

# **BROOKS HIRE**

ABN 20 008 975 988

**SERVICE PTY LTD**



1300 BROOKS (276 65)



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## **Master Equipment Hire Agreement**

**BH-IMS-F-061**



## Master Equipment Hire Agreement

Date

### PARTIES

Owner Name Brooks Hire Service Pty Ltd (**Owner**)

ABN 20 008 975 988

ACN 008 975 988

Address 30 Coulson Way Canning Vale WA 6155

Email address [ar@brookshire.com.au](mailto:ar@brookshire.com.au)

Telephone 1300 276 657

Hirer Name [insert name] (**Hirer**)  
(if individual please include date of birth) \_\_\_\_\_

ACN (if a company) \_\_\_\_\_

Trust Name (if applicable) \_\_\_\_\_

Trust ABN (if applicable) \_\_\_\_\_

Address \_\_\_\_\_

Postal Address \_\_\_\_\_

Email address \_\_\_\_\_

Contact Name \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_



## Operative Provisions

### 1 Definitions and Interpretation

1.1 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* and the *Road Traffic (Administration) Act 2008* which introduces legal accountability throughout the whole transport chain, general accountability to all involved in the transport chain and penalties for non compliance.

**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 Hire 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.

**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; and
- (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.

**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.

**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 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.

## 2 Hire

- 2.1 The Owner agrees to hire Equipment to the Hirer on the terms and conditions of this agreement. 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 hire agreement between the Owner and the Hirer, together with any facility applications, guarantee or other contractual documents. The Owner may decline to hire Equipment in its discretion.
- 2.2 A Hire Schedule may contain further details of matters in respect of the Hire. If so those apply as part of this agreement.
- 2.3 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 9.
- 3.2 If the Hirer elects to collect the Equipment from the Owner's premises, 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 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, 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. The Hirer must notify the Owner prior to 9.00am on the day the Equipment is Off Hired, to avoid incurring the minimum hours per day charge. The minimum hours per month charge will be pro-rated 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 Owner 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 charge 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 must be hired by the Hirer for a 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 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 The Hirer must notify the Owner in writing of any disputes in relation to the Hire Charges within thirty days of the Hire Start Date. If the Hirer does not dispute the Hire Charges within that period, the Hirer will be deemed to have accepted them.
- 3.17 Where any amount becomes overdue all unpaid amounts will immediately become due and payable by the Hirer to the Owner.
- 3.18 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 Bankwest'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.
- 3.19 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.
- 4.9 The Owner may assign or sub-contract its rights and obligations under this agreement without notice to the Hirer.



## 5 Loss of 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) 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 The 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;
- (t) deliver the Equipment back to the Owner at the expiration of the Hire Period or immediately upon this agreement being terminated;
- (u) report and provide full details to the Owner of any accident or damage to the Equipment within two Business Days of the accident or damage occurring;



- (v) not tamper with or damage the Equipment;
- (w) not use the diesel exhaust fluid known as AdBlue in the Equipment unless otherwise approved by the Owner;
- (x) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment; and
- (y) if applicable, not exceed the recommended or legal speed limit for the Equipment.

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 clauses 6.1(d) and 6.1(s) 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 Release and Indemnity

7.1 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, misdelivery or non-delivery of the Equipment or any other matter.

## 8 Theft and damage waiver

8.1 Theft and damage waiver is an agreement between the Owner and the Hirer that the Hirer's liability, if the Equipment is stolen or damaged under some specific circumstances, is limited to an amount specified by the Owner in the Hire Schedule ('Waiver Fee'). The Hirer acknowledges that the theft and damage waiver is not insurance.

8.2 If the Hirer chooses to take the benefit of the theft and damage waiver option in this clause and pays the Waiver Fee to the Owner, 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) \$400.00; or
- (b) 15% of the repair costs (if the Equipment is partially damaged and can be repaired) or 10% of the full new replacement cost of the Equipment (if the Equipment cannot be repaired, is lost or stolen) in respect of any loss, destruction of or damage to Equipment which is caused, due to no act or omission by the Hirer, by fire, storm, earthquake, collision, accident, theft or burglary.



- 8.3 This theft and damage waiver in clause 8.1 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.
- 8.4 In addition the theft and damage waiver contained in clause 8.1 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 any 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 electrical 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;
  - (r) loss or damage caused by the negligence of the Hirer.
- 8.5 For the avoidance of doubt, the Hirer will be solely responsible for all loss or damage to the Equipment:
- (a) upon the occurrence of any of the circumstances in clause 8.4; or



(b) if the Hirer does not provide satisfactory evidence to the Owner in accordance with clause 8.3,

and the Hirer must not make a claim to the Owner under the theft and damage waiver contained in clause 8.1.

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

## 9 Termination of Hire

9.1 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.

9.2 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.

9.3 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.

9.4 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.

9.5 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 the 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.

9.6 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.

9.7 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.



## 10 Insurance

10.1 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 8 in which case such insurance policies need not cover the loss or damage to the extent of waiver in clause 8; 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.

## 11 PPS Law

11.1 This clause applies to the extent that the Owner's interest in respect of a Hire provided for in this agreement is a 'security interest' for the purposes of the PPS Law. References to PPS Law in this agreement include references to amended, replacement and successor provisions or legislation. The Owner may register its security interest or 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.

11.2 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.

11.3 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 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 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 (reinstatement of security agreement).

11.4 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 document 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.

11.5 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.



- 11.6 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 sub-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 sub-clause.
- 11.7 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).
- 11.8 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.
- 11.9 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.
- 11.10 To assure performance of its obligations under this agreement, the Hirer hereby gives the Owner an irrevocable power of attorney to do anything the Owner considers the Hirer should do under this agreement. The Owner may recover from the Hirer the cost of doing anything under this clause, including registration fees.
- 11.11 The Hirer must give the Owner at least 30 days' prior notice of any change in business structure of the Hirer or if it becomes trustee of a trust or a partner in a partnership, together with details of the proposed new structure including any ABN issued to the trust or partnership.

## 12 Breach of this agreement by Hirer

- 12.1 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 8 is immediately invalidated.
- 12.2 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.

## 13 Exclusion of Warranties and Liabilities

- 13.1 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.



13.2 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.

## 14 Disputes

14.1 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.

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

14.3 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.

14.4 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).

14.5 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.

## 15 Miscellaneous

15.1 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.

15.2 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.

15.3 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.

15.4 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.

15.5 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.

15.6 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.

15.7 Subject to clause 15.1, 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.



- 15.8 Time is to be of the essence of all obligations of the Hirer in this agreement.
- 15.9 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.
- 15.10 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.
- 15.11 Any credit accommodation granted may be withdrawn at any time for any reason without notice.
- 15.12 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.



### Executed by Hirer

Please Sign Section A (Individual / Sole Trader / Partnership), B (Company), or C (Trust)

#### A Individual / Sole Trader / Partnership

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

Witness Name: \_\_\_\_\_

Dated: \_\_\_\_\_

#### B Company: In accordance with section 127 of the Corporations Act by its authorised officers

Signature of Director: \_\_\_\_\_

Name: \_\_\_\_\_

Signature of Director/Secretary: \_\_\_\_\_

Name: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

Witness Name: \_\_\_\_\_

Dated: \_\_\_\_\_

#### C Trustee: In accordance with section 127 of the Corporations Act by its authorised officers

Option 1 \_\_\_\_\_ Pty Ltd

Option 2 (First Name, Last Name) \_\_\_\_\_

Trust

As Trustee for the: \_\_\_\_\_

Signature of Director: \_\_\_\_\_

Name: \_\_\_\_\_

Signature of Director/Secretary: \_\_\_\_\_

Name: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

Witness Name: \_\_\_\_\_

Dated: \_\_\_\_\_