

1 Definitions

- 1.1 **"Contract"** means the terms and conditions contained herein, together with any Special Conditions, quotation, Purchase Order, appendix, annexure, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **"SSE"** means Southside Enterprises Pty Ltd T/A SSE Plant Hire, its successors and assigns or any person acting on behalf of and with the authority of SSE.
- 1.3 **"Customer"** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting SSE to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 **"Equipment"** means all Equipment (including any accessories, machinery, tools and associated items, manuals, log books and vehicles as accompanies such Equipment) supplied on hire by SSE to the Customer (and where the context so permits shall include any incidental supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by SSE to the Customer.
- 1.5 **"Minimum Hire Period"** means the minimum Hire Period, as specified in this Contract, and calculated at the appropriate hourly rate plus travel unless otherwise specified by SSE prior to commencement of the Hire Period.
- 1.6 **"Hire Period"** means the term of the hire of the Equipment as specified in the Purchase Order and which may include weekends and/or public holidays, and continues until the supply of the Services is completed or the Hire Contract is terminated in accordance with these terms and conditions or such further period as agreed by the parties in writing.
- 1.7 **"Hire Docket"** means the form issued by SSE at the time an order is submitted to SSE and includes job details, Equipment and other relevant details.
- 1.8 **"Dry Hire"** means that the Equipment is supplied by SSE without an operator.
- 1.9 **"Wet Hire"** means that the Equipment is supplied by SSE with an operator who shall at all times remain an employee or representative of SSE.
- 1.10 **"Site"** means the location/s at which the Equipment is to be operated.
- 1.11 **"PPSA"** means the Personal Property Securities Act 2009 (Cth) as amended from time to time.
- 1.12 **"PPSR"** means the Personal Property Securities Register established under the PPSA.
- 1.13 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, Customer information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.14 **"Charges"** means the cost of the hire (plus any GST where applicable) of the Equipment as agreed between SSE and the Customer subject to clause 5 of this contract.
- 1.15 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2 Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by this Contract if the Customer places an order for Equipment, or accepts Delivery.
- 2.2 This Contract constitutes the entire Contract between the parties and contains all the representations, warranties, covenants and agreements of the parties in relation to the subject matter of this Contract.
- 2.3 The special conditions (if any) set out by SSE in any quotation, order or other document shall form part of this Contract, unless otherwise stated. In the event of any inconsistency between the special conditions and any other term of this Contract, the special conditions shall prevail to the extent of the inconsistency.
- 2.4 None of the Equipment shall be sublet or cross-hired by the Customer. The Customer shall not assign or transfer their interest in this Contract or part with possession of all or any portion of the Equipment without the prior written consent of SSE, which consent may be arbitrarily withheld.
- 2.5 The Customer acknowledges and accepts that:
- (a) any offer of hire by SSE to the Customer, is not an offer to sell, hire purchase or leasing agreement, that contains an option to purchase the Equipment. The relationship between SSE and the Customer is limited to a relationship of owner and bailee in respect of the Equipment; and
 - (b) where SSE is instructed to supply Equipment and it is later found, once on Site, that the Equipment hired is not capable of completing the Services, due to height restrictions being outside the operational requirements of the Equipment; or
 - (c) inaccurate information being provided at the time of quoting, which are beyond SSE's control; and
 - (d) SSE then reserves the right to provide the Customer with a variation to the Contract Price in accordance with clause 5.2. Failure to accept the variation, SSE shall be entitled to cancel the Contract under clause 23 and the Customer shall be liable for all costs incurred by SSE up until the time of cancellation.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 10 of the Electronic Transactions Act 2011 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.7 These terms and conditions may be meant to be read in conjunction with SSE's Equipment Hire Form/s, and:
- (a) where the context so permits, the term 'Services' shall include any supply of Equipment, as defined therein; and
 - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

3 Errors and Omissions

- 3.1 The Customer acknowledges and accepts that SSE shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by SSE in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by SSE in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of SSE; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

4 Change in Control

- 4.1 The Customer shall give SSE not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address and contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by SSE as a result of the Customer's failure to comply with this clause.

5 Charges and Payment

- 5.1 The Customer shall pay the Charges to SSE for the duration of the Hire Period, which (at SSE's sole discretion) shall be either:
- (a) as indicated on invoices provided by SSE to the Customer in respect of Equipment supplied on hire;
 - (b) SSE's current Charges as at the date of Delivery, according to SSE's current pricelist rates (rates are subject to change upon written notice to the Customer and shall take effect from the date of notice. In the event that the Customer does not accept the revised rates, the Customer has the right to terminate without prejudice upon the required notice of termination); or
 - (c) calculated on a working day of eight (8) hours per day (from 7.00am to 3.30pm, allowing a thirty (30) minute lunch break); or
 - (d) SSE's quoted Charges (subject to clauses 5.2), which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 SSE reserves the right to vary the Charges, in the event that:
- (a) a variation to SSE's quotation (including but not limited, any change of Equipment due to height restrictions) is requested; or
 - (b) where SSE is required to mobilisation and demobilisation Equipment when SSE is required to transport the Equipment to and from SSE's depot, unless otherwise agreed; or
 - (c) where Equipment is used outside SSE's standard working hours (as specified in clause 5.1(c) above) or on a weekend or public holiday. "Excess" is more than eight (8) hours per calendar day; or
 - (d) rates in respect of SSE's personnel are subject to additional Charges for loading, penalties and allowances as applicable to SSE personnel pursuant to their terms of engagement (including but not limited to, night shifts, weekends, standby, overtime, public holidays, meals, travel and accommodation rates); or
 - (e) a fuel levy shall be payable where the price of fuel exceeds the fuel price specified in SSE's pricelist rates.
- 5.3 Variations will be charged for on the basis of SSE's quotation, and will be detailed in writing, and shown as variations on SSE's invoice. The Customer shall be required to respond to any variation submitted by SSE within ten (10) working days. Failure to do so will entitle SSE to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 SSE may, in its sole discretion, require the Customer to pay a deposit.
- 5.5 Time for payment for the Equipment being of the essence, the Charges will be payable by the Customer on the date/s determined by SSE:
- (a) Hire Charges which may be:
 - (i) Daily – means twenty-four (24) hours (maximum operation time eight (8) hours): if the weekly rate is less than the accumulated daily rate, then the weekly hire rate will apply. SSE must be notified of work schedules and will increase daily rate for twenty-four (24) hour/double shift operations;
 - (ii) Weekly – means five (5) days of eight (8) hours each (maximum operation time forty (40) hours);
 - (iii) Monthly – means a calendar month (maximum operation time one hundred and eighty (180) hours) charged per week;
 - (b) for certain approved Customer, due thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices; or
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Customer by SSE.
- 5.6 No allowance has been made in the Charges for the deduction of retentions. In the event that retentions are made, SSE reserves the right to treat all retentions as placing the Customer's account into default.
- 5.7 The Customer will make payment to SSE on/by each due date by cash, bank cheque, electronic/on-line banking, credit card (plus a surcharge per transaction may apply), or by any other method as agreed to between the Customer and SSE.
- 5.8 In addition the Customer must pay any other taxes and duties (including stamp duty, import duties, bonds or any other charges which may be levied upon this Contract and/or the use of the Equipment or Delivery) that may be applicable in addition to the Charges except where they are expressly included in the Charges.
- 5.9 SSE may in its discretion allocate any payment received from the Client towards any invoice that SSE determines and may do so at the time of receipt or at any time afterwards. On any default by the Client, SSE may re-allocate any payments previously received and allocated. In the absence of any payment allocation by SSE, payment will be deemed to be allocated in such manner as preserves the maximum value of SSE's Purchase Money Security Interest (as defined in the PPSA) in the Services/Equipment.
- 5.10 Receipt by SSE of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then SSE's rights and ownership in relation to the Equipment, and this Contract, shall continue.
- 5.11 The Customer shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Customer by SSE nor to withhold payment of any invoice because part of that invoice is in dispute, such dispute must be detailed in writing and given to SSE within seven (7) days of the date of the invoice.
- 5.12 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Charges.

6 Hire Period

- 6.1 The Hire Period shall commence, and Charges shall be paid by the Customer to SSE, from the time the Equipment departs from SSE's premises and will continue until (whichever last occurs):
- (a) the termination of the Hire Period; or
 - (b) the return of the Equipment to SSE's premises in good operating condition, reasonable wear and tear excepted; or
 - (c) the date which the Equipment is available for Recovery by SSE, as notified by the Customer (if such Recovery is agreed to by SSE), provided the Equipment is recovered in good operating condition, reasonable wear and tear excepted; or
 - (d) the expiry of the Minimum Hire Period.
- 6.2 Stand downs will only apply with prior notification. All stand down requests are to be emailed to admin@southsideenterprises.com.au.
- 6.3 Notwithstanding clause 6.1, the Customer shall provide a minimum of one (1) weeks' notice to SSE of their intention to return the Equipment, and the date of expiry or cessation of this Contract shall in all cases be treated as a full day's hire.
- 6.4 Furthermore, anything contained in this Contract to the contrary, SSE reserves the right to take possession of the Equipment at any time and without notice to the Customer when, in SSE's opinion, the Equipment is endangered or imperilled by any reason or cause whatsoever. The Customer indemnifies SSE in respect of any loss arising from any act done under or by virtue of this clause 6.4. Any action taken by either SSE or the Customer as set forth herein shall be without prejudice to any other rights or remedies that SSE or Customer may have respectively.

7 Extension of the Hire Period

- 7.1 If, and only if not later than one (1) month before the expiry of the Hire Period, the Customer gives notice to SSE requesting an extension of the Hire Period, such extension is, if any, subject to SSE's agreement, the availability of the Equipment and the following conditions:
- (a) the Charges and all other payments due under this Contract having been received by SSE in full as at the expiry of the Hire Period;
 - (b) there is no breach of the Customer's covenants, the Hire Period shall be extended for the period specified between the parties, commencing on the day following the date of expiration of the Hire Period and at the Charges, as varied, on the same terms and conditions of this Contract, except for the insertion of the extended term.

8 Delivery and Recovery

- 8.1 As agreed by SSE and at SSE's sole discretion:
- (a) delivery of the Equipment ("**Delivery**") shall take place when the Customer takes possession of the Equipment at either SSE's premises or the Site;
 - (b) recovery of the Equipment ("**Recovery**") will be completed when the Equipment has been either collected from the Site and/or returned to SSE's premises.
- 8.2 Unless otherwise specified:
- (a) the costs of Delivery and Recovery, including the supply of additional labour, equipment, materials and transportation expenses and other requirements are in addition to the Charges.
 - (b) Customer is responsible for the supply of all necessary craneage, labour and other handling equipment to offload, assemble, erect, dismantle and load the Equipment at the Site.
- 8.3 In the event the Customer is unable to accept Delivery and/or Recovery as arranged, or there are any delays due to free and clear access to the Site not being available, SSE shall be entitled to charge all additional costs involved with the redelivery and/or storage, or subsequent attempts at Recovery, as applicable, and all Charges lost as a direct result of the Equipment being unavailable.
- 8.4 Any time or date given by SSE to the Customer is an estimate only. The Customer must still accept Delivery even if late and SSE will not be liable for any loss or damage incurred by the Customer as a result of any delay in Delivery and/or Recovery of the Equipment, commencement of work or interruption to the continuity of work due to reasons beyond the practical control of SSE (including, but not limited to, any event outlined in clause 25.10, breakdown of plant, transport delays, accidents, or other labour difficulties, etc.).

9 Insurance

- 9.1 The Customer accepts full responsibility for the safekeeping of the Equipment and must effect insurance (and maintain any such insurance) with an insurer acceptable to SSE in the name of SSE and the Customer for their respective rights and interests whilst the Equipment is at the Site, or in transit between the Site and SSE's premises in respect of the following:
- (a) the full replacement value of the Equipment against such risk as SSE may nominate, or in the absence of such nomination, against loss or damage by theft, fire, accident and such other risks as are insured against by prudent persons engaged in a similar business to that of the Customer, excluding liability for claims being the subject of compulsory third party injury insurance on vehicles registered by SSE;
 - (b) a policy of employer's indemnity insurance and works compensation insurance in respect of all employees of the Customer in respect of damage or loss caused by the use, maintenance, repair and storage of the Equipment;
 - (c) public risk liability (at least 10 million) and product defect liability, and any other such insurance in support of the indemnities contained in this Contract, and must in respect of any policy of insurance, deliver to SSE a copy of the policy and promptly pay all premiums and stamp duty payable in respect of the policy.
- 9.2 SSE will maintain current insurance policies in respect of the Equipment to its full insurable value.
- 9.3 In the event that the Equipment provided by SSE is the subject of an insurance claim made by SSE, as a result of any action or inaction of the Customer, then the Customer accepts full liability for the value of Equipment (or part thereof) that is lost, stolen or damaged in any way any during the entire rental term, irrespective of whether the insurance claim is successful.

10 Risk

- 10.1 The Customer shall assume all risks and liabilities for and in respect of the Equipment and for injuries to or death of persons and damage to property howsoever arising from the possession, use, maintenance, repair or storage of the Equipment.
- 10.2 The Customer shall be solely responsible for any loss or damage to the Equipment, including (without limiting the generality of the foregoing) damage done by corrosion, rust, oxidation, and chemical reactions of every nature and kind whatsoever.

- 10.3 The Customer acknowledges and agrees that:
- (a) the Customer has satisfied themselves as to the condition and suitability of the Equipment, and its fitness for the Customer's purposes;
 - (b) the Customer has, prior to signing this Contract, examined the Equipment and satisfied themselves as to its compliance with the specifications and validity of the warranties of the manufacturer or SSE;
 - (c) once satisfied with the condition and suitability of the Equipment, the Customer must sign SSE's rental condition (hire-in & hire-out) inspection report.
- 10.4 Unless otherwise agreed to in writing between the parties, SSE shall not be deemed the principal contractor and shall not be obligated to maintain any contract works insurance cover or be responsible with regard to any work cover requirements (including, but not limited to, compliancy under any relevant legislation or policy, etc.).

11 Title

- 11.1 The Equipment is and will at all times remain the absolute property of SSE, and the Customer must return the Equipment to SSE upon request to do so.
- 11.2 The Customer must not, and must not attempt to, assign, mortgage, pledge, sell, charge, encumber, sublet, part with possession of, grant any lien, license or other encumbrance over, or otherwise dispose of or deal with, or permit or suffer to exist any lien or other encumbrance over, the Equipment or any part thereof, or any of the rights of the Customer to the Equipment, or any of the rights of the Customer under this Contract, and must keep the Equipment free from any distress, execution or other legal process.
- 11.3 Nothing contained in this Contract renders on the Customer any right or property or interest in the Equipment other than as a hirer.
- 11.4 The Customer must notify all persons who come in contact with the Equipment, including those who have an interest in the Services being undertaken, of the existence on the restriction on the creation of liens, or similar interests, whether by way of pledge or otherwise, in or over the Equipment, and will notify any persons seizing the Equipment or any part thereof of the restrictions contained in this clause 11.

12 Condition of Equipment and Inspections

- 12.1 The Equipment will be inspected by a representative of each party to establish the general condition thereof and a statement of condition of the Equipment will be prepared:
- (a) immediately prior to the commencement of this Contract; and
 - (b) as soon as practicable following termination of this Contract.
- 12.2 The Customer acknowledges and agrees that they will, at their own cost, reinstate the Equipment to its condition as specified in the rental condition (hire-in & hire-out) inspection report normal wear and tear excepted.

13 Wet Hire

- 13.1 Unless otherwise agreed to in writing between the parties, SSE shall not be deemed the principal contractor and shall not be obligated to maintain any contract works insurance cover or be responsible with regard to any work cover requirements (including, but not limited to, compliancy under any relevant legislation or policy, etc.).
- 13.2 The Customer shall:
- (a) be responsible for ensuring that SSE is notified of the location of any underground services on the Site; and
 - (b) provide amenities and first aid services to SSE's employees in compliance with all applicable health and safety legislation in operation in the state where the services are undertaken; and
 - (c) should it be necessary for the Equipment to be towed in, or out of the Site, then the Customer shall be responsible for all damage and/or salvage costs involving the Equipment, and said costs shall be in addition to the Charges; and
- 13.3 Notwithstanding that the operator of the Equipment is an employee or representative of SSE, the operator shall operate the Equipment in accordance with the instructions of the Customer, and accordingly, the Customer shall be liable for all responsibility and costs incurred as a result of the actions of the operator whilst following the Customer's instructions.
- 13.4 In the event the Customer requires an employee of SSE to undertake a Site induction during working hours, the Customer will be liable to pay the hourly Charges for that period, notwithstanding that the Equipment is not being operated during such time. If any induction is undertaken outside of the Hire Period then the Customer shall be liable to pay SSE standard (and/or overtime, if applicable) hourly labour rate.
- 13.5 In the event that SSE is required to provide the Services urgently, that may require SSE's staff to work outside normal business hours (including but not limited to working through lunch breaks, working double shifts, weekends and/or Public Holidays) then SSE reserves the right to charge the Customer additional labour costs (penalty rates will apply), unless otherwise agreed between SSE and the Customer.

14 Dry Hire

- 14.1 The Customer shall ensure that the Equipment is operated by a properly experienced and qualified person in accordance with SSE's and manufacturer's requirements and/or recommendations.

15 SSE's Employees

- 15.1 The Customer agrees not to employ, contract, subcontract or utilise in any way an employee or past employee of SSE (other than through SSE) for a period of no less than twelve (12) months after that employee's last employment with SSE.
- 15.2 The Customer agrees that if clause 15.1 is contravened SSE will be able to invoice the Customer at its current hourly rate the hours that the employee has been employed, contracted, subcontracted or utilised in any way by the Customer and agrees to pay said invoice in accordance with the standard payment terms contained in this Contract.

16 Compliance with Laws

- 16.1 The Customer and SSE shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any WorkSafe (WA) laws relating to building/construction sites and any other relevant safety standards or legislation, particularly those in relation to asbestos and/or other hazardous materials (and the safe removal and

disposal of the same). The Customer agrees to indemnify SSE against all claims arising from health issues related to exposure to asbestos on site.

16.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals or notices (including local Government approvals) that may be required in relation to use or transport of the hire Equipment.

17 Personal Property Securities Act 2009 ("PPSA")

17.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

17.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Equipment and/or collateral (account) – being a monetary obligation of the Customer to SSE for services – that has previously been supplied and that will be supplied in the future by SSE to the Customer.

17.3 The Customer undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which SSE may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the PPSR;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 17.3(a)(i) or 17.3(a)(ii);
- (b) indemnify, and upon demand reimburse, SSE for all expenses incurred in registering a financing statement or financing change statement on the PPSR established by the PPSA or releasing any registration made thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of SSE;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment and/or collateral (account) in favour of a third party without the prior written consent of SSE.

17.4 SSE and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

17.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

17.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

17.7 Unless otherwise agreed to in writing by SSE, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

17.8 The Customer must unconditionally ratify any actions taken by SSE under clauses 17.3 to 17.5.

17.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

17.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period, shall this clause 17 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 17 will apply generally for the purposes of the PPSA.

18 Security and Charge

18.1 In consideration of SSE agreeing to supply Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

18.2 The Customer indemnifies SSE from and against all SSE's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising SSE's rights under this clause.

18.3 The Customer irrevocably appoints SSE and each director of SSE as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 18 including, but not limited to, signing any document on the Customer's behalf.

19 Load Measuring Devices

19.1 If any Equipment has been fitted with a load measuring device, the Customer hereby acknowledges and agrees that SSE has made no warranties or representations whatsoever with respect to the ability of said load measuring device too accurately or consistently measure the weight of the load being lifted by such Equipment. The Customer further acknowledges and agrees that it is the responsibility of the Customer to independently determine the weight of every load to be lifted by any Equipment comprising all or a portion of the Equipment so as to ensure that any such load to be lifted does not exceed the rated load as determined by such Equipment's capacity chart and that the load measuring device shall be used as an operator-aide only.

19.2 The Customer will be liable for, and shall indemnify and hold harmless SSE of and from, any and all liabilities, costs, damages, charges, legal fees and disbursements (including those on a solicitor and own Customer basis with right of full indemnity) fines, penalties, expenses, actions, suits, proceedings and demands, all of whatever kind or nature which SSE may suffer or incur or be liable for, either directly or indirectly, by reason of failure of any load measuring device to perform consistently or accurately, notwithstanding the negligence of SSE directly or indirectly related thereto. The Customer hereby releases SSE of and from any and all liabilities, losses, costs, damages, claims and demands which it may have against SSE, either directly or indirectly, arising by reason of the failure of any load measuring device to perform consistently or accurately, notwithstanding the negligence of SSE. Without restricting the generality of the foregoing, the Customer covenants and agrees that they shall not sue SSE for any such losses, or costs, damages, claims or demands. Furthermore, the Customer acknowledges and agrees that if they rely in any way whatsoever on any such load measuring device that they do so completely at their own risk.

20 Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 20.1 All conditions and warranties, express or implied, whether arising by statute or otherwise, as to the condition, suitability, quality, fitness for any purpose or safety of or title to the Equipment are hereby negative and excluded to the full extent permitted by the law, and SSE gives no such warranty or condition, and the Customer acknowledges that SSE has not given any such warranty or condition.
- 20.2 The terms of this Contract that exclude or limit SSE's liability shall apply only to the extent permitted by law, and subject to the provisions of the Competition and Consumer Act 2010 and other statutes from time to time in force which cannot be excluded, restricted or modified, or which can only be excluded, restricted or modified to a limited extent, and if any such statutes apply to this Contract, then to the extent to which SSE is entitled to do so, SSE's liability under such statutes shall be limited at SSE's absolute option to:
- (a) the replacement of the Equipment or the supply of plant similar to the Equipment; or
 - (b) the payment of the cost of having the Equipment repaired; or
 - (c) the repair of the Equipment; and
 - (d) Hire Charges will be suspended in full until the Equipment is replaced (at SSE's discretion) or returned to operating condition.
- 20.3 Notwithstanding clauses 20.1 and 20.2, but subject to the CCA, SSE shall not be liable for any defect or damage which may be caused or partly caused by, or arise as a result of:
- (a) the Customer failing to properly maintain or store the Equipment;
 - (b) the Customer interfering with the Equipment in any way without SSE's written approval to do so;
 - (c) the Customer using the Equipment for any purpose other than that for which it was designed;
 - (d) the Customer continuing the use of the Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (e) the Customer failing to follow any instructions or guidelines provided by SSE;
 - (f) fair wear and tear, any accident, or act of God.

21 Limitation of Liability

- 21.1 Subject to clause 20:
- (a) SSE shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit or any rectification costs), or any third party claims, suffered by the Customer in connection with the use of the Equipment and/or the provision of Services by SSE, or arising out of a breach by SSE of these terms and conditions. Alternatively, SSE's liability shall be limited to damages which under no circumstances shall exceed the Charges;
 - (b) the Customer acknowledges and agrees that SSE is not liable:
 - (i) to the Customer for any loss, cost (whether indirect or consequential) or damage or delay through breakdown, mechanical defect or accident to or of the Equipment;
 - (ii) to any person for any loss or damage to any property stolen from the Equipment or damaged or otherwise lost during the Hire Period or left in the Equipment after return of the Equipment to SSE's depot;
 - (iii) to the Customer for any form of breakdown, whether mechanical electrical or structural to the Equipment whilst on hire to the Customer.
- 21.2 The Customer assumes liability for an indemnifies and holds harmless SSE, its agents and employees from and against all claims, costs, damages, losses or expenses of any kind howsoever, arising under tort (including but not limited, negligence), contract, strict liability, statute or otherwise from the arrangements between the Customer and SSE and including (without limitation) in relation to death of or injury to any person, loss, damage or destruction of any property including the Equipment and any goods in transit. This indemnity shall not include the Equipment.
- 21.3 To the full extent permitted by law, the Customer releases, holds harmless and discharges SSE, its agents and employees in respect of all claims and demands on SSE and any loss or damage caused to the Customer or its agents.

22 Default and Consequences of Default

- 22.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at SSE's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 22.2 If the Customer owes SSE any money the Customer shall indemnify SSE from and against all costs and disbursements incurred by SSE in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, SSE's contract default fee, and bank dishonour fees).
- 22.3 Further to any other rights or remedies SSE may have under this Contract, if a Customer has made payment to SSE, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by SSE under this clause 22 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 22.4 Without prejudice to SSE's other remedies at law SSE shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to SSE shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to SSE becomes overdue, or in SSE's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by SSE;
 - (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

23 Cancellation/Termination

- 23.1 Without prejudice to any other remedies SSE may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions SSE may suspend or terminate the supply of Services to the Customer. SSE will not be liable to the Customer for any loss or damage the Customer suffers because SSE has exercised its rights under this clause.
- 23.2 SSE may terminate this Contract, or cancel Delivery, at any time before the Equipment is delivered by giving written notice to the Customer. On giving such notice SSE shall repay to the Customer any sums paid in respect of the Charges. SSE shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 23.3 In the event that the Customer terminates this Contract, or otherwise cancels Delivery, the Customer:
- (a) must provide notice of such to SSE at least twenty-four (24) hours prior to the specified date of Delivery; and
 - (b) the Customer shall be liable for any and all loss incurred (whether direct or indirect) by SSE as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 23.4 Except so far as clause 23.1 applies, on termination SSE shall be entitled to:
- (a) retain all monies paid to it under this Contract; and
 - (b) recover from the Customer any other monies due and owing under this Contract as at the date of termination.
- 23.5 On termination, the Customer must deliver up to SSE the Equipment (together with all parts and accessories) in clean and good order as delivered (with allowance for fair wear and tear).
- 23.6 Upon termination of this Contract following the occurrence of a default event as per clause 22.4, the Customer must pay to SSE by way of liquidated damages, in addition to and without prejudice to any other right or remedy of SSE, an amount equal to the total of:
- (a) the unpaid balance of the Charges for the Hire Period which would have been payable until the expiration of the Hire Period had the Contract not been terminated;
 - (b) SSE's costs and expenses incurred in repossessing and storing, insuring and registering the Equipment and in entering on and removing the Equipment from land or premises on which the Equipment was situated, and make good any injury or damage caused to the land or premises;
 - (c) SSE's costs and expenses of repairs reasonably necessary to bring the Equipment to an operational/useable condition;
 - (d) interest calculated in accordance with clause 22.1 of this Contract.
- 23.7 On, or before, termination of this Contract, the Customer shall return the Equipment to SSE's premises and the Customer acknowledges and agrees that the Charges are payable:
- (a) until such time as the Equipment is returned to SSE's premises and returned to its condition as specified in the on-hire inspection, normal wear and tear excepted; and
 - (b) for the entirety of the Hire Period, notwithstanding that the Equipment may be returned to SSE prior to termination.

24 Privacy Policy

- 24.1 All emails, documents, images or other recorded information held or used by SSE is Personal Information, as defined and referred to in clause 24.3, and therefore considered Confidential Information. SSE acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). SSE acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by SSE that may result in serious harm to the Customer, SSE will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 24.2 Notwithstanding clause 24.1, privacy limitations will extend to SSE in respect of Cookies where transactions for purchases/orders transpire directly from SSE's website. SSE agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email Customer type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to SSE when SSE sends an email to the Customer, so SSE may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via SSE's website.
- 24.3 The Customer agrees for SSE to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by SSE.
- 24.4 The Customer agrees that SSE may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 24.5 The Customer consents to SSE being given a consumer credit report to collect overdue payment on commercial credit.
- 24.6 The Customer agrees that personal credit information provided may be used and retained by SSE for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services/Equipment; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Equipment; and/or

- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Equipment.
- 24.7 SSE may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the SSE to create or maintain a credit information file about the Customer including credit history.
- 24.8 The information given to the SSE may include:
- (a) Personal Information as outlined in 24.3 above;
 - (b) name of the credit provider and that SSE is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and SSE has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of SSE, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 24.9 The Customer shall have the right to request (by e-mail) from SSE:
- (a) a copy of the Personal Information about the Customer retained by SSE and the right to request that SSE correct any incorrect Personal Information; and
 - (b) that SSE does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 24.10 SSE will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 24.11 The Customer can make a privacy complaint by contacting SSE via e-mail. SSE will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

25 General

- 25.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, arbitration, in accordance with the Commercial Arbitration Act 2012 (WA); or its replacement(s) or the relevant governing agency for the state in which the Works were performed.
- 25.2 Furthermore, where a dispute exists, each of the parties must continue to perform its obligations under this Contract unless the other party evinces an intention not to comply with this clause.
- 25.3 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.4 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia, the state in which SSE has its principal place of business, and are subject to the jurisdiction of the Court in that state.
- 25.5 The Customer agrees to assist and cooperate with SSE in relation to SSE exercising any and all of their rights in respect to the Equipment, including without limitation to, SSE instituting, carrying on or enforcing, compromising or completing any legal proceedings which SSE thinks desirable to protect their rights in respect of the Equipment.
- 25.6 SSE may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 25.7 The Customer cannot licence or assign without the written approval of SSE.
- 25.8 SSE may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of SSE's sub-contractors without the authority of SSE.
- 25.9 The Customer agrees that SSE may amend their general terms and conditions for subsequent future Contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for SSE to provide Services/Equipment to the Customer.
- 25.10 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 25.11 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.