



## Terms and Conditions for LED Light Rentals and Sales Pty Ltd

### IT IS AGREED:

### GENERAL T&CS

### APPLICATION OF T&CS

1.1 These Terms and Conditions apply to any Equipment Hire, Equipment Sale or Equipment Hire-to-Buy, on the basis that the Equipment Hire T&Cs apply to any Equipment Hire, the Equipment Sale T&Cs apply to any Equipment Sale and the Equipment Hire-to-Buy T&Cs apply to any Equipment Hire-to-Buy. For the avoidance of doubt, the General T&Cs apply to Equipment Sales, Equipment Hires and Equipment Hire-to-Buys.

### 2. DEFINITIONS AND INTERPRETATION

2.1 Unless the context otherwise requires, in these Terms and Conditions and any other document forming part of the Agreement the following terms are defined:

**Account Application** means any account application or similar form completed by the Customer on the Supplier's standard form that relates to the supply of Equipment by the Supplier from time to time, whether as an Equipment Sale, Equipment Hire or Equipment Hire-to-Buy;

**Additional Costs** means any fees or charges for additional items or services provided at the Customer's request or reasonably required as a result of the Customer's conduct, including for additional hours of use, the Damage Waiver Surcharge or any other any fees or charges incurred or payable to the Supplier in connection with arranging for the delivery of the Equipment or in connection with any repairs to the Equipment undertaken by the Supplier following the Period of Hire due to the Customer's acts or omissions, as well as any mark-up provided for in this Agreement;

**Agreement** is defined in clause 2.2;

**Agreed Value** means the value specified as such in respect of the Equipment in the Proposal, but if no amount is so specified then the full replacement costs of the Equipment as reasonably determined by the Supplier.

**Attachments** means any articles offered by the Supplier that can be installed on or to the Equipment that are supplied to the Customer, including those specified in the Proposal;

**Business Day** means a day which is not a Sunday, Saturday, public holiday or bank holiday in Brisbane, Queensland or the relevant location where the Equipment Hire is being conducted;

**Condition Report** means a report on the general condition of Equipment, which may include its state of wear and tear, the state of any Defined Wear Items, cleanliness, and the readings on its measurement equipment;

**Cost** includes all costs, losses, expenses, charges (government or otherwise), taxes, duties, expenses, solicitors and advisors fees (on a full indemnity basis) and third party expenses;

**Customer** means the person or persons named in the Proposal as the hirer of the Equipment the subject of any Equipment Hire or Equipment Hire-to-Buy or the purchaser of any Equipment the subject of an Equipment Sale, and includes the entity to whom the Equipment is to be hired or sold and the entity named as the Customer in the Account Application. If there are more than one person, the Customer means each of them separately and every two or more of them jointly;

**Damage Waiver** means the Supplier's waiver of the rights it may otherwise have under this Agreement in respect of any damage to the Equipment on the conditions set out in clause 11.2;

**Damage Waiver Surcharge** means the amount payable by the Customer as a condition of the Supplier offering the Damage Waiver, which is an amount equal to 12% of the total Hire Charge payable in respect of each invoice issued by the Supplier;

**Defined Wear Items** means tyres, tracks, wheels, and any other parts or accessories of a nature that are similarly susceptible to wear or are otherwise specified as 'Defined Wear Items' in the Proposal or the on-hire Condition Report;

**Encumbrance** means any Security Interest, mortgage, charge, pledge, lien, assignment, trust or power held as security, or other interest securing the payment or performance of any obligation or similar right;

**Equipment** means each of the items specified in the Proposal, including any tools, tyres, accessories and parts supplied to the Customer, any Attachments and any replacements of those items;

**Equipment Hire** means the provision of the Equipment on a hire basis to the Customer in accordance with the Proposal and the remaining provisions of this Agreement;

**Equipment Hire T&Cs** means the terms, conditions and other provisions applicable to Equipment Hire as provided for in this Agreement, including any provisions under the heading 'EQUIPMENT HIRE T&Cs' and the General T&Cs but excluding any provisions only applicable to Equipment Sales or Equipment Hire-to-Buys;

**Equipment Hire-to-Buy** means the provision of the Equipment on a hire basis to the Customer which contains an option for the Customer to purchase the Equipment in accordance with the Proposal and the remaining provisions of this Agreement;

**Equipment Hire-to-Buy T&Cs** means the terms, conditions and other provisions applicable to Equipment Hire-to-Buy as provided for in this Agreement, including any provisions under the heading 'EQUIPMENT HIRE-TO-BUY T&Cs', the Equipment Hire T&Cs (in respect of any period prior to the transfer of ownership of the Equipment following exercise of the Option), the Equipment Sale T&Cs (if the Option is exercised) and the General T&Cs;

**Equipment Failure** means:

(a) a breakdown of the Equipment; or

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(b) the occurrence of a defect in or a malfunction of the Equipment that renders the Equipment unsafe or unsuitable for use, during the Period of Hire unless the breakdown, defect or malfunction is the result of the acts or omissions of persons other than the Supplier;

**Equipment Sale** means the sale of the Equipment to the Customer in accordance with this Agreement;

**Equipment Sale T&Cs** means the terms, conditions and other provisions applicable to Equipment Sales as provided for in this Agreement, including any provisions under the heading 'EQUIPMENT SALE T&Cs' and the General T&Cs but excluding any provisions only applicable to Equipment Hire or Equipment Hire-to-Buy;

**Expected End Date** means the estimated last date of the Period of Hire as stated in the Proposal, which may be a fixed date or may be determined by reference to the 'Hire Duration' stated in the Proposal (which is to commence on the Start Date);

**Fair Wear and Tear** means minor damage or degradation to the Equipment, which in the reasonable opinion of the Supplier, is in the nature of ordinary fair wear and tear caused by ordinary day-to-day use of the Equipment in compliance with this Agreement, but excludes any damage or degradation to Defined Wear Items or any of the foregoing to the extent that it was caused or contributed to by the Customer's failure to repair and maintain the Equipment in accordance with this Agreement.

**General T&Cs** means the general terms, conditions and other provisions applicable to both Equipment Sales and Equipment Hires as per this Agreement, including any provisions under the heading 'GENERAL T&Cs' (including clause 1 and 2) and before the heading 'EQUIPMENT SALE T&Cs' and from clause 12 onwards (unless those provisions expressly state otherwise);

**GST** means any tax imposed by or through the GST Law on a supply (without regard to any input tax credit) including, where relevant, any related interest, penalties, fines or other charges to the extent they relate to a supply under this Agreement;

**GST Law** has the same meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (and any related tax imposition act);

**Guarantor** means any person who has provided a guarantee or indemnity to the Supplier in connection with any obligations of the Customer from time to time, including any persons who these Terms and Conditions provides is a 'Guarantor' for the purposes of this Agreement;

**Hire Charge** means the amount payable by the Customer to the Supplier for hiring the Equipment the subject of an Equipment Hire, calculated in accordance with clause 8 and this Agreement;

**Hire Period** means the period from the Start Date and continuing until the later of the Expected End Date or such other date specified in these Terms and Conditions as being the end of the Hire Period;

**Intellectual Property Rights** means all present and future intellectual property rights of any nature, anywhere in the world, including:

- (a) any patents, designs, trade marks (whether registered or common law trade marks), copyright or trade secrets; and
- (b) any invention, discovery, trade secret, secret process, know how, computer software or confidential, scientific, technical or product information, and any right to use (or otherwise exploit), or to grant the use of, or to be the registered owner or user of, any of them;

**Minor Repairs** means:

- (a) all daily and routine maintenance and service activities specified by the Supplier or the manufacturer of the Equipment or otherwise necessary to ensure the Equipment remains serviceable and in proper working order, including the responsibilities set out in the Proposal as being the Customer's responsibility; and
- (b) all repairs to the Equipment for which the part cost does not exceed \$2,000 for a single repair or \$5,000 in any period to which an invoice relates, or such other amounts as may be specified in the Proposal as the monetary limits for Minor Repairs;

**Major Repairs** means any repair, maintenance work, servicing or replacement of parts which is not a Minor Repair;

**Other Property** means all present and after acquired rights and interest in land and any other property, rights and interests that is not Personal Property;

**Option** means the right of the Customer to purchase a piece of Equipment the subject of an Equipment Hire-to-Buy, on the provisions of this Agreement.

**Personal Property** means all present and after acquired personal property (as defined in the PPSA and to which the PPSA applies) and all present and after acquired personal property (as defined in the PPSA and to which the PPSA applies) in which the party has rights or is capable of granting a security interest from time to time;

**PPSA** means the *Personal Property Securities Act 2009* (Cth) and any associated or amending legislation or regulations;

**Proposal** means the relevant Equipment Hire proposal/quote or Equipment Sale proposal/quote (as the case may be) incorporating these Terms and Conditions, which identifies (among other things) the Equipment the subject of any Equipment Sale, Equipment Hire or Equipment Hire-to-Buy and any special conditions applicable to the relevant transaction;

**Purchase Price** means the purchase price of the relevant item of Equipment the subject of an Equipment Sale or Equipment Hire-to-Buy, as determined in accordance with this Agreement;

**Rental Rebate** means, in respect of an item of Equipment where the Option is validly exercised, the relevant percentage of the Hire Charges (but excluding any Additional Costs) paid to the Supplier in respect of the Equipment at the time of sale, as follows:

- (a) if the sale occurs in the first month of the Hire Period, 90%;
- (b) if the sale occurs in the second month of the Hire Period, 75%;

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- (c) if the sale occurs in the third month of the Hire Period, 50%;
- (d) if the sale occurs in the fourth month of the Hire Period, 40%;
- (e) if the sale occurs in the fifth month of the Hire Period, 35%;
- (f) if the sale occurs in the sixth month of the Hire Period, 25%;

**Security Interest** means:

- (a) in relation to personal property has the same meaning as in the PPSA; and
- (b) in relation to any other property means any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust or power;

**Site** means the designated location specified in the Proposal (including the project name and address), being the place that the Equipment is to be located at all times during the Hire Period (unless the Supplier agrees otherwise in writing);

**Start Date** in respect of an item of Equipment, means the earlier of the 'Start Date' for the item in the Proposal (if any) and the date the item is either dispatched to the Site or the date the item is made available for collection from the Supplier or the Supplier's representative;

**Supplier** means LED Light Rentals and Sales Pty Ltd ABN 31 600 746 503, unless one of its related entities is specified as the 'Supplier' in the Proposal (in which case the entity so specified);

**Terms and Conditions** means these terms and conditions of the Supplier;

**Unit Rate** means the rate charged for each item of Equipment specified as the 'Unit Rate' in the Proposal, or if none is specified any similar hourly, daily or monthly hire rate set out in the Proposal, which is to be calculated by reference to the relevant unit of measurement set out in the Proposal;

**Utilisation** for each item of Equipment is the greater of the minimum number of hours, if any, set out in the Proposal (or as otherwise provided for in these Terms and Conditions) and the actual number of hours of operation determined in accordance with clause 8; and

Unless the context indicates a contrary intention or the term is otherwise defined in clause 2.1, capitalised terms defined in the Proposal have the same meaning when used in these Terms and Conditions.

### 2.2 This Agreement consists of the following documents:

- (a) the Proposal;
- (b) these Terms and Conditions; and
- (c) the Account Application (if any).

For the avoidance of doubt and to the extent the law permits, no other terms or conditions (including those contained in any document submitted by the Customer, such as a purchase order) will form part of this Agreement nor will they apply to the supply of any Equipment.

2.3 The various documents making up this Agreement are intended to be correlative, complementary and mutually explanatory of one another and this Agreement must be read as a whole. Notwithstanding that intention, if this Agreement provides for standards of quality or other obligations of the Customer in an inconsistent manner (including where any special conditions stated in the Proposal are similar to obligations of the Customer under these Terms and Conditions), then the highest standard or most onerous obligation must be undertaken by the Customer.

2.4 If there is any conflict or inconsistency between the documents constituting the Agreement, then the documents will rank in order of precedence in accordance with the order in which they are listed in clause 2.2 (unless the relevant provision in the document expressly provides to the contrary).

2.5 For the avoidance of doubt, if the Supplier has issued a quote or proposal that is later varied then the final quote or proposal will be the 'Proposal' for the purposes of this Agreement.

2.6 The Customer and each Guarantor agrees to be bound by this Agreement on the earlier of the following:

- (a) by the Customer's representative signing and returning any documents forming part of this Agreement or if the Customer or its representative orally accepts any Proposal;
- (b) once the Equipment leaves the Supplier's facility in accordance with this Agreement (whether a Proposal is signed or not);
- (c) once the Equipment arrives at the Site (or such other location at the Customer's request); or
- (d) once the Equipment is operated or used by or on behalf of the Customer for any period prior to signing any documents forming part of this Agreement.

However, the Supplier is under no obligation to supply the Equipment the subject of any Equipment Hire, Equipment Sale or Equipment Hire-to-Buy unless and until a duly authorised representative of the Customer signs the relevant Proposal and returns it to the Supplier.

2.7 If the Customer accepts a Proposal after the period stated in it or if the Supplier otherwise seek to vary the Proposal (including in connection with any variations to the Equipment or any Attachments requested by the Customer), the Supplier may notify the Customer of any required changes to be made to, or additional matters to be included in, the Proposal (including the prices or any changes to the prices for the Equipment the subject of the order) and any Additional Costs relevant to the order (which may be an estimate or rate). If this occurs, the Customer must promptly confirm in writing that the Customer accepts or rejects the variations proposed by the Supplier, prior to the Supplier being obliged to accept or fulfil any order for the purchase of Equipment. If a Proposal is varied by the Supplier, and the Customer has been notified of the variation and takes delivery of the Equipment

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or Attachments, then the Customer will have been deemed to have agreed to the variation upon taking delivery of the relevant Equipment or Attachments.

### 3. INVOICING AND PAYMENT

#### 3.1 General payment terms

- (a) The Supplier is under no obligation to supply or deliver any Equipment if the Customer has not paid any invoice when due. Despite the Customer paying for any Equipment prior to supply, the Customer obtains no rights in such Equipment unless and until title passes to the Customer in accordance with the Agreement (if at all).
- (b) The Supplier will invoice the Customer in accordance with this Agreement. The Customer must pay to the Supplier the following amounts as stated on any invoice the Supplier raises:
  - (i) in respect of any Equipment Hire, each of the following:
    - (A) the Hire Charge;
    - (B) any insurance excess, premium, deductible or surcharge that is payable by the Customer under this Agreement, including the Damage Waiver Surcharge (if applicable);
    - (C) a reasonable estimation of any costs associated with the Supplier or its agents, employees or contractors collecting the Equipment or not being able to collect the Equipment at the end of the Hire Period, including in circumstances where the Supplier has provided the Customer with an Off Hire number and the Equipment is not ready for collection or this Agreement or any Equipment Hire is terminated due to the Customer's default;
    - (D) the cost of repairing any damage to the Equipment, Fair Wear and Tear (other than Defined Wear Items) excepted and the costs of labour supplied by the Supplier plus a 12% administration fee;
    - (E) any amount reasonably determined by the Supplier representing the degradation in the Defined Wear Items at the end of the Hire Period;
    - (F) an environmental levy equal to 1% of the Hire Rate payable under this Agreement;
    - (G) any fees associated with cleaning the Equipment if it is not returned in the same condition as it was supplied at the start of the Hire Period;
  - (ii) in respect of any Equipment Sale, the Purchase Price;
  - (iii) any Additional Costs; and
  - (iv) any other amounts that become owing under this Agreement.
- (c) Without limiting any other provision of this Agreement, Additional Costs shall include:
  - (i) a registration fee equal to \$20.00 for each item of Equipment provided to the Customer under an Equipment Hire or any Equipment Sale on credit terms to cover the costs of registering any Security Interest arising under this Agreement;
  - (ii) all government charges and taxes relating to this Agreement or the payments to be made under it, including stamp duty and GST;
  - (iii) all costs and expenses incurred in the exercise or attempted exercise by the Supplier of the Supplier's rights under this Agreement, including any Costs and collection agency fees and legal fees (calculated on a solicitor and own client basis); and
  - (iv) where storage costs and expenses are payable under clause 3.4(c) of this Agreement, such storage costs and expenses shall be reasonably calculated by the Supplier (including by reference to any rates published by the Supplier from time to time, if any).
- (d) The Supplier is entitled to charge interest on all amounts that may become due to the Supplier in connection with this Agreement that are not paid when due, and such interest will accrue and be payable at the rate of 12% per annum, calculated on daily balances and compounded monthly from the due date for payment until paid. Any such interest is payable immediately, without the need for any demand.
- (e) The Customer must review each invoice the Supplier issues to the Customer and if the Customer is aware of any entitlement to a deduction the Customer must notify the Supplier of the deduction within seven days of the receipt of the invoice. If the Customer does not notify the Supplier within seven days of receipt, then to the extent the law permits the Customer waive any right to later challenge the invoiced amount.
- (f) The Customer must pay the amount shown on each invoice within the period provided for in this Agreement (and if no such period is so specified, then within seven days of the date of the invoice). If the Customer genuinely disputes the invoice (provided such dispute is raised within the period provided in the preceding paragraph), in which case:
  - (i) the Customer will pay the undisputed part of the invoice (if any) and use all reasonable endeavours to resolve the dispute relating to the disputed part of the invoice as expediently as possible; and
  - (ii) if the resolution of the dispute determines that the Customer is to pay any disputed amount to the Supplier, the Customer will pay that amount upon resolution of that dispute. For the avoidance of doubt, noting in this Agreement releases the Customer from any obligation to pay, nor prevents the Supplier from recovering monies owing to the Supplier, in connection with this Agreement that is due and payable to the Supplier while the parties are attempting to resolve a dispute.
- (g) The Customer is not entitled to withhold or retain any money owing to the Supplier notwithstanding any default or alleged default by the Supplier, including in respect of the supply of allegedly faulty or defective Equipment or a delay in the provision of Equipment. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

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### 3.2 Credit terms

- (a) Unless the Supplier has agreed to provide the Customer with credit terms in respect of the relevant Equipment Sale, Equipment Hire or Equipment Hire-to-Buy, the Customer must pay any invoice issued by the Supplier immediately upon receipt and in any event prior to collection of any Equipment (or dispatch of the Equipment from the Supplier's premises, if the Supplier has agreed to deliver the Equipment). Any requested credit amount, terms or limit in any Account Application will not be binding on the Supplier unless the Supplier expressly approve any credit terms in writing and any such approval remains subject to the Supplier's right to cancel such credit terms in accordance with this Agreement.
- (b) If the Customer is hiring the Equipment under a Equipment Hire-to-Buy, then the Customer must pay the Hire Charge monthly in advance based on the minimum Hire Charge that would fall due in respect of the relevant month. Following the end of each month, the Customer will report the actual utilisation of the Equipment for the month and the Supplier will invoice the Customer for any additional Hire Charges payable in respect of that month.
- (c) The Supplier may agree to provide the Customer with credit terms in respect of any particular Equipment Sale, Equipment Purchase or Equipment Hire-to-Buy (or on an ongoing basis until revoked) on such conditions imposed by the Supplier from time to time (which will include the requirement for the Customer to pass credit checks and be accepted by the Supplier's relevant insurers).
- (d) If credit terms are offered, then payment is to be made strictly in accordance with those credit terms and in any event on or before the last Business Day of the calendar month following the calendar month to which the invoice relates.
- (e) The Supplier may revoke any credit terms by notice in writing to the Customer if the Customer fails to make payment of overdue amounts for a continuous period of 5 Business Days or the Customer otherwise breaches this Agreement.
- (f) If the credit terms offered by the Supplier are revoked and any further Proposals are accepted by the Supplier, then any monies payable to the Supplier in connection with any such Proposal (including the Purchase Price or the Hire Charges (as the case may be)) must be paid for prior to collection or dispatch from the Supplier's premises.

### 3.3 Delivery of Equipment

The Supplier may, in the Supplier's absolute discretion, agree to deliver the Equipment to the Customer. If the Supplier has agreed to deliver the Equipment, then unless otherwise stated in the accepted Proposal:

- (a) the delivery terms will be notified to the Customer prior to dispatch of the Equipment;
- (b) the Customer must arrange for all approvals or clearances required, as well as the safe unloading of the Equipment at the delivery location at the time the Equipment is delivered; and
- (c) if the prices in the Proposal do not specifically include the Supplier's costs in connection with delivery or where the Customer requests the Supplier or the Supplier's delivery provider to unload or place the Equipment at a location other than on the street at the delivery location, then the Customer will incur Additional Costs in respect of the delivery which will include the costs incurred by the Supplier (including the costs of any delivery provider) plus a mark-up of 12%.

The Supplier's delivery drivers do not accept instructions for collection of the Equipment and all arrangements for collection must be made with the Supplier's representative noted in the Proposal.

### 3.4 Collection of Equipment

- (a) If the Supplier has not agreed to deliver the Equipment to the Customer, then the Supplier will notify the Customer of the date that the Equipment will be available for collection as well as the collection address, and the Customer must (at the Customer's cost and risk) arrange for the collection, loading and transport of the Equipment from that premises (during normal business hours) on the date so notified.
- (b) Unless the Proposal expressly states otherwise, the Equipment will be at the Customer's risk from the time the Equipment commences loading at the Supplier's premises (or such other location where the Equipment first commences dispatch to the Customer, if the Supplier's premises) and will remain with the Customer until such time as the Equipment is unloaded at the Supplier's premises. For the avoidance of doubt, the Supplier will not be liable for any damage to the Equipment during loading or in transit whether the Customer or the Supplier is collecting the Equipment (whether personally or by engaging a third party).
- (c) If the Customer does not collect any Equipment the subject of an Equipment Sale from the Supplier's premises by the collection date notified to the Customer, then risk in the Equipment passes to the Customer from that date and the Supplier may store the Equipment and charge the Customer storage costs and expenses as Additional Costs. If the Equipment is not collected within 30 days of the collection date notified to the Customer, then the Supplier may dispose of the Equipment and recover any losses, costs, expenses or other monies incurred by the Supplier in connection with the storage or disposal of the Equipment (including any decrease in the price the Supplier obtain if the Supplier subsequently sell the Equipment for a lower price).
- (d) If the Customer does not collect any Equipment the subject of an Equipment Hire or Hire-to-Buy from the Supplier's premises by the collection date notified to the Customer, then the Supplier may charge the Customer storage costs and expenses from the collection date notified to the Customer as Additional Costs.

### 3.5 Acceptance of Equipment

The Customer agrees to promptly inspect the Equipment upon receipt for any defects, faults or other non-compliance with the Agreement. If the Customer fails to notify the Supplier in writing of any defects, faults or other non-compliance with the Agreement within 48 hours from date of delivery or collection in respect of any Equipment Sale, then the Customer is deemed to have accepted the Equipment and that the Equipment is fully compliant with the Agreement. Nothing in this clause affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

### 3.6 Risk and title

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- (a) The Customer accepts full responsibility for the safe-keeping of the Equipment and all risk in the Equipment will remain with from the time immediately prior to the commencement of loading the Equipment at the Supplier's premises (if the Customer is collecting the Equipment) or from the time of dispatch of the Equipment from the Supplier's premises (if the Customer is not collecting the Equipment) until the Equipment is returned to the Supplier in good working order. This applies despite any insurance policies effected over the Equipment and despite any Damage Waiver applicable to the relevant Equipment Hire.
- (b) Property and title in any Equipment the subject of an Equipment Sale does not pass to the Customer until all money owing the Supplier on any account is paid in full without any set off or counterclaim. For the avoidance of doubt, property and title in any Equipment that is not the subject of an Equipment Sale will never pass to the Customer.
- (c) If the Customer fails to pay any amounts due to the Supplier, then the Supplier, the Supplier's agents and their respective employees and contractors have the right and are granted an irrevocable licence to, at any time and without notice, enter the Customer's premises (or any other location) to exercise the Supplier's rights under the Agreement, including the right to repossess any item of Equipment.
- (d) The Customer must ensure that if any Equipment is damaged or destroyed prior to title in the Equipment passing to the Customer (if at all), then the proceeds of any insurance policy are paid directly to the Supplier.

### EQUIPMENT SALE T&Cs

#### **4. TERMS APPLICABLE TO EQUIPMENT SALE**

4.1 This clause 4 (in addition to any other Equipment Sale T&Cs) will apply in respect of any sale of the Equipment to the Customer, whether by Equipment Sale or Equipment Hire-to-Buy. For the avoidance of doubt, this clause 4 does not apply to Equipment that is only the subject of Equipment Hire and is not being purchased from the Supplier pursuant to an Equipment Sale or Equipment Hire-to-Buy.

#### **4.2 Ordering**

- (a) The Customer may order Equipment from the Supplier for purchase by returning a signed Equipment Sale Proposal that identifies the relevant Equipment to be purchased, the agreed Purchase Price and any other terms acceptable to the Supplier that relate to the sale of the Equipment. Any Proposal the Supplier provides must be accepted within the period specified in the Proposal.
- (b) No order to purchase Equipment will be binding on the Supplier unless and until the Supplier countersigns the Proposal confirming the Supplier's acceptance. Once the Supplier has countersigned a Proposal confirming the Supplier's acceptance, a contract is formed for the sale of the Equipment to the Customer for the Purchase Price in accordance with this Agreement.
- (c) Any Proposal that has been accepted by the Customer cannot be withdrawn without the Supplier's prior written consent. The Supplier may cancel any agreement to sell the Equipment if the Equipment is no longer available for sale, if there is any failure on the part of its suppliers to promptly supply the Supplier with the relevant Equipment or if the Customer breaches this Agreement.
- (d) Once the Supplier accepts a Proposal, the Supplier will advise the Customer of the proposed date that the Equipment will be ready for collection (or delivery, if agreed by the Supplier in writing as per the Proposal). To the extent the law permits, any indication in of the time frame for the supply of the Equipment is an estimate only and the Supplier will not be liable to the Customer for any cost, liability, loss or expense suffered if the time frame is not met.
- (e) This clause 4.2 does not apply to an Equipment Hire.

#### **4.3 Purchase Price of Equipment**

- (a) Subject to paragraph (b), the Purchase Price for the Equipment will be the price stated in the final and accepted Proposal plus any Additional Costs.
- (b) Where the Equipment is being acquired pursuant to an Equipment Hire-to-Buy, then the Rental Rebate will applied against the Purchase Price such that the net amount will be payable by the Customer for the purchase of the relevant item of Equipment.
- (c) The Supplier may issue an invoice (including a pro forma invoice) to the Customer at any time in respect of an Equipment Sale (including at the time of accepting a Proposal or after the Equipment has been supplied).
- (d) The amount payable by the Customer for the Equipment the subject of the Equipment Sale will be the amount set out in the invoice. This will be calculated as the Purchase Price for the Equipment as set out in the accepted Proposal (as varied in accordance with these Terms and Conditions) and any Additional Costs. This paragraph does not release the Customer from any other obligations to pay as provided for in the Agreement.

### EQUIPMENT HIRE-TO-BUY T&Cs

#### **5. TERMS APPLICABLE TO EQUIPMENT HIRE-TO-BUY**

5.1 This clause 5 (in addition to any other Equipment Hire-to-Buy T&Cs) will apply in respect of any Equipment Hire-to-Buy. For the avoidance of doubt, this clause 5 does not apply to Equipment that is only the subject of Equipment Hire and is not being purchased from the Supplier pursuant to an Equipment Hire-to-Buy nor does it apply to an Equipment that is only subject to an Equipment Sale that does not arise from an Equipment Hire-to-Buy.

#### **5.2 Application of Equipment Hire T&Cs and Equipment Sale T&Cs**

The Equipment Hire T&Cs apply in respect of each item of Equipment that is subject to the Equipment Hire-to-Buy, save for the following amendments that will apply despite any provision in this Agreement (or any indication in the Proposal) to the contrary:

- (a) clauses 9.1 and 9.2 are amended such that all obligations in respect of servicing, maintenance and repair of the Equipment (including any Key Responsibilities, as defined in clause 9.1) are the responsibility of the Customer alone, and the Customer must duly and punctually comply with all such obligations at its own cost despite anything in this Agreement to the contrary;

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(b) the Customer will be responsible for all Minor Repairs and Major Repairs in respect of the Equipment at its own cost and the Customer must undertake all such Minor Repairs and Major Repairs promptly to the standard required by this Agreement; and

(c) any obligation imposed on the Supplier pursuant to clause 11 ceases immediately upon the exercise of the Option by the Customer.

### 5.3 Exercise of Option

(a) The Customer may only exercise the Option:

- (i) in respect of an item of Equipment that is subject to an Equipment Hire-to-Buy;
- (ii) if the Customer is not in default of this Agreement at the time of exercise of the Option and the proposed purchase date, and provided the Hire Period remains current for the Equipment;
- (iii) on the condition that the purchase date of the relevant Equipment is the last day of the calendar month in which the Option is exercised or such other date accepted by the Supplier in writing (**Purchase Date**), and the Customer has paid all Hire Charges other monies payable to the Supplier in connection with this Agreement up to (and including) the Purchase Date; and
- (iv) by giving written notice to the Supplier not less than 7 days prior to the proposed Purchase Date and specify in such notice the proposed Purchase Date, the Equipment over which the Option is exercised, the Customer's calculation of the purchase price of the Equipment (factoring in any Rental Rebate) and any other information reasonably requested by the Supplier.

(b) Following the Supplier's receipt of a valid notice exercising the Option, the Supplier will notify the Customer whether or not any of the information provided in the notice of exercise is correct and will confirm the purchase price and Purchase Date of the Equipment. No notice given by the Supplier pursuant to this clause will release the Customer from any obligations it owes to the Supplier pursuant to this Agreement.

(c) Provided the Option has been validly exercised and the Customer has paid all monies owing to the Supplier as at the Purchase Date (including the purchase price of the Equipment), the Supplier will sell the Equipment to the Customer on the Purchase Date on an 'as is, where is' basis, subject to all defects, with no obligation to arrange delivery of the Equipment and otherwise subject to the limitations of liability contained in this Agreement.

## EQUIPMENT HIRE T&Cs

### 6. AGREEMENT TO HIRE EQUIPMENT

6.1 By entering into this Agreement and in consideration of the Customer's due and punctual compliance with this Agreement (including the prompt payment of the Hire Charge and any other monies owing to the Supplier), the Supplier agrees to hire each item of Equipment to the Customer for the Hire Period in accordance with this Agreement.

6.2 The Customer acknowledges and agrees that in respect of each item of Equipment:

- (a) the Customer is a mere bailee of the Equipment and nothing in this Agreement passes title in the Equipment to the Customer;
- (b) any replacement parts, accessories or Attachments to the Equipment are the Supplier's property, unless specified otherwise in writing by the Supplier;
- (c) despite paragraph (b) any parts, accessories or Attachments to the Equipment become the Supplier's property if they are not removed at the end of the Hire Period; and
- (d) the Equipment must only be located at the Site at all times during the Hire Period.

6.3 The Customer must not do anything or permit anything to be done to adversely affect the Supplier's interest as owner or lessee of the Equipment.

### 7. HIRE PERIOD

7.1 The Hire Period may be extended by agreement between the parties in writing or by operation of these Terms and Conditions. The Customer must comply with the Customer obligations under this Agreement (including paying the Hire Charge and insuring the Equipment) for any extended period provided for in this Agreement.

7.2 Despite anything in these Terms and Conditions to the contrary and unless the final Proposal states otherwise, the Customer must arrange for the return of the Equipment to the Supplier (or for the Equipment to be collected by the Supplier, if the Supplier is obliged to collect the Equipment in accordance with this Agreement) prior to the Expected End Date, despite any automatic extension of the Hire Period by operation of these Terms and Conditions. For the avoiding of doubt, any extension of the Hire Period or any obligation on the Customer to pay the Hire Charges beyond the Expected End Date does not entitle the Customer to continue to have possession of the Equipment under any Equipment Hire.

7.3 Unless the Supplier expressly agree in writing to the contrary, the Customer will be responsible for collecting the Equipment at the commencement of the Hire Period and returning the Equipment to the Supplier prior to the end of the Hire Period.

7.4 If the Supplier agrees in writing, the Supplier may organise for freight of the Equipment but all costs incurred by the Supplier must be paid for by the Customer in addition to an administration fee of 12% (unless a specific sum is stated as the mobilisation charge in the Proposal for the relevant item of Equipment, in which case that sum is payable by the Customer).

7.5 The Hire Period will cease at different times depending on whether the Supplier has agreed to collect the Equipment from the Customer in accordance with this Agreement.

7.6 If the Customer is responsible for returning the Equipment to the Supplier at the end of the Hire Period, the Customer must do so before the end of the Hire Period and the Hire Period will cease on the later of the date that the Customer return the Equipment to the Supplier's premises (or such other location specified for the return of the Equipment in the Proposal) or the on the last date of the Hire Period specified in the Proposal. In either

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case, in each case the Customer is responsible for complying with this Agreement and payment of the Hire Charge for both the Hire Period and any additional period until the Equipment is returned to the Supplier premises.

7.7 If the Supplier is responsible for collecting the Equipment from the Site at the end of the Hire Period, the Hire Period will cease once the Customer has notified the Supplier that the Equipment is available for collection AND the Supplier has provided the Customer with an Off Hire number (as described below) as verification that such notification has been received (**Off Hire number**).

7.8 In relation to the Supplier's collection of the Equipment (if applicable):

- (a) an Off Hire number must be obtained by telephone or in person and the Customer warrants that when requesting an Off Hire number that the Equipment is ready for collection by the Supplier. If the Equipment is not ready for collection when the Off Hire number is obtained, then the Customer will be responsible for any costs associated with the Supplier trying to arrange collection of the Equipment;
- (b) the Supplier may, in the Supplier's absolute discretion, refuse to grant the Customer an Off Hire number if it is requested prior to the end of the Hire Period specified in the Proposal;
- (c) obtaining an Off Hire number does not relieve the Customer of responsibility or liability for the security and safe keeping of the Equipment until the Equipment is collected by the Supplier; and
- (d) despite the Supplier collecting the Equipment, the Supplier does not warrant or represent that the Equipment is in good working order or that any of the Customer obligations under this Agreement have ceased. All returns of Equipment are subject to the completion of a Condition Report and payment of any outstanding amounts by the Customer.

7.9 Despite any provision in this Agreement to the contrary, the Hire Period will be varied as follows:

- (a) the minimum Hire Period is one week;
- (b) if the Customer is responsible for returning the Equipment and the Customer fails to return the Equipment to the Supplier's premises until after 10:00am at the end of the Hire Period, the Hire Period shall be deemed to be extended for one full day;
- (c) if the Supplier is responsible for collecting the Equipment from the Site and the Customer does not obtain an Off Hire number before 9:00am on the date the Hire Period is to end, the Customer will have to pay the Hire Charge for that day;
- (d) notwithstanding anything in this agreement to the contrary, if the Supplier is unable to gain access to the Equipment upon or after termination due to the Customer's acts or omissions or those of a third party, the Hire Period will continue (without prejudice to the Customer's continuing obligation to allow possession of the Equipment) and the Hire Charge will be payable by the Customer until the Supplier is able to regain possession of the Equipment;
- (e) The Hire Period will include any time (up to a maximum of 30 weeks) that the Equipment is inoperable due to loss or damage caused by the Customer's negligence or the Customer's wrongful acts or omissions. However, if the Equipment is irreparable, the Hire Period will cease when the Supplier receives reimbursement equal to the replacement value of the Equipment;
- (f) For the purposes of paragraphs (b), (c) and (d), if the Hire Charge is measured by a period longer than one day, then the Hire Charge is amended proportionally.

7.10 Despite anything else in this Agreement and unless the 'Hire Period' specified in the Proposal expressly states that the Hire Period it is for more than 24 months:

- (a) the term during which the Customer possess any Equipment (including any extensions or renewals) must not continue beyond the period of 24 months from the time the Customer (or anyone on the Customer's behalf) first took possession of the relevant Equipment;
- (b) the Customer must return the Equipment to the Supplier before the end of the period in paragraph (a); and
- (c) if the Equipment is not returned before the end of that period, then this Agreement (including the obligation to continue to pay the Hire Charge) will continue to apply on the basis that the hiring of Equipment has converted to a weekly rental, but nothing in this paragraph shall be taken to provide that the term of any hire will exceed beyond the period referred to in paragraph (a) above.

7.11 Despite anything else in this Agreement, the Hire Period for any Equipment Hire-to-Buy is limited to 6 months and the Customer must return the Equipment to the Supplier prior to, or exercise the Option to coincide with, the end of such period.

## 8. HIRE CHARGE

8.1 The Customer must pay the Hire Charge for the whole of the Hire Period and any additional periods specified in this Agreement. For the avoidance of doubt, the Hire Charge continues to be payable by the Customer where the Equipment is not utilised due to wet weather or any other circumstances.

8.2 The Unit Rate quoted in the Proposal does not include amounts that may be charged for delivery or collection of the Equipment or the costs of any Attachments (unless the Proposal expressly states otherwise) or any Additional Costs.

8.3 The Hire Charge for each item of Equipment for any period to which an invoice relates (**'Invoicing Period'**) will be calculated by multiplying the Unit Rate by the Utilisation for the Invoicing Period. In addition to such amounts:

- (a) if the Proposal provides for an hourly rate as the Unit Rate, then the equipment will be deemed to be used for any minimum period specified in the Proposal and if no such period is specified then eight hours per day for each day of the week (including weekends) during the Hire Period; and
- (b) if the Proposal provides for the Equipment to be hired based on basis other than an hourly Utilisation rate and the Equipment has been utilised for:

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- (i) more than eight hours on any given day, then the Customer will be liable to pay the Supplier an additional Hire Charges equal to the Unit Rate (calculated on an hourly basis, assuming eight hours per day) multiplied by each hour (or part thereof) that the Equipment is utilised in excess of eight hours on any given day; or
- (ii) more than five days in any given week, then the Customer will be liable to pay the Supplier an additional Hire Charge equal to the Unit Rate (calculated on a daily basis, assuming five days per week) multiplied by each day (or part thereof) that the Equipment is used in excess of five days in any given week.

8.4 The Supplier will issue invoices to the Customer after the completion of the Hire Period and at least monthly during the Hire Period and the Customer must pay all amounts contained on any invoice within the timeframes provided for in this Agreement.

8.5 For the purpose of calculating the actual hours of operation of the Equipment during an Invoicing Period, the SMU meter reading for the Equipment will be used, of if no SMU meter reading is available (including where the SMU meter becomes defective to any extent), the actual hours of operation will be determined in a manner approved by the Supplier in writing or will otherwise be approximated by the Supplier.

8.6 The Customer must notify the Supplier of the SMU meter readings for each item of Equipment within three Business Days of the end of each month or the proposed Invoicing Period (if the Invoicing Period is not the end of a month). If the readings are not provided, then the Supplier may estimate the hours of operation of the Equipment in such manner as the Supplier reasonably determines, and such estimate will be used for the purpose of determining the Utilisation and calculating the Hire Charge.

8.7 The Customer is responsible for ensuring that any equipment in the Equipment which is used to measure the amount of use (including any SMU meter) is functioning and operating correctly and the Customer must not tamper with the such items in any way. If there is a fault in any such items, the Customer must notify the Supplier immediately and the Customer must keep manual logs recording the hours of operation of the affected Equipment and provide copies of those logs to the Supplier on request.

8.8 If the Customer notifies the Supplier immediately of any Equipment Failure and obtain a 'Stand Down number', then from that time the Hire Charge will not be applied during the time in which the Equipment is unable to be used due to the Equipment Failure. Where the Equipment Failure is the result of the acts or omissions of parties other than the Supplier, then Hire Charges will be incurred and payable at the normal rate. Despite any Equipment Failure the Customer is still required to take all reasonable steps to safeguard the Equipment.

8.9 If the Customer is unable to utilise the Equipment due to wet weather, the Supplier may, in the Supplier's absolute discretion, reduce the Hire Charge to the sum notified to the Customer in writing on the condition that the Supplier provide the Customer with a 'Stand Down number' by 9:00am for each and every day that the Customer is unable to utilise the Equipment due to such circumstances. This clause does not apply to Equipment that is hired on weekly or monthly basis.

8.10 If the Equipment is being provided on a daily basis the Customer acknowledges that when requesting a Stand Down number, the Supplier may terminate this Agreement, or part of this Agreement in relation to the Equipment that is not being used, and demand the return of the Equipment to the Supplier's premises (if it has already been collected by or delivered to the Customer) at the Customer's expense.

## 9. MAINTENANCE, REPAIR & OTHER KEY RESPONSIBILITIES

9.1 Subject to the provisions in clause 9.2, the obligations with respect to the servicing, maintenance and repair of the Equipment will be as specified in the sections in the Proposal headed 'Key Responsibilities'. The Key Responsibilities of a party may be determined by reference to a table in the Proposal that indicates that the party is responsible for the relevant 'Key Responsibility' (a party's **Key Responsibility**). If the Proposal does not specify that the Supplier is responsible for any matter the subject of a Key Responsibility, the Customer will be responsible for complying with that matter at its Cost. For the avoidance of doubt, the fact that a Key Responsibility in the Proposal is less prescriptive than an obligation imposed on a party under these Terms and Conditions does not relieve that party from complying with the Key Responsibility stated in the Proposal in addition to the party's corresponding obligation in these Terms and Conditions, and the Key Responsibilities and the obligations in these Terms and Conditions are intended to be complementary.

9.2 Each party must comply with its Key Responsibilities in order to keep the Equipment in good order and repair, Fair Wear and Tear (other than Defined Wear Items) excepted, and must provide all spare parts, service kits and labour (at their own cost) that are necessary to comply with their respective Key Responsibilities in a manner as recommended by the Equipment's manufacturer and the Supplier. Despite the foregoing, the Customer acknowledges that the Supplier is not liable for failing to comply with any of the Supplier's Key Responsibilities where the Supplier relies on the Customer notifying the Supplier of any issues with the Equipment and such notification is not provided promptly.

9.3 Notwithstanding clause 9.2 the Customer will be responsible for maintaining at all times adequate precautions to safeguard the Equipment from the loss, theft or damage to the Equipment and all associated greasing, oiling and lubrication of the Equipment, all fuel required for its operation, cleaning of the Equipment (as well as the disposal of such waste fluids and other consumables) and conducting general maintenance such as the tightening of nuts and bolts and any other general requirement that are necessary to service the Equipment and ensure that it is maintained in good working order as recommended by the manufacturer and the Supplier from time to time. The Customer must also clean the Equipment thoroughly on completion of the Hire Period and prior to the Supplier performing any servicing on the Equipment or conducting any of the Supplier's Key Responsibilities and pay any fees for labour associated with the Customer's failure to do any of the foregoing.

9.4 If the Equipment suffers Equipment Failure the Customer must immediately stop using the Equipment and must take all necessary steps to prevent injuries to any person or damage to any property (including the Equipment) as a result of such Equipment Failure. The Customer must not repair, or attempt to repair, any Equipment suffering Equipment Failure without the Supplier's prior written consent. Such consent will not release the Customer from any liability in relation to any maintenance or repair work conducted by the Customer.

9.5 Unless the Proposal expressly states otherwise, the Customer will be responsible for conducting:

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- (a) Minor Repairs to the Equipment and all daily and routine maintenance and service activities specified by the Supplier or the manufacturer of the Equipment or otherwise necessary to ensure the Equipment remains serviceable and in proper working order; and
- (b) all repair, maintenance and servicing or replacement of parts (including as a result of damage to the Equipment) which is not specifically designated as the Supplier's responsibility under the Proposal; and
- (c) any other service, maintenance, repair or other activity set out as being the Customer's responsibility in the Proposal to ensure the Equipment is maintained in a good state of repair and condition.

The Customer will be responsible for all Costs in connection with these matters and must perform such tasks promptly and in accordance with the Proposal, the Equipment manufacturer's recommendations and any instructions given by the Supplier.

9.6 Without detracting from the Customer's obligations under the preceding clause, any repair, service or maintenance activities undertaken by the Customer must be performed by suitably qualified and experienced persons and within 5% of the specified SMU meter reading intervals. Subsequent repairs or maintenance will not be extended if a service is performed late. By way of explanation, if a 250 hour service is performed at 260 hours, the next service will be due at 500 hours, not 510 hours. None of the Customer's Key Responsibilities may be undertaken by any third party without the Supplier's prior written consent. Such consent will not release the Customer from any liability in relation to any maintenance or repair work conducted by third parties.

9.7 Provided the Customer complies with all of the Customer's obligations under this Agreement (including the obligations in the preceding provisions of this clause 9), the Customer will not be liable for Fair Wear and Tear to the Equipment except in respect of Defined Wear Items and where this Agreement expressly provides to the contrary. For the avoidance of doubt, the Customer will be responsible for wear and tear in circumstances where the Customer misuse the Equipment or fail to properly maintain it.

9.8 Subject to any provisions in these Terms and Conditions to the contrary and unless the Proposal indicates otherwise, the Supplier agrees to conduct any other activity set out as being the Supplier's responsibility in the Proposal at the Supplier's expense. The Customer must use the Customer's best endeavours to comply with any reasonable request of the Supplier to supply workshop facilities and labour at the Site to allow the Supplier to comply with this clause. The Supplier will not be responsible for modifications and attachments to the Equipment that are specific to a particular mine site unless the Supplier has expressly agreed to do so in writing.

9.9 The Supplier will not be required to comply with its obligations in the preceding clause nor will the Supplier be responsible for conducting Major Repairs (despite any indication in the Proposal to the contrary), and the Customer will be responsible for all Costs of the Supplier obligations therein, where the Major Repairs or any other activity of the Supplier is beyond Fair Wear and Tear or is caused by an accident or breakdown involving the Equipment or the occurrence of a defect in or malfunction of the Equipment and the accident, breakdown, defect or malfunction is the result of the negligent or deliberate misuse or care of the Equipment by anyone other than the Supplier or as a result of the Customer failing to comply with the Customer's obligations in this Agreement or as a result of the Customer not promptly notify the Supplier of any potential defects in the Equipment or the expected need to conduct Major Repairs.

9.10 On request the Customer must provide all information pertaining to the condition and use of the Equipment that has been developed by or is in the Customer possession, including oil sampling information, track and/or other condition monitoring inspections and reports, daily checklists and downtime logs and other information the Supplier request from time to time. The Customer waives any right the Customer may have to keep such information or documentation from the Supplier.

9.11 Unless the Proposal expressly states otherwise, the Customer will be responsible for traffic control, management and pedestrian control, management (including but not limited to barriers, bunting, traffic controllers) as required, during transport and use of the Equipment. The Customer will also be responsible for installation access, service, utility location, identification, erection, assembly, and earthworks foundation for concrete base as required, during transport and use of the Equipment.

### 10. CONDITION REPORT

10.1 At the time of supplying the Equipment, at the end of the Hire Period and at such other times agreed or stated in the Proposal, the Supplier may provide a Condition Report to the Customer.

10.2 The Condition Reports will be used for the basis of calculating any back charges that are to be paid by the Customer that represent the degradation of the Equipment and/or the Defined Wear Items. The Supplier may also request that the Customer prepares a Condition Report in such form and within such timeframe as the Supplier may prescribe.

10.3 If any Condition Report is not disputed by the Customer within 48 hours of receipt, it will be conclusive evidence of the matters that it contains. The Customer must obtain the consent of all parties necessary to allow access to the Equipment for the purposes of making a Condition Report.

10.4 In calculating the amount to charge the Customer for any alteration in the condition of the Equipment during the Hire Period, the Supplier will:

- (a) have reference to any Condition Report made under the preceding clauses; and
- (b) in the absence of a Condition Report under the preceding clauses, fairly determine the alteration in the condition of the Equipment. Such determination will be final and beyond challenge by the Customer, to the extent the law permits.

10.5 The Customer will rectify any defects outlined in a Condition Report made during the Hire Period or around the time of the end of the Hire Period (within such reasonable time as the Supplier may specify in writing, or in default of any time being specified then 7 days) or the Supplier will invoice the expected cost of rectifying any defects shown in the interim Condition Report to the Customer plus a mark-up of 12%.

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10.6 If the rectification costs that are actually incurred by the Supplier at the conclusion of the Hire Period differ from the amounts invoiced under the preceding clause and paid by the Customer, the Customer shall pay the Supplier on demand any deficiency and the Supplier shall reimburse the Customer for any excess as the case may be.

10.7 If any Condition Report is disputed by the Customer and the parties cannot reach an agreement, then an independent party, nominated by the Supplier, will be appointed to complete a Condition Report, which will be conclusive evidence of the matters that it contains.

### 11. INSURANCE

11.1 This clause applies in relation to insurance that the Supplier may take out over the Equipment (whether in accordance with the Proposal or otherwise and despite any Damage Waiver being offered):

- (a) the Supplier's insurance cover will only extend to material damage to the Equipment during the Hire Period. For the avoidance of doubt, anything that would not be considered a Major Repair is not material damage;
- (b) any insurance the Supplier effect and maintain over the Equipment will only cover the Equipment while it is operated by the Customer and remains in the Customer's possession;
- (c) the Supplier's insurance does not cover other liabilities to which the Customer is required to effect insurance, including but not limited to personal injury, third party liability or workers compensation insurance. The Customer must maintain appropriate insurances in respect of these types of loss for the whole of the Hire Period in accordance with this Agreement;
- (d) the Supplier's insurance will not cover loss or damage to the Equipment in situations where the Customer has breached this Agreement and in the event that it does cover such loss or damage to the Equipment, the Supplier will not be obliged to claim under such insurance if the Customer has breached this Agreement;
- (e) the Customer will be responsible for all insurance charges detailed in the Proposal plus any excess payable in accordance with this Agreement in the event that a claim is made on the policy;
- (f) the Customer must pay the following excess for each and every claim per item of Equipment per incident, that the Supplier or the Customer make on the Supplier's insurance policy:
  - (i) if the Equipment is only damaged, either 10% of the costs of the repairs in respect of the Equipment, any excess payable by the Supplier under its insurance policy or \$1,000.00, whichever is the greater; or
  - (ii) if the Equipment is lost, stolen or written off, 12% of the new replacement cost of the Equipment;
- (g) despite paragraph (f) above, if the Equipment Hire is in relation to a motor vehicle then:
  - (i) the excess payable by the Customer in the event that the Supplier's claim under the Supplier's insurance policy will be the greater of the sum stated in paragraph (f) and \$1,000; and
  - (ii) the Customer must pay an additional 12% surcharge on all Hire Charge payable under this Agreement; and
- (h) if the Supplier agrees to effect and maintain insurance over the Equipment pursuant to this clause then the Supplier may, in the Supplier's absolute discretion, require the Customer to pay for the Damage Waiver in accordance with clause 11.2.

11.2 The Supplier offers a Damage Waiver which provides the Customer with limited protection against certain types of damage in relation to the Equipment, except for motor vehicles, on the following terms:

- (a) the Damage Waiver only applies in relation to the costs of repairs or replacement of the Equipment due to damage caused by third parties, fire, storm, collision, accident, theft or burglary, unless such types of damage is specifically excluded pursuant to this clause, this Agreement or any exclusions under any insurance policy the Supplier has effected over the Equipment;
- (b) the Customer must maintain adequate precautions to safeguard the Equipment from the loss, theft or damage to the Equipment that may be covered by the Damage Waiver;
- (c) the Supplier providing a Damage Waiver in no way entitles the Customer to, or implies the availability of, compensation from the Supplier for any liability incurred by the Customer in relation to the use of the Equipment, or for any work being undertaken by the Customer with the Equipment;
- (d) this clause and the Damage Waiver will not continue to operate after the expiration of the Hire Period unless the Supplier grants an extension in writing and any additional fees or costs as notified to the Customer are paid;
- (e) the applicable fee for every event causing damage and each time the Customer wishes to rely on the Damage Waiver is:
  - (i) if the Equipment is damaged, either 12% of the costs of the repairs to the Equipment or \$5,000.00, whichever is the greater; or
  - (ii) if the Equipment is lost, stolen or written off, 12% of the new replacement cost of the Equipment;
- (f) the Damage Waiver does not apply to any loss or damage to the Equipment that arises in connection with any of the following:
  - (i) misuse, abuse, wilful or malicious acts, negligent or reckless use, or overloading of the Equipment or any components thereof;
  - (ii) wrongful conversion of the Equipment or any components thereof;
  - (iii) loss or damage that arising in relation to any contravention of the terms of this Agreement;
  - (iv) breach of any statutory laws or regulations in connection with the use of the Equipment by parties other than the Supplier;

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- (v) theft, loss or damage by whatever cause to tools and/or accessories supplied with the Equipment, including but not limited to, hoses, drills, bits, grease guns, electric leads, tyres and tubes, accessories, welding cable, oxy and acetylene bottles, pneumatic tools, steel and other similar accessories;
- (vi) damage caused to tyres and tubes by blowouts, bruises, cuts or other causes inherent in the use of the Equipment;
- (vii) glass breakage;
- (viii) lack of lubrication or non-adherence to other normal maintenance and servicing requirements that are required of the Customer under this Agreement or could reasonably be expected of the Customer in relation to the Equipment;
- (ix) loss or damage to the Equipment whilst located at or being used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
- (x) loss or damage to motors or other electrical appliances or devices caused by overloading or artificial electrical current, including use of under-rated or excessive length of extension leads on electrical powered tools and machines;
- (xi) damage caused by exposure to any corrosive substance e.g. caustic, cyanide, salt water, acid, etc;
- (xii) theft of the Equipment in circumstances where security is available at the Site including, but not limited to, locked yards, buildings and sheds and where such security is not used by the Customer to secure the Equipment;
- (xiii) loss or damage during transport, except where the Supplier provides for transport of the Equipment;
- (xiv) loss or damage to items on which the Damage Waiver Surcharge is not paid on time;
- (xv) any failure to comply with instructions the Supplier has given to the Customer in respect of the proper use of the Equipment;
- (xvi) any contradiction of the manufacturer's instructions if supplied with the Equipment; and/or
- (xvii) unexplained disappearances of the Equipment.

11.3 The Supplier's agreement to waive the Supplier's rights under the Damage Waiver is conditional upon:

- (a) the Customer immediately notifying the Supplier of any damage to the Equipment;
- (b) the Customer promptly providing the Supplier with a police report where such damage to the Equipment results from being stolen or maliciously damaged by third parties;
- (c) the Customer complying with any of the Supplier's requests in relation to the Damage Waiver, including providing written details of the incident giving rise to the damage or loss and any photographic evidence the Supplier requires;
- (d) the loss, theft or damage not falling into one or more of the circumstances provided for under clause 11.2(f);
- (e) the Customer having elected to pay for the Damage Waiver at the commencement of the Hire Period and paying the Damage Waiver Surcharge on time throughout the Hire Period;
- (f) the Customer paying the Supplier the applicable fee outlined in paragraph 11.2(e); and
- (g) the Customer not being in breach of this Agreement.

11.4 Provided the Customer has satisfied all of the conditions in clause 11.3, the Supplier will waive the Supplier's rights to invoice the Customer for the costs of repairing or replacing the Equipment as a result of the damage or loss that is expressly waived in accordance with clause 11.2.

11.5 The Customer will be obliged to pay the Damage Waiver Surcharge from the commencement of the Hire Period and until such time as the Customer has provided evidence to the satisfaction of the Supplier that the Customer has taken out insurance over the Equipment in accordance with these Terms and Conditions and any other requirements in the Agreement (including those stated in clause 17.1(c)), and the Damage Waiver Surcharge will be payable as an Additional Cost.

## GENERAL T&Cs

### 12. WARRANTIES

12.1 The Customer and any Guarantor warrant, represent and acknowledge that the following at all times during the operation of this Agreement:

- (a) the Customer has the right to enter into and perform the Customer's obligations under this Agreement and that this Agreement does not breach any other agreement or arrangement to which the Customer is a party;
- (b) the person signing this Agreement and the Customer's representative named in any Account Application or Proposal is properly authorised to bind the Customer to this Agreement and in relation to the Customer actions under this Agreement, and the person signing any constituent parts of this Agreement separately warrants that they are duly authorised to bind the Customer to this Agreement;
- (c) the Customer has all licences, permits and qualifications necessary for performance of this Agreement and to perform the Customer obligations under this Agreement;
- (d) the Supplier has the right to inspect the Equipment while it is in the Customer's possession to ensure that it is being operated, maintained and stored in accordance with this Agreement;

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- (e) to the extent permitted by law, the Customer shall have no right or claim or cause of action against the Supplier on account of any claim asserted or judgment obtained against the Customer by any third party for any alleged breach of any condition or warranty contained in the Agreement or otherwise implied by law;
- (f) all Equipment is being acquired by the Customer, and will be used, solely for use in the Customer's business and the Customer is not acquiring the Equipment for personal, domestic or household use;
- (g) the Customer's particulars and details set out in any Proposal and all other information provided to the Supplier in connection with this Agreement (including in any Account Application) are true, correct and not misleading in any respect (including by way of omission) and are up to date;
- (h) the Customer has (and ensured the Customer officers, employees and agents have) read, understood and agreed to each of the Supplier policies (including the Supplier's privacy policy, credit reporting policy and any terms of use on the Supplier's website) (which, for the avoidance of doubt do not form part of the Agreement) and the terms of the Agreement prior to accepting any Proposal and all required consents, waivers or agreements are in place to ensure continued compliance with the foregoing; and
- (i) if the Customer elects for the Supplier to provide the Damage Waiver then this does not detract from the Customer's obligations under this Agreement;
- (j) if the Supplier decide to waive the Supplier's rights in relation to any damage or loss to the Equipment that is covered by the Damage Waiver, then this does not impact the Supplier's rights to terminate the Agreement for breach of any of its terms;
- (k) where, during the term of this agreement, the Customer rents other plant or equipment from the Supplier for which a separate agreement has not been entered into, then these Terms and Conditions will apply to the hire of that equipment unless the Supplier acknowledges otherwise in writing prior to the commencement of that rental; and
- (l) the Supplier reserves the right to exchange or replace the Equipment with an equivalent item and if for any reason the Equipment is exchanged all terms and conditions of this Agreement will be deemed to apply to the exchanged or replaced item.

### 13. CONDITION OF EQUIPMENT

13.1 The Customer acknowledges that the Equipment may be used (including refurbished) and will not be new (unless the Proposal expressly states otherwise) and that the Supplier may not be the manufacturer of the Equipment.

13.2 On request the Supplier will use reasonable endeavours to transfer any warranties given by third party manufacturers of the Equipment (or any major components of the Equipment) to the extent that such warranties exist and are transferrable. However and to the extent the law permits, the Supplier will not be liable for negotiating with manufacturers on the Customer's behalf and the Supplier will not be liable to provide warranties to the Customer in addition to those provided by any manufacturers (if any) that are transferred under this clause.

13.3 The contents of any third party manufacturer's warranties may be provided upon request. Any such warranties may be subject to their own conditions, which the Customer will familiarise itself with prior to acquiring any Equipment.

13.4 Subject to clause 13.5, any condition or warranty which would otherwise be implied in the Agreement which is capable of being excluded is hereby excluded, and all information, specifications and samples provided by the Supplier in relation to the Equipment are approximations or illustrations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer's use of the Equipment will not entitle the Customer to reject the Equipment, or to make any claim or seek to recover any Costs or other liabilities in respect of them.

13.5 The Australian Consumer Law may give to the Customer certain guarantees. Where such guarantees apply to the supply of the Equipment and liability for breach of any such guarantee can be limited, the Supplier's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of goods, to the replacement or repair of the goods or the costs of resupply or replacement of the goods or with respect to services to the supply of services again or cost of re-supplying the services again.

### 14. INDEMNITY

14.1 To the extent the law permits, the Customer indemnifies the Supplier and the Supplier's employees, contractors, officers and agents against any liability or loss arising from, and any Costs charges and expenses incurred or otherwise arising in connection with any of the following:

- (a) loss of or damage to or caused by the Equipment (including during the Hire Period or such other period that the Equipment may be at the Customer's risk), including any property damage, injury or death caused directly or indirectly by the Equipment and specific consequential losses that the Supplier has made the Customer aware of;
- (b) in respect of any Equipment Hire, arising as a consequence of any damage or degradation to the Equipment that is not Fair Wear and Tear or resulting from the Customer's use of the Equipment, including in adverse site conditions;
- (c) any act or omission of the Customer or the Customer's employees, contractors, officers or agents arising in connection with this Agreement or the Equipment, except to the extent caused by the Supplier's negligence;
- (d) any breach of this Agreement, including a delay in payment of money under this Agreement or any acknowledgement or warranty in this Agreement being incorrect or incomplete; or
- (e) if the Supplier is manufacturing, modifying or otherwise supplying the Equipment in accordance with any specifications, designs, drawings or plans provided by or on behalf of the Customer, any infringement (including any alleged infringement) of any third party's Intellectual Property Rights by the Supplier in connection with the foregoing.

14.2 To extent the law permits, neither the Supplier, its contractors nor any of their respective employees, contractors, officers or agents will be liable for any loss, claim, damage or Costs suffered by the Customer or any third party (including their respective employees, contractors, officers or

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agents) as a result of the breakdown or failure of the Equipment nor will any of them be liable for any indirect, punitive, incidental, special, consequential losses or damages (including damages for loss of use, data or profits).

14.3 Without limiting the preceding clause and to the extent the law permits, neither the Supplier, its contractors nor any of their respective employees, contractors, officers or agents will be liable to the Customer in contract, tort or otherwise for any loss or damage of whatsoever kind howsoever occasioned at any time, except to the extent caused by the Supplier's own negligence or the negligence of the Supplier's servants or agents in relation to the performance of this Agreement or will the Supplier be liable for any consequential loss or damage as a result of the Supplier breaching this Agreement.

14.4 The Customer agrees that no claim or allegation may be made against any officer, employee or agent of the Supplier or its contractors (excluding the Customer) that imposes or attempts to impose on such person any liability or Costs in connection with this Agreement, whether or not arising out of negligence or a wilful act or omission on the part of any of them.

14.5 If the Supplier receives an amount from the Customer under the above indemnity and subsequently receive an amount from the insurer for the same incident, the Supplier shall reimburse the Customer any excess amount (less any money owing by the Customer, whether due for payment or not).

## 15. UNDERTAKINGS

15.1 The Customer undertakes that it will:

- (a) store the Equipment securely at all times to prevent any loss or damage to the Equipment;
- (b) comply with all environmental and workplace health and safety laws and immediately rectify any breach of any such laws caused by the Customer's use of the Equipment or otherwise;
- (c) provide a trained and competent operator, equipment and facilities to load and/or unload the Equipment, unless the Proposal expressly states that this is the Supplier's responsibility;
- (d) comply with all of the 'Special Conditions' set out in the Proposal;
- (e) comply with any requirements for the use, storage or transport of the Equipment set out in the manufacturer's manuals, any document provided with the Equipment or as otherwise notified to the Customer by the Supplier from time to time;
- (f) ensure that all safety information supplied with the Equipment is explained to all those involved in the hire or operation of the Equipment and that all safety signs or the like, as well as any identifying marks or plates that are supplied with the Equipment are not defaced or removed from the Equipment;
- (g) ensure that operators of the Equipment wear suitable clothing and any protective equipment required or recommended by the Manufacturer's safety and operating instructions;
- (h) ensure that the Equipment is only operated by qualified and competent operators employed by the Customer and that the Equipment is used in a skilful and proper manner in accordance with the manufacturer's specifications and only for the purpose and within the capacity for which it was designed, acknowledging that the Supplier can give no warranty as to any capacity of the Equipment and that the Customer is liable for any actions of the Equipment's operator;
- (i) until title in the Equipment passes to the Customer (if applicable), not deal with the title to Equipment, on-hire the Equipment, grant an Encumbrance over the Equipment, claim any lien over the Equipment, dispose of the Equipment, modify the Equipment nor otherwise deal with the Equipment in a manner inconsistent with the Customer's position as bailee of the Equipment and not part in any way with possession of the Equipment, nor remove the Equipment from the Site, unless the Customer obtains the Supplier's written consent;
- (j) if the Equipment is a motor vehicle:
  - (i) that the motor vehicle shall only be driven by a person who is over the age of 21 years and has not been convicted of any offences relating to driving under the influence of alcohol or drugs and such person must have an unrestricted driving licence, which legally entitles that person to drive that particular class of motor vehicle;
  - (ii) promptly pay all fines, penalties and other charges, including but not limited to, duties, tolls, levies or freight, arising out of the use of the motor vehicle and must reimburse the Supplier if the Supplier is required to or have made such a payment;
  - (iii) return all motor vehicles with a full tank of fuel or pay the Supplier costs of filling the tank; and
- (k) at the commencement of the Hire Period provide details of the driver's name and their driver's licence number, which will be used in the event of traffic camera infringement notices received;
- (l) do all that is necessary to allow the Supplier to inspect the Equipment at any time during the Hire Period or to repossess the Equipment on termination of this Agreement, at the expiration of the Hire Period (if the Customer fails to return the Equipment) or as a result of the Customer's breach of this Agreement, or where the Customer has breached any term of this Agreement;
- (m) appoint the Supplier as the Customer's agent and authorise the Supplier to enter on any land or premises owned by or under the control of the Customer where the Equipment is situated and agree to indemnify the Supplier in respect of any claims, damages and expenses arising out of any action against the Supplier arising out of the Supplier utilising the Supplier's rights under this Agreement;
- (n) in respect of any Equipment Hire:
  - (i) do all that is practical to facilitate the delivery or removal of the Equipment, including ensuring that the Equipment is in an appropriate state and position for removal;

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- (ii) return the Equipment to the Supplier in the same condition in which it was provided at the commencement of the Hire Period, Fair Wear and Tear (other than Defined Wear Items) excepted and in compliance with all return conditions set out in the Proposal;
- (o) advise the Supplier of the precise location of the Equipment, and promptly grant access to it.
- 15.2 The Customer indemnify the Supplier for any cost, loss or claim arising from or related to any breach by the Customer of any of the Customer's warranties or undertakings provided in accordance with this Agreement.
- 16. GST**
- 16.1 Unless the context otherwise requires, terms defined in the GST Law have the same meanings given to them in any provisions of this Agreement that deal with GST.
- 16.2 If a party makes a supply to another party under, or in connection with, this Agreement, then (unless the consideration is expressly stated to be inclusive of GST) the consideration for that supply is GST exclusive.
- 16.3 In addition to paying consideration for a supply (unless the consideration is GST exclusive) the person making the payment must:
  - (a) pay to the supplier an amount equal to any GST for which the supplier is liable on that supply, without deduction or set-off of any other amount; and
  - (b) make that payment as and when the consideration must be paid or provided.
- 16.4 The recipient need not pay GST unless the recipient has received a tax invoice (or an adjustment note) for that supply.
- 16.5 If a party provides payment for a claim or a right to claim under or in connection with this Agreement (for example, for a breach of any warranty or for reimbursement of any expense) that gives rise to a liability for GST, the provider must pay, and indemnify the claimant against, the amount of that GST.
- 16.6 If a party has a claim under, or in connection with, this Agreement for a cost on which that party must pay an amount for GST, the claim is for the cost plus all amounts for GST (except any amount for GST for which that party is entitled to an input tax credit).
- 16.7 If a party has a claim under, or in connection with, this agreement, and the calculation of the claim amount depends on actual or estimated revenue or loss of revenue, this must be calculated without GST.
- 16.8 To the extent permitted by law the Supplier shall not be liable (whether before or after the expiration or termination of this Agreement) for any Cost, loss or damage the Customer suffer arising from or caused or contributed to by the Supplier's negligence.
- 17. INSURANCE**
- 17.1 The Customer is required at the Customer's own cost, to effect and maintain for the whole of the Hire Period, any additional period that the Equipment remains in the Customer's possession and (in respect of any Equipment Sale) for such period until title in the Equipment passes to the Customer, each of the following insurances, in relation to risks or occurrences arising, or which may arise, out of the performance of this Agreement or the Customer's use of the Equipment:
  - (a) workers' compensation and employers' liability insurances covering all liabilities, whether arising under statute, common law or civil law, in relation to the death of, or injury to, any of the Supplier's employees or any person deemed to be the Supplier's employee;
  - (b) insurance covering all liabilities in respect of any injury to, or death of, any person not being a person who at the time of the occurrence is engaged in or upon the service of the Customer under a contract of service or apprenticeship, or any loss, damage or destruction to property not belonging to the Customer. Such insurance must provide cover to an amount of not less than A\$20,000,000 for each and every claim, unless a greater amount is specified in the Proposal; and
  - (c) in respect of any Equipment Hire and unless the Proposal expressly states that the Customer is not responsible for insuring the Equipment, insurance covering all loss and damage to the Equipment and such insurance policy must:
    - (i) be for not less than the Agreed Value of the Equipment;
    - (ii) note the Supplier's interest (and the interest of any financier that the Supplier has disclosed) as the owner of the Equipment and loss payee in the event of damage to the Equipment;
    - (iii) cover the respective liabilities of the Supplier and the Customer for personal injury, property damage (including to the Equipment), all losses arising from the use of the Equipment;
    - (iv) apply similarly to any replacement Equipment; and
    - (v) be approved by the Supplier prior to the commencement of the Hire Period and not be changed or cancelled without the Supplier prior written consent.
- 17.2 The Customer must also:
  - (a) give a copy of all insurance policies required to be maintained by the Customer in connection with this Agreement as well as certificates of currency in respect of same to the Supplier prior to the Hire Period. Regardless of what appears in the Proposal, the Supplier may demand a certificate of insurance from the Customer at any time;
  - (b) keep the policies fully paid, and ensure that nothing is done, or not done, to allow the insurance to lapse, be cancelled or to prevent the insurer from paying a claim;

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- (c) direct the insurer to make all insurance payments for insurance claims held in relation to the Equipment directly to the Supplier, unless and until title in the Equipment passes to the Customer pursuant to an Equipment Sale (if applicable);
- (d) if the Customer receives payment from an insurer in breach of paragraph (c) above, it must hold any money paid under an Insurance claim on trust for the Supplier
- (e) replace or restore an item of Equipment to its original condition and indemnify the Supplier for the costs incurred in restoring an item of Equipment to its original condition, in the event that the Equipment is lost, stolen or damaged, and an insurance claim fails or does not adequately cover the cost of repair or replacement;
- (f) immediately notify the Supplier if an insurance payment arising out of insurance over the Equipment is received or expected to be received;
- (g) authorise the Supplier to litigate or settle any claim under the insurance policy at the Supplier's discretion, and must not litigate or settle any claim itself without the Supplier's consent;
- (h) be responsible for the payment of any excess or deductible relating to the insurances effected by the Customer, including where the Supplier makes a claim under such policy, to the extent that the Supplier determines that the Customer or any of the Customer's personnel were responsible for the loss or damage; and
- (i) in the event that the Equipment is materially damaged or destroyed, pay the Hire Charge to the Supplier up to the date of receipt of a payment of the Agreed Value of the Equipment to compensate the Supplier for any loss associated with such damage to or destruction of the Equipment in addition to any other sums payable under this Agreement.

### 18. TERMINATION

18.1 If a Customer breaches any of the Customer's obligations under this Agreement (including any failure to pay any amounts when due) or any other agreement with the Supplier (**the Customer Default**) then the Supplier may serve a notice of default on the Customer containing the information specified in clause 18.2 (**Default Notice**).

18.2 A Default Notice must:

- (a) either require that the breach be remedied within a specified period of not less than 14 days after service of the Default Notice on the Customer or state that the breach is incapable of remedy; and
- (b) indicate that if the Customer's Default is not remedied within the period specified in the Default Notice, then the Supplier may exercise the Supplier's rights under this Agreement including the following:
  - (i) cease performance of all or any part of the Equipment Hire until such time as the Customer's default is remedied; or
  - (ii) terminate this Agreement or any particular Equipment Hire or Equipment Sale by notice to the Customer.

18.3 For the purposes of clause 18.2, the following are breaches that are incapable of remedy and therefore require no notice:

- (a) where in the Supplier's reasonable opinion, the Equipment is in imminent danger of destruction or material damage, or do or permit to be done any act or thing whereby the Supplier's rights in the Equipment may be prejudiced;
- (b) where the Customer engages in conduct which would enable a court to make an order against the Customer for the Customer's winding-up (if a company) or grant a creditor's petition (if the Customer is an individual), or be wound-up, or go into voluntary administration, or if a liquidator or receiver or administrator of the Customer's assets or any of them is appointed, or if any court order or process is made against the Customer in relation to any of the Customer's assets; and
- (c) if the Customer allows the insurance over the Equipment to lapse, or any of the insurances required under this Agreement are cancelled by the insurer or the Customer.

18.4 Without prejudice to any other remedies available to the Customer and notwithstanding any minimum Hire Period specified in the Proposal, the Customer may terminate this Agreement:

- (a) if the Supplier fails to observe or perform any of the Supplier's material obligations under this Agreement and, if such failure is capable of remedy, it is not remedied to the Customer's reasonable satisfaction within 14 days of receiving written notification outlining the failure;
- (b) if a receiver or receiver and manager, official manager, trustee or similar officer is appointed over the Equipment or distress, attachment or other execution is levied against the Equipment, provided the foregoing occur due to any of the Supplier's actions; or
- (c) without notice, if the Supplier engages in conduct which would enable a court to make an order against the Supplier for the Supplier's winding-up (if a company) or grant a creditor's petition (if the Customer is an individual), or be wound-up, or go into voluntary administration, or if a liquidator or receiver or administrator of the Supplier's assets or any of them is appointed, or if any court order or process is made against the Supplier in relation to the Supplier's assets;

18.5 Upon termination of this Agreement the Supplier shall be entitled without notice to take possession of the Equipment and all monies owing by the Customer under this Agreement (whether due for payment or not) will be immediately due and payable.

18.6 Without limiting any other provision of this Agreement, if this Agreement is terminated by the Supplier in accordance with clause 18.2 or otherwise as a result of the Customer's breach or repudiation of this Agreement, the Supplier may, in the Supplier's absolute discretion, issue an invoice for the following sums (without prejudice to any rights the Supplier may otherwise have under this Agreement or at law):

- (a) any amounts payable in accordance with clause 18.9;

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(b) the costs incurred by the Supplier in taking possession of the Equipment; and

(c) if the Equipment is destroyed or damaged beyond repair, the sum equal to the Agreed Value of the Equipment.

18.7 If this Agreement is terminated by the Customer in accordance with clause 18.4 then any portion of prepaid Hire Charge under this Agreement which apply to a period after the date of termination will be refunded.

18.8 The exercise of the right of termination by either party shall not prejudice the legal rights or remedies that party may have against any other party in respect of any breach of the terms of the agreement. For the avoidance of doubt, the termination of a particular Equipment Sale, Equipment Hire or Equipment Hire-to-Buy will not prejudice any other Equipment Sale, Equipment Hire or Equipment Hire-to-Buy (unless they are also terminated).

18.9 In the event of termination of this Agreement prior to the Expected End Date (other than a valid termination by the Customer pursuant to clause 18.4), the Customer agrees to pay the Supplier:

(a) within 30 days from the date of termination of this Agreement, a sum representing the Hire Charge payable until the Expected End Date; and

(b) the Supplier will refund to the Customer within 30 days of the Expected End Date any revenue that the Supplier is able to generate by hiring the Equipment to a third party (provided such amount will not exceed the amount payable by the Customer in accordance with paragraph (a) above.

18.10 The Supplier agrees to use all reasonable efforts to hire the Equipment to a third party in accordance with clause 18.9(b), but will not be liable to account to the Customer any money under clause 18.9(b) in the event that the Supplier is unable to hire the Equipment to a third party.

18.11 Termination of this Agreement shall not affect any of the conditions that are expressed or implied to operate or have effect after termination.

### 19. ADDITIONAL SECURITY

19.1 Any of the Customer's directors or representatives who sign any constituent part of this Agreement shall be considered 'Guarantors' for the purposes of this Agreement.

19.2 In consideration of the Supplier supplying Equipment to the Customer from time to time at the request of each Guarantor (whether on the basis of an Equipment Sale, Equipment Hire or otherwise), each Guarantor agrees to provide the guarantees, indemnities and securities provided for in this Agreement.

19.3 The Guarantor (and if more than one, jointly and severally) guarantee to the Supplier the due payment and performance of all of the obligations of the Customer under this Agreement and any other agreement between the Customer and the Supplier and indemnify and covenant to keep indemnified the Supplier and the Supplier's employees, contractors, officers and agents against any claims, damage, loss, Costs or obligations, direct or indirect, which any of them may suffer, incur or sustain by reason of the Customer's non-performance, non-observance, breach or purported breach of any laws, obligations, covenants, warranties, terms, conditions, or provisions of this Agreement as well as any other agreement between the Customer and the Supplier. Without limiting the foregoing, if any acknowledgement or warranty in this Agreement is untrue, incorrect or incomplete that will constitute a breach of the Agreement.

19.4 The guarantee, undertaking and indemnity in the preceding clause is a continuing guarantee, undertaking and indemnity and will extend to the ultimate balance of any sums payable by the Customer under this Agreement or any other agreement with the Supplier, regardless of any intermediate payment or discharge in whole or in part. If any payment to or any discharge, release or arrangement given or entered into by the Supplier is avoided, reduced or restored for any reason then the liability of the Customer and any Guarantor shall continue and any such obligation or security shall be reinstated and the Supplier will be entitled to recover the value or amount of the payment or security from the Customer and any Guarantor.

19.5 The obligations of the Customer and any Guarantor under this Agreement will not be affected by an act, omission, matter or thing which, but for this clause would reduce, release or prejudice any of the Supplier's rights or the Guarantor's obligations in connection with this Agreement including: (a) any time, waiver, other concession or consent granted to the Customer; (b) release or resignation of the Customer or any Guarantor; (c) the taking, variation, compromise, release of, refusal or neglect to perfect, execute, take up or enforce, any rights against, or security over assets of, the Customer or any Guarantor or any non-observance of any requirement in respect of any instrument or any failure to realise the full value of any security; (d) any amendment, novation, supplement, extension, restatement or replacement of any part or the whole of this Agreement or any other agreement with the Supplier, including any extension of the Hire Period; (e) any unenforceability, illegality or invalidity of any obligation of any person under any agreement; (f) any insolvency or similar proceedings; (g) any part of this Agreement not being executed by or binding against the Customer, any Guarantor or any other party; (h) to the extent permitted by law, any thing whatsoever; or (i) the assignment or other dealing with this Agreement or any other agreement between the parties.

19.6 The provisions of the Supplier's standard long-form guarantee (which at the date of these Terms and Conditions is available on the Supplier's website or as otherwise available on request) will be binding on the Guarantor and will be deemed to be incorporated into the guarantee given by the Guarantor pursuant to these Terms and Conditions, with such changes as are necessary to give effect to this provision.

19.7 The Customer and any Guarantor grant a Security Interest in their respective Personal Property and charges their respective Other Property (together the 'Collateral') by way of fixed charge in favour of the Supplier to secure the due and punctual payment of all monies that may be owing to the Supplier (whether due for payment or not, liquidated or unliquidated, actual or contingent) and the due and punctual performance of all of their respective obligations and covenants under this Agreement or otherwise. The Security Interest over any Personal Property is a charge and if for any reason it is necessary to determine the nature of the charge it is a fixed charge.

19.8 For the purposes of section 20(2)(b) of the PPSA, the Security Interest granted over any Personal Property in the preceding clause is in over all present and after-acquired property of the Customer and any Guarantor. This paragraph does not limit the scope of the security granted under the preceding clause in any way.

19.9 The security provided for in this clause 20 is in addition to and is not in any way prejudiced by any other guarantee, undertaking and indemnity or security now or subsequently held by the Supplier.

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### 20. PPSA

20.1 If the hire of the Equipment to the Customer or any provision of this Agreement gives rise to a Security Interest for the purposes of the PPSA (including any retention of title in respect of any Equipment Sale), the parties agree that:

- (a) the Security Interest extends to any proceeds (as defined in the PPSA) of any kind;
- (b) the Supplier does not consent to any dealing with or disposal of the property subject to the Security Interest that could prejudice the Supplier's rights, whether under the PPSA or otherwise;
- (c) this Agreement and any emails or other documents indicating acceptance of this Agreement is a security agreement (as defined in the PPSA);
- (d) the Customer will do all things reasonably necessary to, at the Customer's Cost, to assist the Supplier to register its Security Interest on the personal property securities register;
- (e) the Supplier's Security Interest will be a first ranking Security Interest and the attachment of the Security Interest will not be postponed for any reason;
- (f) the Supplier may, at the Customer's Cost, take all steps the Supplier considers advisable to register, amend or remove the registration of any Security Interests arising under or in connection with this Agreement, or to protect, perfect or record its Security Interests under this Agreement; and
- (g) the Equipment will be commercial property for the purposes of the PPSA and that the Equipment will not form part of the Customer's inventory.

20.2 The Customer undertakes:

- (a) not to change its name, address or contact details without providing the Supplier with prior written notice;
- (b) not to deal with, transfer, assign, part with possession or otherwise Encumber the Equipment without the Supplier's consent;
- (c) not to issue an amendment demand or any other notice under the PPSA without the Supplier's consent;
- (d) to provide all original documents that relate to this Agreement to the Supplier for the purpose of perfecting any Security Interest in favour of the Supplier; and
- (e) without limiting any other right the Supplier may have under this Agreement or by law, to immediately to return the Equipment if requested to do so by the Supplier following any breach of this Agreement or reimburse the Supplier for the Costs associated with repossessing the Equipment plus 12%.

20.3 When exercising any Security Interest arising in connection with this Agreement, the Supplier may do anything in respect of the property subject to the Security Interest that the owner would otherwise be capable of doing at law, including appointing a receiver in respect of the Equipment or any other Collateral and thought itself or through an agent exercising the powers granted to receivers under section 420(1) and (2) of the *Corporations Act 2001* (Cth) as if references in that section to property were references to the relevant property subject to the Security Interest and references to the receiver were references to the Supplier. Any receiver appointed in connection with this Agreement must be fully indemnified by the Customer and any guarantor for any liability or Cost incurred and will always be the Customer's agent.

20.4 The Customer must keep confidential the terms of this Agreement and any information which either of them may provide to each other, except where consented to by the Supplier, where such disclosure is required by law, where disclosure is made to the Supplier related entities, any Financier or to the parties' legal or professional advisors. The disclosure obligations contained in the PPSA do not override the restrictions on non-disclosure contained in this clause, to the extent permitted by law.

20.5 To the extent the law permits, the Supplier need not comply with, and the entity against which a Security Interest is being enforced may not exercise rights under, any provisions of PPSA that may be contracted out of. This does not prevent the Supplier from relying on the remedies in the PPSA if the Supplier elects to do so and this Agreement will be deemed to provide the Supplier with all the rights and remedies under the PPSA (but without any corresponding obligations).

20.6 If the Supplier exercises a right, power or remedy in connection with this Agreement or a Security Interest that it provides for, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Supplier states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPSA.

20.7 So far as is permitted by law, the Customer and any Guarantor waive any rights to receive any notice (including a verification statement) that is required to be provided under the PPSA, to receive notice of removal of any accession to the Equipment, to claim for damages if the Supplier removes any accession or the right to apply to the court.

20.8 If any property subject of the Supplier's Security Interest is dealt with in a way that gives rise to an account or chattel paper (as defined in the PPSA), whether in breach of this Agreement or not, then the Customer expressly transfers that account or chattel paper to the Supplier and undertake not to grant any other rights in the account or chattel paper. For the purposes of s153 of the PPSA, the Supplier appoints the Customer to effect any registrations over third parties in connection with the Equipment or any Collateral.

20.9 All obligations of the Customer and any Guarantor under this clause 20 and the Supplier's rights are all deemed to be expressed for the benefit of any Financier, unless the context otherwise requires.

20.10 The Customer and any Guarantor acknowledge and agree, including for the benefit of any third party who owns the Equipment or otherwise has been granted an Encumbrance over the Equipment (**Financier**) as follows:

- (a) the Supplier may grant an interest in or Encumbrance over this Agreement and/or the Equipment (**Charge**) in favour of a Financier without the Customer's consent;
- (b) the Financier has a Charge, including a purchase money security interest (as defined in the PPSA) in this Agreement and/or the Equipment;

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- (c) any Charge in favour of the Financier is not released or otherwise prejudiced due to this Agreement and the Customer's rights in respect of Equipment are expressly subject and subordinated to the rights of the Financier (whether arising under the Charge, at law or otherwise);
- (d) the exercise of any rights by the Financier under the agreement between the Financier and the Supplier will not constitute a breach or default under this Agreement or otherwise entitle the Customer to terminate, rescind or revoke this Agreement;

### 21. TRUST PROVISIONS

21.1 If the Customer is a trustee of any trust (irrespective of whether or not the trustee is listed in this Agreement) the Customer:

- (a) warrants that the Customer has been properly appointed as trustee of the trust and are the sole trustee of the trust;
- (b) warrants that the Customer has the power to enter into this Agreement under the relevant trust deed, and that the power has been exercised properly;
- (c) enter into this Agreement and any security and undertake all obligations therein in the Customer's personal capacity and in the Customer's capacity as trustee of any trust and warrant that this Agreement and any security is binding on the Customer personally and in the Customer capacity as trustee of the trust;
- (d) warrant that the Customer has the right to be indemnified out of the trust assets, in priority to the beneficiaries, for all liabilities that the Customer may incur under this Agreement and undertake not do anything that may result in the loss of its right of indemnity from the trust assets; and
- (e) undertakes to ensure that any new trustee (if one is appointed despite the provisions above) is bound by this Agreement or any variation of this Agreement.

### 22. POWER OF ATTORNEY

22.1 The Customer and each Guarantor irrevocably appoints the Supplier, and any of the Supplier's directors, officers, managers or agents, severally, as the Customer's attorney with the power to:

- (a) do anything that is reasonably necessary to effect the exercise of any of the Supplier's rights under this Agreement and any Security Interest granted to the Supplier,
- (b) do all acts and things which the Customer or the Supplier is obliged, or is able, to do in connection with this Agreement or upon its termination; and
- (c) complete any necessary documents or forms on the Customer's behalf that are necessary for the completion, registration and enforcement of any Security Interest or the Supplier otherwise considers desirable to give effect to this Agreement.

22.2 Any attorney may exercise any right solely for the Supplier's benefit, notwithstanding any conflict of interest. The Customer and any Guarantor, by this Agreement ratify anything done or not done by the attorney pursuant to this Agreement.

22.3 The power of attorney is granted for valuable consideration to secure the compliance of all obligations in connection with this Agreement and is irrevocable.

### 23. CHAIN OF RESPONSIBILITY LAWS AND HEAVY VEHICLE NATIONAL LAW.

23.1 Unless the context otherwise requires, in this clause 23:

- (a) **CoR Laws** means any laws in relation to safety concerning the carriage of goods by road, including as to mass, dimension, load restraint, speed, fatigue and vehicle standards, roadworthiness and maintenance and including the HVNL;
- (b) **HVNL** means the Heavy Vehicle National Law and Regulations and any other laws of any State/Territory which give effect to any of them, including the *Heavy Vehicle National Law Act 2012* (Qld), and the *Heavy Vehicle National Law Regulation 2014* (Qld) in Queensland, any similar laws in any State/Territory and any replacement or modification of any of the foregoing and any Industry Code of Practice registered under the Heavy Vehicle National Law;
- (c) **CoR Management Plan** means the Chain of Responsibility Management Plan in clause 23.7 or as may be updated by the Supplier from time to time and provided to the Customer; and
- (d) terms defined in the HVNL that are not otherwise defined in this Agreement have the same meanings given to them in the HVNL.

23.2 The Customer must comply with the chain of responsibility provisions of the HVNL, including in respect of the mobilisation and demobilisation of the Equipment and any relocation of the Equipment by the Customer (whether in breach of this Agreement or not).

23.3 Without limiting any other provision of this Agreement or the Customer's responsibilities under HVNL, the Customer warrants and undertakes that it will (all times during the operation of this Agreement):

- (a) ensure, so far as reasonably practicable, the safety of its and its subcontractors' transport activities and not do anything which would directly or indirectly cause or encourage any person (including the Supplier) to breach any CoR Law, the CoR Management Plan, working practices and policies or any contractor or supplier management policies;
- (b) develop and implement appropriate policies and working procedures (including training/education, compliance performance monitoring and reporting) to, so far as reasonably practicable, eliminate or, where not possible, minimise, risks to the public arising from the conduct of its Transport Activities;
- (c) comply with any compliance policy, working practices and policies, instructions or reasonable direction of the Supplier in relation to compliance with the CoR Laws, which the Customer acknowledges that it has read and understood;

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- (d) manage and retain copies of all transport documentation and journey documentation as required under the CoR Laws and promptly make available all information or documentation reasonably requested by the Supplier for the purpose of monitoring or auditing compliance with the provisions of this clause 23, including transport document and journey documentation;
- (e) promptly advise the Supplier of any facts or circumstances which come to its attention which may give rise to any breach or allegation of breach of the CoR Laws, including any warning or caution, request for information or documents, infringement notice, fine or the commencement of prosecution proceedings by any regulatory authority;
- (f) conduct an investigation into the cause of any breach or allegation of breach of the CoR Laws and develop any actions to be implemented in order to avoid or reduce the risk of a similar incident arising again, within 10 Business Days of becoming aware of the facts or circumstances giving rise to the breach or allegation of breach, and provide the Supplier with copies of any reports and evidence of steps taken by the Customer in this regard;
- (g) not engage, instruct or cause any person to perform any transport activities relating to any goods or services to be provided by the Supplier unless it has first satisfied itself that any such person has in place its own policies and working procedures to ensure that it complies with this clause 23 (as if named in place of the Customer), has been provided with sufficient information, instruction, training and supervision to ensure compliance by it with the provisions of this clause 23 (as if named in place of the Customer) and has been provided copy of any CoR Management Plan, working practices and policies and contractor or supplier management policies of the Supplier in relation to compliance with the CoR Laws.

23.4 The Customer indemnifies and agrees to keep indemnified upon demand the Supplier, its agents, employees or contractors (other than the Customer) from any damage, expense, loss, claim or liability (including to the extent permitted by law, any statutory penalty or fine) arising from (or in connection with) the Customer's non-compliance with any obligations in this clause 23, the CoR Laws or the HVNL.

23.5 In the event of any breach or suspected breach of any provision of this clause 23, the Supplier will be entitled, in its sole and absolute discretion to:

- (a) report any breach or suspected breach of the CoR Laws to any relevant authority, including disclosing any or all information and documentation in relation to the facts or circumstances of any such breach or suspected breach; and/or
- (b) issue the Customer with a notice (**Show Cause Notice**) requiring the Customer to explain to the reasonable satisfaction of the Supplier within 14 days of the date of the Show Cause Notice:
  - (i) the facts and circumstances of the breach or suspected breach;
  - (ii) any steps taken to respond to the breach or suspected breach; and
  - (iii) any steps taken to prevent any other breach similar to the breach or suspected breach from occurring.

23.6 In addition to any other right of the Supplier under this Agreement, in the event of any breach or suspected breach of the provisions of this clause 23 by the Customer or any failure of the Customer to respond to the reasonable satisfaction of the Supplier to any Show Cause Notice issued in accordance with clause 23, the Supplier will be entitled, in its sole and absolute discretion:

- (a) to require that any person responsible for any breach is not used or engaged to perform any aspect of the Customer's or Supplier's transport activities relating to the performance of this Agreement or any other agreement between the parties in the future;
- (b) suspend the performance of this Agreement (or any part of it) (including by repossessing the Equipment) without any liability to the Customer until such time as the breach is remedied to the reasonable satisfaction of the Supplier; and
- (c) terminate this Agreement with immediate effect by giving notice in writing to the Customer.

23.7 **COR Management Plan:** For the purposes of this clause 23, the **CoR Management Plan** contains the following requirements that are to be met by the Customer (including any of its employees and contractors):

- (a) **(mass):** no minor, substantial, severe or critical risk breaches permitted for the vehicle under any mass requirement in the HVNL;
- (b) **(dimension):** no minor, substantial, severe or critical risk breaches permitted for the vehicle under any mass requirement in the HVNL;
- (c) **(load restraint):** no minor, substantial, severe or critical risk breaches permitted for the vehicle under any mass requirement in the HVNL;
- (d) **(speed):** no breaches for driver exceeding the applicable speed limit;
- (e) **(fatigue):** no breaches of any work or rest hours law or requirement;
- (f) **(maintenance):** no defect, infringement, penalty or court attendance notice issued in respect of any breach of licencing, registration or roadworthiness of any heavy vehicle used in and during the performance of this Agreement, and no spot check maintenance item fail (any 'no/fail') identified in respect of the same vehicle on any subsequent spot check within the following 3 months; and
- (g) **(general):** no defect, infringement, penalty or court attendance notice issued to the Customer (or any of its subcontractors) in relation to any breach of the HVNL in relation to any journey conducted in the performance of this Agreement.

## 24. MISCELLANEOUS

24.1 **(Notices):** Any notice, demand, termination procedure or other communication relating to this Agreement must be either sent by facsimile, email, ordinary post or personally served or left at the relevant party's address for service as specified in the Proposal.

24.2 **(Force majeure):** If the performance of the Equipment Hire or Equipment Sale or any obligation under it (except for any obligation to pay) is prevented, restricted or interfered with or materially prejudiced by reason of circumstances beyond the reasonable control of a party (including any power, data or communication outages, Acts of God, national emergencies, hostile or warlike action or sabotage, industrial action, default of any

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suppliers of the Supplier or any legislation or regulation and any action or inaction of any government or government agency), the party so affected (upon giving prompt notice to the other party) shall be excused from performance to the extent of the prevention, restriction or interference, but the party so affected shall use its best endeavours to avoid or remove the causes of non-performance and shall continue performance under the Agreement with the utmost despatch whenever such causes are removed or diminished. If such causes are not reasonably able to be overcome, then the parties will negotiate in good faith alternative arrangements for the performance of the Agreement.

**24.3 (Supplier):** LED Light Rentals and Sales Pty Ltd ABN 31 600 746 503 or the Supplier specified in the Proposal may have entered into this Agreement (or may sell the Equipment to the Customer pursuant to any Equipment Sale or Equipment Hire-to-Buy) as agent for another person (including a related entity of either of them) and may transfer all or part of the Equipment or interest in this Agreement to their principal without the consent of the Customer or the Guarantor. To the extent the law permits, the liability of LED Light Rentals and Sales Pty Ltd ABN 31 600 746 503 and the Supplier specified in the Proposal will be limited to the extent to which the agent is actually indemnified by the principal for the relevant liability, and neither the Customer nor the Guarantor will have any further recourse.

**24.4 (IP):** The Customer acknowledges and agrees that any Intellectual Property Rights in connection with any Equipment (including any Attachments, any other items supplied by the Supplier and any designs, drawings, specifications or other items that are developed by the Supplier, whether in conjunction with the Customer or otherwise), as well as any Intellectual Property Rights held by the Supplier independently of this Agreement, will remain the property of the Supplier and will vest immediately upon their creation in the Supplier. To the extent that the Customer has Intellectual Property Rights that were created prior to and independently of any dealings with the Supplier, the Customer retains such rights but grants to the Supplier a non-exclusive, transferable, royalty free licence to use and exploit such rights for the purpose of enabling the Supplier to supply the Equipment and otherwise perform its obligations (and exercise its rights) in connection with this Agreement.

**24.5 (Assignment):** The Supplier may assign or otherwise deal with the Supplier's rights in relation to this Agreement by written notice to the Customer.

**24.6 (Application of moneys):** To the extent permitted by law, the Supplier may, in its absolute discretion and at any time without demand or notice, apply any sum paid by the Customer to any outstanding Invoice, debt or other amount which remains payable by the Customer to the Supplier whether under this Agreement or not. The Supplier may set off any amount received or recovered by the Customer under or in connection with this Agreement, as well as any debt owed by the Customer, against any amount that is due and payable to the Supplier.

**24.7 (Payment of monies):** All monies are payable to the Supplier at the Supplier's principal place of business in the manner the Supplier reasonably require from time to time. A statement in writing signed by an authorised officer of the Supplier from time to time setting out the moneys due or owing to the Supplier at the date of the statement shall be sufficient evidence of the amount so due or owing until the contrary is proven.

**24.8 (Privacy)** Subject to any applicable restrictions in the *Privacy Act 1988* (Cth), the Customer, the Guarantor and their respective officers authorise the Supplier to make consumer and commercial credit enquiries concerning them in connection with this Agreement (or the Supplier's decision to enter into, or enforce, it), and to exchange with any credit reporting body and any other person (including a ratings agency, a credit enhancer or other credit providers) any information concerning them (including credit information, repayment history, default information and other credit-related information as described in the Supplier's policies in place from time to time).

**24.9 (Counterparts):** This Agreement may be executed and exchanged in any number of counterparts, all of which taken together constitute one and the same document. The Customer and any guarantor will be deemed to have signed and agreed to the terms this Agreement where the Customer and/or any Guarantor have been provided with the Proposal and these Terms and Conditions and the Customer or the Customer's representative and/or any guarantor (as the case may be) indicate acceptance of those terms in any email or other communication sent to the Supplier.

**24.10 (Further Acts):** The Customer agrees to promptly do and perform all further acts and execute and deliver all further documents required by law or reasonably requested by the Supplier to carry out and effect the intent and purpose of this Agreement and to protect the Supplier's rights in the Equipment.

**24.11 (Variation):** Any variation of or to this Agreement will not have any effect whatsoever unless such variation is reduced to writing and signed by both parties.

**24.12 (Waiver):** Any failure by the Supplier to exercise any or all of its rights or powers under this Agreement at any time and for any period of time shall not constitute a waiver of any of the Supplier's rights or powers arising pursuant to this Agreement.

**24.13 (Entire Agreement):** The Agreement represents the whole agreement between the parties and supersedes all oral and written communications by or on behalf of any of the parties, to the exclusion of any implied terms that can be excluded by law. The Supplier's rights under this Agreement are without prejudice to the Supplier's rights at law.

**24.14 (Third Parties):** This Agreement confers rights and remedies upon the third parties related to the Supplier, including the Supplier's related bodies corporate, and the Customer acknowledges that the Supplier hold those rights on trust for those parties.

**24.15 (Severance):** If any provisions or part of this Agreement is invalid or unenforceable, this Agreement does not include it. The remainder of this Agreement continues in full force.

**24.16 (No Merger):** Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that a party may have against another party or any person at any time.

**24.17 (Consents):** Where this Agreement gives the Supplier a right or power to consent, approve or agree in relation to a matter under this Agreement, the Supplier may withhold any consent or approval or give consent or approval conditionally or unconditionally in the Supplier's absolute discretion on any terms the Supplier sees fit. The Customer must comply with any conditions the Supplier imposes on the Supplier's consent or approval.

**24.18 (Governing Law):** This Agreement is governed by the laws of Queensland and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland.

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### 24.19 (Interpretation): In this Agreement:

- (a) headings are for convenience only and do not affect interpretation;
  - (b) where the Customer must obtain the Supplier's consent to do or refrain from doing anything under this Agreement, the Customer must obtain the Supplier's prior written consent and the consent may be given on any conditions the Supplier determines in its absolute discretion;
  - (c) time is of the essence in respect of all of the Customer's obligations under this Agreement; and
  - (d) the term 'including' or any similar expression are not words of limitation;
  - (e) where a right of power is given to the Supplier under this Agreement, the right of power may, in the Supplier's absolute discretion, be exercised by the Supplier or any employee or agent nominated by the Supplier,
- and unless the context otherwise requires:
- (f) the words denoting the singular number include the plural and vice versa;
  - (g) words denoting individuals include corporations and vice versa;
  - (h) references to 'law' or 'laws' include references to common law, principles of equity, laws made by parliament and any regulation, rule, directive, requirement, guideline or policy of any government agency and if not having the force of a law, with which responsible entities in the position of the relevant Party would normally comply;
  - (i) where this Agreement provides for standards of quality or other obligations in an inconsistent manner, then the Customer must comply with the highest standard or most onerous obligation and for the avoidance of doubt where this Agreement provides for standards of quality or other obligations they shall not be taken to be inconsistent where they are capable of operating concurrently;
  - (j) a reference to any party to this Agreement includes their executors, administrators, successors and permitted assigns including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee and that party in its own right as well as trustee;
  - (k) this Agreement will, if the Customer comprises more than one person, bind such persons jointly and severally.
  - (l) references to clauses or paragraphs are references to clauses and paragraphs in the constituent part of this Agreement containing the reference. A reference to a paragraph is a reference to a paragraph in the clause in which the reference is made;
  - (m) where a clause uses the words "unless otherwise agreed" or similar this is also a reference to any agreement or designation made in the Proposal;
  - (n) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
  - (o) a reference to this Agreement includes any subsequent variation of this Agreement;
  - (p) a reference to an 'associate' and 'related bodies corporate' has the respective meaning given to that term in the *Corporations Act 2001* (Cth);
  - (q) in any clause in this Agreement that provides a benefit to the Supplier, the reference to the Supplier also includes a reference to the Supplier's related bodies corporate, any associates and any Financier;
  - (r) in clauses 20 onwards in this Agreement, a reference to the Customer includes a reference to any Guarantor; and
  - (s) in clause 20, a reference to the Equipment includes a reference to the Collateral (i.e. all of the Customer's and any Guarantor's Personal Property and Other Property).

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