

MASTER EQUIPMENT HIRE AGREEMENT

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this agreement unless the contrary intention appears:

Business Day means, a day that is not a Saturday, Sunday, bank holiday or public holiday in Western Australia.

Chain of Responsibility Legislation means the legislation contained in the Road Traffic (Vehicles) Act 2012 (WA) and the Road Traffic (Administration) Act 2008 (WA) which introduces legal accountability throughout the whole transport chain, general accountability to all involved in the transport chain and penalties for non-compliance.

Electronic Traffic Control Equipment means electronic Equipment that is used to control traffic, which includes, but is not limited to portable traffic lights, variable message signs, traffic sensors, arrow boards and radar-controlled speed advisory signs.

Equipment means the goods hired to the Hirer under this agreement which may include:

- (a) Weed and Seed Equipment;
- (b) equipment including but not limited to access equipment; air and air compression equipment; compaction equipment; concrete & masonry equipment; earthmoving equipment; floor & cleaning equipment, generators and power distribution equipment; ground and shoring equipment; ladders & scaffolding; propping; lighting; materials handling equipment; offshore pumps & fluid management equipment; safety equipment; site accommodation including portable buildings and portable toilets; tools & similar goods; traffic management equipment including road barriers; trucks, vehicles & trailers; welding equipment; any other goods hired under or in respect of any security interest; and any related goods including parts and accessories for the foregoing;
- (c) vehicles and their associated parts, accessories and equipment, including but not limited to, motor vehicles and trailers and including access vehicles; air and air compression vehicles; compaction vehicles; earthmoving vehicles; generators and power distribution vehicles; lighting vehicles; materials handling vehicles; offshore vehicles; pumps & fluid management vehicles; traffic management and road barrier vehicles and;

GST Law means the same as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Hire means the hire of Equipment in accordance with this agreement.

Hire Charges means the charges payable by the Hirer under this agreement.

Hire End Date means in respect of a Hire, the date specified in the relevant Hire Schedule. If no date is specified, the Hire continues until terminated in accordance with this agreement.

Hire Period means a period commencing on the Hire Start Date and expiring on the Hire End Date.

Hire Schedule means a schedule which the Owner may require the Hirer to sign to hire Equipment and which includes particulars of the Equipment, the period for which the Hire is required and such other information as the Owner may require. An indicative form of schedule is attached to this agreement.

Hire Start Date means in respect of a Hire, the date specified in the relevant Hire Schedule.

Hirer means any person who requests the Owner to hire Equipment, its successors, permitted assigns, employees, agents and any person claiming through, under or in trust for such person.

Major Repairs shall include, but not be limited to, repairing or replacing the following items except where they are caused by accident, negligence, excessive wear and tear:

- (a) engine assembly;
- (b) torque converter and pumps;
- (c) transmission assembly and pumps;
- (d) differentials and final drives, including brakes;
- (e) radiators and coolers;
- (f) chassis and frames;
- (g) hydraulic pumps, motors, pump drives and cylinders;
- (h) fuel system components (fuel pump, injectors);
- (i) air conditioning compressor, alternators, and emergency steering motors;
- (j) suspension;
- (k) steering components;
- (l) electrical harnesses;
- (m) equalizer bar;
- (n) major electrics; and
- (o) slew ring and associated components.

Minor Repairs shall include, but not be limited to, daily servicing and repairing or replacing the following items:

- (a) items covered by the manufacturer's maintenance instructions and recommendations, including filters and breathers;
- (b) hydraulic hoses;
- (c) belts;
- (d) any adjustments and applications mechanism;
- (e) minor electrical including electrical wiring, electrical switches, fuses, lights, circuit breakers and globes;
- (f) minor leaks;
- (g) air conditioner hoses, switches, and service items;
- (h) grease lines and fittings;
- (i) starter motors; and
- (j) window wipers.

Off Hire occurs when the Hirer no longer requires the Equipment, and the Equipment is available for collection by the Owner.

Portable Traffic Lights means an independently powered, mobile traffic light solution, comprising a pair of units which can be remotely controlled to manage the flow of traffic.

PPS Law means the Personal Property Securities Act 2009 (Cth).

Weed and Seed Equipment means equipment that requires special cleaning for the purpose of complying with an industry standard.

1.2 Interpretation

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, 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 \$ is a reference to Australian dollars;



- (f) a reference to time is to the time in Perth, Western Australia;
- (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 and binds them jointly and severally;
- (l) a rule of construction does not apply to the disadvantage of a party because the 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; and
- (n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed, or the event must occur on or by the next Business Day.

1.3 Headings

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

2 HIRE

2.1 The Owner agrees to hire Equipment to the Hirer on the terms and conditions of this agreement.

2.2 The Hirer must complete and sign a Hire Schedule and such other documents as the Owner may require. Each Hire Schedule is not a separate contract but forms a part of this agreement between the Owner and the Hirer, together with any facility applications, guarantee or other contractual documents.

2.3 The Owner may decline to hire Equipment in its discretion.

2.4 A Hire Schedule may contain further details of matters in respect of the Hire. If so, those further details apply as part of this agreement.

2.5 If there is any inconsistency between the Hire Schedule and this agreement the terms of the Hire Schedule will prevail to the extent of the inconsistency.

3 BILLING AND PAYMENT

3.1 Unless otherwise agreed, Hire Charges will commence from the time the Equipment leaves the Owner's premises on the Hire Start Date (if collected by the Hirer) or from the time it arrives at the destination the Hirer specified (if delivered by the Owner) until the expiration or termination of the Hire in accordance with clause 12.

3.2 The Hirer acknowledges and agrees that Hire Charges will start to accrue if the Hirer fails for any reason to collect the Equipment from the Owner's premises at the agreed time.

3.3 Subject to this agreement, Hire Charges will be based on the minimum hours per month or the minimum hours per day and the minimum days per week, as specified in the relevant Hire Schedule. If the Equipment is used in excess of the specified hours or specified days (regardless of when the Owner carries out the hour meter reading on the Equipment), additional Hire Charges will apply at a rate reasonably determined by the Owner.

3.4 Hire Charges will apply on public holidays, irrespective of whether or not the Equipment is being used.

3.5 If the Hire Charges are based on the minimum hours per day and the minimum days per week, the Hirer may stand down the Equipment for up to six days per month of Hire. The first day will be free of charge, the remaining five days will be

charged at fifty percent of the minimum hours per day or fifty percent of the daily Hire rate. The Hirer may not stand down water trucks. If the Hire Charges are based on the minimum hours per month, the Hirer is not entitled to stand down the Equipment. The Hirer may not stand down the Equipment in the event of severe weather.

3.6 In the event that the Equipment breaks down or is Off Hired, the Hirer must notify the Owner immediately. For Metropolitan area hires the Hirer must notify the Owner prior to 3pm on the last day of hire and return the Equipment by 10am the next day to avoid incurring the minimum hours per day charge. For Regional hires the Hirer must notify the Owner prior to 3pm on the last day of hire and return the Equipment within 5 days, to avoid incurring the minimum hours per day charge. The minimum hours per month charge will be prorated for Equipment that breaks down or is Off Hired.

3.7 If the Equipment is found to be operating on a day that was notified by the Hirer as breakdown, Off Hired or stand down, Hire Charges will apply. The Owner has installed an electronic tracking system to monitor daily the Equipment usage in accordance with clause 6.2.

3.8 The Hirer must specify, prior to the commencement of Hire, the days of the week the Equipment will be in use. Should the Hirer wish to use the Equipment on a day other than those specified, they must notify the in writing at least 24 hours prior. Failure to do so will result in additional Hire Charges being payable by the Hirer. The minimum hours per day charge or the daily Hire Charge will apply to the additional or varied day of Hire as otherwise provided by this agreement.

3.9 The Hirer must identify in writing the specifications of the Equipment it is hiring. In the event that the Hirer incorrectly orders the Equipment and requires a replacement of that Equipment, the Owner will charge the Hirer a replacement fee as determined by the Owner from time to time as well as the minimum hours per day charges or pro-rated minimum hours per month Hire Charge for the time taken to deliver the incorrectly ordered Equipment to the Owner.

3.10 The rate of Hire Charges will be as specified by the Owner from time to time and may be varied by the Owner at its sole discretion. Variations will apply from the time of notification to the Hirer.

3.11 If the Hirer is responsible for wear and tear of the tyres and/or the Ground Engaging Tools (GET), the Owner may charge the Hirer a repair or replacement fee, proportionate to the Hirer's usage, as determined by the Owner from time to time.

3.12 Weed and Seed Equipment hires must be hired by the Hirer of minimum of 5 days. The Hirer cannot stand down the Weed and Seed Equipment during the 5 days. In the event that the Hirer Off Hires the Weed and Seed Equipment prior to the end of the 5 days, the Owner will still charge the Hirer for the 5 days of Hire. It is the Hirer's responsibility to check that the Weed and Seed Equipment meets any applicable standard for Weed and Seed Equipment.

3.13 The Hirer will pay a deposit in the amount stated in 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.

3.14 In addition to the charges specified by the Owner, the Hirer will pay to the Owner the amounts of any tax, levy, charge or other expense paid or payable by the Owner to any government authority in respect of the use of the Equipment, together with the Owner's standard delivery and/or collection charges from time to time together with any expenses incurred by the Owner as a result of a breach by the Hirer of its obligations pursuant to this agreement (including legal costs on a solicitor-client basis).

3.15 The Hirer agrees to pay the Hire Charges and other charges specified by the Owner at the times and in the manner specified by the Owner or, if not specified within seven days of the date of the relevant invoice without set-off or demand. The Owner may at its option render invoices to the Hirer at the commencement or completion of the Hire Period or periodically throughout the Hire Period.



3.16 Where any amount becomes overdue all unpaid amounts will immediately become due and payable by the Hirer to the Owner. The Hirer agrees to indemnify the Owner for all costs and fees (including legal costs on an indemnity basis) incurred by the Owner in recovering overdue amounts from the Hirer.

3.17 The Owner may charge interest on all amounts not paid by the Hirer by the due date at the rate of 1% per month plus ANZ's commercial overdraft interest rate on accommodation in excess of \$100,000 from and including the due date to the actual receipt of payment. If that rate is not readily ascertainable the Owner may apply what the Owner reasonably considers to be an equivalent rate. The rate applies whether or not the Owner notifies it to the Hirer.

3.18 An environmental levy will be charged at the rate specified in the Hire Schedule.

4 PROPERTY

4.1 Ownership of the Equipment will at all times remain with the Owner.

4.2 No person will be entitled to use, dispose of or otherwise deal with the Equipment in any way which is inconsistent with the Owner's rights or these conditions.

4.3 Neither payment of compensation nor any other circumstance or event will amount to, constitute or result in any transfer of property or interest in the Equipment from the Owner.

4.4 This agreement is personal to the Hirer and the Hirer must not:

- (a) assign or sub-contract its rights and obligations;
- (b) sell or offer for sale, assign, mortgage, pledge, lend or otherwise part with possession of the Equipment;
- (c) allow any other person to use or have possession of the Equipment; or
- (d) allow any lien to be levied upon the Equipment whether for repairs or otherwise, without the prior written consent of the Owner, which may be withheld at the Owner's absolute discretion.

4.5 The Hirer acknowledges that the Owner may inspect the Equipment at any time during the Hire Period, whether notice of such inspection is given to the Hirer or not, and the Hirer shall provide to the Owner all assistance and co-operation necessary to facilitate such inspection of the Equipment.

4.6 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 the Equipment.

4.7 The Hirer will protect the Equipment against execution or seizure and will indemnify the Owner against all resultant losses (including any consequential losses), costs, charges, damages and expenses (including any legal costs on a solicitor and client basis) incurred by the Owner as a result of a breach of this clause 4 by the Hirer.

4.8 The Hirer must maintain the Equipment on a daily basis in compliance with the requirement of the Owner and this agreement.

4.9 The Owner may assign or sub-contract its rights and obligations under this agreement without notice to the Hirer.

5 LOSS OR DAMAGE TO EQUIPMENT

5.1 If the Equipment is lost, breaks down or is damaged, the Hirer must immediately notify the Owner in writing of the details. Notification shall not absolve the Hirer from its obligations under this agreement to safeguard the Equipment.

5.2 In the event that the Equipment breaks down or becomes unsafe to use or the Equipment requires a Major Repair, the Hirer must:

- (a) immediately stop using the Equipment;
- (b) take all steps necessary to prevent the Equipment from sustaining any further damage;
- (c) take all steps necessary to prevent injuries from occurring to any person or property as a result of the condition of the Equipment; and
- (d) save as otherwise provided in this agreement, not repair or attempt to repair the Equipment without the Owner's prior written consent.

5.3 The Owner shall endeavour to repair the Equipment or provide substitute Equipment (if available to the Owner) as soon as is reasonably practicable in the circumstances after receipt of a request from the Hirer.

5.4 If the Equipment is lost or damaged, and the loss of or damage to the Equipment is caused by any act or negligence of the Hirer or the breach of any term of this agreement by the Hirer, or the failure by the Hirer to use the Equipment in accordance with any instruction manual or instructions provided to the Hirer the Hirer shall be liable for the following:

- (a) any costs incurred by the Owner in repairing or replacing the Equipment;
- (b) Hire Charges for the Equipment until the Equipment is repaired or replaced; and
- (c) any other costs whatsoever incurred by the Owner as a result of the damage to or loss of the Equipment.

5.5 If the Owner is required by any relevant authority, is requested by the Hirer, or elects in its unfettered discretion to salvage the Equipment, then all salvage costs shall be payable by the Hirer.

6 HIRER'S OBLIGATIONS

6.1 The Hirer must:

- (a) pay all Hire Charges together with any other charges or amounts that may become due and payable to the Owner under the terms of this agreement;
- (b) upon delivery or collection of the Equipment immediately examine the Equipment to satisfy itself as to its condition and suitability and fitness for the purpose to which it requires the Equipment. In accepting the Equipment, the Hirer acknowledges that it has not in any way relied upon the skill or judgement or any representations made by or on behalf of the Owner in respect of the Equipment, its purpose, use or performance;
- (c) use the Equipment in a skilful, proper, safe and prudent manner and only for the purpose and within the capacity for which it was designed;
- (d) notify the Owner of any breakdown, stand down and Off Hire;
- (e) perform service and maintenance routines for the Equipment as per the manufacturer's operation and maintenance manual, and perform all Minor Repairs of the Equipment;
- (f) ensure that the Equipment is operated by a suitably qualified, trained, experienced and (if necessary) certified operator. If the Owner supplies an operator to operate the Equipment the operator shall be under the sole direction and control of the Hirer and for the purpose of this agreement shall be deemed to be the employee of the Hirer. The Hirer shall be responsible for any claims whatsoever arising in connection with the operation of the Equipment by such an operator or any third party and, if an operator is provided by the Owner, the Hirer shall not allow any other person to operate the Equipment without the Owner's prior written consent;
- (g) at its own expense clean, fuel, lubricate and keep and maintain Equipment in good condition and repair failing which the Hirer will reimburse the Owner for any costs, claims, loss, damages or expenses (including legal expenses on a solicitor client basis) incurred by the Owner;
- (h) repair or replace at its own cost any flat and/or damaged tyres;
- (i) clean the Equipment thoroughly on the expiry of the Hire Period. If the Hirer fails to clean the Equipment properly in the Owner's opinion, then the Owner may undertake the cleaning and the Hirer shall be liable for a cleaning charge;
- (j) ensure that the Equipment is stored safely, securely and protected from theft;
- (k) not alter, make additions to, deface or erase any identifying mark, plate, trademark writing or number on or in the Equipment or interfere with or modify the Equipment in any other manner;
- (l) be liable for the cost of freight to retrieve Equipment that has been abandoned for any reason;

(m) comply at its own expense with all local authority, state and federal laws, ordinances and regulations including in particular any occupational health and safety laws which may affect the Equipment while it is in the possession of or being used by the Hirer;

(n) comply with the Chain of Responsibility Legislation, and ensure that any activity relating to the Equipment (including scheduling, load restraint, and transport movement) is undertaken in compliance with the Hirer's Chain of Responsibility Legislation and ensure that any subcontractor of the Hirer (where the Hirer subcontracts any movement of transport under this agreement) are contractually bound to comply with their obligations under the Chain of Responsibility legislation;

(o) not without prior written consent of the Owner keep or store in the Equipment or on or near any of the Equipment any volatile spirits or explosive goods or goods that are or may become dangerous, corrosive, highly combustible, offensive (including radioactive materials) or likely to encourage any vermin or pests. Any such goods stored in or near the Equipment may at any time be destroyed, disposed of, abandoned, or rendered harmless by the Owner without compensation to the Hirer and without effecting the Owner's rights under this agreement. The Hirer authorises the Owner to have unrestricted access to the Equipment for the purpose of exercising the Owner's rights under this clause;

(p) supply the operator of the Equipment with all necessary manuals and instructions (both written and oral) necessary for the safe use of the Equipment and the appropriate safety clothing;

(q) not use the Equipment offshore, in a mine, in an area where friable asbestos is present, or move the Equipment over water without the Owner's prior written consent, which may be withheld or granted at the Owner's complete discretion;

(r) remove and dispose of any diesel, grease, oil or similar substance from the service module of a service truck, fuel truck or fuel trailer (and if the Hirer fails to do so, the Owner may remove and dispose of the diesel, grease, oil or similar substance at the cost of the Hirer);

(s) notify the Owner if they intend to use a hydraulic attachment that has not been supplied by the Owner. The Hirer may be charged an hourly rate for attachment usage as determined by the Owner.

6.2 The Owner uses an electronic tracking system on the Equipment. The Equipment usage is monitored daily and a data report is produced for Equipment usage, frequency and mode of attachment usage, breakdowns, general daily activities and negligent behaviour which includes over revving the engine. Should the information provided under clause 6.1(d) not match the information provided by the electronic tracking system, the Hirer will be charged additional Hire Charges.

6.3 Unless the Owner agrees otherwise, the Hirer is responsible for arranging the transportation of the Equipment to and from the site or premises at which the Equipment is used by the Hirer and the costs of that transportation (including any waiting fee). The Hirer is responsible for loading and unloading the Equipment onto the means of any transportation. The Owner will determine the site at which the Equipment is mobilised from on the Hire Start Date and demobilised to on the Hire End Date.

6.4 The Hirer must seek the Owner's prior written consent if the Hirer intends to use the Equipment in or around corrosive substances, including but not limited to salt, acid and fertilizer. If the Owner consents to that usage, the Hirer must wash down the Equipment daily with fresh water. Any damage caused to the Equipment by exposure to corrosive substances is payable by the Hirer.

6.5 During the Hire Period the Hirer must ensure that the Equipment is not contaminated with any hazardous substances including asbestos. If the Equipment has been contaminated with any hazardous substance the Hirer is responsible for decontaminating the Equipment, which may include replacing filters, washing down

the Equipment, and removing all contaminants before the Equipment is returned to the Owner. The Hirer shall advise the Owner in writing of details of the decontamination. If in the reasonable opinion of the Owner the Equipment cannot be decontaminated, the Hirer must pay to the Owner the replacement cost of the Equipment.

7 PORTABLE BUILDING HIRE

If the Equipment the subject of the Hire are portable buildings and or portable toilets and ablution facilities (together "**Portable Buildings**") the following additional conditions shall apply to the Hire.

7.1 Hire charges will apply from the Hire 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.

7.2 Unless expressly agreed in writing, the minimum Hire Period for Portable Buildings is 90 days. A cancellation fee of 50% of the Hire Charges will apply if delivery is cancelled with less than 24 hours notice before the delivery date.

7.3 Unless the Owner is responsible for the installation of any Portable Buildings, 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 each Portable Building 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 carry out checks on waste tank levels and to have waste tanks pumped out regularly and prior to Off Hire.

(g) Pay for any additional works, extras, or variations to the Hire Agreement.

(h) The Owner is not responsible for the supply of steps to Portable Buildings.

7.4 Unless otherwise agreed, all Portable Buildings will be supplied unfurnished. Furniture can be supplied at an additional cost.

7.5 The Hirer acknowledges that Portable Buildings are not load bearing structures 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 Portable Buildings.

7.6 Once the Portable Buildings have been delivered to the Hirer's site, the Hirer must:

(a) arrange for tagging and testing of the Portable Building; and
(b) during the Hire Period regularly maintain the air-conditioning units and replace the filters every 2 weeks or in accordance with manufacturer's instructions.

7.7 Irrespective of whether the Hirer has paid the Damage Waiver Fee, the liability of the Hirer will not be reduced if it fails to comply with clause 7.3(e).

7.8 Unless expressly agreed in writing, the Owner does not warranty any design specifications for the installation of any Portable Buildings 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 Portable Buildings.

7.9 The Hirer must Pay the Owner for an electrical inspection fee charged upon return of the Portable Building.

7.10 Unless expressly agreed in writing, the Hirer must ensure all equipment is packed securely for transport upon return to the Owner's premises at the termination of the Hire.



7.1 The Hirer will be liable for any damage to the structure or integrity of the Portable Building 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).

7.2 The Hirer agrees to pay an additional cleaning fee per floor and additional charges will apply for the cleaning and removal of concrete splatter, graffiti, paint, overspray, silicon, liquid nails.

7.3 The Hirer acknowledges compliance with this special condition may result in additional cost for the Hirer and the Hirer agrees to inform itself of all costs of complying with this special condition.

7.4 The Hirer agrees to pay a lump sum fee of \$600.00 at the end of hire for cleaning, electrical test & tagging and general off hire inspection.

7.5 The Hirer acknowledges receipt of a copy of the "HRIA Portable Toilet Code of Practice" and agrees to comply with the Code of Practice.

8 PUMPS AND DEWATERING

If the Equipment the subject of the Hire is pumps & fluid management equipment ("Pump") the following additional conditions shall apply to the Hire.

8.1 Pump 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 Pump then the Hire must consult with the Owner in writing at operations@brookssiteservices.com.au.

8.2 The Hirer must at all times ensure that the Pump 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 Pump. The Hirer will be liable to the Owner for any damage.

9 ELECTRONIC TRAFFIC CONTROL EQUIPMENT AND PORTABLE TRAFFIC LIGHTS

If the Equipment the subject of the Hire is Electronic Traffic Control Equipment and/or the Portable Traffic Lights, the following additional conditions shall apply to the Hire.

9.1 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 Electronic Traffic Control Equipment and Portable Traffic Lights that the Hirer has hired.

9.2 The Hirer is responsible for the safe placement and operation of the Electronic Traffic Control Equipment in accordance with all relevant laws and statutory regulations.

9.3 In the event that the Hirer instructs the Owner to place the Electronic Traffic Control Equipment on its behalf, the Hirer will provide the Owner with all information relevant and available for the safe placement of the Electronic Traffic Control 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 Electronic Traffic Control Equipment.

9.4 The Hirer agrees not to use Electronic Traffic Control 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 Electronic Traffic Control Equipment.

9.5 The Hirer acknowledges that if a Portable Traffic Light malfunctions, the failsafe system will revert the Portable Traffic Lights 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, failure to function or interruption of or to any Portable Traffic Light unless it is caused by any negligent act or omission of the Owner. The Hirer may not terminate this agreement for these reasons and has no right of action or claim for compensation or damages against the Owner.

10 LONG DISTANCE AND REMOTE LOCATIONS

10.1 This clause applies if the Hirer hires Equipment for use at a Long Distance

and Remote Location.

10.2 All Equipment located at a Long Distance and Remote Location will be subject to a per kilometre charge both to and from such premises nominated by the Owner.

10.3 The Hirer remains responsible for daily maintenance and care of all Equipment located at a Long Distance and Remote Location, including but not limited to, checking of all fluids (fuel, oil, water, battery levels, waste tanks etc.), checking of all hoses (hydraulic, fuel and water), general tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points.

10.4 If the Equipment breaks down at a Long Distance and Remote Location, the Hirer must also pay the Owner the costs associated with any attendance to the Long Distance and Remote Location in addition to any other costs payable under this agreement.

10.5 In this clause, Long Distance and Remote Location means any location which is outside a radius of 300 kilometres from the premises nominated by the Owner in clause 10.2.

11 RELEASE AND INDEMNITY

The Hirer hereby releases the Owner from, and agrees to indemnify the Owner in respect of, any third party claims, actions, suits, demands, costs and expenses for damage or injury to 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.

12 THEFT AND DAMAGE WAIVER

12.1 If the Hirer chooses to take the benefit of the theft and damage waiver option in this clause (and pays the additional amount specified in the Hire Schedule or otherwise agreed) the Owner agrees to waive its rights to claim from the Hirer the sum of money in excess of an amount being the greater of:

(a) \$5,500.00; or

(b) 1% of the sum insured for the Equipment,

in respect of any loss, destruction of or damage to Equipment which is caused by fire, storm, earthquake, collision, accident, theft or burglary, subject always to the other provisions in this clause 11 and provided that the Hirer notifies the Owner in writing immediately upon the occurrence of any such loss, destruction or damage.

12.2 The theft and damage waiver in clause 12.1 only applies provided that in the case of theft or burglary the Hirer has supplied to the Owner satisfactory evidence that:

(a) the Hirer has promptly reported the theft or burglary to the police; and

(b) 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.

12.3 In addition the theft and damage waiver contained in clause 12.1 will not apply to loss of or damage to the Equipment in the following circumstances:

(a) loss or damage resulting from overloading, exceeding rated capacity, failure to maintain, misuse, abuse or improper servicing of the Equipment;

(b) loss or damage due to mysterious disappearance of the Equipment;

(c) loss or damage caused by misappropriation or wrongful conversion of the Equipment by the Hirer;

(d) loss or damage by the operation of the Equipment in contravention of any of these conditions;

(e) loss or damage caused by the use or operation of the Equipment in violation of any law, regulation or by-law;

(f) damage to tyres;

(g) glass breakage;

(h) loss or damage occurring whilst the Equipment is being carried over



water;

- (i) damage to equipment during transit or while the goods are being loaded or unloaded from any vehicle;
- (j) loss or damage due to the Hirer's use or misuse of AdBlue;
- (k) loss or damage to accessories, grease guns, hoses and similar;
- (l) damage caused by exposure to any corrosive substance, including and hazardous, caustic or toxic materials, cyanide, salt water or acid;
- (m) loss or damage relating to lack of lubrication or other normal servicing of the Equipment;
- (n) loss or damage to the Equipment whilst located, used, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
- (o) 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 machine;
- (p) theft of the Equipment unless reasonably locked and secured;
- (q) loss or damage during transport, except where transported by Owner; or
- (r) loss or damage caused by the negligence of the Hirer.

12.4 For the avoidance of doubt:

- (a) the Hirer will be solely responsible for all loss or damage to the Equipment:
 - (i) if the Hirer does not notify the Owner in writing immediately upon the occurrence of any loss, destruction or damage;
 - (ii) upon the occurrence of any of the circumstances in clause 12.3; or
 - (iii) if the Hirer does not provide satisfactory evidence to the Owner in accordance with clause 12.2,

and the Hirer must not make a claim to the Owner under the theft and damage waiver contained in clause 12.1; and

- (b) if the Hirer is entitled to receive the benefit of the theft and damage waiver option in this clause, 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:
 - (i) \$5,500.00; and
 - (ii) 1% of the sum insured for the Equipment.

By way of example only:

- (iii) if the sum insured for the Equipment is \$500,000.00, the Hirer will be responsible to pay \$5,500.00 for the loss or damage to the Equipment (being the greater amount between \$5,500.00 and 1% of \$500,000.00); or
- (iv) if the sum insured 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 1% of \$900,000.00).

12.5 The Hirer acknowledges that nothing in this clause derogates from the Hirer's obligations contained in clause 6.

13 TERMINATION OF HIRE

13.1 The Owner may at any time and in its unfettered discretion terminate a Hire to the Hirer whereupon the Hirer must immediately attend to any of the obligations remaining under this agreement and make the Equipment available for collection.

13.2 The Hirer may terminate the hire of the Equipment by:

- (a) delivering the Equipment to the Owner at a time acceptable to the Owner during normal working hours; or
- (b) notifying the Owner that the Equipment is ready for collection.

The Hirer must obtain an "Off Hire" number, failing which the Hirer will not be deemed to have notified the Owner that the Equipment is ready for collection and the Hire will incur charges until this number has been obtained.

13.3 Subject only to clause 5.5, if the Equipment is returned to or collected by the Owner in a state which is unsatisfactory or in breach of the terms of this agreement then the Hire Period will be deemed to continue until the Equipment is in a state which is satisfactory to the Owner, or any breach of this agreement has been remedied (whichever is the later). The Owner undertakes to take all reasonable steps to put the Equipment into a satisfactory state as soon as is reasonably possible after the return or collection of the Equipment.

13.4 Upon termination of a Hire, the Owner is entitled to take possession of the Equipment and for this purpose the Hirer irrevocably appoints the Owner as his agent and authorises and licences the Owner to:

- (a) 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
- (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 the Owner, in use by the Hirer or any other person or containing property not owned by the Owner.

13.5 The Hirer releases the Owner from and indemnifies the Owner against any claims arising from removal and collection of the Equipment in accordance with this clause. Should the Equipment contain any property not owned by the Owner, the Owner shall store that property for a period of 14 days from the termination of Hire. The Owner may charge the Hirer reasonable storage fees for the storage of that property. Should the property not be collected at the expiration of 14 days after the termination of Hire the Owner may sell the property and the Hirer releases the Owner from and indemnifies the Owner against any claims which any person may have directly or indirectly arising from the sale of the property or whether through negligence, sale at under value, sale of property owned by a third party or howsoever.

13.6 After termination of Hire, and until the Equipment has been collected by the Owner, the Equipment shall remain at the sole risk of the Hirer, and the Hirer will indemnify the Owner in respect of any loss of or damage to the Equipment those circumstances and where an Off Hire number has been obtained but the Owner has not collected the Equipment.

13.7 If the Hire is prematurely terminated, the Owner may apply Hire Charges from the day the Equipment is prematurely Off Hired until the end of the Hire Period stated in the Hire Schedule.

14 INSURANCE

The Hirer must maintain at its own expense all appropriate policies of insurance against:

- (a) All damage to or arising out of the hire of the Equipment in an amount not less than the full new replacement cost of the Equipment howsoever occurring, unless the Hirer has taken the benefit of the theft and damage waiver option pursuant to clause 11 in which case such insurance policies need not cover the loss or damage to the extent of waiver in clause 11; and
- (b) All third party and public liability risks in respect of the hire or use of the Equipment by the Hirer for not less than \$10 million for any one occurrence.

15 PPS LAW

15.1 This clause applies to the extent that the Owner's interest in respect of a Hire as provided for in this agreement is a 'security interest' for the purposes of the PPS Law.

15.2 References to PPS Law in this agreement include references to amended, replacement and successor provisions or legislation.

15.3 The Owner may register any actual impending or likely security interest. The Hirer may not make any Claim against the Owner in respect of any registration even if it is determined that the Owner should not have registered a security interest. The Hirer must do anything (such as obtaining consents and signing documents) which the Owner requires for the purposes of:

(a) ensuring that the Owner's security interest is enforceable, perfected and otherwise effective under the PPS Law;

(b) enabling the Owner to gain first priority (or any other priority agreed to by the Owner in writing) for its security interest; and

(c) enabling the Owner to exercise rights in connection with the security interest.

15.4 The rights of the Owner under this agreement are in addition to and not in substitution for the Owner's rights under other law (including the PPS Law) and the Owner may choose whether to exercise rights under this document, and/or under such other law, as it sees fit. To avoid any doubt about it the Owner's security interest will attach to proceeds.

15.5 To the extent that Chapter 4 of PPSA applies to any security interest under this agreement, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of this agreement in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires the Owner to give a notice to the Hirer); section 96 (retention of accession); section 121(4) (notice of grantor); section 125 (obligations to dispose of or retain collateral); section 121(4) (notice of grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires the Owner to give a notice to the Hirer); section 129(2) and 129(3); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re-instatement of security agreement).

15.6 The following provisions of the PPS Law being section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral) may, if applicable, confer rights on the Owner. The Hirer agrees that in addition to those rights, the Owner shall, if there is default by the Hirer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this agreement and the Hirer agrees that the Owner may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

15.7 The Hirer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law. This waiver also extends to any verification statement in respect of security interests arising or provided for under security agreements prior to the date of this agreement.

15.8 The Owner and the Hirer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Hirer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this clause is made solely for the purpose of allowing to the Owner the benefit of section 275(6)(a) and the Owner shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this clause.

15.9 The Hirer must not dispose or purport to dispose of or create or purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the Equipment other than with the express written consent of the Owner. The Hirer must not lease, hire, bail or give possession (sub-hire) of the Equipment to anyone else unless the Owner (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to the Owner and must be expressed to be subject to the rights of the Owner under this agreement. The Hirer may not vary a sub-hire without the prior written consent of the Owner (which may be withheld in its absolute discretion).

15.10 The Hirer must ensure that the Owner is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the

terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment.

15.11 The Hirer must take all steps including registration under PPS Law as may be required to:

(a) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;

(b) enabling the Hirer to gain (subject always to the rights of the Owner) first priority (or any other priority agreed to by the Owner in writing) for the security interest; and

(c) enabling the Owner and the Hirer to exercise their respective rights in connection with the security interest.

16 BREACH OF THIS AGREEMENT BY HIRER

16.1 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:

(a) terminate this agreement; and/or

(b) sue the Hirer for recovery of all monies owing by the Hirer; and/or

(c) repossess the Equipment (and the Owner is authorised to enter any premises where the Equipment is located in order to do so), and any theft and damage waiver referred to in clause 11 is immediately invalidated.

16.2 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.

17 EXCLUSION OF WARRANTIES AND LIABILITIES

17.1 Where the Australian Consumer Law applies, the Hirer has the benefit of guarantees in relation to the Hire of the Equipment which cannot be excluded.

17.2 To the extent that the Australian Consumer Law (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 (including for consequential loss) in relation to the hiring of the Equipment by the Hirer.

18 DISPUTES

18.1 A party must not start court proceedings about a dispute arising out of this agreement unless it first complies with this clause, except:

(a) where the party seeks urgent injunctive relief; or

(b) where the dispute relates to compliance with this clause.

18.2 A party claiming a dispute has arisen must notify each other party to the dispute giving details of the dispute.

18.3 Each party must use its best endeavours to resolve the dispute within twenty-eight days of receiving notice of the dispute or a longer period agreed by the parties to the dispute.

18.4 If, at the end of the twenty-eight-day period, the parties have been unable to resolve the dispute, the matter shall be referred to an independent mediator agreed by the parties (or failing agreement appointed by the Chairman of the Western Australian Chapter of the Institute of Arbitrators and Mediators).

18.5 Each party agrees to act in accordance with the directions of the mediator in respect of the mediation, but the mediator's recommendations shall not be binding on the parties.

19 MISCELLANEOUS

19.1 This agreement replaces and supersedes all other terms and conditions of Hire, previously in force between the Owner and the Hirer and no variation of these conditions will bind either party unless confirmed by the Owner in writing.

19.2 The Owner may from time to time give notice to the Hirer amending any provision in this agreement. However, the variation will not take effect in respect of



any Hire that has commenced before the notice is given to the Hirer.

19.3 Any notice or invoice which by this agreement may be served or rendered by the Owner may be served or rendered by leaving it at or posting it to the address of the Hirer as stated in this agreement or last notified in writing by the Hirer to the Owner and will be deemed to have been served or rendered at the time of leaving or, if posted, on the Business day following the day of postage and any notice may be signed by a manager, director or solicitor of the Owner on behalf of the Owner.

19.4 The person signing this agreement for and on behalf of the Hirer agrees with the Owner that he or she has the authority of the Hirer to make this agreement on the Hirer's behalf and is empowered by the Hirer to bind the Hirer to this agreement and hereby indemnifies the Owner against all losses and costs incurred by the Owner arising out of the person signing this agreement failing to have such power and/or authority.

19.5 If this agreement or any part of it becomes void or unenforceable for any reason then that part will be severed from this agreement to the intent that all parts that do not become void or unenforceable will remain in full force and effect and be unaffected by any severance of other parts.

19.6 The rights and obligations of the Hirer and the Owner will continue and not be affected by termination of the Hire of the Equipment. Termination of the Hire of the Equipment will be without prejudice to any action already given to the Hirer or Owner in respect of any breach of this agreement by the other party.

19.7 Subject to clause 18.1, the parties acknowledge that this agreement contains the entire agreement concluded between the parties notwithstanding any prior or subsequent negotiations or discussions or representations. Any such conditions, warranties or representations are hereby expressly excluded.

19.8 Time is to be of the essence of all obligations of the Hirer in this agreement.

19.9 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 rights that the Owner may have and shall not be deemed a waiver of any subsequent breach of any term in this agreement.

19.10 A statement in writing made up from the books of the Owner and signed by any director, secretary or credit manager of the Owner of the amount owing by the Hirer as at the date mentioned in that statement will be prima facie evidence that the amount is due and owing without it being necessary to produce any books or vouchers to verify the same.

19.11 Any credit accommodation granted may be withdrawn at any time for any reason without notice.

19.12 This agreement is governed by the laws of Western Australia, and the parties irrevocably submit to the jurisdiction of the courts of Western Australia. The Hirer agrees that in the event of any litigation arising in connection with this agreement the action be commenced out of a Court of Western Australia.

19.13 Neither party will be responsible for any delays in delivery or installation due to causes beyond their control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation, epidemic or pandemic. Nothing in clause will limit or exclude the Hirer's responsibility and liability under this agreement for Equipment that is lost, stolen or damaged beyond fair wear and tear during the Hire Period, or has broken down or become unsafe to use as a result of the Hirer's conduct or negligence.



MASTER VEHICLE HIRE AGREEMENT

TERMS AND CONDITIONS OF HIRE

Unless otherwise specifically agreed in writing the following terms and conditions apply to all Vehicles hired by the Customer from Brooks Hire Service Pty Ltd trading as Brooks Fleet Services (ACN 008 975 988) (Brooks) of 39 – 43 Murray Road North, Welshpool WA 6106.

1 DEFINITIONS AND INTERPRETATION

Definitions

In these terms and conditions unless the contrary intention appears:

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

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.

Authority means any body or corporation or any municipal, government, statutory or non-statutory authority or body having authority or jurisdiction over the Vehicles or any matters set out in these terms and conditions.

Brooks includes its employees, officers, agents and contractors.

Business Day means, a day that is not a Saturday, Sunday, bank holiday or public holiday in Western Australia.

Charges means the charges payable by the Customer to Brooks for the Hire.

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.

Commencement Date means the commencement date stated in the Hire Schedule.

Customer means the party named as applicant in the Hire Schedule and includes its employees, officers, agents and contractors.

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.

Excluded Area means any area or road designated by Brooks to be an excluded area.

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 same as in the GST Law.

GST Law means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Hire means the hire of the Vehicles in accordance with these terms and conditions.

Hire Schedule means an application for hire attached to the front of these terms and conditions.

Law includes any present or future requirement of any statute, regulation, proclamation, ordinance or by-law, whether State, Federal, local or otherwise.

Losses means all losses including financial losses, damages, legal costs and other expenses of any nature whatsoever.

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 Customer 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.

Parties means Brooks and the Customer, and Party means each of them.

Remote Area means any location which is more than 50 (fifty) kilometres from the Brooks branch from where the Vehicle or Vehicles (as the case may be) is hired.

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

Single Vehicle Accident or 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.

Tax Invoice means an invoice issued by Brooks in accordance with the GST Law setting out the Charges.

Term means the period of the Hire commencing on the Commencement Date and ending on the Termination Date.

Termination Date means the termination date stated in the Hire Schedule, or such earlier date on which the Hire is terminated in accordance with these terms and conditions.

Unsealed Road means a road which is not sealed with a hard material such as tar, bitumen or

concrete.

Vehicle Condition Report means the report prepared by Brooks on the condition of the Vehicle on the Commencement Date.

Vehicles means the vehicles specified in the Hire Schedule, or any alternate motor vehicle supplied by Brooks to the Customer, whether as a replacement or otherwise, and includes all parts, tyres, tools, accessories and equipment in or affixed to the Vehicles.

Interpretation

In these terms and conditions, unless the context otherwise requires:

(d) the singular includes the plural and vice versa, and a gender includes other genders;

(e) other grammatical forms of a defined word or expression have corresponding meanings;

(f) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, these terms and conditions, and a reference to these terms and conditions includes any schedules and annexures;

(g) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;

(h) a reference to \$ is a reference to Australian dollars;

(i) a reference to time is to the time in Perth, Western Australia;

(j) a reference to party includes the party's executors, administrators, successors, assigns and substitutes;

(k) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

(l) 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;

(m) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;

(n) 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 and binds them jointly and severally;

(o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these terms and conditions or any part of it;

(p) the words "include", "includes" and "including" are not words of limitation; and

(q) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

Headings

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

2 AGREEMENT TO HIRE

(a) Subject to clause 2(b), Brooks agrees to hire to the Customer, and the Customer agrees to rent from Brooks, the Vehicles for the Term (which must not be less than 24 hours) and at the Charges set out in the Hire Schedule subject to these terms and conditions.

(b) The Customer acknowledges and agrees:

(i) prior to any Hire, it must complete and sign the Hire Schedule and such other documents as Brooks may require;

(ii) it has read these terms and conditions carefully and by signing the Hire Schedule, it agrees to be bound by them;

(iii) these terms and conditions form part of the Hire Schedule, and if there is any inconsistency between these terms and conditions and the terms of the Hire Schedule, the terms of the Hire Schedule shall prevail; and

(iv) Brooks may decline to hire any Vehicles to the Customer in its discretion.

3 CUSTOMER'S WARRANTIES

Warranties

The Customer warrants that:

(a) all information comprised in the Hire Schedule is true and correct;

(b) the person who signs the Hire Schedule on behalf of the Customer is duly authorised to sign the Hire Schedule;

(c) the drivers of the Vehicles has all appropriate licences to drive and operate such Vehicles during the Term; and

(d) at all times during the Term, the Customer will take out and maintain all insurance policies required to be taken out and maintained by it pursuant to these terms and conditions.

Reliance

The Customer acknowledges that Brooks agrees to Hire the Vehicles to the Customer in reliance on the Customer's warranties in clause 3.1.

Indemnity

The Customer indemnifies and keeps indemnified Brooks against all losses, damages, Claims, fines, expenses, duty, tax, demands, actions and proceedings or any other liability suffered or incurred by, or made or instituted against, Brooks as a result, directly or indirectly, of:



- (e) a breach of the Customer's obligations under these terms and conditions;
- (f) a breach of the Customer's warranties in clause 3.i; and/or
- (g) any negligence, wilful misconduct or recklessness of the Customer.

4 CUSTOMER'S OBLIGATIONS

The Customer must:

- (a) take out and maintain all the insurance policies required to be taken out and maintained by it under clause 5;
- (b) pay all Charges to Brooks in accordance with clause 6;
- (c) take proper care of the Vehicle at all times during the Term;
- (d) maintain fluid levels (including radiator and engine sump) and tyre pressure for all Vehicles in accordance with Brooks' directions;
- (e) comply with all limitations placed on the use of the Vehicle whether specified by Brooks or otherwise;
- (f) return the Vehicle to Brooks at the end of the Term in the same condition as noted in the Vehicle Condition Report, fair wear and tear only excepted, fair wear and tear being those conditions indicated in the Brooks' Form 1 "Fair Wear and Tear Guide Summary" annexed hereto and incorporated into these Terms and Conditions;
- (g) comply with all Laws;
- (h) not drive the Vehicles if they are in a damaged or unsafe condition;
- (i) not, unless otherwise permitted in writing by Brooks, take or use the Vehicles:
 - (i) Off Road;
 - (ii) on private roads whether sealed or not;
 - (iii) on beaches, boat ramps, rivers, lakes or other places where the Vehicles will enter into water or be immersed, partially or totally, in water; and/or
 - (iv) in Excluded Areas;
- (j) not use the Vehicles to propel or tow any vehicle or trailer in excess of the load for which the Vehicles are constructed;
- (k) not use the Vehicles in any illegal manner, for any illegal purpose or in any speed test or contest (including in the preparation therefor);
- (l) not allow any person to drive the Vehicles while under the influence of alcohol or any intoxicating drugs (whether prescribed or illicit);
- (m) not interfere or tamper with the odometer in the Vehicles;
- (n) not use the Vehicles:
 - (i) to haul any goods unless previously agreed in writing by Brooks; and/or
 - (ii) for the carriage of Dangerous Goods; and
- (o) unless expressly agreed at the commencement of the Hire, return the vehicle to Brooks with a full tank of fuel otherwise the Customer will be charged the cost of fuel to fill the tank together with a service or administrative fee.

The Customer must obtain the prior written consent of Brooks (which shall be granted or withheld in Brooks' absolute discretion) if the Customer intends to use the Vehicles in a manner or for a purpose contrary with its obligations set out in this clause 4 and generally in these terms and conditions.

5 INSURANCE

5.1 Customer to Insure

- (a) The Customer must at all times during the Term maintain at its own expense all appropriate policies of insurance against:
 - (i) physical loss (including theft) and/or damage to the Vehicles in an amount not less than the full new replacement value and loss of hire charges, including while in transit;
 - (ii) 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 Vehicles (whether they are used for the purpose of conveying people or property or otherwise and whether they are licensed or unlicensed);
 - (iii) public liability risk in respect of the Hire for a minimum of \$10,000,000.00 for any one occurrence;
 - (iv) workers compensation and occupational/industrial disease and any other insurance required by any law relating to the Customer's workers compensation liability to any person, including common law cover for not less than \$50,000.00; and
 - (v) any other risks as required by law.
- (b) The Customer must ensure that all insurance policies taken out and maintained by it pursuant to clause 5.1(a) name Brooks as principal and owner and loss payee.
- (c) Prior to taking possession of the Vehicles, the Customer must provide Brooks with a copy of all certificates of currency for the insurance policies taken out by it in accordance with clause 5.1(a).

5.2 Collision Waiver

- (a) If the Customer elects to take the benefit of damage from 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 Vehicles arising from collision with another vehicle ("Collision") the Hirer agrees to pay Collision damage liability as follows:
 - (i) for a Collision involving a Brooks Light Vehicle minimum collision damage \$5,500 plus

GST; and

This Collision waiver does not constitute comprehensive insurance. This Collision waiver applies to all Vehicles unless a certificate of currency is provided pursuant to clause 5.1(c).

- (b) The Collision waiver does not include waiver of liability for
 - (i) Cleaning the Vehicle;
 - (ii) Windscreen damage;
 - (iii) Tyre damage;
 - (iv) Punctures;
 - (v) Damage from collision with animals;
 - (vi) Single Vehicle damage;
 - (vii) Recovery of the Vehicle; or
 - (viii) relocation of the Vehicle,

for which the Customer shall remain liable.

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.

6 CHARGES AND ADDITIONAL CHARGES

- (a) The Customer must pay the Charges to Brooks from and including the Commencement Date until and including the Termination Date.
- (b) To avoid doubt, if the Termination Date is not a Business Day, then the Customer must pay the Charges to Brooks until the Business Day immediately after the Termination Date.
- (c) Charges will include (without limitation):
 - (i) the charges for the use of the Vehicles set out in the Hire Schedule as calculated at the discretion of Brooks at:
 - (A) a time and kilometre rate charge;
 - (B) a flat rate determined by Brooks;
 - (C) if agreed by Brooks and the Customer, the rate set out in the Hire Schedule; or
 - (D) Brooks' schedule of charges current as at the Commencement Date;
 - (ii) fuel service charges;
 - (iii) late return charges if a Vehicle is returned after 5:00 p.m. on the Termination Date;
 - (iv) any duty, GST and other taxes payable in respect of the Hire; and
 - (v) any other fees and costs specified in the Hire Schedule.
- (d) Charges are exclusive of GST and the Customer must pay GST in addition to the Charges.
- (e) Brooks will issue a tax invoice in accordance with the GST Law to the Customer upon determination of all Charges, and the Customer must pay such Charges within 14 days after the date of such tax invoice.
- (f) The Customer must also pay the following additional charges (Additional Charges) to Brooks or as directed by Brooks upon demand:
 - (i) a sum equal to the replacement value of any tyres, tools, accessories and equipment lost or stolen;
 - (ii) taxes, tolls, levies and duties imposed arising out of the use or possession of the Vehicles by the Customer;
 - (iii) any fines for traffic, parking or other offences arising from the Customer's use of the Vehicles;
 - (iv) any expenses incurred by Brooks in repossessing the Vehicles including where a Vehicle is impounded or confiscated by any governmental authority for any reason;
 - (v) any expenses incurred by Brooks for cleaning the Vehicles;
 - (vi) any expenses incurred by Brooks for rust treatments due to the Vehicles being exposed to salt and/or due to damage caused by salt;
 - (vii) any fees and costs incurred by Brooks relocating the Vehicles if the Vehicles are returned to a location other than the hire collection point; and
 - (viii) any administration fee or such other fees and costs as reasonably determined by Brooks following any by the Customer to comply with its obligations under the Hire Schedule and these terms and conditions.
- (g) Time shall be of the essence in respect of the payment of any Charges and/or Additional Charges.
- (h) The Customer indemnifies and keeps indemnified Brooks against any Claims and/or Losses incurred by Brooks arising from or in connection with a breach by the Customer of its obligations to pay any Charges and/or Additional Charges in accordance with this clause 6.

7 GENERAL RESTRICTIONS ON DRIVERS OF VEHICLES

The Customer undertakes that:

- (a) the Vehicles must not be driven by any person other than the Customer or such other person named by the Customer in the Hire Schedule (Authorised Driver); and
- (b) it will not allow any Authorised Driver to drive the Vehicles unless that person:
 - (i) holds a motor vehicle driver's licence for the class of Vehicle hired which is valid for the Term; and
 - (ii) has never been refused motor vehicle insurance;
- (c) it will procure that any driver of the Vehicles undergoes a breath, blood or similar test or



analysis at all times when required by, or in compliance with, the directions of the police or any other Authority.

The Customer is liable for the full amount of all loss, costs and damages plus any administration fee as reasonably determined by Brooks in connection with any breach of this clause 7.

8 ACCIDENTS, LOSS AND/OR DAMAGE

(a) The Customer must:

(i) report to Brooks immediately upon the occurrence of any Accident, SVA, breakdown or other incident which may give rise to a Claim which occurs during the Term; and
(ii) in the case of an Accident, SVA or incident involving damage to the Vehicles or to any property and/or injury to or death of any person, furnish to Brooks or its solicitors all statements, police reports, information and assistance as Brooks may reasonably require.

(b) The Customer must not, without the prior written consent of Brooks, 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 Vehicles or to any property and/or injury to or death of any person.

(c) The Customer acknowledges and agrees that:

(i) the amount of any damage to the Vehicles will whenever reasonably possible be assessed by an independent expert (whom may be a repairer with a minimum of 5 years post qualification experience) engaged by Brooks for such purpose; and
(ii) Whenever the services of such an expert are not available such assessments of damage shall be undertaken by any authorised representative of Brooks who shall certify the amount of such assessment, and whose assessment shall be final and binding on Brooks and the Customer in the absence of manifest error.

(d) The Customer will be liable for any damage to the Vehicles howsoever caused including as a result of the negligence or misconduct of the Customer, its officers, contractors and agents.

(e) The Customer agrees that in the event of an Accident, SVA or other incident or damage in relation to the Vehicles, it shall be liable for all loss, costs and expenses incurred by Brooks including without limitation the costs of:

- (i) any administration fees and call out fees;
- (ii) replacing the Vehicles if they are deemed to be written off as a result of such Accident, SVA, incident or damage;
- (iii) rectifying or replacing any parts of the Vehicles;
- (iv) 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 the Vehicles;
- (v) rectifying all damage to the under carriage or to the over carriage;
- (vi) repairing all body or roof damage;
- (vii) towing the Vehicles;
- (viii) rectifying all damage to suspension, steering, chassis, differential, gear box, transfer case, axles, wheels or other damage caused by abnormal use, misuse or abuse of the Vehicles;
- (ix) replacing spare wheels equipment, tools and jack;
- (x) repairing or replacing window glass; and
- (xi) any loss of hire charges or profits during the period when the Vehicles are out of operation.

9 TERMINATION

(a) Brooks may by written notice to the Customer terminate these terms and conditions immediately in any of the following circumstances:

- (i) the Customer fails to perform any of its obligations under these terms and conditions or otherwise;
- (ii) the Customer dies or becomes incapacitated, or ceases, or indicates that it is about to cease to trade;
- (iii) anything happens that reasonably indicates in Brooks' opinion that there is a significant risk that the Customer is, or will become, unable to pay its debts as they fall due;
- (iv) steps are taken to have a receiver, a receiver and manager, a provisional liquidator, a liquidator or an administrator appointed to the Customer or any of its assets.

(b) If Brooks terminates these terms and conditions pursuant to clause 9(a):

- (i) Brooks may repossess the Vehicles immediately upon such termination; and
- (ii) If the Customer owes Brooks any money, that money becomes payable immediately to Brooks and bears interest at a rate of 6% per annum.

(c) Termination of these terms and conditions do not affect any other rights or remedies available to Brooks at law or in equity.

10 NO WARRANTIES

(a) The Customer acknowledges and agrees that Brooks has not made any warranties or representations whatsoever to the Customer in relation to the Vehicles or any matters set out in these terms and conditions.

(b) All conditions and warranties (statutory or otherwise) including those of fitness for purpose, quality or description are negated and excluded to the full extent permissible by law.

(c) Brooks will supply a copy of the manufacturer's specifications for a Vehicle upon request by the Customer.

(d) The Customer must not at any time make any claims against Brooks for any loss or damage for delays through breakdown, mechanical difficulty or accident or by reason of the Vehicles being found to be unsuitable for the purposes of the Customer or with respect to any loss or damage to any property stolen from the Vehicle or damaged or otherwise during the Term or left in the Vehicle after the return of the Vehicle to Brooks.

11 INDEMNITY

The Customer hereby agrees to pay Brooks on demand and indemnify Brooks and keep Brooks indemnified from and against any and all legal and other costs, including costs and charges by professional debt collectors, in seeking to enforce these terms and conditions and to remedy any breach by the Customer. The Customer acknowledges and agrees that this indemnity covers any loss, cost or damage incurred by Brooks as a result of or in connection with the Hire including caused by accidents, incidents, damage and theft to the Vehicles.

12 DISPUTE RESOLUTION

No proceedings

A Party must not start court proceedings about a dispute arising out of these terms and conditions unless it first complies with this clause, except:

- (a) where the Party seeks urgent injunctive relief; or
- (b) where the dispute relates to compliance with this clause.

Notice

A Party claiming a dispute has arisen must notify the other Party to the dispute giving details of the dispute.

Best efforts to resolve

Each Party must use its best endeavours to resolve the dispute within 28 days of receiving notice of the dispute or a longer period agreed by the Parties to the dispute.

Mediation

If, at the end of the 28 day period, the Parties have been unable to resolve the dispute, the matter shall be referred to an independent mediator agreed by the Parties (or failing agreement appointed by the Chairman of the Western Australian Chapter of the Institute of Arbitrators and Mediators). Each Party agrees to act in accordance with the directions of the mediator in respect of the mediation but the mediator's recommendations shall not be binding on the Parties.

13 NOTICES

Method of giving Notices

A notice, consent, approval or other communication (Notice) must be in writing, signed by or on behalf of the Party giving it, addressed to the Party to whom it is to be given and:

- (a) delivered to that Party's address;
- (b) sent by pre-paid mail to that Party's address; or
- (c) sent by email to that Party's email address.

Time of receipt

A Notice given to a Party in accordance with this clause is given and received:

- (d) if delivered to a Party's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
- (e) if sent by pre-paid mail, on the third Business Day after posting; and
- (f) if sent by email to a Party's email address and no failure message is received, then on the day the email was sent if it was sent if a Business Day, otherwise on the next Business Day.

Addresses for Notices

For the purpose of these terms and conditions, the address or email address of a Party is the address or email address set out in the Hire Schedule.

14 GENERAL

Amendments

- (a) Brooks reserves the right to amend these terms and conditions from time to time, and will notify the Customer in writing of such amendments.
- (b) Amendments will be effective immediately upon the Customer being notified by Brooks.

Governing Law

These terms and conditions are governed by the laws in force in Western Australia. The Parties agree to submit to the exclusive jurisdiction of the courts of that jurisdiction.

Entire Agreement

These terms and conditions contain the full and complete understanding between the Parties and supersedes all prior agreements and understandings, whether written or oral, and cannot be modified except by a written instrument signed by both Parties.

Assignment

(c) The Customer must not assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under these terms and conditions without the prior written consent of Brooks, except that the Customer may assign and transfer all its rights and



obligations under these terms and conditions to any person to which it transfers all of its business, provided that the assignee undertakes in writing to Brooks to be bound by the obligations of the assignor under these terms and conditions.

(d) Brooks may assign and transfer all its rights and obligations under these terms and conditions to any person without the prior consent of the Customer provided that the assignee undertakes in writing to Brooks to be bound by the obligations of the assignor under these terms and conditions.

(e) Brooks is entitled at any time and from time to time to perform its obligations through any branch or office, provided that branch or office is not a separate legal entity, situated at a location within Australia other than the address specified in these terms and conditions.

Time

Time is of the essence of these terms and conditions.

Force majeure

Brooks is not responsible for any loss or damage incurred by the Customer if such loss or damage is due, in whole or in part, to any cause whatsoever beyond its control including but not limited to acts of God, lightning, earthquakes, cyclones, floods, landslides, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, public disorder, riots, civil commotion, malicious damage, vandalism, sabotage and revolution, explosions and nuclear accidents, strikes, labour disputes and other industrial disturbances, any road closure or congestion of roads, any quarantine or customs restriction, any interruption of power supply or scarcity of fuel or any accident, collision or breakdown of a vehicle, machinery or equipment or any pandemic, epidemic or quarantine.

15 PPS LAW

15.1 This clause applies to the extent that Brooks' interest in respect of a Hire as provided for in this agreement is a 'security interest' for the purposes of the PPS Law.

15.2 References to PPS Law in this agreement include references to amended, replacement and successor provisions or legislation.

15.3 Brooks may register any actual impending or likely security interest. The Customer may not make any Claim against Brooks in respect of any registration even if it is determined that Brooks should not have registered a security interest. The Customer must do anything (such as obtaining consents and signing documents) which Brooks requires for the purposes of:

- (a) ensuring that Brooks' security interest is enforceable, perfected and otherwise effective under the PPS Law;
- (b) enabling Brooks to gain first priority (or any other priority agreed to by Brooks in writing) for its security interest; and
- (c) enabling Brooks to exercise rights in connection with the security interest.

15.4 The rights of Brooks under this agreement are in addition to and not in substitution for Brooks' rights under other law (including the PPS Law) and Brooks may choose whether to exercise rights under this document, and/or under such other law, as it sees fit. To avoid any doubt about it Brooks' security interest will attach to proceeds.

15.5 To the extent that Chapter 4 of PPSA applies to any security interest under this agreement, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of this agreement in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires Brooks to give a notice to the Customer); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 121(4) (notice of grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires Brooks to give a notice to the Customer); section 129(2) and 129(3); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re-instatement of security agreement).

15.6 The following provisions of the PPS Law being section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral) may, if applicable, confer rights on Brooks. The Customer agrees that in addition to those rights, Brooks shall, if there is default by the Customer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this agreement and the Customer agrees that Brooks may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

15.7 The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law. This waiver also extends to any verification statement in respect of security interests arising or provided for under security agreements prior to the date of this agreement.

15.8 Brooks and the Customer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to Brooks the benefit of section 275(6)(a) and Brooks shall not be liable to pay damages or any other compensation or be subject to injunction in

respect of any actual or threatened breach of this sub-clause.

15.9 The Customer must not dispose or purport to dispose of or create or purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the Equipment other than with the consent of Brooks (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to Brooks and must be expressed to be subject to the rights of Brooks under this agreement. The Customer may not vary a sub-hire without the prior written consent of Brooks (which may be withheld in its absolute discretion).

15.10 The Customer must ensure that Brooks is provided at all times with up-to-date information about the sub-hire including the identity of the sub-Customer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment.

15.11 The Customer must take all steps including registration under PPS Law as may be required to:

- (a) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
- (b) enabling the Customer to gain (subject always to the rights of Brooks) first priority (or any other priority agreed to by Brooks in writing) for the security interest; and
- (c) enabling Brooks and the Customer to exercise their respective rights in connection with the security interest.