

**PART B – SPECIAL TERMS: HIRE OF GOODS**

**19. Definitions**

For the purpose of this Part B, unless otherwise defined in this Part B, capitalised words have the same meaning ascribed to them in Part A “General Terms and Conditions” of these terms and conditions.

**20. Terms of supply**

20.1 Our hire of the Goods to you are governed by the following documents (in order of precedence):

- (a) Any agreement/hire schedule provided to you by us with respect to the Goods, including any conditions contained in that schedule.
- (b) This Part B “Special Terms: Hire of Goods”.
- (c) Part A “General Terms and Conditions”.

20.2 In the event of any inconsistency between the above documents, the documents will prevail to the extent of that inconsistency in the order set out in clause 20.1.

**21. Our commitment to you**

21.1 We will provide the Goods to you in good working order.

21.2 You are (as hiree) permitted to exclusively use the Goods during the hire period. Notwithstanding the preceding sentence, we reserve the right to replace the Goods hired to you at any time.

**22. Hire period**

22.1 The hire period for the Goods:

- (a) commences when you take Delivery of the Goods; and
- (b) ends on the earlier of:
  - (i) two (2) years less one day from the commencement date;
  - (ii) an agreed date between you and us;
  - (iii) the Goods being returned into our possession and control;
  - (iv) the expiry of the period referred to in clause 22.5.

22.2 The hire period is continuous and includes all times when the Goods are in your possession and control, including weekends and public holidays.

22.3 If a minimum hire period applies to the Goods and you return the Goods to us prior to the end of the minimum hire period, you will be required to pay the full Price payable for the minimum hire period.

22.4 You must notify us in writing when the Goods are available to be returned to us at the end of the hire period.

22.5 We may terminate the contract and/or any hire period for any Goods under these terms and conditions (with or without providing reasons) at our absolute discretion by providing you with twenty-four (24) hours written notice. You cannot make any claim (of any nature) against us if we elect to exercise our rights under this clause 22.5

**23. Price**

23.1 You must pay the Price until such time as the Goods have been returned to us.

23.2 The Price payable for the Goods hired to you will be based on the following:

- (a) Daily rate (minimum one (1) day)

Based on a maximum of 8 hours use per 12 hour period (**Operations Cap**). Any usage in excess of the Operations Cap will be charged on pro-rata basis in one (1) hour blocks. For example, if you use an item of machinery for 8 hours 15 minutes, then you will be liable to pay for an additional full hour. Stand-downs (a period where no fees are payable because there is a stand-down on site) may be allowed only where there is a stand down table in the quotation provided by us (where applicable and if displayed).

- (b) Weekly rate (minimum five (5) days)

Based on a maximum of 40 hours (in aggregate) use per week. Additional hours of use will be charged on a pro-rata basis in one (1) hour blocks. Stand-downs are not allowed on weekly rates.

- (c) Monthly rates (minimum thirty (30) days)

Based on a maximum of 200 hours (in aggregate) use per month. Additional hours of use will be charged on a pro-rata basis in one (1) hour blocks. Stand-downs are not allowed on monthly rates.

23.3 In addition to the Price for the Goods, you agree to pay the following (if applicable):

- (a) Where required, transport of the Goods to and from the site(s) nominated by you.
- (b) Any consumables, fuel or trade materials that we supply to you.
- (c) If you do not return the Goods in clean and/or good working condition, charges for the cleaning and/or repair of the Goods and which will include the imposition of ongoing hire charges for the time required to clean and/or repair the Goods.
- (d) A charge for pumping out waste tanks or refilling water or fuel tanks.
- (e) Any applicable levies, fines, penalties and any other government charges arising out of your use of the Goods.
- (f) Operational and training Services provided by us to you (at your request) in connection with the Goods.
- (g) Any reasonable charges incurred by us if we are unable to inspect or carry out maintenance on the Goods during normal working hours.
- (h) If applicable, charges under the Loss and Damage Waiver as set out in clause 35.
- (i) Any rates, costs or charges notified to you in writing prior to you entering into this contact, which may include an environmental charge, administration charge etc.

23.4 If no time is stated for the payment of the Price on an invoice issued to you, then payment will be on or prior to delivery of the Goods (COD).

23.5 We reserve the right at any time to revise the hire fees/Price by providing you with written notice (**Price Increase Notice**). However, the Price cannot be increased during the period of an agreed fixed term hire unless you agree to the increase in writing. Where the increase in Price applies to Goods already on hire to you, you may in your discretion terminate the hire in writing to us and return the Goods to us within two (2) Business Days of receiving a Price Increase Notice. If such notice is not received by us and the Goods are not returned within the period referred to in the preceding sentence then the increased Price set out in the Price Increase Notice will apply on and from the time stipulated in that notice.

**24. Return of Goods**

24.1 You must return the Goods to us in the same clean condition and good working order as given to you (ordinary fair wear and tear excepted) on the date the hire period ends.

24.2 If you do not properly clean the Goods, we will charge you a cleaning fee and you will be liable to continue to pay hire charges for that portion of the hire period during which we clean the Goods.

24.3 Subject to clause 24.4, unless we have otherwise agreed in writing, it is your responsibility to return the Goods to the branch you hired it from during normal business hours.

24.4 If we agree to collect the Goods, you must ensure that the Goods are kept safe and secure until the time of collection.

**25. Your obligations**

25.1 You must not allow nor authorise any other person to use, re-hire or have possession of the Goods at any time, unless expressly agreed by us in writing.

25.2 You agree that before taking delivery of the Goods, you have satisfied yourself as to the suitability and condition of the Goods and you will ensure that the Goods are used only for the purpose for which they were designed by the manufacturer. You acknowledge that we have made the manufacturer’s operating and safety instructions available to you.

25.3 We make no representations and give no guarantee or warranty that the Goods are suitable for your intended purpose.

25.4 You must:

- (a) operate the Goods safely, strictly in accordance with all laws, only for intended use and in accordance with the manufacturer's instructions and our instructions;
- (b) ensure persons operating or erecting the Goods are suitably trained on safe and proper use, qualified to use the Goods and where necessary, hold the appropriate licences and authorisations;
- (c) ensure persons operating the Goods wear suitable clothing and protective equipment when operating the Goods as required or recommended by us or the manufacturer;
- (d) ensure that no persons operating the Goods are under the influence of drugs or alcohol;
- (e) conduct a job safety analysis prior to using the Goods;
- (f) ensure that no person carries illegal, prohibited or dangerous substances in or on the Goods;
- (g) display all safety signs and instructions (as required by law) and ensure that all instructions and signs are observed by operators of the Goods;
- (h) clean, fuel, lubricate and keep the Goods in good condition and in accordance with the manufacturer's and our instructions at your own cost;
- (i) not in any way alter, modify, tamper with, damage or repair the Goods without our prior written consent;
- (j) not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information on the Goods;
- (k) not remove fuel or oil tank caps, bund plugs or seals from the Goods and ensure that they are in place when you return the Goods to us; and
- (l) arrange for the emptying of any waste tanks and water carts.
- 25.5 At all times during the hire period for the Goods, you must store the Goods safely and securely.
- 25.6 Whenever you are moving the Goods, you must ensure the safe loading, securing and transportation of all Goods in accordance with all laws, the manufacturer's guidelines and our requirements. You must observe any safety directions advised by us and/or the manufacturer of the Goods to ensure safe loading and handling.
- 25.7 You must not remove the Goods from the State or Territory in which you hired it without our written consent.
- 25.8 You must not use the Goods off-shore, in a mine, in an area where friable asbestos is present, or move the Goods over, in or close proximity to water or in forestry projects without our prior written consent.
- 25.9 You warrant that you will comply with all laws in relation your use of the Goods and immediately rectify any breach of an law caused by the use of the Goods.
- 25.10 You must use best endeavours to ensure that the Goods are not contaminated with any contaminants and/or hazardous substances (including, without limitation, asbestos, insects, fire ants, weeds or seeds). You must advise us of any risks of hazardous substance or contamination to the Goods as soon as they become apparent. Where Goods may have been subjected to contamination, you must immediately and effectively decontaminate the Goods, as well as provide us with written details of decontamination processes applied. If, in our opinion acting reasonably, the Goods are not capable of being decontaminated, you will be charged for the replacement cost of the Goods.
- 25.11 Any electrical Goods (including but not limited to, battery powered Goods) provided by us will be tested and tagged before it is hired to you, but during the hire period for the Goods, you are responsible for arranging the re-testing and re-tagging of any electrical Goods in accordance with our and/or the manufacturer's instructions and the applicable laws and standards at your cost and you will be liable for any damage that may result from incorrect testing of the electrical Goods.
- 26. Responsibility for the Goods**
- 26.1 You are responsible for any loss, theft or damage to the Goods, except where any such loss, theft or damage was caused by our act or omission.
- 26.2 We are responsible for the cost of ordinary wear and tear to tyres, track gear, ground engaging tools and wear on blades/buckets/rippers.
- 26.3 You are responsible and liable for the cost of:
- (a) repairing or replacing flat or damaged tyres; and
- (b) repairing or replacing all wear and tear and damage to tyres, track gear, ground engaging tools, wear on blades/buckets/rippers which is caused by use of the tyres, track gear and ground engaging tools, blades/buckets/rippers in conditions which we reasonably consider adverse or abnormal;
- (c) any daily service checks covered under clause 26.5 which include top ups of oils and lubricants as required; and
- (d) fuel and refuelling during the hire period. Goods returned us without a full tank of fuel will incur further charges which will be payable by you at rates determined by us.
- 26.4 At all times you must adhere to the manufacturer's recommended tyre pressure and track tension. You are responsible for replacing tyres, track gear, ground engaging tools, wear on blades/buckets/rippers and fuel lubricants when they become worn out or used up during the hire period.
- 26.5 You are responsible for undertaking the daily "Hire Daily Plant Inspection Check List" as outlined in our "Daily Inspection/Checklist Procedure Booklet", which is located in the protective pouches on the Goods.
- 26.6 You are responsible for the correct installation, calibration and use, as per the manufacturer's instructions of any attachments fitted to the Goods.
- 26.7 If you wish to use any attachments fitted to the Goods which have not been supplied by us, you must seek our approval in writing.
- 26.8 You are required to use best endeavours to prevent the theft of any device designed to guide the operation of the Goods, including but not limited to cross slope, laser, universal tracking systems, global positioning systems or compaction meters (**Device**). You must remove any detachable operator display or receiver of a Device from the Goods at the end of every use of the Goods and store in a safe place.
- 26.9 You are responsible for verifying the accuracy of any Device during the hire period. You must check the calibration of the Device on the Goods before each use and calibrate it at frequent intervals during use of the Goods.
- 27. Inspection**
- 27.1 Upon request being made by us, you must immediately allow us to enter the premises on which the Goods are located, and inspect and maintain the Goods from time to time at any time during the hire period during normal working hours.
- 27.2 If you cannot, or refuse to allow us to inspect or maintain the Goods during normal working hours, then additional charges may apply at our absolute discretion.
- 27.3 You may request to conduct a joint inspection of the Goods with us at the end of the hire period.
- 28. Services provided by us**
- If you request that we supply an operator to operate the Goods, and we agree to the same then:
- (a) the operator will be under your sole direction, responsibility and control during the hire period and will comply with your reasonable and lawful directions;
- (b) we will not be liable to you for any acts or omissions of the operator while under your direction, responsibility and control; and
- (c) you will not allow any other person to operate the Goods without our prior written consent.
- 29. Breakdown of the Goods**
- 29.1 In the event that the Goods break down or become unsafe to use during the hire period, you must:
- (a) immediately stop using the Goods and notify us;
- (b) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Goods;
- (c) take all steps necessary to prevent any further damage to the Goods; and

- (d) not repair or attempt to repair the Goods without our written consent.
- 29.2 Subject to clause 29.3, upon receiving notice from you, we will:
- (a) take all reasonable steps to repair the Goods or provide suitable substitute Goods as soon as reasonably possible; and
  - (b) not impose a hire charge forming part of the Price for that portion of the hire period for which the Goods were broken down or unsafe, nor the costs associated with any repair or replacement of the Goods.
- 29.3 If the Goods break down or become unsafe as a result of your acts or omissions or your failure to comply with these terms and conditions, then you will be liable to us for the full Price of the hire period for which the Goods are inoperable, as well as all costs associated with any repair or replacement of the Goods.

### 30. Stand-Downs

- 30.1 In circumstances where we have provisioned or allowed for stand-downs in our quotation, stand-downs may be allowed by us for rostered days off, wet weather and industrial disputes where the Goods cannot be used. Otherwise you will not be entitled to any stand-downs.
- 30.2 Stand-downs may be charged by us at a percentage of the applicable Price.
- 30.3 You must notify us prior to 9.00am on the morning of such stand-downs for stand-downs to be considered by us.
- 30.4 If approved (which will be at our absolute discretion), a stand-down number will be quoted by us which should be recorded by you as proof of stand-down. If you do not record proof of stand-down, we will not acknowledge the stand-down.
- 30.5 For the avoidance of doubt, a stand-down date must be a current or future date and cannot be retrospectively applied.

### 31. Telematics data

- 31.1 We are not liable with respect to Your use or reliance on any telemetry data we have provided to you in relation to the Goods.
- 31.2 You acknowledge and agree that:
- (a) we own all rights, title and interest in such data;
  - (b) you must obtain our prior written approval for the purposes for which you intend to use the data and you must not disclose the data to any third party;
  - (c) we do not warrant the accuracy of any data nor guarantee that such data will be available to you;
  - (d) we are not required to retain any data and such data may not be available for retrieval; and
  - (e) we may disclose, from time to time, any data to a third party who is not a party to this contact and we are not required to obtain your prior permission with respect to such disclosure.

### 32. Tracking equipment

- 32.1 You consent to the installation, use and maintenance of a tracking and preventative maintenance device installed on the Goods to allow us to:
- (a) monitor the geographical location of the Goods from time to time;
  - (b) monitor and assist with preventative maintenance scheduling;
  - (c) monitor the usage of our Goods by you (including the hours and times the Goods have been used); and
  - (d) monitor anything else in connection with the Goods.
- 32.2 You will ensure that the notice of the installation and use of such a tracking device is drawn to the attention of every operator that you have authorised to use the Goods before they commence using such Goods by way of a notice that is affixed to the Goods and which is not obscured, defaced or removed.

### 33. Title in the Goods

- 33.1 You acknowledge that we own the Goods and in all circumstances we retain title to the Goods. Your rights to use the Goods are as a bailee only.

- 33.2 Subject to clause 33.5, you are not entitled to offer, sell, assign, licence, lease, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Goods in any way.
- 33.3 In no circumstances will the Goods be deemed to be a fixture.
- 33.4 You acknowledge that we may hire or lease Goods from a third party if we cannot provide the Goods to you and if this occurs, title in the Goods remains with that third party owner.
- 33.5 You must not lease, hire, bail or give possession (**Sub-Hire**) of the Goods to anyone else unless we, in our absolute discretion, first consent in writing. Any such Sub-Hire must:
- (a) be in writing in a form acceptable to us and must be expressed to be subject to our rights under the Sub-Hire agreement;
  - (b) be consistent with these terms and conditions; and
  - (c) does not relieve your rights and obligations with respect to the Goods pursuant to these terms and conditions.

You may not vary the arrangements relating to a Sub-Hire without our prior written consent which we, at our absolute discretion, may refuse or approve subject to any conditions we think fit. You must ensure that we are provided at all times with up-to-date information about the Sub-Hire including the location and condition of our Goods.

### 34. Lost, stolen or damaged Goods

- 34.1 If the Goods:
- (a) have broken down or become unsafe to use as a result of your acts or omissions or your failure to comply with these terms and conditions; or
  - (b) if the Goods are lost, stolen or damaged beyond fair wear and tear,
- you will be liable for:
- (c) any costs incurred by us to recover and repair or replace the Goods; and
  - (d) the Price for that portion of the hire period during which the Goods are being recovered and repaired or replaced,

except where you have paid the Damage Waiver Fee, in which case your liability is subject to clause 35 below.

- 34.2 Provided that you pay the costs and charges described in clause 35, we will return or replace the Goods, and you must continue to pay the Price for the remainder of the hire period.

### 35. Loss and Damage Waiver

- 35.1 The Loss and Damage Waiver set out in this clause 35 is an agreement to limit your liability in certain circumstances for loss, theft or damage to the Goods to an amount known as the **Damage Waiver Fee**, and which currently comprises 12.50% of the hire fees/Price payable on an upfront basis. We may, at our discretion, change the percentage referred to in the preceding sentence by notice in writing to you from time to time.
- 35.2 If applicable, the Damage Waiver Fee will be automatically charged to you in addition to the Price.
- 35.3 You are not required to pay the Damage Waiver Fee from the date you produce a certificate of currency for an appropriate policy of insurance that covers loss, theft or damage to the Goods for an amount not less than the replacement value of the Goods. For the avoidance of any doubt, you are liable to pay the Damage Waiver Fee for that portion of the hire period where a certificate of currency remains outstanding and you are not entitled to any credit and/or reimbursement of the Damage Waiver Fee charged and/or paid that relates to the uninsured period. You are responsible for any excess and any other costs associated with your insurance and you are responsible for any shortfall in repair or replacement costs of the Goods following payment of any amount received under your insurance, including any loss we suffer as a result of not being able to hire or other utilise the Goods.
- 35.4 Subject to clauses 35.5 and 35.6, where you have paid the Damage Waiver Fee, we will waive our right to claim against you for loss, theft or damage to the Goods if:
- (a) for theft, you have promptly reported the incident to the police and provided us with a written police report; and
  - (b) you have co-operated with us and provided us with the details of the incident, including any written or photographic evidence we require.

35.5 If any item of Goods is either lost, stolen or damaged and you have paid the Damage Waiver Fee, you must pay the **Damage Waiver Excess** for each such item of Goods and which is the amount calculated as follows:

Replacement where the Goods are lost, stolen or damaged beyond repair:

- (a) Subject to paragraph (b) below, the **Damage Waiver Excess** for each item of Goods that is lost, stolen or damaged beyond repair will be the amount equal to the greater of:
  - (i) \$5,000.00; or
  - (ii) fifteen percent (15%) of market value to replace the Goods with a new item of the same goods, or if the same is not available, then the cost to replace the Goods with a new item of goods of the same quality, function and capacity (**New Replacement Cost**).
- (b) Where the **New Replacement Cost** is less than \$5,000.00, the **Damage Waiver Excess** will be an amount equal to the **New Replacement Cost**.

Repair where the Goods are partially damaged and can be repaired:

- (c) Subject to paragraph (d) below, the **Damage Waiver Fee** for each item of Goods that is partially damaged and can be repaired will be the amount equal to the greater of:
  - (i) \$5,000.00; or
  - (ii) fifteen percent (15%) of the repair cost.
- (d) Where the repair cost of the Goods is less than \$5,000.00, the **Damage Waiver Excess** will be an amount equal to the lesser of the repair cost and the **New Replacement Cost**.

35.6 Even if you have paid the Damage Waiver Fee, we will not waive our rights to claim against you for loss, theft or damage to the Goods and the Loss and Damage Waiver will not apply if the loss, theft or damage:

- (a) has arisen as a result of your breach of any contract we have with you for the Goods;
- (b) has been caused by your negligent act or omission;
- (c) has arisen as a result of your use of the Goods in violation of any laws;
- (d) has been caused by your failure to use the Goods for their intended purpose or in accordance with our instructions or the manufacturer's instructions;
- (e) occurs to the Goods whilst they are located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
- (f) occurs to the Goods whilst working in or close proximity to water or whilst being used in forestry projects. In such cases,

you must ensure that you effect all necessary insurances, at your cost, with respect to the Goods and provide a certificate of currency in that respect before taking possession of the Goods;

- (g) has been caused by a lack of lubrication or a failure to properly service or maintain the Goods;
- (h) has been caused by collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object due to insufficient clearance;
- (i) has been caused by the overloading of the Goods or any components thereof;
- (j) is to motors or other electrical Goods or components within the Goods caused by electrical overload, a surge in electrical current or the use of under-rated or excessive lengths of extension leads with the electrical Goods;
- (k) is caused by exposure to any corrosive or caustic substance, such as cyanide, salt water, acid, etc.;
- (l) is caused by vandalism;
- (m) is to tyres or tubes; or
- (n) is to windscreens, mirrors, glass, or perspex.

**36. Defective Goods on Delivery**

Pursuant to clause 10, you must inspect the Goods on delivery and must within twenty-four (24) hours notify us in writing of any alleged defect, shortage in quantity, damage or failure to comply with the description, specification or quote.

**37. Your indemnity**

37.1 You are liable for and indemnify us against all liability, claims, damages, losses, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against us) (**Losses**) in respect of:

- (a) personal injury;
- (b) damage to property; or
- (c) a claim by a third party,

in respect of your use of the Goods and/or breach of these terms and conditions. Your liability under this indemnity is reduced to the extent that such claim or loss was incurred as a result of our negligent acts or omissions.

37.2 We will not be liable to you for any acts or omissions of any person supplied by us where that person is acting under your direction and control during the hire period and you indemnify us against all Losses arising from or incurred in connection with such acts or omissions.