



Hire Agreement No:

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Acu-Tech Pty Ltd
 119 Kelvin Rd
 Maddington WA 6109
 T/ 08 9238 8000
 E/ equip@acu-tech.com.au

THIS AGREEMENT IS BETWEEN ACU-TECH PTY LTD

| And Customer |
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| |
| |
| Contract Details |
| Date of Delivery: |
| On Hire Date: |
| Order No: |

| Site Address & Contacts |
|-------------------------|
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| |
| Contact: |
| Tel: |
| Email: |

EQUIPMENT SCHEDULE

| REF | DESCRIPTION | QTY | START DATE | PRICE | PER |
|-----|-------------|-----|------------|-------|-----|
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I/We, the Customer offer to hire from Acu-Tech Pty Ltd, the Equipment described in this Equipment Schedule. I/We, the Customer acknowledge and agree that this offer and the agreement constituted by Acu-Tech Pty Ltd's acceptance hereof is made upon and subject to the Terms and Conditions attached which I/We have read and understood and shall be deemed to be included in this Agreement. I/We the Customer acknowledge and agree that any hire of Additional Equipment by or on behalf of Customer from time to time will be governed by this Agreement, without the need for the Equipment Schedule to be updated or provided to the Customer for the hire of such Additional Equipment.

| Customer |
|-------------------------------------|
| Company: |
| Signature: |
| Name and position of Signatory: |
| Date: ___ / ___ / 20 ___ |

| Courier Company |
|-------------------------------------|
| Company: |
| Signature: |
| Driver Name: |
| Date: ___ / ___ / 20 ___ |

| Checked Out |
|-------------------------------------|
| Name: |
| Signature: |
| Date: ___ / ___ / 20 ___ |

| Accepted by Acu-Tech Pty Ltd |
|-------------------------------------|
| Name: |
| Signature: |
| Date: ___ / ___ / 20 ___ |

ACU-TECH PTY LTD HIRE TERMS AND CONDITIONS

Acu-Tech Pty Ltd ("Owner") agrees to hire to the Customer and the Customer accepts on hire from the Owner the Equipment, any Additional Equipment and accessories from time to time subject to the following Terms and Conditions. The Equipment Schedule to which these terms are attached forms part of the Agreement.

1. Definitions

Additional Equipment means all Equipment hired to the Customer at any time following the date of this Agreement.

Agreement means these Terms and Conditions, the Equipment Schedule, any variations to this Agreement agreed in writing by the parties, and any Quotations.

Claim includes any demand, claim, action, proceeding, judgment, damage, loss, cost, liability, penalty or expense (including legal fees on an indemnity basis) however arising and whether present, unascertained, immediate, future or contingent and whether or not arising in relation to matters which occurred in the past.

Cost of Replacement means the current list price of any item of equipment at the date upon which the same is replaced or upon which the Owner receives written notification of loss of or damage to the item of Equipment, whichever shall be the earlier.

CPI means the Consumer Price Index (All Groups) for the eight capital cities of the states and territories of Australia, reflecting the average change in the price level of consumer goods, as published by the Australian Bureau of Statistics or an equivalent government body.

Customer means the Customer specified on this Agreement or the Quotation and includes any related body corporate, its officers, employees, agents and contractors.

Depot means Acu-Tech Pty Ltd, 119 Kelvin Rd, Maddington, Western Australia 6109, or any other depot as specified on the Contract.

Environment and **Environmental** includes all aspects of the surroundings of human beings including:

- (i) the physical characteristics of those surroundings such as the land, the waters and the atmosphere; and
- (ii) the biological characteristics of those surroundings such as the animal plants and other forms of life; and
- (iii) the aesthetic characteristics of those surroundings such as their appearance, sounds, smells, tastes and textures.

Environmental Laws means a law relating to the Environment, including but not limited to a law relating to the use of land; planning; Environmental assessment; the Environmental heritage; water; water catchments; pollution of air; soil; ground water or water; noise; soil; chemicals; pesticides; hazardous substances; the ozone layer; waste; dangerous goods; building regulation; occupation of buildings; public health; occupational health and safety; Environmental hazard; any aspect of protection of the Environment; or the enforcement or administration of any of those laws (whether that law arises under statute or the common law or pursuant to any permit, licence approval, notice, decree, order or directive of any government agency or otherwise).

Equipment means each item of equipment hired by the Customer from the Owner, including any item of plant, machinery, accessory or other material affixed to or supplied by the Owner with the Equipment, and where the context requires, "Equipment" includes any "Additional Equipment".

Equipment Schedule means the schedule to which these Terms and Conditions are attached.

GST means the tax levied under the GST Act.

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

Hire Charges mean the rates and charges for hiring Equipment and Additional Equipment.

Law means any legislation including regulations, by-laws, orders, awards and proclamations, common law and equity, any official requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals) and any legally binding guidelines.

Maximum Period of Hire means 364 days for all Equipment, which is goods that must or may be registered by serial number under the PPSA, and means 729 days for all other Equipment.

Owner means Acu-Tech Pty Ltd (ABN 68 626 756 223), and any other related body corporate (within the meaning of the Corporations Act (Cth)).

Period of Hire means the hire period or Period of Hire identified in the Quotation, which shall never exceed the Maximum Period of Hire.

PPSA means the Personal Property Securities Act 2009 (Cth).

Quotation means any quotation (including the final estimated cost of the hire of the Equipment) provided by the Owner to the Customer relating to the hire of the Equipment under this Agreement.

Security Interest means a first-ranking security interest in the Equipment arising by operation of the PPSA or arising under clause 8 of this Agreement, and any other security for payment of money performance of an obligation or protection against default (including a bill of sale, mortgage, charge, lien, pledge, trust, power, title retention arrangement, right of set-off, assignment of income, garnishee order, monetary claim or flawed deposit arrangement).

2. **Quotations and Bookings:** All Quotations for the Hire of Equipment given by the Owner to the Customer are exclusive of GST unless otherwise stated and are valid for a period of 15 days or until a replacement Quotation has been issued. If an accepted Quotation or forward booking is cancelled by the Customer, the Customer will pay 20% of the Hire Charges for the cancelled Period of Hire for the Equipment. The Customer agrees that:

- (i) any price list or Quotation given by the Owner to the Customer in respect of the hire of Equipment (including relating to the Hire Charges) is a guide only and is subject to change without notice to the Customer.
- (ii) the Owner may correct mistakes in prices quoted in any Quotation by giving notice to the Customer at any time prior to delivery or release of the Equipment for hire. The Customer is deemed to accept the terms of the correction written notice is given prior to the delivery or release of the Equipment disputing the corrected Quotation.

3. **Period of Hire:** The period of hire of the Equipment shall commence on the earlier date of which the Customer takes possession or on delivery of the Equipment to the address nominated by the Customer. The period of hire will continue for the minimum period of hire specified in the Quotation ("Minimum Period of Hire") or the later of:

- (i) the date on which the Owner collects the Equipment from the Customer; or
- (ii) the date on which the Owner accepts the return of the Equipment from the Customer, whichever is the longer ("Period of Hire").

The Period of Hire includes all weekends and public holidays. If a fixed period has been agreed upon, the Customer may only change the Period of Hire with the Owner's written consent. The Customer may not retain the Equipment for any period longer than the Maximum Period of Hire. Under no circumstances does the Owner consent to the Customer retaining uninterrupted or substantially interrupted possession of the Equipment for longer than the Maximum Period of Hire. For the avoidance of doubt, the Period of Hire will automatically terminate upon expiration of the Maximum Period of Hire (if not determined earlier), and should the

Customer wish to re-hire the Equipment, the Equipment must be returned to the Owner before the expiration of the Maximum Period of Hire and a new Period of Hire must be agreed.

4. **Hire of Equipment:** The Owner agrees to allow the Customer to use and maintain possession of the Equipment during the Period of Hire on the terms of this Agreement. The Customer may request the hire of Additional Equipment from time to time in writing to the email address set out in the Equipment Schedule (**Customer Order**). Customer acknowledges and agrees that the hire of such Additional Equipment will be on the terms of this Agreement only, the terms of which will be deemed to have been accepted by Customer on the issue of the Customer Order. Any terms and conditions of the Customer supplied before, with or after any Customer Order for Equipment or Additional Equipment will not be binding between the parties and shall have no effect.
5. **Hire Charges:** In consideration of the Owner agreeing to perform its obligations under clause 4, the Customer will pay the following charges:
 - (i) a security deposit of an amount determined by the Owner in its reasonable discretion for the Equipment (if required by the Owner) payable in advance, which will be refunded to the Customer at the determination of the Period of Hire less any outstanding amounts due and payable by the Customer on account of any breach by the Customer of this Agreement and/or any amounts payable under this Agreement including for repairs or cleaning of the Equipment, which the Owner may use to satisfy any unremedied breach of the Agreement by the Customer remaining as at the end of the Period of Hire;
 - (ii) the Hire Charges for the full Period of Hire and any additional charges that arise until the Equipment is returned to the Depot;
 - (iii) The full cost of transport, delivery and/or collection and return of the Equipment to the Depot, including the cost of any unsuccessful delivery for any reason; and
 - (iv) The full cost of cleaning and repairing the Equipment upon return to the Depot.
6. **Payment:** Where Equipment is hired for a fixed period, the Hire Charges for the Period of Hire are payable in advance. All other charges (including for exceeding the Period of Hire, cancelled forward bookings or for Equipment repairs and cleaning) are payable without deduction on the last day of the month following the month of the Owner's invoice provided that:
 - (i) GST shall be paid by the Customer on all invoices;
 - (ii) Any payment stated to be made in full and final settlement can be accepted by the Owner as part payment of an invoice without prejudice to the Owner's rights to require payment of the full amount outstanding under the invoice;
 - (iii) Interest accrues on all outstanding amounts calculated daily at the rate of 1% per month, which shall be payable by the Customer for each day that any amount due and payable remains unpaid.The Customer is not entitled to withhold payments to the Owner.
7. **Retention of Title:** The Equipment shall at all times remain the legal property of the Owner, and the Customer will not sell or hire out, charge, lend, mortgage, or create any other securities, or otherwise howsoever part with the Equipment without the prior written permission of the Owner, and in the event of such written permission being given by the Owner, it shall be on the basis that the Customer accepts full responsibility for the Equipment and shall indemnify and keep indemnified the Owner against all and any Claims however arising.
8. **Charge:** As security for the performance of its obligations under this Agreement, the Customer agrees to:
 - (i) grant to the Owner all presently owned and after-acquired real property of the Customer. The Customer charges in favour of the Owner all real property in which Customer now or in the future has any title or interest in as security for payment of any amount payable by Customer to Owner under or pursuant to this Agreement at any time. ; and
 - (ii) grant to the Owner a security interest (as that term is defined in the PPSA) over the Equipment, including all proceeds of sale or divestment of such Equipment. For the purposes of the PPSA, the "collateral" is the Equipment. The Customer waives its rights to receive a verification statement under the PPSA and in relation to sections 95, 97, 118, 121, 130, 132, 135, and 157(3) of the PPSA; and
 - (iii) do all things and provide all documents as reasonably directed by the Owner to enable the Owner to obtain the full benefit of security envisaged by this clause 8.
9. **Delivery:** Unless otherwise agreed in writing by the Owner, the Customer is responsible for all transport of the Equipment to and from the Customer's premises (or other location requested by the Customer) and/or the Depot for the purposes of this Agreement at its sole cost and expense. Where the Equipment is delivered to the Customer by the Owner upon commencement of the Period of Hire:
 - (i) the Customer is responsible for unloading the Equipment and must provide adequate staff and machinery to safely unload the Equipment;
 - (ii) if the Customer does not attend the delivery, the Hire Delivery Note shall be forwarded to the Customer's address, which will be conclusive proof of delivery of the Equipment clean and in good working order.
 - (iii) every reasonable effort will be made to supply all Equipment at the time requested, but the Owner accepts no liability or responsibility in respect of late or non-delivery, mechanical breakdown or other circumstances beyond the Owner's control.
10. **Terms of Use by the Customer:** During the Period of Hire, the Customer must, at its sole cost and expense:
 - (i) not misuse, abuse or overload or make any alteration or addition to the Equipment or apply any tool or process to the Equipment without the Owner's written consent;
 - (ii) not expose the Equipment to contaminant or hazardous substances;
 - (iii) not move the Equipment outside of the State or Territory the Equipment was hired in without the Owner's prior written consent;
 - (iv) ensure that the Equipment is erected, operated or moved by qualified persons in accordance with all operations manuals and instructions;
 - (v) make all necessary arrangements for, and pay all costs of, mobilisation and demobilisation of the Equipment;
 - (vi) comply with all relevant Laws, by-laws and Regulations applicable to the use, storage, transportation and operation of the Equipment;
 - (vii) not remove, deface, or cover-up the Owner's name plate or mark on the Equipment;
 - (viii) where the Equipment is electrical equipment, ensure that it is correctly earthed during use, and only use the Equipment with plugs and/or sockets as fitted or with replacement plugs and sockets fitted by a qualified person;
 - (ix) where the Equipment is electrical equipment, arrange for the electrical re-testing and re-tagging of the hire Equipment in accordance with the manufacturer's instructions and the Australian Standards requirements;
 - (x) supply and lay suitable timbers, or equivalents, appropriately positioned for the Equipment to travel over or work on if the area of operation is soft or unsuitable for the equipment to work on;

- (xi) upon the Owner providing reasonable notice to the Customer, allow the Owner to, at all reasonable times, have free access to the Equipment so that the Owner can examine and/or test the Equipment at its reasonable discretion; and
- (xii) do any other thing reasonably required by the Owner in respect of the use, storage, transportation or operation of the Equipment.

11. Maintenance and Breakdown Repairs: The Customer shall, at its sole cost and expense:

(i) **Maintain the Equipment**

At all times during the Period of Hire:

- i. The Customer must service and maintain the Equipment so that the Equipment is in good and substantial repair, order and condition;
- ii. The Equipment must be capable of being operated fully and efficiently for its intended purpose and to the capacity for which the Equipment was intended by the Owner at the commencement of the Period of Hire.

At the termination of the Period of Hire:

- i. The Customer must clean the Equipment thoroughly and properly prior to returning the Equipment;
- ii. The Customer must return the Equipment in the condition supplied and in a condition consistent with compliance by the Customer of the terms of this Agreement;
- iii. Any work that the Owner is required to undertake to repair or restore the Equipment to the condition supplied and in a condition consistent with compliance by the Customer of the terms of this Agreement will be at the cost of the Customer.

(ii) **Undercarriage:** The Customer must adhere to the manufacturer's recommended track tension at all times. The Customer will be responsible for all wear and tear of any nature, including but not limited to ordinary wear and tear and wear resulting from the undercarriage being used in working conditions that were, in the opinion of the Owner, abnormal.

(iii) **Tyres:** The Customer must adhere to the manufacturer's recommended tyre pressure at all times. The Customer must repair all punctures to inflated tyres at the Customer's own cost.

(iv) **Attachments:** The Customer must adhere to the Manufacturer's recommended use with respect to all attachments, including but not limited to the blade, blade mould board, blade push arms, ripper and ripper assembly, bucket, stemming bucket, truck body and rock hammer, as may be applicable.

(v) **Ground Engaging Tools (GET):** The Customer shall adhere to the manufacturer's recommended use with respect to all GET's, including but not limited to all cutting edges, bucket teeth, bucket pins and bushings, hardware, stick, bucket end, H bracket pins and bushings, ripper teeth, ripper tyres, blade faces, blade push arms, blade mould boards, roller feet. All GET's are to be returned from hire in as supplied condition. The Customer will be liable for all wear and tear including but not limited to ordinary wear and tear and wear resulting from the GET's being used in working conditions that were, in the opinion of the Owner, abnormal.

(vi) **Oil Sampling:** The Customer must adhere to the manufacturer's recommended oil sampling analysis at every oil change period on all compartments. If the Customer does not carry out the necessary servicing, then the Owner shall undertake the servicing at the cost of the Customer. The Owner may require oil sampling analysis details from the Customer at any time and from time to time and such will be provided by the Customer as so required.

(vii) **Fuel and Lubricants:** All lubricating oils and engine fuel used by the Customer will be in accordance with the manufacturer's recommendations. All oil reservoirs must be full on return on the Equipment. The Equipment fuel tank will be full at the commencement of the Period of Hire and shall be returned full, otherwise the Customer will be invoiced for the difference.

(viii) **Minor and Major Maintenance:** The Customer shall at its cost conduct all servicing in accordance with the manufacturer's recommendations including but not limited to electrical components, hydraulic hoses, oil leaks, greasing, oil changes, filters and attachments. Subject to compliance by the Customer with this Agreement, including but not limited to all servicing and oil sampling and provided that the Equipment has not been inappropriately used, then unless the Owner considers it reasonable not to do so, the Customer will not be liable for major power train repairs including engine, torque, converter, transmission, final drive and differential repairs. Where the Customer does not employ qualified staff to maintain the Equipment in the manner required by this Agreement, the Customer must effect, maintain and keep in force maintenance contracts in respect of the Equipment providing for regular maintenance in accordance with the Manufacturer's or other supplier's specifications and such maintenance contracts shall include any contracts as required by any insurer pursuant to the Customer's obligations to effect insurance. Maintenance and repair work of Equipment must be reasonably acceptable to the Owner. The Customer will, prior to the commencement of the Period of Hire and thereafter upon being so required provide the Owner copies of all such maintenance contracts, together with satisfactory evidence that those maintenance contracts are at the time still in force. All engine oils shall be changed after 250 hours of use or in accordance with the Manufacturer's specifications. SOS samples and reports shall be prepared and provided by the Owner thereafter as soon as is reasonably practicable. The Owner shall be entitled to carry out repairs that may be required on site where the Equipment is located, provided that if agreement is reached between parties that the Customer shall carry out the repairs on the Owner's behalf, then such repairs are only to be carried out with the Owner's written purchase order outlining the details of the relevant repairs and the Customer will then invoice the Owner for payment. The Customer will not set off any repair costs against the hire fee.

(ix) **Replacement Parts:** The Customer must with reasonable promptness replace all Parts which may from time to time become worn, lost, stolen, compulsory acquired, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use by damage or obsolescence. All replacement parts supplied by the Customer will be the property of the Owner. The Customer must ensure that all replacement Parts are free and clear of all liens and rights of others. The Customer must also ensure that all replacement Parts have a value and utility at least equal to the Parts replaced. The Customer must not, without prior written consent of the Owner, make any replacement alterations or additions of any nature which may lead to a material reduction in the value of the Equipment. The Owner retains the right to charge the Customer for the replacement of replacement parts of unsuitable or inferior quality.

(x) **Breakdown Repairs:** The Customer will not undertake any repairs without prior written authority from the Owner and is subject to clause 14(i). The Customer shall conduct all approved breakdown repairs (not including power train failures) in accordance with the manufacturer's recommendations and at the Customer's expense. Subject to compliance by the Customer with the terms of this Agreement, the Owner will be responsible for the power train failures, including engine, torque converter, transmission, final drives and differential. The Owner may serve on the Customer notice in writing of any defect or deficiency in the Equipment or its operation or both (whether that defect or deficiency comes to the Owner's attention in the course of any inspection) requiring repair or replacement for which the Customer is or may be responsible

under this Agreement to be undertaken within a reasonable time. The Customer is not entitled to set off any repair time from the Period of Hire.

- (xi) **Repair of Equipment:** The Owner is entitled to retain such properly qualified experts as it thinks fit in order to determine whether the Equipment is in need of repair, removal or replacement or is otherwise deficient. The Customer will at all times comply with the reasonable requirements of any such expert and of the Owner as to any repair, removal or replacement of the remedying of any deficiency.
12. **Return:** If the Customer requires the Owner to collect the Equipment, 24 hours written notice must be given to the Owner. Upon collection, a collection ticket or form will be issued, but this shall be conclusive proof only as to the quantity of the Equipment collected but not of its condition at the time of collection. If the Customer returns the Equipment to the Depot, the Owner shall send the Customer within 14 days a Returns Hire Note, which shall be conclusive proof as to the quantity of the Equipment returned but not of its condition at the time of return.
13. **Repossession:** The Owner may repossess the Equipment without liability and without notice to the Customer if the Owner terminates this Agreement under clause 18. The Customer authorises the Owner to access the Customer's premises or any place where the Equipment is located without notice to carry out a repossession of Equipment. All monies previously paid to the Owner, including any deposit, are immediately forfeited to the Owner upon repossession under this clause without prejudice to the Owner's right to claim damages for breach of these conditions. The Customer is liable for all Claims arising from the termination.
14. **Theft, Loss, Damage and Non-Return:** Throughout the Period of Hire and until collected by the Owner and/or returned to the Depot:
- (i) the Customer will immediately notify the Owner in writing of any loss or damage to and/or breakdown of the Equipment, and must comply with the obligations in clause 11(xi) with respect to repairing Equipment;
 - (ii) the Customer shall be solely responsible for the full costs of all theft, loss and damage to the Equipment, howsoever caused;
 - (iii) where the Equipment has been lost or stolen or is not returned to the Owner within 60 days of the end of the Period of Hire, the Customer shall be liable for the full Cost of Replacement of the Equipment upon receiving an invoice from the Owner; and
 - (iv) In the event of lost or damaged Equipment, the Hire Charges shall be payable at the full rate until the item is repaired or replaced by the Owner.
15. **Sale of Equipment:** Subject to the Owner's prior written consent and agreement between the Owner and the Customer as to the sale price, the Owner may, at the Customer's request, agree to sell the Equipment to the Customer at the expiry of the Period of Hire. The Equipment is not in any other circumstances offered for sale. For the avoidance of doubt, Hire Fees are payable for the Equipment up until payment has been received in full by the Owner.
16. **Customer Warranties:** The Customer agrees and warrants that:
- (i) it has the authority, power and capacity to enter into and perform its obligations under this Agreement. If a body corporate that it is duly incorporated and validly existing under the Corporations Act 2001 (Cth) and has full power and authority to enter into and perform its obligations under this Agreement;
 - (ii) in the case of a Customer that is a trust, the trustee of the Customer enters this Agreement in its personal capacity as well as in its capacity as trustee. The trustee warrants that the trust is lawfully operating and that the assets of the trust shall be available to meet payment of any monies owed to the Owner by the Customer under this Agreement;
 - (iii) it has all consents and approvals required under any Law in order for the Customer to use and operate the Equipment and perform its obligations under this Agreement;
 - (iv) it will not, without the prior written consent of the Owner, sub-hire or cross-hire the Equipment, which the Owner may withhold in its absolute and sole discretion.
 - (v) prior to entering into this Agreement, it has examined the Equipment and is satisfied with the condition and suitability of the Equipment and its fitness for the Customer's purpose;
 - (vi) it will comply with all Environmental Laws and is solely reliable with the remediation of any breach of Environmental Law by the Customer's use of the Equipment; and
 - (vii) it will not do or omit to do anything that may prejudice the Owner's interest in the Equipment or any insurance effected by anyone in respect of the Equipment.
17. **Wet Hire:** If this Agreement provides for the wet hire of Equipment, although the operator of the Equipment remains an employee of the Owner, the operator operates the Equipment in accordance with the sole instructions of the Customer and at the Customer's sole risk. The Owner will not be liable for any acts or omissions of the Operator where the Operator is acting under the Customer's direction and control in relation to the Equipment.
18. **Termination:** The Owner may terminate this Agreement if:
- (i) the Owner, in its sole discretion, unilaterally decides to terminate the Agreement provided that the Owner will reimburse to the Customer any Hire Charges paid in advance up to the date of unilateral termination;
 - (ii) the Customer breaches any term of the Agreement and fails to remedy the breach within 7 days of receiving written notice of the breach from the Owner;
 - (iii) the Customer made a false or misleading statement in relation to this Agreement or any relevant documents;
 - (iv) the Customer is guilty of fraud or misrepresentation; or
 - (v) the Customer is insolvent, enters into liquidation or receivership or a petition in bankruptcy is filed by or against it or if it makes an arrangement for the benefit of its creditors or if it otherwise ceases carrying on business.
19. **Insurances:** The Customer, at its cost, must effect and maintain at all times during the Period of Hire and any extension thereof or during any period of holding over policies of insurance in respect of loss or damage arising from or relating to:
- (i) Damage to the Equipment, including whilst the Equipment is in transit;
 - (ii) The Customer's liability to indemnify the Owner;
 - (iii) Workers' compensation, the use of any motor vehicle, whether the loss be to property or persons;
 - (iv) Damage to property or persons; and
 - (v) Public liability in accordance with this clause 19.
 - (vi) **Equipment Insurance:**
The Customer shall insure the Equipment for its full insurable value against:
 - i. Damage or destruction caused by accident;
 - ii. Any insurable risk commonly insured in regard to the equipment of a similar nature to the Equipment; and
 - iii. Such other insurable risks as the Owner may reasonably stipulate.
 - (vii) **Indemnified Risk:** The Customer shall insure in respect of the Customer's liability to the Owner pursuant to indemnity provisions in clause 20.

- (viii) **Third Party Risk:** The Customer shall insure in respect of all third party risks, including liability for damage or injury of any kind to any property or person and also against other risks to the full extent required by Statutes and such policy will be for the benefit of the Owner and the Customer.
 - (ix) **Public Risk:** The Customer shall insure against public risk relating to the Equipment for an indemnity (including damage to property of any person) of not less than \$10,000,000 or such other amount as the Owner may from time to time reasonably require for any one accident or event.
 - (x) **Excess:** The Customer shall insure with respect to the Customer's liability under this Agreement to the extent that such liability exceeds its liabilities under this clause 19.
 - (xi) **Direct Physical Loss:** The Customer shall insure with respect to any direct physical loss or damage to the Equipment in an amount sufficient to cover the value of the Equipment.
 - (xii) **Conditions of Insurance:** The insurances required to be arranged must be taken out in the names of the Owner and the Customer for their respective rights and interests, and all Certificates of Currency must be provided to the Owner prior to the Customer taking possession of all or any of the Equipment. The Customer must be shown as the named insured and the Owner as the joint name insured. Each policy must expressly provide that all of its provisions, except the limits of liability, operate in the same manner as if they were a separate policy covering each insured. The insurances must be taken out with an insure approved by the Owner which approval will not be unreasonably withheld.
20. **Liability and Indemnity:** The Owner's liability to the Customer in relation to any hire agreement on these terms will never exceed the Hire Charges. The Owner will not be liable for any consequential loss or damages, including (but not limited to) loss of profit, business revenue, goodwill, anticipated savings or damage to property. The Owner is not liable for any Claim directly or indirectly resulting from malfunction, breakdown mechanical defect, wear and tear, or accident to the Equipment during the Period of Hire or as a result of the Customer's improper use, maintenance, attachments or storage of the Equipment. The Customer indemnifies the Owner against any Claim against the Owner arising from a Customer breach of these terms or arising from the possession, control, use, maintenance, repair or storage of the Equipment by any person during the Period of Hire. The Customer indemnifies the Owner in respect of any loss of the Equipment by seizure, distress, execution or other legal process, confiscation or forfeiture of the Equipment or arising out of any claim for patent, trademark or copyright infringement, for strict liability, or for any other reason being made against the Owner in connection with the Equipment or its operation. The Customer indemnifies the Owner against any Claims made by a third party in respect of negligence, personal injury or death arising out of the hire of the Equipment to the Customer by the Owner. The Customer indemnifies the Owner against all Claims by any person whatsoever, including but not limited to consequential and/or indirect loss and for injury to persons and/or damage to property caused by or in connection with or arising out of the exercise by the Owner of any rights under this Agreement, the use and/or unloading of the Equipment by the Customer.
21. **Warranty:** Except as required by Law, the Owner provides no warranty, guarantee, statement, agreement, representation or undertaking other than those expressly set out in this Agreement in relation to the Equipment hired to the Customer under these terms. In the case of any non-excludable guarantee, term, condition, warranty, undertaking or representation by law in relation to this Agreement, the Owner's liability for the breach of such a provision is limited to the replacement or repair of goods, or the provision of a service or the cost of the provision of the service, at the Owner's sole discretion.
22. **Variation:** Upon giving the Customer reasonable notice, the Owner may vary the Agreement if the variation is reasonably necessary due to circumstances outside the Owner's control. The Agreement can also be amended by express written agreement between the parties.
23. **Entire Agreement:** These terms, and any agreed variations in writing by both parties, constitute the expression of the full and entire agreement between the Customer and the Owner. It annuls and replaces all written or verbal agreements that may have previously existed between the parties or be printed on any purchase orders, order confirmations, delivery dockets or tax invoices. No previous communications or documents may give rise to any obligations under this Agreement.
24. **No Exclusion:** These terms do not exclude any provisions required by Law to be included, and any inconsistent provisions shall be severed from these terms without affecting the enforceability of the remaining provisions.
25. **Severance:** If any of these terms or conditions is or becomes for any reason wholly or partly invalid, that term or condition shall, to the extent of the invalidity, be severed without prejudice to the continuing force and validity of the remaining conditions.
26. **No SetOff:** The Customer may not set off any amount required to be paid to the Owner against any amount that the Owner is required to pay to the Customer under this Agreement. The Owner is entitled to set off against any amount owed by the Owner to the Customer, any amount the Customer owes to the Owner.
27. **Notice:** Any notice, consent or communication to be given by party under the Agreement must be given by delivering the notice personally, by facsimile, e-mail or registered post addressed to the party at such address as may be notified in writing to the other party from time to time. Any notice, consent or communication so sent shall be deemed to have been duly given, served and received:
- (i) Immediately, if personally delivered;
 - (ii) if sent by pre-paid post, 3 business days after posting;
 - (iii) if emailed, upon the earlier of:
 - i. the sender receiving an automated message confirming delivery; and
 - ii. 6 hours after the time sent (as rescored on the device from which the sender sent the email), unless the sender receives an automated message that delivery failed;
 - (iv) if sent by facsimile, upon receipt by the sender of a successful transmission report provided that if a facsimile is sent after 4pm, the notice will be deemed to be received on the next business day.
28. **Authorised representative:** the person or persons signing the Equipment Schedule on behalf of the Customer: (a) represents and warrants to the Owner that they have the authority to bind the Customer and enter into this Agreement; and (b) jointly and severally guarantees the payment of all amounts payable by Customer to Owner from time to time under or pursuant to this Agreement.
29. **Jurisdiction:** The laws of the State of Western Australia apply to all hire agreements pursuant to these terms and all contracts between the Owner and the Customer, and unless varied by mutual consent, all contracts shall be subject to the jurisdiction of any of the Courts of Western Australia.
30. **Dispute Resolution:** In this clause 30:
- (i) "Act" means the Commercial Arbitration Act 2012 (WA);
 - (ii) "Arbitrator" means a single arbitrator appointed pursuant to this clause 30;
 - (iii) "Party" means a party to this Agreement who has a dispute or difference with another party of this Agreement; and

(iv) "President" means the president for the time being of the Law Society of Western Australia.

In the event any dispute or difference between any Parties as to any issue arising hereunder, the dispute or difference, if unresolved within 7 days after notice in writing of the dispute or difference has been given by a Party to another Party, shall be referred to an Arbitrator in accordance with the Act.

The Arbitrator shall be a person agreed between the Parties. In default of agreement as to the Arbitrator within 7 days after nomination in writing by any Party, the Arbitrator shall be a person appointed by the President.

The arbitration shall be conducted in accordance with the following provisions:

- (i) The arbitration hearing shall be convened and concluded within 30 days after the date of the Arbitrator's appointment;
- (v) The time permitted for the arbitration hearing shall not exceed 2 days (from 10am to 1pm and 1pm to 4pm on each day), with the presentation of each Party's case not to exceed a rateable proportion of the hearing time without the written agreement of the other Party;
- (vi) Within 7 days after the Arbitrator's appointment, each Party will pay the Arbitrator a rateable proportion of the maximum costs that might be payable to the Arbitrator as and by way of security for the Arbitrator's costs so that if the maximum cost payable to the Arbitrator is \$9,000 plus GST and there are two (2) Parties then each Party will pay \$4,500 plus GST; and
- (vii) The determination of the Arbitrator shall be binding on the Parties.
- (viii) The arbitration will be conducted according to the Law; and
- (ix) No variation to these terms will be permitted except with the written agreement of the Parties.

This clause 30 shall not affect the right of a Party to seek urgent injunctive relief from a court of competent jurisdiction.