

STANDARD TERMS AND CONDITIONS FOR THE COMMERCIAL HIRE OF EQUIPMENT

1. ACCEPTANCE

- 1.1. Parties:** This Agreement is between Ben Smith (ABN 15 155 659 180), its successors and assignees (referred to as “**we**” and “**us**” and “the **Owner**”) and you, the person, organisation or entity described in the Quote/Invoice (referred to as “**you**”). This Agreement apply to all Services provided by us to you.
- 1.2. Acceptance:** You have requested the Services set out in the Quote/Invoice. You accept this Agreement by:
- (a) signing and returning the Quote/Invoice;
 - (b) confirming by email or verbally that you accept the Quote/Invoice;
 - (c) accepting the Quote/Invoice online;
 - (d) allowing us to proceed with the Services; or
 - (e) making part or full payment for the Services.
- 1.3. You agree that this Agreement form the agreement under which we will supply Services to you. Please read this Agreement carefully.** Please contact us if you have any questions. Purchasing Services or Hiring Equipment from us indicates that you have had sufficient opportunity to read this Agreement and contact us if needed, that you have read, accepted and will comply with this Agreement.
- 1.4. Payment in advance:** If the Quote/Invoice indicates that we require a Security Deposit and/or upfront payment, we will not commence performing the Services or allow the Equipment to leave our premises until you have paid the Security Deposit and/or the first instalment of our Fee.
- Cancellation:** Cancellations must be in writing and state specifically which items of Equipment you would like to cancel. You must provide us with at least 2 days’ notice in writing of any cancellation. Failure to do so may result in part of any Deposit (including the Security Deposit) being forfeited, at our sole discretion. If no Security Deposit or upfront payments have been paid, you must pay to us 20% of the original Quote/Invoiced amount, payable by you within 7 days of receipt of an invoice for that amount.

2. SERVICES

- 2.1.** The hiring of the Equipment commences on the Start Date and continues until the Return Date, unless extended by agreement between the Parties, if a request for an extension is made by you in advance.
- 2.2.** Subject to the provisions of this Agreement, the Equipment will be delivered or collected by you on the Start Date in the Delivery Condition at the Delivery Location or such other location as the Parties otherwise agree in writing.
- 2.3.** Throughout the Term and until return of the Equipment, subject to clause 10.2, you bear all risks of loss, theft, Damage and destruction of or to the Equipment and every part thereof, and no such loss,

- theft, Damage or destruction, nor any other event or circumstance of any nature whatsoever, shall impair or frustrate any obligation of you under this Agreement (including without limitation as to the payment of Fees or other payments) so that all such obligations shall, continue in full force and effect.
- 2.4.** Following the Start Date, we will not be liable for any liability, claim, loss, damage or expense of any kind or nature caused directly or indirectly by the Equipment or any part thereof, by any inadequacy thereof for any purpose or any deficiency or defect therein, by the use or performance thereof, by any repairs or servicing thereto, or any damage whatsoever and howsoever caused prior to the return of the Equipment to us.
- 2.5.** Unless otherwise agreed by us, all costs associated with the transport of the Equipment to and from the Delivery Location is your responsibility, unless you opted for us for delivery or Wet Hire (as set out in the Quote). Delivery to and from the Delivery Location and Wet Hire will incur the Delivery Fees as set out in the Quote to cover our travel time and expenses.
- 2.6.** You acknowledge that we retain all title to the Equipment and that you have limited rights to use the Equipment as a bailee only. You must not to sell, purport to sell, assign, sub-let, charge, lend, pledge, mortgage, let or hire or otherwise part with or attempt to part with personal possession of, or create any security interest over, the Equipment.

3. DRY HIRE

- 3.1.** The Equipment is charged for the entire time the Equipment is not in possession of the Owner at your request (inclusive of weekends and public holidays), not only the time in which the Equipment is used.
- 3.2.** Certification is not required to operate this machine, however you must be competent to do so.
- 3.3.** Employers hiring for their employees have a 'Duty of Care' responsibility under the Act.
- 3.4.** You must check for underground hazards - dial before you dig.

4. WET HIRE

- 4.1.** We agree to provide the Services with due care and skill. We reserve the right to refuse any request that we deem inappropriate, unreasonable or illegal.
- 4.2.** We may provide the Wet Hire to you using our employees, contractors and third party providers, and they are included in this Agreement.
- 4.3.** Third parties who are not our employees or our direct contractors will be your responsibility. We are not responsible for the products or services provided by those third parties.
- 4.4.** Wet Hire Fees will be charged at an hourly rate in addition to the Equipment Fees for the periods of operation as set out in the Quote/Invoice, plus the Delivery Fees to cover travel time to and from the Delivery Location.

4.5. Payment in full for all Equipment and Wet Hire fees and any other amounts payable in accordance with this Agreement is required by the Return Date, or within 24 hours from the date of invoice.

4.6. A minimum hire period of 3 hours applies to every job, unless this is pre-agreed in writing between Parties.

5. PRICE, INVOICING AND PAYMENT

5.1. You agree to pay us the amounts set out in our Quote/Invoice, including any Security Deposit required. All amounts are stated in Australian dollars (AUD). All amounts exclude Australian GST (where applicable). Payment may be made by way of payment methods as set out in our Quote/Invoice when purchasing our Services or hiring our Equipment.

5.2. You agree to pay our Invoices by the payment date set out on the Invoice. If you do not pay by the payment date, we may cease to provide the Services or Equipment to you until we receive payment.

5.3. We may charge interest at a rate equal to the Reserve Bank of Australia's cash rate from time to time plus 8% per annum, calculated daily and compounding monthly, on any amounts unpaid after the payment date.

5.4. If invoices are unpaid after the payment date, we have the right to engage debt collection services for the collection of unpaid and undisputed debts, and the right to commence legal proceedings for any outstanding amounts owed to us.

5.5. We reserve the right to report bad debts to independent credit data agencies.

6. SECURITY DEPOSIT

6.1. By the Start Date, you must pay a Security Deposit to us in the amount stated in the Quote/Invoice.

6.2. We may use the Security Deposit to make good the cost of remedying breaches of your obligations under this Agreement and you must pay any further amounts required to bring the security deposit back to the required level.

6.3. As soon as reasonably practicable after this Agreement has ended and you have returned the Equipment and performed all of your obligations under this Agreement, we shall refund the unused part of the Security Deposit, provided the Equipment is in its Delivery Condition, undamaged, cleaned, refuelled and on time. The refund will be processed via the same method as payment was received.

6.4. Any additional fees required to remedy breaches of your obligations under this Agreement in excess of the Security Deposit will be payable by you within 7 days of an invoice for that amount.

7. VARIATIONS

7.1. The Fee, the Services and Equipment can be varied by written agreement between us, including by email.

7.2. We may at any time, in writing, inform you of the need for us to perform a Variation.

7.3. If you request a Variation to the Services, we have discretion as to whether we make the Variation.

7.4. Variations will not invalidate this Agreement or be regarded as a repudiation of this Agreement by us.

7.5. If you would like to keep the Equipment or Wet Hire for an additional period of time, and we have capacity to do so, then we will amend the term of this Agreement after consultation with you.

7.6. If we need to charge an additional fee for a Variation (Additional Fee), then we will provide a written Quote/Invoice for the Additional Fee to you. If:

- (a) You accept the Quote/Invoice then this Agreement is amended to incorporate the Variation and the Additional Fee but otherwise remains the same; or
- (b) You do not accept the Quote/Invoice we may in our discretion terminate this Agreement immediately.

7.7. If we are unable to accommodate the Variation, we may request that all Equipment be returned/collected and we be paid for the Equipment, Delivery Fees and Wet Hire (as applicable) provided to date and terminate this Agreement.

8. YOUR OBLIGATIONS AND WARRANTIES

8.1. You warrant that:

- (a) You are over the age of 18;
- (b) You hold a valid current driver licence;
- (c) You agree and acknowledge that you are solely responsible for the Equipment during the hire period and you are the only person allowed to operate the Equipment;
- (d) If you will be picking up the Equipment from our premises, you agree and acknowledge that your vehicle has the towing capacity required to transport the Equipment safely;
- (e) You will follow the guidelines we or the Manufacturer set for attaching the Equipment to the trailer;
- (f) there are no legal restrictions preventing you from agreeing to this Agreement;
- (g) you will cooperate with us, and provide us with information that is reasonably necessary to enable us to provide the Services and Equipment as requested from time to time, in a timely manner;
- (h) the information you provide to us is true, correct and complete;
- (i) you will not infringe any third party rights in working with us and receiving the Services and Equipment;
- (j) you will inform us if you have reasonable concerns relating to our Services and hire of Equipment under this Agreement, with the aim that the Parties will use all reasonable efforts to resolve your concerns;
- (k) you are responsible for obtaining any consents, licences and permissions from other parties necessary for the Services and Equipment to be

provided, at your cost, and for providing us with the necessary consents, licences and permissions;

- (l) you will ensure that, the Equipment is securely located on the Site and/or you are authorised to occupy those premises and keep the Equipment there;
- (m) you will ensure that if the Services and Equipment are to be performed/used on your property, that at all times the property is safe and that all facilities provided by you for the purposes of using the Services and Equipment are also safe;
- (n) you will ensure that we have free and unimpeded access to the Site (if applicable) and that you will do all things to ensure that we are not delayed by matters within your control;
- (o) you accept that we have the right to impose stand down charges and recover additional costs incurred where the Wet Hire is delayed by reason not in our control and where we are unable to reasonably reschedule services;
- (p) you will ensure that the Equipment remains on Site for the Period of Hire and that the Site is not required for any other purpose which would require the Equipment to be dismantled and re-installed or which may put the whole or any part of the Equipment at risk of being lost damaged or destroyed;
- (q) you will do all such things as are necessary to discharge your obligations under all applicable Occupation Health and Safety legislation, regulations and codes of practice so as to ensure that the Site and the Equipment as installed are safe and free from defects and dangerous conditions;
- (r) you will comply with any reasonable directions given by us from time to time;
- (s) you will act lawfully and will comply with any safety instructions, manuals, guides, applicable licenses, laws, regulations, industry codes of conduct, health and safety requirements and Australian standards in relation to the use of the Equipment. We will provide instruction, however it is the customer's responsibility to operate Equipment safely;
- (t) you have adequate insurance to cover all liabilities incurred as a result of the use of the Equipment; and
- (u) you will not employ, canvass, solicit, entice, induce or attempt to employ our employees or contractors.

9. THE EQUIPMENT

9.1. The Equipment will at all times remain the property of the Owner. You have no legal or equitable interest in the Equipment or any part thereof. Your possession of the Equipment (upon pick up) will be as a bailee for the Period of Hire and thereafter at will.

- 9.2. Upon pick up, the Equipment must be inspected by you to determine whether the Equipment is complete in accordance with this Agreement and is in good order and working condition. Unless otherwise stated in the Special Conditions, you will on completion of the inspection be deemed to have satisfied yourself that the Equipment as a whole is suitable, fit and merchantable and capable of meeting all your requirements.
- 9.3. Unless the Owner has been expressly retained, in writing, to advise on the suitability, fitness and merchantability of the Equipment for your purpose, any warranting as to suitability, fitness or merchantability is hereby expressly excluded.
- 9.4. Any shortages or malfunctioning of the Equipment must be notified by you to the Owner, in writing, within 24 hours of pick up.
- 9.5. Where you are in Effective Control of the Equipment, then you are a bailee of the Equipment. In addition to all duties imposed at law upon bailees, it is an essential term of the Contract that you will:
 - (a) At all times exercise all reasonable care and diligence in the use of the Equipment in accordance with Manufacturer's specifications;
 - (b) Where you have responsibility to return the Equipment, you must return it in good order and working condition to the Owner on or prior to the expiration of the Period of Hire;
 - (c) Where the Owner is to collect the Equipment at the expiration of the Period of Hire, you must make it available for collection in good order and working condition at the Site;
 - (d) Not tamper or in any way interfere with, or repair or attempt to repair the Equipment;
 - (e) Be responsible for all accidental damage to the Equipment, save and except where such damage is caused by the Owner;
 - (f) Be responsible for all loss or damage to the Equipment occasioned by theft, malicious damage, or other unlawful act, save and except where such loss or damage occurs when the Equipment is under the effective control of the Owner;
 - (g) At no time during the Period of Hire part with possession of the Equipment or in any way deal with it in a manner inconsistent with the rights of the Owner as Owner;
 - (h) Ensure that the Equipment is secure at all time and where being stored in unlocked premises, supply such security measure to ensure that the Equipment is secure at all times;
 - (i) Keep the Equipment safe at all times during the Period of Hire;
 - (j) Not remove or deface any label, Manufacturer's serial numbers or other marks identifying the Equipment and/or The Owner's Ownership of the Equipment;

- (k) Not permit any person to improperly use the Equipment.

10. DEFAULT EVENTS

10.1. You will be in default if:

- (a) You breach any of your obligations under this Agreement and fail to remedy such breach within seven (7) days of being requested by the Owner to do so;
- (b) You breach any essential Term of this Agreement;
- (c) Where you being a corporation are insolvent, are wound-up or go into Liquidation or have an Administrator appointed to you or have a Receiver appointed over any of your assets;
- (d) Where you are a natural person, you are or becomes insolvent or make an assignment for the benefit of your creditors or commit an act of bankruptcy under the *Bankruptcy Act 1966* (Cth) or are declared bankrupt.

10.2. On the happening of a Default Event the Owner may, without prejudice to any of its other rights either under this Agreement or at law and without previous notice to you, enter any Site where the Owner believes the Equipment to be located, re-possess it and you hereby agree not to make any claim or bring any action against the Owner as a result of the re-possession of the Equipment.

10.3. You agree to indemnify the Owner and keep the Owner indemnified against any loss or liability expense or cost which might be incurred by the Owner in entering upon the Site and taking possession of the Equipment or any item thereof. Such indemnity covers any liability to any third party for trespass or for damage to the Site occasioned through the entry upon the Site, the re-possession of the Equipment or its removal from the Site.

11. DAMAGE

- (a) you accept responsibility for restoring the Equipment to its Delivery Condition;
- (b) where the Equipment is lost or stolen due to your act or negligence;
- (c) where the operator is not suitably licensed;
- (d) where the operator is affected by drugs and/or alcohol;
- (e) where the Equipment has been wilfully damaged at any time during the Period of Hire;
- (f) where the Damage is caused by a collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object whatsoever due to insufficient clearance;
- (g) where the Damage is caused while the Equipment is being driven or towed on any road that is unsealed or is not a public road; or
- (h) where the Damage is caused in any way by overloading.

12. CONFIDENTIAL INFORMATION

12.1. We, including our employees and contractors, agree not to disclose your Confidential Information to any third party (other than where necessary, to third

party suppliers, or as required by law); to use all reasonable endeavours to protect your Confidential Information from any unauthorised disclosure; and only to use your Confidential Information for the purpose for which it was disclosed by you, and not for any other purpose.

12.2. You, including your employees and contractors, agree not to disclose our Confidential Information to any third party; to use all reasonable endeavours to protect our Confidential Information from any unauthorised disclosure; and only to use our Confidential Information for the purpose for which it was disclosed or provided by us to you and not for any other purpose.

12.3. These obligations do not apply to Confidential Information that:

- (a) is authorised to be disclosed;
- (b) is in the public domain and/or is no longer confidential, except as a result of a breach of this Agreement;
- (c) is received from a third party, except where there has been a breach of confidence; or
- (d) must be disclosed by law or by a regulatory authority including under subpoena.

12.4. This clause will survive the termination of this Agreement.

13. FEEDBACK AND DISPUTE RESOLUTION

13.1. Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Services and Equipment, please contact us.

13.2. If there is a dispute between the Parties in relation to this Agreement, the Parties agree to the following dispute resolution procedure:

- (a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them at an initial meeting.
- (b) If the Parties cannot agree how to resolve the dispute at that initial meeting, any Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, the complainant will ask the Law Society of Queensland to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.

13.3. Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under this Agreement, by law or in equity.

14. WARRANTIES

14.1. Except where specifically agreed in the Special Conditions, the Owner gives no warranty express or

- implied in respect of the Equipment, its fitness for purpose or the condition thereof.
- 14.2. All warranties implied by the *Competition and Consumer Act 2010* (Cth) and any other Statutes (if any) that can be expressly excluded are hereby expressly excluded.
- 14.3. Where permitted by statute, the Owner's liability for breach of any warranty is limited to:
- The supply to you of substituted equivalent equipment; or
 - The payment of the costs of supplying to you substituted equivalent equipment; or
 - The repayment to you of the Hire Fee.
- 15. LIMITATION OF LIABILITY**
- 15.1. The liability of the Owner is limited as follows:
- The Owner is not liable to you for any loss or damage which you might sustain as a consequence of you ordering the wrong Equipment or insufficient quantities of the Equipment or where the Equipment is hired for a purpose which is outside of the Equipment's specifications.
 - The Owner is not liable for any damage or loss suffered by you as a consequence of any late delivery of the Equipment to the Site if you have accepted the Quote/Invoice less than 72 hours prior to the required delivery time and the Site is in within 0 kilometres of the Owner's premises. If the Site is a greater distance from the Owner's premises, then the Owner will have no liability arising out of late delivery if the acceptance by you is received within 5 days of the anticipated delivery date to the Site.
 - The Owner will have no liability to you if it is your responsibility to prepare the Site for the delivery and installation of the Equipment or where it is your responsibility to provide the facilities and at the time of delivery of the Equipment to the Site, the Site is not so prepared or the facilities or any of them are not available or unsuitable.
 - The Owner has no liability to you for any damage or loss which you might sustain where the cause of that damage or loss is your negligence or any of your servants, agents or contractors.
 - The Owner has no liability if you:
 - do not wear the seatbelt provided on the Equipment;
 - do not ensure the swing lock pin is installed;
 - do not comply with the safe loading of the excavator as per the operator's manual; or
 - remove the ROPS/FOPS system or any other safety feature on the Equipment.
 - The Owner has no liability for any expenses incurred by repossessioning the Equipment including where the Equipment has been impounded or confiscated by the Police or other Relevant Authority pursuant to hoon laws for any other reason;
- General restrictions on driver/ operator. The parties agree and you undertake that:
 - No person shall drive the Equipment unless she/he holds a current motor drivers' licence for the class of vehicle hired and which must be valid in the place in which the Equipment is used;
 - The Equipment must not be driven by any person other than you or your properly authorised employee, agent, contractor or other representative.
 - No illegal purpose. The Equipment must not be used in any illegal manner; for any illegal purpose; or in any speed test or contest (or in preparation therefore).
 - Alcohol and drugs. The Equipment must not be driven by you under the influence of alcohol or intoxicating drugs (whether prescribed or illicit). You will not refuse or fail to undergo a breath, blood or similar test or analysis in compliance with the directions of the police or other Relevant Authority. Such refusal will give the Owner the right to terminate this hire agreement contract.
- 15.2. Where it is your responsibility to ensure that the Site is safe and that the Facilities are safe, then you indemnify the Owner against any liability to any third party who suffers injury, loss or damage where such injury, loss or damage is caused wholly or partly as a consequence of any negligent act or omission or other failure on your part of to ensure that the Site is safe.
- 15.3. The Owner is not liable for any damage or loss which is sustained by you or your subsidiaries, including personal injury or death, if any of this Agreement is breached.
- 15.4. The Owner is not liable for any damage or loss which is sustained by you or your subsidiaries, including damage to your vehicles or personal affects, including theft. Where you leave your vehicles or personal affect on the Owners site you do so at your own risk and agree to not make a claim against the Owner.
- 15.5. Any fines for traffic, toll charges or parking offences rising from the use of the Equipment imposed on any person or company during the Period of Hire will be on charged to you in full.
- 16. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS**
- 16.1. **Service Standard:** We will provide the Services with due care and skill, the Services will be fit for the purpose that we advertise, and we will supply the Services within a reasonable time.
- 16.2. **ACL:** Certain legislation including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth) and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Services by us to you which cannot

- be excluded, restricted or modified (**Statutory Rights**).
- 16.3. **Statutory Rights:** Nothing in this Agreement excludes your Statutory Rights as a consumer under the ACL. You agree that our liability for the Services is governed solely by the ACL and this Agreement.
- 16.4. **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services, where it is affected by your delay in response or supply of incomplete or incorrect information.
- 16.5. **Referrals:** We may provide you with contact details of third-party specialists. This is not a recommendation by us for you to seek their advice or to use their services. We make no representation or warranty about the third-party advice or provision of services, and we disclaim all responsibility and liability for the third party advice or provision of services, or their failure to advise or provide services.
- 16.6. **Availability:** To the extent permitted by law, we exclude liability for:
- (a) the Services or Equipment being unavailable; and
 - (b) any Claims for loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation or any loss or damage relating to business interruption or otherwise, suffered by you or made against you, arising out of or in connection with your inability to access or use the Services or the late supply of Services, even if we were expressly advised of the likelihood of such loss or damage.
- 16.7. **Limitation:** To the extent permitted by law, our total liability arising out of or in connection with the Services, however arising, including under contract, tort including negligence, in equity, under statute or otherwise, is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates. Our total liability to you for all damages in connection with the Services will not exceed the price paid by you under this Agreement and pursuant to the Quote/Invoice for the 12-month period prior to the act which gave rise to the liability, or one hundred dollars (AUD\$100) if no such payments have been made.
- 16.8. This clause will survive the termination of this Agreement.
- 17. INDEMNITY**
- 17.1. You are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:
- (a) any information provided by you that is not accurate, up to date or complete or is misleading or a misrepresentation;
 - (b) your breach of this Agreement;
 - (c) any misuse of the Services or Equipment by you, your employees, contractors or agents;
 - (d) your breach of any law or third-party rights; and
 - (e) any injury caused by your property (or access to the property) and/or your Equipment being unsafe.
- 17.2. You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of the Services or Equipment including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.
- 17.3. This clause will survive the termination of this Agreement.
- 18. SPECIAL CONDITIONS**
- 18.1. **Refueling of machines:** Machines must be returned at the end of the hire period with a full tank of diesel fuel. If when the Owner inspects the fuel tank on return of the machine the tanks are not full, then you will be charged the Refuel Fee.
- 18.2. **Insurance Excess:** A \$750.00 fee applies to each and every insurance claim that is made, per policy. This fee is due within 24 hours of a claim being lodged by the Owner. Any insurance claim is made at the Owner's sole discretion. In the event the Owner makes an insurance claim for any Damage to Equipment, an invoice will be issued to you once payment is received. If this is not paid by you within that time frame, you will be liable for the full repair costs of the Equipment, as deemed by the Owner's chosen repairer. Please note this fee does not include demurrage for Equipment down time, demurrage will be charged separately.
- 18.3. **Area of Operation:** All Equipment must be operated within the Owner's Area of Service, unless approved in writing by the Owner prior to the hire Start Date. No Equipment is to travel outside of the Area of Service without our prior approval.
- 18.4. **Securing Equipment:** You will always keep the Equipment locked and secured and the keys and any keyless start or remote-control device under your personal control and you must be able to produce those keys and devices in the event of a theft of the Equipment.
You must never leave the keys to the Equipment, any keyless start or remote door control device in or with the Equipment whilst it is unattended or unoccupied by you or any passenger. Failure to do this could result in an insurance claim being rejected, and therefore making you liable for full replacement costs of the Equipment. All keys and/or keyless start or remote door control devices must be handed back to the Owner at the end of the hire period, if the Owner is not present then they must be left in the appropriate lockbox provided by the Owner.
- 18.5. **Late Return Fee:** Returning Equipment late will incur an additional full day hire rate.

19. GENERAL

- 19.1. **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.
- 19.2. **Publicity:** You consent to us stating that we provided Services to you, including but not limited to mentioning you on our website and in our promotional material.
- 19.3. **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.
- 19.4. **GST:** If and when applicable, GST payable on the Fee for the Services or Equipment will be set out on our invoices. You agree to pay the GST amount at the same time as you pay the Fee.
- 19.5. **Relationship of Parties:** This Agreement is not intended to create a relationship between the Parties of partnership, joint venture, or employer-employee.
- 19.6. **Assignment:** This Agreement is personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld).
- 19.7. **Severance:** If any provision (or part of it) under this Agreement is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under this Agreement cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from this Agreement and the remaining provisions (and remaining part of the provision) of this Agreement is valid and enforceable.
- 19.8. **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under this Agreement if such delay is due to any circumstance beyond our reasonable control, including any restrictions due to a global pandemic.
- 19.9. **Notices:** Any notice required or permitted to be given by either Party to the other under this Agreement will be in writing addressed to the relevant address in the Quote/Invoice. Any notice may be sent by standard post or email, and notices will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 19.10. **Jurisdiction & Applicable Law:** These terms are governed by the laws of Queensland and the Commonwealth of Australia. Each Party irrevocably

and unconditionally submits to the exclusive jurisdiction of the courts operating in Queensland.

- 19.11. **Entire Agreement:** This Agreement and any document expressly referred to in them represent the entire agreement between the Parties and supersede any prior agreement, understanding or arrangement between the Parties, whether oral or in writing.
- 19.12. **Special Conditions:** The Special Conditions will prevail to the extent of any inconsistency with this Agreement.

20. DEFINITIONS

- 20.1. **Additional Equipment** means further goods or equipment required by you for collection/pick up.
- 20.2. **Area of Service** means the Area for Service designated in the Quote.
- 20.3. **Claim/Claims** includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute, whether indirect, incidental, special, consequential and/or incidental, and whether involving a third party or a Party to the Terms or otherwise.
- 20.4. **Confidential Information** includes confidential information about you, your credit card or payment details, and the business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, technology, and other information of either Party whether or not such information is reduced to a tangible form or marked in writing as "confidential".
- 20.5. **Damage** means physical harm caused to the Equipment as a result of:
- (a) the negligent use or abuse of the Equipment including impact, misuse, mishandling and faulty operation;
 - (b) operation in abnormal conditions;
 - (c) operation outside the recommendations set out in the operation manual for the Equipment;
 - (d) operation or maintenance not in accordance with the manufacturer's recommendations or those set out by us;
 - (e) operation or maintenance not in accordance with common sense or with any legislation applicable;
 - (f) the incorrect or neglected servicing or maintenance of the Equipment; or
 - (g) the failure of any component parts due to faulty operation or maintenance.
- 20.6. **Delivery Condition** means the condition of the Equipment upon delivery to or collection by you.

- 20.7. **Delivery Location** means the location that the Equipment will be picked up and returned as set out in the Quote/Invoice.
- 20.8. **Deposit** (if any) set out in the Quote/Invoice.
- 20.9. **Dry Hire** means the hiring of the Equipment to you without the provision of persons to operate the Equipment.
- 20.10. **Effective Control** means actual physical control and use of the Equipment at relevant times. Where the Equipment is provided to you on a Dry Hire basis, it will be deemed to be under the Effective Control of you. Where the Equipment is provided to you on a Wet Hire basis, it will be deemed to be under the Effective Control of The Owner.
- 20.11. **Equipment** means the equipment set out in the Quote/Invoice.
- 20.12. **Expenses** (if any) are set out in the Quote/Invoice.
- 20.13. **Fees** are set out in the Quote/Invoice.
- 20.14. **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.
- 20.15. **Intellectual Property** includes any and all present and future rights to intellectual and industrial property throughout the world, and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), patents, improvements, registered and unregistered trademarks, designs, any corresponding property rights under the laws of any jurisdiction, discoveries, circuit layouts, trade names, trade secrets, secret processes, know-how, concepts, ideas, information, processes, data or formulae, business names, company names or internet domain names, and any Confidential Information.
- 20.16. **Manufacturer** means in respect of each item of Equipment the identified Manufacturer of that item of Equipment.
- 20.17. **Moral Rights** means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined in the *Copyright Act 1968* (Cth).
- 20.18. **Party** and **Parties** means a party or parties to this Agreement.
- 20.19. **Period of Hire** means the period from the Start Date to the Return Date as set out in the Quote/Invoice.
- 20.20. **Start Date** as set out in the Quote/Invoice.
- 20.21. **Quote/Invoice** means the Quote/Invoice to which this Agreement is attached.
- 20.22. **Return Date** means as set out in the Quote/Invoice.
- 20.23. **Refuel Fee** as set out in the Quote/Invoice.
- 20.24. **Services** means the Equipment and the services set out in the Quote/Invoice.
- 20.25. **Site** means the site where the Equipment will be used as set out in the Quote/Invoice.
- 20.26. **Special Conditions** means the special conditions, if any, detailed in this Agreement and/or in the Quote/Invoice.
- 20.27. **Terms** means these terms and conditions.
- 20.28. **Variation** means amended or additional services, including but not limited to changes to the Quote/Invoice or Fees or varying the Services by:
- (a) hiring additional Equipment;
 - (b) omitting any Equipment; changing the return date of the Equipment;
 - (c) changing the Services; or
 - (d) changing from Dry Hire to Wet Hire.
- 20.29. **Wet Hire** means the hiring of the Equipment and the provision of persons to operate the Equipment and provide the Services in respect thereto.