

The Glossary

1. DEFINITIONS AND INTERPRETATION

Additional Expenses means any fees, expenses, duties, taxes and disbursements that We incur to supply Equipment and Services to You at rates advised by Us from time-to-time. Additional Expenses for Equipment may include delivery fees, freight and haulage charges, fuel costs, toll or other road charges, traffic management costs, specific insurance costs, permit and licence fees, mobilisation fees and de-mobilisation fees, cleaning and repair costs, cancellation fees and administration fees. Additional Expenses for Services may include Personnel costs (such as meal allowances, transport, accommodation etc), specific requested safety and training costs (such as safety modifications, medical assessments, training and inductions, etc.), external labour hire costs, overtime loadings, cancellation fees, and administration fees.

Confidential Information means any document labelled 'confidential' and any information of a confidential nature whether oral, written or in electronic form including, but not limited to, these Terms, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including personal information and credit information as those terms are defined in the *Privacy Act 1988* (Cth)) and pricing details.

Credit Account means the approved commercial account You have with Us to purchase Equipment and Services on credit pursuant to these Terms.

Customer means any person or entity placing an Order with Us for the supply of Equipment and Services (also referred to as "You" and "Your").

Due Date means the date listed on Our invoice for Your payment of Equipment and Services.

Equipment means Our cranes, plant, machinery, vehicles, floats and any other ancillary equipment that We supply to You as part of the Services. Equipment includes any accessories, machinery, tools and associated items, manuals and logbooks that are supplied with the Equipment.

Force Majeure means something outside a party's reasonable control, including war, strikes, lockouts and lockdowns, epidemics and pandemics, industrial disputes or civil unrest, government restrictions or intervention, transport delays, fire, act of God, storm, flood, theft and vandalism.

Goods means any of Your cargo together with any container, packaging, or pallet(s) to be handled, lifted and/or carried by Us for You.

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

Hire Period means the period of time that You agree to hire Equipment (with or without Personnel) as specified in the Hire Schedule. The Hire Period includes the actual time that You have the Equipment in Your possession (with or without Personnel), any agreed extension of time or automatic rollover period and may include any weekends and public holidays.

Hire Schedule means Our document specifying the Equipment, scope of Services, Personnel, Hire Period, rates, Additional Expenses and any other

special conditions for the supply of Equipment and Services to You pursuant to these Terms.

Industrial Law means any industrial or employment contract, award, instrument, rule, statute or legislation and amended from time-to-time.

Insolvency Event means any circumstances where We reasonably believe that You are unable to pay Your debts as and when they fall due or You have suffered a material adverse change in Your financial circumstances.

Loss means any claim, demand, cause of action, loss and damage, liability, costs (including legal costs on an indemnity basis), expenses (including any GST payable) and is not limited by the Losses which were contemplated by the parties at the time of entering into these Terms.

Order means Your request or purchase order with an order number for the supply of Our Equipment and Services.

PPSA means:

- the *Personal Property Securities Act 2009* (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- any amendment made at any time to any other legislation as a consequence of the PPS Act.

Personnel means Our staff members, employees, crew, contractors and other personnel who are supplied to operate the Equipment and perform the Services on a Wet Hire basis.

Quote means Our written description and price of the Equipment and Services to be supplied to You, which is valid for 30 days.

Rates Schedule means the list of rates and charges for supply of Our Equipment and Services, as published from time-to-time.

Services means the:

- supply of Equipment to You with Personnel, associated labour, works and services (also known as 'Wet Hire'); and/or
- bare hire Equipment to You without Personnel (also known as 'Dry Hire')

pursuant to any Quote, Order and/or these Terms.

Site means any place where You request Equipment and Services to be supplied and operated, or Goods to be handled, lifted, carried or delivered.

Supplier means the entity or entities specified in these Terms as supplying Equipment and Services to You (also referred to as "Us", "We" and "Our").

Website means www.metcalfcranes.com.au as redirected from time to time.

In these Terms:

- a reference to 'Terms' means these Terms and Conditions of Business;
- a reference to a clause or paragraph is a reference to these Terms;
- a reference to a party to these Terms or any other document or arrangement includes that party's associated, related, subsidiary and parent companies, executors and permitted successors and assigns;
- a reference to writing includes email and any communication through Our website;

Duly signed and accepted in full on behalf of _____

Signature _____ Name _____ Position _____ Date _____

- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings, explanatory notes or paragraphs are for ease of reference only and do not affect the meaning or interpretation of these Terms;
- (g) a reference to 'including' does not convey any limitation and should be interpreted as if the word 'without limitation' also appear; and
- (h) a Business Day is any day except Saturday, Sunday or a public holiday in the location where the Equipment and Services are supplied;
- (i) if these Terms require something to be done on a day that is not a Business Day (for example, payment or notice), then it must be done on the preceding Business Day.

About these Terms

2. OUR AGREEMENT

- (a) These Terms apply to all Equipment and Services that are supplied by Us to You.
- (b) The entire agreement between the parties for all Equipment and Services supplied to You is comprised of these Terms, the Hire Schedule, Our Rates Schedules as published from time-to-time, any Credit Account application, and any special conditions listed on Our Quote. Any other negotiations, documents, terms and conditions (including those listed on Your Order) are expressly superseded and excluded.
- (c) Unless the parties otherwise agree in writing, these Terms apply to the extent of any inconsistency between documents.
- (d) You warrant that You have obtained all the necessary authorisations to enter into and perform the agreement created by these Terms. You warrant that any person signing these Terms or instructing Us as to the Equipment and Services has Your authority and power to do so.
- (e) You accept these Terms by signing and returning a copy of them to Us or by other conduct, for example by oral acceptance, submitting an Order, or by instructing Us to supply Equipment and Services.
- (f) You engage Us to supply Equipment and Services strictly as an independent contractor. We are not engaged as Your employee, partner, agent, joint venture or franchisee, nor is any other person working at Our direction.
- (g) These Terms are interpreted according to the laws of the State or Territory as We may reasonably determine. Proceedings by either party may be commenced and/or continued in the State or Territory We determine in Our sole discretion. If We do not make any determination, You consent to any proceedings being commenced and heard by a Court in the State of Victoria applying the laws of that State.

3. CHANGES AND UPDATES TO THESE TERMS

- (a) You acknowledge and agree that We may update or alter our standard terms and conditions of business from time-to-time.
- (b) We will provide You with 7 days' written notice of any proposed updates or variations to these Terms. Any such updated or varied Terms will apply to all Orders placed after the date of the notice, unless You object in writing within the notice period. If You object to Our updated Terms, You may exercise Your termination rights stipulated by these Terms and We may choose not to accept any new Orders from You until You accept Our updated Terms.
- (c) Any variation that You request to the Terms, Equipment or Services is subject to Our consent (which will not be unreasonably withheld) and must be given in writing by a duly authorised officer.
- (d) All changes or variation to the agreement between the parties for supply of Equipment and Services must be in writing.
- (e) You must notify Us in writing of any material change to Your organisation, including a change of director, bank account details or change of address.
- (f) The parties may only assign or transfer all or any of their title, estate, interest, benefit, rights, duties and obligations in these Terms to any person with the other parties' written consent and provided that the

assignee agrees to assume any of Our duties and obligations owed to You in these Terms.

- (g) You must not charge, encumber or otherwise deal with any of Your rights and obligations under these Terms without Our prior written consent.

How to Order from Us

4. QUOTATIONS AND ORDERS

- a) We may issue a Quote to You, but a Quote is not an offer by Us to supply Equipment and Services to You.
- b) We may vary or cancel any Quote before a corresponding Order is accepted.
- c) You may request Equipment and Services by placing an Order with Us in writing. You warrant that the person who places the Order is authorised by You to do so.
- d) We may impose minimum Hire Periods on Orders, at rates advised by Us from time-to-time. Minimum Hire Periods are applicable to Equipment and Personnel (if any) to be supplied.
- e) All Hire Periods are based on the time and date that Our Equipment and/or Personnel departs Our depot until the time and date the Our Equipment returns to Our depot.
- f) You must provide Us with 48 hours' notice for any Orders that require night shift Personnel.
- g) We may accept or decline any Order by notifying You in writing or by supplying the Equipment and Services to You.
- h) We may ask You to pay a deposit for an Order in any amount that We advise from time-to-time. We are not required to accept Your Order until payment of the deposit has been made. The balance of the Order must be paid as We direct.
- i) You may cancel an Order as follows:
 - a. Any Orders containing night shifts must be made in writing with 48 hours' notice;
 - b. All other cancellations must be made in writing with 12 hours' notice;
 - c. If Equipment has been despatched or We have incurred costs to fulfil an Order at the time of Your cancellation, You must pay Us for the Loss that We incur as a result of Your Order cancellation;
- j) You agree to indemnify Us against and pay Us for Loss that We incur as a result of cancelling an Order once We have incurred costs to fulfil the Order or once Equipment has been despatched, including payment of any minimum Hire Period and any Additional Expenses that We have incurred to supply in accordance with the Order.

5. OUR RATES

- (a) Our prices for Equipment and Services are contained in the Rates Schedule that We publish from time-to-time. Our Rates Schedule may change from time-to-time by written notice to You.
- (b) You acknowledge and agree that Our rates for Services are calculated on the following basis:
 - i) Unless expressly stated in Our Rates Schedule or the Hire Schedule, or as otherwise agreed between the parties in writing, Our rates do not include Additional Expenses. We may charge Additional Expenses that We incur in supplying Equipment and Services to You;
 - ii) All rates are based on Equipment that We own and are subject to the availability of Equipment, statutory approvals, road and weather conditions at the time Your Order is made;
 - iii) All rates are based on the initial configuration stipulated in the Hire Schedule; and
 - iv) All rates are exclusive of GST. You must pay Us GST imposed on any supply of Equipment and Services made under these Terms. Payment of any GST must be made at the same time as payment for the Goods and Services.
- (c) Unless the parties otherwise agree in writing, the price that You must pay for Equipment and Services is specified in the Hire Schedule, any special conditions, listed in Our Quote, Our Rates Schedule that

is current at the time that Your Order is accepted and/or Our invoices.

Getting the Equipment and Services to You

6. DELIVERY

- (a) You authorise Us to:
 - i) Deliver Equipment and supply Services to the Site nominated by You, whether or not any person is there to accept delivery;
 - ii) Install, mobilise and configure Equipment at the Site nominated by You.
- (b) The method of delivering Equipment is at Our sole discretion. At any time, We may appoint a third party agent to perform Our delivery obligations of these Terms.
- (c) We may appoint an agent or sub-contractor to perform any other obligation of these Terms only with Your prior written consent.
- (d) You must pay all Additional Expenses that We incur to deliver Equipment.
- (e) We are not obliged to obtain a signed receipt, signed delivery docket or other acknowledgement of Equipment being delivered. But if a signed receipt, delivery docket or other acknowledgement is obtained then that document will be conclusive evidence of Your acceptance of Equipment being delivered.
- (f) You acknowledge and agree that any supply, delivery, mobilisation and de-mobilisation times indicated by Us are given in good faith and are estimates only. Estimates of time are subject to change due to Equipment being available, Our reasonable ability to supply on the estimated date, Site conditions, Force Majeure Events and receiving cooperation from You and relevant third parties.
- (g) We will endeavour to deliver Equipment and supply Services at the time you need, but if We fail to deliver within a specified time due to factors beyond Our control or Your acts or omissions, You are not allowed to cancel Your Order, refuse to accept delivery, or refuse to pay for the Services.
- (h) You acknowledge and agree that We may incur Additional Expenses (such as travel, storage, handling and insurance costs) if You cause a delay in delivery.
- (i) Delivery is deemed to occur when Equipment is either handed to You or Your representative or delivered to the Site.
- (j) You agree to inspect and examine Equipment immediately on delivery.
- (k) If You believe Equipment is damaged on delivery or there has been an ordering error, You must notify Us within 24 hours of receiving the Equipment.

Hire Responsibilities

7. GENERAL HIRE OBLIGATIONS

- (a) The following provisions apply to Services, regardless of whether Equipment is hired on a 'Wet Hire' or 'Dry Hire' basis.
- (b) The Services are provided to You with all due skill and care in accordance with Our professional standards and industry accreditations.
- (c) To facilitate Our supply of Services, You must:
 - i) Provide all resources that We reasonably require to supply the Services, including but not limited to accurate and complete instructions, Site specifications and measurements, files and records, plans, licenses and permits, traffic management systems, third parties where applicable and people (whether engineers, builders, management or staff) with the relevant authority that We reasonably require;
 - ii) Accurately disclose to Us the nature, centre of gravity and weight of loads to be handled, carried or lifted by Our Equipment or Our Personnel;
 - iii) Provide and maintain a suitable and safe Site for Us (or Our agents, employees or contractors) to supply the Services, including a Site that is compliant with occupational health and safety legislation;

- iv) Provide clear, close and easy access for Us to deliver Equipment, mobilise and de-mobilise Equipment, and move Equipment around the Site; and
 - v) Erect and maintain all amenities at the Site, including power and water supply, scaffold, barricades, guards, fencing, temporary roadways and footpaths, bathrooms, signs and lighting at the Site that We or the Personnel reasonably require, unless such items are included in the Hire Schedule.
- (d) You acknowledge and agree that:
 - i) Our Services are limited to the particular project, solution, tasks, activities, operation or other scope of work that We have agreed to carry out in the Hire Schedule;
 - ii) The Services provided are based on information that is available to Us at the time. We are entitled to rely on the accuracy and completeness of the information that You provide Us for the Services;
 - iii) You must promptly notify Us of any change in information that may have a material impact on the Services or if anything occurs after information is provided to Us which renders such information incorrect or inaccurate;
 - iv) We reserve the right to determine the method of mobilisation, calibration, repair, maintenance, de-mobilisation or other Service that may be required.
 - (e) Before hiring Our Equipment, You must determine the suitability of the Equipment for any purpose You require.
 - (f) You must provide Us with at least 7 days' written notice of any request to change the Services.

8. WET HIRE OBLIGATIONS

- (a) Unless the Hire Schedule provides otherwise, the following provisions apply to Wet Hire Services.

What We Must Do

- (b) We will supply Personnel who are appropriately qualified, experienced, skilled and licensed to perform the Services.
- (c) We are responsible for:
 - i) Payment of remuneration and other entitlements that Personnel may be entitled to under any Industrial Law, including salaries and wages, minimum wage entitlements, allowances, superannuation, leave, rostered-days-off, redundancy and public holiday entitlements;
 - ii) Payment of all taxes and duties in respect of Personnel remuneration and entitlements, including payroll tax;
 - iii) Payment and maintenance of relevant insurances for the Personnel supplied, including public liability insurance and workers compensation insurance;
 - iv) Resolving all reported incidences of injury, performance and/or misconduct of Personnel;
 - v) Instructing, supervising and training Personnel at all times during the Hire Period;
 - vi) Ensure that each Personnel maintains an accurate timesheet recording the number of hours worked and the time and date of hours worked;
 - vii) Ensure that all Personnel timesheets are reviewed for accuracy, approved, signed and submitted by an authorised representative at times that We advise during the Hire Period; and
 - viii) Scheduled servicing and maintenance of Equipment during the Hire Period.

What You Must Do

- (d) You must:
 - i) Comply with all Industrial Law;
 - ii) Arrange all Site and risk specific insurances to meet Your needs;
 - iii) Conduct a Site and safety induction for all Personnel (and ensure that all Personnel complete such Site and safety induction) prior to any Personnel commencing the Hire Period;
 - iv) Provide and maintain safe Sites, working environments and work systems for the Personnel in accordance with all applicable occupational health and safety legislation and Industrial Law;

- v) Obtain all permits, approvals, inspections and sign-offs required for the Equipment to be operated at the Site;
 - vi) Effect adequate insurance to cover personal injury or death of Personnel, or any Loss or damage to Your equipment caused by Personnel, that occurs during the Hire Period;
 - vii) Provide or pay for Site-specific Additional Expenses required by Personnel;
 - viii) Promptly advise Us in writing of any incident involving injury, misconduct or underperformance of Personnel.
- (e) You must provide Your cooperation and all reasonable access to the Site, Personnel, documentation and Your staff so that We can:
- i) Investigate any reported incidence of underperformance, injury or misconduct;
 - ii) Investigate any error or discrepancy in timesheet reporting;
 - iii) Conduct occupational health and safety inspections from time-to-time;
 - iv) Conduct safety, toolbox, training or other meeting with the Personnel as may be required from time-to-time; and
 - v) Conduct inspection, servicing, repair and maintenance of the Equipment from time-to-time.

9. DRY HIRE OBLIGATIONS

What You Must Do

- (a) Unless the parties otherwise agree in writing:
- i) The following provisions apply to Dry Hire Services only;
 - ii) The parties may allocate specific risk and responsibility for Dry Hire Services (or any part of them) in the Hire Schedule instead of these Terms; and
 - iii) To the extent of any inconsistency between a Hire Schedule and these Terms in respect of Dry Hire Services, the Hire Schedule applies.
- (b) Before the Hire Period commences, You must obtain insurance for the full insurable value of the Equipment against damage or destruction to the Equipment, public and third-party liability and any other insurable risks that We reasonably require.
- (c) You must maintain such insurance at all times during the Hire Period and provide Us with a certificate of currency on request.
- (d) When the Equipment is delivered, You must:
- i) Immediately inspect the Equipment for its condition; and
 - ii) Within 24 hours of delivery notify Us in writing of any discrepancy, unsatisfactory condition, damage or defect in the Equipment.
- (e) During the Hire Period, You must:
- i) Use the Equipment in a skilful and workman like manner and only for the purposes and within the capacity for which the Equipment is designed;
 - ii) Ensure that the Equipment is operated by suitably certified, trained and/or licensed personnel;
 - iii) Ensure that the Equipment is operated in accordance with all instructions, guides and manuals (whether Yours, Our or the manufacturer's);
 - iv) Ensure the safety of all personnel when the Equipment is on Site, including:
 1. Attaching and maintaining any relevant safety signs to the Equipment;
 2. Ensuring that all safety information supplied with the Equipment is conveyed to personnel on Site; and
 3. Ensuring that all operators of the Equipment wear all recommended personal protective equipment (PPE);
 - v) Keep the Equipment in good repair and condition; and
 - vi) Keep the Equipment secure and prevent it from being lost, stolen or damaged in any way.
- (f) During the Hire Period, You must not without Our prior written consent:
- i) Move the Equipment from the Site;
 - ii) Claim any lien over, sell, transfer, charge, part with possession of, assign, or encumber the Equipment in any way;
 - iii) Interfere with the Equipment, including altering, adding to,

- defacing, or erasing any identifying mark, plate or number on or in the Equipment; or
 - iv) Service or repair the Equipment.
- (g) You are responsible for cleaning, servicing and maintaining the Equipment during the Hire Period. You must:
- i) Follow all instructions and specifications for servicing and maintaining the Equipment, whether Ours, the manufacturer's or operating manuals;
 - ii) Email all servicing and maintenance log sheets to Us on a weekly basis;
 - iii) Ensure that detailed field service reports are prepared for all servicing and maintenance of the Equipment, including details of works conducted and parts used;
 - iv) Immediately provide Us with all field service reports;
- (h) We may access the Equipment from time-to-time during the Hire Period for the purpose of inspecting the Equipment. You must permit and arrange such access to the Equipment.
- (i) You are liable for any Loss that occurs to the Equipment (or as a result of Your use or operation of the Equipment) during the Hire Period. This liability includes property damage, injury to a person, and the costs to repair or replace Equipment that is lost, stolen or damaged during the Hire Period. We reserve all rights to charge You for repair or replacement of such Loss.
- (j) You must return all Equipment to Us at the end of the Hire Period in a clean condition.

Loss and Damage to Equipment

- (k) Unless these Terms or the Hire Schedule say otherwise, You are responsible for any Loss, theft or damage to Equipment during the Hire Period for any cause whatsoever, except where that Loss, theft or damage has been directly caused by Us.
- (l) If the Equipment breaks down, needs recalibration, repair or maintenance, or otherwise becomes unsafe to use during the Hire Period, then You must:
- i) Immediately stop using the Equipment;
 - ii) Notify Us of the breakdown, damage, fault or repair in question;
 - iii) Take all steps necessary to prevent injury occurring to persons or property as a result of the Equipment's condition;
 - iv) Take all steps necessary to prevent further damage to the Equipment; and
 - v) Not repair or attempt to repair the Equipment without Our prior written consent.
- (m) If the repair of the Equipment is not caused by You, then We will:
- i) Repair or replace the Equipment (as may be required in Our sole discretion) as soon as practicable and at Our expense; and
 - ii) Suspend or credit hire charges for the portion of the Hire Period that the Equipment was out-of-use.
- (n) If the fault or repair of the Equipment is caused by You (including Your use or misuse of the Equipment) then You are liable for all costs for repair or replacement of the Equipment and continuing hire charges while the Equipment is being repaired and/or replaced.
- (o) If the Equipment is lost, stolen or damaged, you are responsible for:
- i) The cost of repairs; or
 - ii) The cost of replacement (if the Equipment cannot be repaired);
 - iii) Ongoing hire charges until the Equipment is repaired or replaced, unless otherwise agreed by Us; and
 - iv) Any Additional Expenses associated with the repair and/or replacement of the Equipment.

10. CARTAGE OF GOODS OBLIGATIONS

- (a) We are not a common carrier and do not accept the obligations or liability of common carriers.
- (b) We reserve the right to determine the type of Goods to be handled by Our Equipment or Personnel. In our sole discretion, We may refuse to handle, lift, or carry any class of Goods without providing You with any reason for such a refusal.
- (c) You warrant that when Goods are given to Us for carriage, You are

acting as an agent for any third party who has an interest in the Goods and are primarily liable for all obligations including insurance of the Goods under these Terms.

- (d) We reserve the right to determine the route, manner or method of carrying Goods in Our absolute discretion. You authorise Us to deviate from the usual route or manner of carriage of Goods that We deem reasonable or necessary in the circumstances.
- (e) Delivery of Goods occurs when they are left at the Site. If the Site is unattended, We may choose whether to leave the Goods there, store them on Your behalf or return them to You or any third party owner. If the Goods are stored on Your behalf or returned to You, You must pay all reasonable Additional Expenses that We incur.
- (f) To secure payment of all monies You owe Us for the supply of Equipment and Services, We may retain all Goods and any related documents in Our possession until You pay for the Equipment, Services and any Additional Expenses (**Lien**). If We exercise the Lien, You do not have a right to inspect or take copies of any documents subject to the Lien. Once the Services and any Additional Expenses have been paid, We may deliver the Goods to You or Your Site or require You to collect them. Any waiver or abandonment of the Lien must be communicated by Us expressly in writing.
- (g) You must comply with all legal requirements (and any requirements of the person(s) to whom We deliver the Goods) in relation to the Goods, including requirements relating to their shape, packaging, labelling and transportation.
- (h) When carriage of the Goods is complete, You must ensure (if required to do so by Us) that any containers, pallets or packaging that are delivered to You with the Goods are returned to their respective legal owner.

11. HIRING OUR PERSONNEL

What We Must Do

- (a) We will:
 - i) Supply Personnel who are appropriately qualified, experienced, skilled and licensed to undertake the Services;
 - ii) Ensure that all Personnel have rights to work in Australia in accordance with Industrial Law;
 - iii) Ensure that Our Equipment to be operated by Personnel during the Hire Period is safe to use at all times;
 - iv) Supply all personal protective equipment (PPE) which may be required by occupational health and safety requirements and Industrial Law; and
 - v) Instruct, supervise and train Personnel during the Hire Period for the safe and correct operation of Our Equipment;
- (b) We are responsible for:
 - i) Payment of remuneration and other entitlements that Personnel may be entitled to under any Industrial Law, including salaries and wages, allowances, superannuation, leave, rostered-days-off and public holidays, and redundancy;
 - ii) Payment of all taxes and duties in respect of Personnel remuneration and entitlements, including payroll tax;
 - iii) Payment and maintenance of relevant insurances for the Personnel supplied, including public liability and workers compensation; and
 - iv) Resolving all reported incidences of injury, underperformance and/or misconduct of Personnel.

What You Must Do

- (c) You must:
 - i) Comply with all Industrial Law;
 - ii) Conduct a Site and safety induction for all Personnel (and ensure that all Personnel complete such Site and safety induction) prior to commencing work for the Services;
 - iii) Provide and maintain safe Sites, working environments and work systems for the Personnel in accordance with all applicable occupational health and safety requirements and Industrial Law;
 - iv) Obtain all Site permits, approvals, inspections and sign-offs for

any Equipment that the Personnel will be operating during the Hire Period;

- v) Ensure that Your own equipment to be operated by Personnel during the Hire Period is safe to use at all times;
 - vi) Instruct, supervise and train Personnel during the Hire Period for the safe and correct operation of Your own equipment;
 - vii) Effect adequate insurance to cover personal injury or death of Personnel, or any Loss or damage to Your equipment caused by Personnel, that occurs during the Hire Period;
 - viii) Ensure that each Personnel maintains an accurate timesheet recording the number of hours worked and the time and date of hours worked;
 - ix) Ensure that all Personnel timesheets are reviewed for accuracy, approved, signed and submitted by an authorised representative at times that We advise during the Hire Period;
 - x) Promptly advise Us in writing of any incident involving injury, misconduct or underperformance of Personnel; and
 - xi) Not employ, contract, solicit or approach Our Personnel for employment or any direct labour contract with Your Company.
- (d) You must provide Us with at least 48 hours' written notice of any change to the quantity or duties of Personnel required.
 - (e) You must provide all access to the Site, Equipment, Personnel, documents and records, and other staff that We reasonably require to:
 - i) Investigate any reported incidence of underperformance, injury or misconduct;
 - ii) Investigate any error or discrepancy in timesheet reporting;
 - iii) Conduct occupational health and safety inspections from time-to-time; and Conduct safety, toolbox, training or other meetings with the Personnel as may be required from time-to-time.

How to Pay for Our Equipment and Services

12. CREDIT ACCOUNTS

- (a) You may apply for a Credit Account with Us to hire Equipment and purchase Services.
- (b) We have no obligation to provide or continue to provide credit facilities to You. You are not entitled to credit facilities until You receive an approved Credit Account with Us.
- (c) A Credit Account must only be used by You, which means it cannot be assigned, transferred or made available for use by any other entity or person (including by a subsequent purchaser of You) without Our prior written consent.
- (d) You authorise Us to debit Your Credit Account with the price of Equipment and Services supplied to You and all other amounts owed by You to Us (including fees and interest payable under the Contract).
- (e) We may apply any payments You make to Us towards any debt You owe Us. We may also set-off any credit amount that We owe to You against any debt owed to Us by You.
- (f) Any credit limit placed on Your Credit Account is for Our administrative purposes only and does not constitute a term of this or any other contract You have with Us.
- (g) If You exceed the credit limit placed on Your Credit Account, We may require You to make immediate payment on Your Credit Account to return Your Credit Account to the credit limit before placing any further Orders.

13. PAYMENT

- (a) Unless the parties otherwise agree in writing, You must pay for the Equipment and Services on or before the Due Date.
- (b) Payment must be made in a method that is approved by Us. There may be Additional Expenses associated with Your chosen payment method.
- (c) We may request payment of the Equipment and Services by instalments or progress claims.
- (d) If You believe You have a set-off or claim against Us (including any

query, dispute or claim), You cannot withhold any payment on that basis without Our prior written consent.

- (e) If You do not pay for the Equipment and Services by the Due Date, We may:
 - i) Charge You interest on all overdue accounts a rate which is 4% higher than the cash rate last published by the Reserve Bank of Australia as at the Due Date, calculated and payable daily and compounded from the due date until the invoice is paid in full. The parties agree that this interest charge is not a penalty, but a true measure of damages incurred by Us;
 - ii) Require You to pay cash on delivery of any further Equipment and Services, or suspend or cease supplying Equipment and Services to You;
 - iii) Demand Your immediate payment of all outstanding monies on Your account whether or not the Due Date has passed;
 - iv) Charge You a reasonable fee if any payment is dishonoured or returned by Your financial provider (or where we are otherwise unable to process any payment from Your financial provider);
 - v) Credit any payments received from You first against any interest charges and costs and all such charges will be payable on demand; and
 - vi) Preclude You from participating in any special deals, discounts, bonus payments redemptions, rebates and all other incentive programs until Your account is no longer overdue.
- (f) Time is of the essence in relation to this section and this section survives expiry or termination of these Terms.

Making Sure We Get Paid

14. SECURITY OVER REAL ESTATE

- (a) To secure payment of all monies You owe Us for the supply of Equipment and Services, You:
 - i) Charge all of Your interest in real and personal property (including all property acquired after the date of these Terms) in favour of Us, whether or not a demand has been made on You ("**Charge**"). This Charge constitutes a General Security Agreement for the purposes of the PPSA;
 - ii) Authorise and consent to Us taking all actions necessary to give effect to the Charge, including the lodgement of a caveat upon any title of Your real property, whether held in Your own right or as trustee of any trust, or any other security document; and
 - iii) Agree to deliver to Us within 7 days of written demand a Memorandum of Mortgage in registrable form. You agree that any amount payable to Us payable on demand incorporating the covenants contained in Memorandum No. Q860000 registered at the Land Registry Services New South Wales as amended to comply with and reflect any appropriate laws in the jurisdiction(s) where You have any beneficial interest in real and personal property and as amended appropriately to comply with any formal requirements of registration.
 - iv) Irrevocably appoint Us and any person nominated by Us severally as Your attorney, with power to execute, sign and deliver (which delivery may be subject to such terms and conditions as the attorney thinks fit) such caveat, mortgage or other security document to effect the Charge granted under this part.

15. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)

Security for Equipment Supplied

- (a) You acknowledge and agree that these Terms constitute a security agreement for the purposes of the PPSA ("**Security Agreement**") and create a security interest in the Equipment supplied by Us from time to time and any proceeds of supply of the Equipment to secure payment for the Equipment supplied ("**Security Interest**").
- (b) Each supply of Equipment by Us under these Terms is subject to the Security Agreement for the purposes of the PPSA.
- (c) We may lodge a financing statement on the Personal Property Securities Register ("**PPSR**") in respect of the Security Interest in the

Equipment and the proceeds of supply of the Equipment, including as a purchase money security interest (as that term is defined in the PPSA) ("**PMSI**"), pursuant to these Terms.

General Security Agreement for Services Supplied

- (d) For the purpose of any general security agreement ("**General Security Agreement**"), "**Collateral**" means all Your present and after-acquired personal property, including circulating and non-circulating assets. Collateral includes any personal property in respect of which You have at any time, or may in the future have at any time, a sufficient legal or equitable right, title, interest or power to grant a security interest either in Your own right or as trustee of a trust.
- (e) You acknowledge and agree that:
 - i) In addition to any other Security Interest created by these Terms, these Terms also constitute a General Security Agreement for the purposes of the PPSA and create a security interest in Your Collateral to secure payment for the Services supplied ("**Security Interest**");
 - ii) Each supply of Services by Us under these Terms is subject to the General Security Agreement for the purposes of the PPSA; and
 - iii) We may lodge a financing statement on the PPSR in respect of the Security Interest in the Collateral pursuant to these Terms.

Assurances

- (f) You must do all things, provide all information and sign all documents that are necessary and reasonably required to enable Us to acquire a perfected Security Interest in the Equipment and/or Collateral (as the case may be) including for the purposes of:
 - i) Ensuring that any Security Interest created under, or provided for, by these Terms:
 - a. Attaches to the Equipment and/or Collateral that is intended to be covered by that Security Interest; and
 - b. Is enforceable, perfected and otherwise effective; and
 - c. Has the priority required by Us.
 - ii) Enabling Us to prepare and register a financing statement or financing change statement;
 - iii) Enabling Us to register a PMSI pursuant to the PPSA (where applicable);
 - iv) Enabling Us to register an ALLPAAP pursuant to the PPSA (where applicable); and
 - v) Enabling Us to exercise and maintain any of Our rights or powers in connection with any such Security Interest.
- (g) If You dispose of the Collateral, You must:
 - i) Immediately pay any proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as specified by subsection 14(6)(c) of the PPSA, unless otherwise specified by Us in writing; and
 - ii) Not allow any other charge or security interest to exist over those proceeds without Our written consent if that security interest could rank ahead of Our Security Interest.
- (h) If a higher-priority security interest does arise in the Collateral and/or their proceeds of sale despite Your obligations under this section, You must:
 - i) Ensure that You receive cash proceeds for the Collateral of at least equal to the market value of the Collateral; and
 - ii) Immediately pay those proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as We see fit.
- (i) You must never dispose of the Equipment and You must not allow any other charge or security interest to exist over the Equipment without Our written consent if that security interest could rank ahead of Our Security Interest.
- (j) If a higher-priority security interest does arise in the Equipment despite Your obligations under this section, You must:
 - i) Ensure that You receive cash proceeds for the Equipment of at least equal to the market value of the Equipment; and

- ii) Immediately pay those proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as We see fit.
- (k) You must not change Your name, structure, status or partnership, or assign or sell Your business to another party, or initiate any change to any registered documentation, or act in any other manner which would impact on Our registered Security Interest without Our prior written consent. You agree that Your liability under these Terms is not affected by such an event until a new application for credit in Your new entity name as restructured or changed is made and approved by Us in writing.

Exclusion of Notices and Other Obligations

- (l) To the extent permitted by law and for the purposes of sections 115(1) and 115(7) of the PPSA:
 - i) We do not need to comply with sections 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d) or 132(4); and
 - ii) Sections 142 and 143 are excluded;
 - iii) For the purposes of section 115(7) of the PPSA, We do not need to comply with sections 132 and 137(3).
- (m) To the extent permitted by law, You agree to waive:
 - i) Your rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) or any other law before a secured party or a receiver exercises a right, power or remedy; and
 - ii) Any time period that must otherwise lapse under any law before a secured party or a receiver exercises a right, power or remedy.
- (n) If the law that requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

Provision of Information

- (o) You agree not to exercise Your rights to make any request of Us under section 275(6) of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- (p) The parties must not disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances where:
 - i) Disclosure is required by sections 275(7)(b) to (e) of the PPSA; and/or
 - ii) We disclose information of a kind mentioned in section 275(1) of the PPSA to the extent that We are not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.
- (q) Notwithstanding the obligations of this section, You shall only authorise the disclosure of information for the purposes of section 275(7)(c) of the PPSA, or request information under section 275(7)(d) of the PPSA, if We approve such disclosure or request for information in writing.
- (r) Nothing in this part prevents any disclosure of information by Us that We believe is reasonably necessary to comply with any other obligations that We may have under the PPSA.

Other

- (s) If You default in the timely performance of any obligation owed to Us, We may enforce the Security Interest by exercising all or any of Our rights under these Terms, the general law and the PPSA.
- (t) Nothing in this part limits or is limited by any other provision of these Terms or any other agreement between the parties.

How We Manage and Reduce Risk

16. RISK AND OWNERSHIP

- (a) Unless the Hire Schedule or these Terms say otherwise:
 - i) All risk in the Equipment and Personnel passes to You when the Equipment and Personnel is delivered to Site;
 - ii) All risk in Equipment and Personnel remains with You until the Hire Period ends.
- (b) We are responsible for all loads that Our Personnel is tasked with

lifting. Our responsibility for such loads begins from the point-in-time that the load is attached to the equipment and ends at the point-in-time that the load is detached from the equipment.

- (c) At all other times, all goods or loads to be handled, carried or lifted by Our Equipment or Our Personnel are at Your risk and responsibility.
- (d) Legal ownership of Equipment remains with Us at all times and never passes to You.
- (e) We retain title and intellectual property rights (whether in copyright, patent, goodwill, moral right or trademark) in any designs, configurations and drawings created for the purpose of the Services;
- (f) If You do not pay for Equipment and Services by the Due Date or You suffer an Insolvency Event, then We may repossess the Equipment wherever they are located. You irrevocably grant Us (including Our agents or any other nominated representative) an unrestricted right and licence to enter any Site or premises occupied by You without notice for the purpose of identifying and repossessing the Equipment. We reserve these repossession rights without being liable to You or any other third party in any way.

17. WARRANTIES AND EXCLUSIONS

- (a) Neither party excludes or limits the application of any statute (including the *Competition and Consumer Act 2010* (Cth) as amended from time to time ("the CCA")), where to do so would contravene that statute or cause any provision of these Terms to be void. Nothing in these Terms modifies or excludes the conditions, warranties, and undertakings and other legal rights under the CCA and other laws.
- (b) Except as expressly set out in the CCA, these Terms, or a separate warranty document, We give no implied warranties or representations under these Terms or in connection with the Equipment and Services that We supply.
- (c) You acknowledge and agree that:
 - i) You are responsible for ensuring that the Equipment and Services are suitable for Your intended Site and use. In that regard, You agree that You have not relied on any inducement, representation or statement made by or on behalf of Us in hiring the Equipment and purchasing the Services;
 - ii) No sale under these Terms constitutes a sale or hire by sample. You acknowledge that any sample may vary from the Equipment that is actually supplied;
 - iii) No sale under these Terms constitutes a sale or hire by description. Any description of Equipment is by way of identification only; and
 - iv) To the extent permitted by law, all other implied warranties, terms and conditions are excluded.

18. LIMITATION OF LIABILITY

- (a) To the extent permitted by law, and where We consider it to be reasonable and appropriate to do so, We may limit Our liability to You pursuant to these Terms by Our choice of:
 - i) Resupplying the Services; or
 - ii) Replacing the Equipment and/or Services with an equivalent (or paying the cost to supply an equivalent); or
 - iii) Refunding the price You paid for the Equipment and/or Services.
- (b) To the extent permitted by law, Our liability to You for Loss suffered or incurred in relation to these Terms will not exceed the total price of all Equipment and Services supplied to You, except for the following types of Loss:
 - i) Personal injury (including sickness and death);
 - ii) Breach of privacy legislation;
 - iii) Breach of intellectual property rights;
 - iv) Breach of confidentiality;
 - v) Statutory liability that cannot be contracted out of;
 - vi) Property damage that is covered by insurance.
- (c) The liability of a party for loss or damage sustained by the other party will be reduced proportionately to the extent that such loss or damage was caused by the other party's failure to comply with its obligations

and responsibilities under this agreement or to the extent that the negligence of the other party contributed to such loss or damage, regardless of whether a claim is made by the other party for breach of contract or for negligence.

- (d) We are not liable to You for any loss of profits, loss of sales, loss of market, loss of goodwill or reputation, third party claims, incidental or special damages, indirect or consequential loss of any kind.
- (e) We will not be liable to You for Loss in relation to the Equipment and Services if:-
 - i) You have not paid for the Equipment and Services;
 - ii) You have abused, neglected or misused Equipment;
 - iii) You have used Equipment and Services other than for the purposes for which they were designed or intended, including for an illegal purpose;
 - iv) Equipment has been repaired or modified by someone other than Us;
 - v) Equipment has been subject to abnormal conditions, including environment, temperature, water, fire, humidity, pressure or other stress that is within Your control;
 - vi) You have failed to use and maintain the Equipment in accordance with Our instructions;
- (f) Neither party will be liable for any breach of these Terms which is wholly or partly caused by a Force Majeure event. This exclusion does not include Your obligation to pay for Equipment, Services and any Additional Expenses.
- (g) Nothing in these Terms affects the duty of a party to mitigate damages after a breach of these Terms by the other party.

19. INDEMNITIES

- (a) To the extent permitted by law, You indemnify Us against (and You must pay Us for) any Loss that We suffer or incur as a result of any act or omission by You (or any entity or person that You are responsible for) pursuant to these Terms or in relation to the Equipment and Services, including but not limited to any breach of these Terms by You, Your negligence or Your failure to perform the obligations in these Terms.
- (b) Specifically, You must indemnify Us against and pay Us for:
 - i) All reasonable legal costs which We incur as a result of any breach, act or omission by You under these Terms. This includes, but is not limited to, legal or mercantile agent fees on an indemnity basis in the recovery or attempted recovery of any overdue amount for Equipment and Services, any action taken to secure any charge and any action take to repossess Equipment;
 - ii) Any stamp duty or other government rates, taxes (including GST) or charges levied on or in connection with any Credit Account and supply of Equipment and Services;
 - iii) All costs associated with the registration, maintenance and withdrawal of any Security Interest created under these Terms;
 - iv) Any Loss arising out of damage to Our Equipment on hire (including any loss of or damage to property) except to the extent that We directly caused such Loss;
 - v) Any Loss arising out of Your failure to provide a safe, suitable and compliant Site for Us to supply the Equipment and Services (including personal injury or death of Personnel);
 - vi) Any Loss that We incur by relying on information provided by You or on Your behalf which is incorrect or inaccurate, or You fail to provide Us with relevant information (including the nature, centre of gravity and weight of loads that Our Equipment or Personnel is tasked with lifting).
- (c) This indemnity does not apply to the extent that Loss is caused by Us, including Our breach of these Terms or negligence.
- (d) This indemnity is a continuing obligation which is separate and independent from your other obligations under these Terms or at law and this indemnity survives termination of these Terms.

Ending Our Agreement

20. DISPUTE RESOLUTION

- (a) If the parties have a dispute in relation to the Equipment and Services or these Terms, then the parties must follow this dispute resolution procedure:
 - i) The disputing party must give the other party written notification of the dispute;
 - ii) On receipt of a dispute notice issued in accordance with this section, the parties must:
 - 1. Refer the dispute to its respective senior management;
 - 2. Each party's senior management representatives must endeavour to resolve the dispute within 30 days of the date of the dispute notice (or such other period as agreed between the parties in writing);
- (b) If the dispute has not been resolved by senior management representatives of each party within 30 days of the dispute notice (or such other period as agreed in writing), then either party **may** (but is not required to) elect to resolve the dispute by mediation via the Australian Disputes Centre (**ADC**) before commencing arbitration or litigation. Any ADC mediation must be conducted in accordance with the ADC Guidelines for Commercial Mediation which operate at the time the matter is referred to ADC. The ADC Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. This paragraph survives termination of these Terms;
- (c) Either party must not commence legal proceedings (except proceedings seeking interlocutory relief) about the dispute unless and until the dispute has been referred for resolution under these Terms and to the extent that this dispute resolution procedure has been completed;
- (d) Either party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute, pending the completion or termination of the procedure set out in this section;
- (e) The parties must continue to perform their respective obligations under these Terms, even if a dispute exists;
- (f) The parties must keep all information relating to any dispute confidential for the purposes of dispute resolution, unless otherwise required by law or at the direction of a court of competent jurisdiction. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

21. TERMINATION

- (a) By giving You written notice, We can:
 - i) Suspend or cancel supply of Equipment and Services (including a current Order);
 - ii) Suspend or terminate Your Credit Account, if You have one;
 - iii) Require immediate payment of the balance of any Credit Account, invoices or any other amounts due and payable whether or not the Due Date has expired;
 - iv) Register a default with any credit reporting agency, where applicable;
 - v) Suspend or terminate the contract created by these Terms (collectively "**Our Termination Rights**").
- (b) We can exercise Our Termination Rights immediately when:
 - i) You have not paid Our invoice (including any Additional Expenses) by the Due Date;
 - iii) You allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against Your property including under the PPSA;
 - iv) You engage in illegal activity related to the Equipment and Services;
 - v) You engage in conduct which, in Our reasonable opinion, may damage Our goodwill or reputation;
 - vi) An Insolvency Event occurs.

- (c) In all other situations, either party may terminate these Terms:
 - i) Immediately by written notice if the other party is in breach of a material clause of these Terms and the breach is not rectified within 3 days of the termination notice;
 - ii) If there is no minimum Hire Period or the minimum Hire Period has expired, by giving 7 days' written notice to the other party; or
 - iii) If a minimum Hire Period applies, by giving the other party at least 30 days' written notice.
- (d) When these Terms are terminated:
 - i) We may exercise Our repossession rights for all Equipment stipulated by these Terms;
 - ii) We may recover from You the amount of any Loss sustained as a consequence of terminating the contract before expiry of a minimum Hire Period, including the balance of any unpaid minimum Hire Period and associated Additional Expenses; and
 - iii) Either party may pursue any additional or alternative remedies provided by law.

Other Information

22. CONFIDENTIALITY

- (a) Each party agrees to keep the Confidential Information of the other party confidential and to use such information only for the purposes of performance of their respective obligations under these Terms.
- (b) You agree not to reproduce any documents labelled "commercial in confidence" or other documents of a commercially sensitive nature (including any Quote, Hire Schedule or Rates Schedule) without Our prior written consent.
- (c) A party must:
 - i) not disclose any Confidential Information of the other party to anyone else except as permitted under these Terms;
 - ii) limit the disclosure of the Confidential Information within its own organisation only to those of its officers and employees to whom such disclosure is strictly necessary for the purposes of these Terms and who have been made aware of its confidential nature and have agreed to keep the information confidential in accordance with the terms of this clause; and
 - iii) not use the name of the other party in publicity releases, advertising or promotion of the party unless the other party has given its prior written consent (which must not be unreasonably withheld).
- (d) The obligations of confidentiality in this section will not apply to information which:
 - i) is generally available in the public domain, except where such availability is as a result of a breach of these Terms;
 - ii) was known prior to the disclosure of the information by the other party; or
 - iii) is required to be disclosed by an applicable law or court order.
- (e) The obligations imposed by this section survive the termination of these Terms.

23. PRIVACY

- (a) We may collect personal and credit information in Our dealings with You (or any of Your guarantors) in accordance with Our Privacy Policy pursuant to the *Privacy (Credit Reporting) Code 2014*, the *Privacy Act 1988* (Cth), the *Privacy (Enhancing Privacy Protections) Act 2012* (Cth), and the Australian Privacy Principles. You consent to that information being collected. You can obtain a copy of Our Privacy Policy by contacting Us in writing.

24. GENERAL

- (a) Any clauses which are expressed to or are, by their nature, intended to survive expiry or termination of these Terms will survive expiry or termination of these Terms for any reason.
- (b) A failure to exercise or a delay in exercising any right, power or remedy under these Terms does not operate as a waiver. A single or partial

exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

- (c) If any part of these Terms becomes void or unenforceable for any reason, then that part will be severed and, to the extent possible, all remaining parts continue with full force and effect without being affected by the severance of any other parts.
- (d) These Terms may be executed in any number of counterparts, each of which when executed and delivered constitutes a duplicate original, but all counterparts together constitute one agreement.
- (e) In addition to any other method of service provided by law, a notice may be sent by prepaid post, facsimile, email or courier to the address of a party as that address set out in the Contract or subsequently notified. A notice has no legal effect unless it is in writing.
- (f) A notice is deemed to have been delivered and received on the day if by hand, courier, email or fax, or otherwise on the second business day after posting.
- (g) You agree to receive invoices via email.
- (h) You agree to accept service of notices via email pursuant to the *Building and Construction Industry Security of Payment Act 2022* (Vic) as amended from time to time, or any like or similar legislation that may be applicable in the State or Territory where the Equipment is delivered to You (in addition to any and all other forms of services authorised by the legislation and its regulations).
- (i) You agree that email communications from Us to You constitute an "electronic communication" within the meaning of the *Electronic Transactions (Victoria) Act 2000* ("ETA").
- (j) You agree that the receipt and service of notices via email is "an information system for the purpose of receiving electronic communications" within the meaning of the ETA.
- (k) You agree that evidence of the "dispatch" (within the meaning of the Act) by Us of an email is also prima facie evidence of the "receipt" of the email by You within the meaning of the ETA. Unless the contrary is proven the time of receipt will be deemed to be twenty (20) seconds after the time of the "dispatch" of the email.

Version: January 2024