duration of the Hire Period. Unless expressly agreed in writing, Hire Charges for Portable Buildings will be reviewed annually.

### 3. ADDITIONAL HIRE OBLIGATIONS

- 3.1. Unless the Owner is responsible for the installation of any Equipment, the Hirer must, at its own cost:
  - a. Ensure the site is clear, level, defined, all-weather and accessible.
  - b. Arrange connection of all required services including power, gas, telephone and data, water, sewer, and stormwater.
  - c. Obtain all necessary approvals and clearances from councils and other statutory authorities.
  - d. Comply with all relevant and applicable building laws, codes, standards, and practices.
  - e. Ensure Equipment is secured with adequate "tie-downs" in accordance with the Australian Specifications and any engineered certified hold down systems.
  - f. It is the responsibility of the Hirer to conduct checks on waste tank levels and to have waste tanks pumped out regularly and prior to Off-Hire.
  - g. Unless otherwise agreed, all Equipment will be supplied unfurnished. Furniture can be supplied at an additional cost.
- 3.2. The Hirer acknowledges that Equipment is not a load bearing structure and attachments such as walkways, roofing and electrical risers must not be affixed to them. The Owner's written consent must be obtained before any modifications are made to the Equipment.
- 3.3. The Owner is not responsible for the supply of steps to Equipment.
- 3.4. The Hirer must ensure all ancillary equipment is packed securely for transport upon return to the Owner's premises at the termination of the Hire.
- 3.5. The Hirer will be liable for any damage to the structure or integrity of the Equipment and any failure to properly maintain (or misuse) of any ancillary equipment (including but not limited to air-conditioning units, fridges, and if applicable, furniture).
- 3.6. Once the Portable Buildings have been delivered to the Hirer's site, the Hirer must:
  - a. Arrange for tagging and testing of the Equipment; and
  - b. During the Hire Period regularly maintain the air-conditioning units and replace the filters every two (2) weeks or in accordance with manufacturer's instructions.
- 3.7. Irrespective of whether the Hirer has paid the LTD waiver fee (Clause 18), the liability of the Hirer will not be reduced if it fails to comply with Special Condition Clause 3.1(e).
- 3.8. Unless expressly agreed in writing, the Owner does not warrant any design specifications for the installation of any Equipment and does not warrant the accuracy or suitability of any design specifications for the Hirer's site. The Hirer acknowledges and agrees that it is responsible for ensuring the accuracy and suitability for the site of any design specifications (if any) provided by the Owner with the Equipment.
- 3.9. The Hirer acknowledges receipt of a copy of the "HRIA Portable Toilet Code of Practice" and agrees to comply with the Code of Practice.

### 4. ADDITIONAL CHARGES

- 4.1. The following additional charges may apply:

- a. Costs associated with additional works, extras, or variations to the Equipment beyond the standard configuration. (Agreed at time of performance).
  - b. Damage rectification to the Equipment based on condition reports, or
    - i. Replacement of any damaged ancillary equipment.
  - c. An additional cleaning fee per building as noted in the Hire Schedule, and
    - i. Additional charges associated with cleaning and removal of concrete splatter, graffiti, paint, overspray, silicon, or liquid nails.
- 4.2. An electrical inspection fee charged upon return of the Equipment as noted in the Hire Schedule.

## SPECIAL CONDITIONS 5: FLEET VEHICLES

These Special Conditions will only apply to the extent that the Equipment hired is identified as those categories under Special Condition 5 Clause 1.1.

### 1. AGREEMENT

- 1.1. If the Equipment on the Hire Schedule is identified as a light vehicle, utility or bus the following additional conditions shall apply to the Hire.
- 1.2. The Hirer agrees to hire the Equipment from the owner incorporating these Special Conditions in conjunction with terms and conditions contained within the Owner's Master Equipment Hire Agreement (MEHA), accompanying Hire Schedules along with any Annexures, as applicable. For the avoidance of doubt, these Special Conditions take precedence over any other terms and shall take priority in the event any terms or definitions in other documents give rise to an ambiguity or inconsistency between them.

### 2. ADDITIONAL OBLIGATIONS

- 2.1. The Hirer must pay the charges to the Owner from and including the commencement of the Hire Period until the Termination Date.
  - a. For the avoidance of doubt, if the Termination Date is not a Business Day, then the Hirer must pay the hire charges until the next Business Day immediately after the Termination Date.
- 2.2. In addition to the Hirer obligations listed under Clause 11, the Hirer is required to:
  - a. Not drive or operate the Equipment if it is damaged, in an unsafe condition or would be dangerous to do so.
  - b. Unless agreed in writing with the Owner, not take or use the Equipment:
    - i. Off Road
    - ii. On private roads (whether sealed or unsealed)
    - iii. On beaches, boat ramps, rivers, lakes or other places where the vehicle will enter into or be partially or fully immersed in water
  - c. Not use the Equipment to propel or tow any vehicle or trailer in excess of the load for the Equipment was constructed.
  - d. Not use the Equipment for the purpose of a speed test or in any contest.
  - e. Unless agreed in writing with the Owner, not haul any goods.
  - f. Return the Equipment with a full tank of fuel and in the same condition as noted in the condition report.
- 2.3. For the avoidance of doubt, the Hirer must obtain the Owner's written permission (which may be withheld or withdrawn in the Owner's absolute discretion) if the Hirer intends to operate the Equipment in a manner or purpose contrary to the obligations set out within Clause 6 or these Special Conditions Clause 2.

### 3. ADDITIONAL CHARGES

- 3.1. In addition to the Conditional Charges in Clause 8, the following fees may apply:
  - a. A per kilometre rate charge as noted in the Hire Schedule.

### 4. RESTRICTIONS ON DRIVERS

- 4.1. The Hirer undertakes that:
  - a. The Equipment must not be driven by any person other than the Hirer, or such other person named by the Hirer in the Hire Schedule (Authorised Driver) and:
  - b. It will not allow any Authorised Driver to drive the Equipment unless that person:
    - i. Holds an appropriate motor vehicle driver's licence for the class of Equipment hired which is valid for the Hire Period and:
    - ii. Has never been refused motor vehicle insurance.
  - c. It will ensure that any drivers of the vehicle undergo a breath, blood or similar test analysis when required by, or in compliance with the directions of the police or other authorities.
- 4.2. The Hirer is liable for full amount of all loss, costs and damages plus any administrative fees as reasonably determined by the Owner in connection with any breach of this Special Conditions Clause 4.

### 5. ACCIDENTS, LOSS AND OR DAMAGE

- 5.1. The Hirer must:



- a. Report to the Owner immediately upon the occurrence of any Accident, Single Vehicle Accident (SVA), breakdown or other incident which may give rise to a Claim which occurs during the Hire Period; and
  - b. In the case of an Accident, SVA or incident involving damage to the Equipment or to any property and/or injury to or death of any person, supply to the Owner or its solicitors all statements, police reports, information and assistance as the Owner may reasonably require.
- 5.2. The Hirer must not, without the prior written consent of the Owner, make any offers or admissions, settle any Claims, promise any payment, release, indemnify or admit liability in respect of any Accident, SVA or other incident involving damage to the Equipment or to any property and/or injury to or death of any person.
- 5.3. The Hirer acknowledges and agrees that:
- a. The amount of any damage to the Equipment will whenever reasonably possible be assessed by an independent expert (whom may be a repairer with a minimum of five (5) years post qualification experience) engaged by the Owner for such purpose; and
  - b. Whenever the services of such an expert are not available such assessments of damage shall be undertaken by an authorised representative of the Owner who shall certify the amount of such assessment, and whose assessment shall be final and binding on the Owner and the Hirer in the absence of manifest error.
- 5.4. The Hirer will be liable for any damage to the Equipment howsoever caused including as a result of the negligence or misconduct of the Hirer, its officers, contractors, and agents.
- 5.5. The Hirer agrees that in the event of an Accident, SVA or other incident or damage in relation to the Equipment, it shall be liable for all loss, costs and expenses incurred by the Owner, including without limitation, the costs of:
- a. Any administration fees and call out fees.
  - b. Replacing the Equipment if they are deemed to be written off as a result of such Accident, SVA, incident or damage.
  - c. Rectifying or replacing any parts of the Equipment.
  - d. Rectifying all tyre damage not attributable to normal wear and tear or where required, replacing damaged tyres with tyres of the same brand and tread pattern as already on Equipment.
  - e. Rectifying all damage to the under carriage or to the over carriage.
  - f. Repairing all body or roof damage.
  - g. Towing the Equipment.
  - h. Rectifying all damage to suspension, steering, chassis, deferential, gear box, transfer, axles, wheels, or other damage caused by abnormal use, misuse, or abuse of the Equipment.
  - i. Replacing spare wheels equipment, tools, and jack.
  - j. Repairing or replacing window glass; and
  - k. Any loss of Hire Charges or profits during the period when the Equipment is out of operation.

## 6. INSURANCES

- 6.1. The Hirer must at all times during the Hire Period maintain insurance of the Equipment defined in Special Condition 5 Clause 1.1 meeting the requirements as per Clause 17.
- 6.2. Prior to taking possession of the Equipment, the Hirer must provide the Owner with copies of all certificates of currency for the insurance policies taken out by the Hirer in accordance with Clause 17.

## 7. COLLISION WAIVER

- 7.1. This Special Condition 5 Clause 7 replaces the conditions of the LTD Waiver Clause 18.
- 7.2. If the Hirer declines or fails to provide proof of suitable insurance in accordance with Special Condition 5 Clause 6 and Clause 17, they elect to take the benefit from the Collision Waiver by paying the additional amount, including service and handling fees and administration charges, specified in the Hire Schedule in the event of damage or loss to the Equipment arising from Collision with another vehicle ("Collision"). The Hirer agrees to pay Collision damage liability as follows:
  - a. For a Collision involving the Owner's Equipment under Special Condition 5 Clause 1.1, minimum collision damage \$5,500 plus GST; and
  - b. This Collision waiver does not constitute comprehensive insurance.
- 7.3. This Collision waiver applies to all Vehicles unless a certificate of currency is provided pursuant to Clause 17 and does not include waiver of liability for:
  - a. Cleaning the Equipment.
  - b. Glass and Perspex damage.
  - c. Tyre damage and punctures.
  - d. Damage from collision with animals.
  - e. Single vehicle damage.
  - f. Recovery or Relocation of the Vehicle.

All for which the Customer shall remain liable.

- 7.4. The Collision waiver is not applicable in any instance where the age of any driver of a Vehicle involved in a Collision is less than 21 years.

## SPECIAL CONDITIONS 6: MINING

These Special Conditions will only apply to the extent that the Equipment is hired from the Owner identified as Brooks Mining Pty Ltd (ACN: 89 677 376 975) as stated on the applicable Hire Schedule.

### 1. AGREEMENT

- 1.1. If the Equipment is hired from the Owner identified as Brooks Mining Pty Ltd (ACN: 89 677 376 975) as stated on the applicable Hire Schedule, the following additional conditions shall apply to the Hire.
- 1.2. The Hirer agrees to hire the Equipment from the Owner incorporating these Special Conditions in conjunction with terms and conditions contained within the Owner's Master Equipment Hire Agreement (MEHA), accompanying Hire Schedules along with any Annexures, as applicable. For the avoidance of doubt, these Special Conditions take precedence over any other terms and shall take priority in the event any terms or definitions in other documents give rise to an ambiguity or inconsistency between them.

### 2. ADDITIONAL OBLIGATIONS

- 2.1. In addition to the obligations under Clause 6, unless agreed in writing or identified within the responsibility matrix on a Hire Schedule, the Hirer shall be responsible for:
  - a. Arranging the transportation of the Equipment at the job site, including obtaining all necessary permits and pilots and ensuring qualified personnel carry out assembly, commissioning or establishment, including relevant testing on site.
  - b. Ensuring qualified personnel carry out disassembly, decommissioning on site and arranging the transportation of the Equipment including obtaining all necessary permits and pilots returning the Equipment to the Owner.
  - c. All Undercarriage, GET, tyre, tray, bucket and blade wear, and damage or replacement calculated on a measure out / measure in basis.
  - d. Wear, damage or replacement of blade skins and strips including parts and labour.
  - e. Wear, damage or replacement of bucket skins and strips including parts and labour.
  - f. Wear, damage or replacement of GET pins and bushes.
  - g. Costs associated with freight of parts to the Equipment location while on hire.
  - h. Costs associated with consumables, including but not limited to oils, coolants, greases, gasses for servicing and breakdowns.
- 2.2. The Hirer shall ensure that all Equipment use complies with applicable mining safety regulations and shall immediately report any incidents or accidents involving the Equipment to all relevant parties, including any regulatory bodies and the Owner.

### 3. EXTENDED INSURANCE REQUIREMENTS

- 3.1. Under these Special Conditions 6, the Hirer is required to provide suitable comprehensive insurance, including coverage for environmental damage, public liability and Equipment replacement in accordance with Clause 17 and:
  - a. The limit required for Public Liability risks under Clause 17.1.c is increased to \$20 million.
  - b. Clause 18 in relation to the LTD Waiver will not apply.

### 4. NO OPERATIONAL GUARANTEES

- 4.1. The Hirer acknowledges and agrees that the Equipment is supplied on a dry hire basis, and as such, the Owner provides no guarantee or warranty, express or implied, regarding the operational performance, productivity, or suitability of the Equipment for the Hirer's intended purposes. The Hirer assumes full responsibility for the operation, performance, and any outcomes or results achieved with the Equipment during the hire period. The Supplier shall not be liable for any losses, damages, or claims arising out of or in connection with the Equipment's failure to meet specific performance criteria, including, but not limited to, production targets, operational efficiency, or compatibility with the Hirer's worksite conditions. The Hirer further acknowledges that it has conducted or has had the opportunity to conduct a full inspection of the Equipment prior to hire and accepts the Equipment as is.



# BROOKS



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