



Branches: Orange NSW
Brisbane QLD

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ABN: 51 625 310 205

A-PLANT EQUIPMENT - STANDARD CONDITIONS OF HIRE

1. Definitions

Additional Amounts means the sum specified as the Additional Amount in the Schedule.

Business Day means a day on which banks are open for business in Sydney, New South Wales, Australia excluding a Saturday, Sunday or public holiday in that city.

Commencement Date means the point in time that the Hirer takes possession of the Plant from the Company, as set out in in the Schedule.

Credit Laws means the *National Consumer Credit Protection Act 2009* (Cth), the National Credit Code, the *National Consumer Credit Protection Regulations 2010* (Cth) and any amendments or revisions from time to time.

Damage Waiver means as that term is defined in clause 8.

End Date means the date that the Hirer must return the Plant to the Company, as set out in the Schedule, unless the Hire Contract is terminated early in accordance with clause 10.

Environmental Laws means any statute, policy directions or regulations made or issued by a regulatory body or government body regulating or otherwise relating to the environment including without limitation the use or protection of the environment.

GST means goods and services tax within the meaning of the GST Law.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time, together with any regulation made pursuant to that legislation.

Hire Contract means the documents forming the agreement between the Company and Hirer for the hire of Plant, in the following order of priority:

- (a) these Standard Conditions, including the Schedule;
- (b) any director's guarantee and indemnity;
- (c) any credit application; and
- (d) any hire delivery note provided to the Hirer by the Company, whether signed or not.

Hire Fees means the Company's rates for the hire of the Plant, as set out in the Schedule and as updated from time to time.

Hirer means the person, firm, organisation, partnership, corporation, or other entity hiring Plant from the Company as identified in the Schedule and includes their Personnel and Related Entities.

Hirer's Declaration means the statement set out in the Schedule that must be executed by the Hirer.

Insolvency Event means, in respect of a Hirer that is a:

- (a) person, the Hirer becoming bankrupt or entering into a scheme of arrangement with its creditors and the Company receiving notice of any such event; or
- (b) company:
 - (i) the appointment of a liquidator, provisional liquidator, receiver, administrator or official manager and Company receiving notice of any such event; or
 - (ii) a statutory demand is issued against the Hirer; or
 - (iii) the Company's inability to pay all of its debts as and when they become due and payable.

Loss means all actions, claims, costs (including legal costs on an indemnity basis), damages, expenses, interest, liabilities and losses whether direct, indirect, special, consequential or otherwise, including loss of profits, loss of business revenue, failure to realise expected profits or savings, overhead costs, loss of goodwill, loss of reputation, loss of value in any intellectual property, damages or liquidated sums payable pursuant to other agreements, other economic losses, or any consequential or indirect losses of any kind howsoever arising and whether caused by breach of statute, breach of contract, negligence or other tort.

Company means A-Plant Equipment (ABN 51 625 310 205).

Plant means any earthmoving machinery, loaders and excavators and any other equipment and machinery as updated from time to time that are hired by the Hirer from the Company on the Commencement Date as specified in the Schedule.

Personnel means a party's employees, subcontractors, advisors, representatives or any other person in its control.

PPSA means the *Personal Property Securities Act 2009* (Cth) together with any regulation made pursuant to that legislation and as these may be amended from time to



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time.

Related Entities means as that term is defined in the *Corporations Act 2001* (Cth).

Schedule means the schedule to the Hire Contract setting out the Hire Contract particulars.

Standard Conditions means this document titled 'Standard Conditions of Hire'.

Statutory Requirements means any statute, regulation, order, rule, subordinate legislation or other obligation enforceable under any statute, regulation, order, rule or subordinate legislation.

Term means the period starting on the Commencement Date and ending on the End Date.

2. Application of these Standard Conditions

- 2.1 These Standard Conditions prevail over any of the Hirer's terms and conditions of hire that it may have issued or provided to the Company in respect of the Plant or any other equipment that the Company hires to the Hirer from time to time.
- 2.2 At all times, a Hire Contract will be read as incorporating these Standard Conditions unless these terms are varied or excluded expressly in writing by a person actually authorised by the Company to vary or exclude these Standard Conditions.

3. Hire of Plant

- 3.1 The Company agrees to let the Plant to the Hirer for the Term and the Hirer agrees to hire the Plant from the Company on the terms and conditions of the Hire Contract.
- 3.2 Delivery is ex Company's warehouse and unless otherwise agreed to in writing by the Company, the Hirer must at its own cost organise:
- the collection of the Plant from the Company's premises on the Commencement Date; and
 - the delivery and unloading of the Plant at the Company's premises on the End Date or when the Plant is returned to the Company, whichever is later.
- 3.3 Risk in the Plant passes to the Hirer immediately prior to the Plant being loaded for transit at the Company's premises and only passes to the Company once the Hirer has unloaded the Plant from its carrier at the Company's premises.
- 3.4 The Hirer acknowledges that the Company has the right to hire the Plant to the Hirer in accordance with this Hire Contract and full legal and beneficial title to the Plant is maintained either with the Company's Related Entity or with a third party at all times during and after the Term.
- 3.5 The Hirer acknowledges that the Company may hire the Plant from a third party and in that event, Hirer agrees:

- title to the Plant remains with that third party;
- to allow that third party, upon reasonable notice, to access the location where the Plant is located from time to time to inspect the Plant;
- if the Company's agreement with that third party terminates during the Term for any Plant, unless otherwise agreed by the Company in writing, any hire of Plant by the Company to the Hirer under these Standard Conditions will automatically terminate and the Company may immediately recover possession of the Plant from the Hirer; and
- the Company will not be liable to the Hirer in any circumstances for any claim that the Hirer may have, or for any loss or damage suffered, as a result of such termination.

3.6 The Hirer's right to use the Plant is as bailee only during the Term. Accordingly, the Hirer must not:

- offer, sell, assign, sub-let, mortgage, pledge or otherwise deal with the Plant; and
- permit, authorise or otherwise allow any other person or entity to use, re-hire or have possession of the Plant,

at any time during or after the Term without the prior written consent of the Company.

3.7 The Hirer represents and warrants that its purpose for hiring the Plant is wholly and predominantly for business purposes and that the Hirer's Declaration is true and correct during and after the Term, in the event that the Hirer has possession of the Plant on expiry of the Term. The Hirer acknowledges and agrees that the Company may exercise its rights set out in 10.2 if the Hirer suspects or reasonably believes that the Hirer's purpose of hiring the Plant is wholly or predominantly for personal, domestic or household use or in a manner that causes or may cause the Company or the Hirer to breach the Credit Laws.

3.8 The Hirer acknowledges and agrees that:

- it has not relied on any representations by the Company or its Personnel in choosing to hire the Plant or in determining the suitability of the Plant; and
- it has inspected the Plant prior to entering into the Hire Contract and accepted the Plant in its then current condition.



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4. Hirer's Obligations

4.1 The Hirer must:

- (a) operate the Plant safely and in strict accordance with all Statutory Requirements;
- (b) only use the Plant for its intended use and in a manner consistent with any operating instructions provided by the Company or the manufacturer from time to time;
- (c) ensure that all persons operating the Plant:
 - (i) are suitably instructed and trained in its safe and proper use and hold all necessary licenses and permits;
 - (ii) wear suitable clothing and protective equipment as required or recommended by the Company or the manufacturer; and
 - (iii) are not under the influence of drugs or alcohol;
- (d) on the End Date, return the Plant to the Company in the same good and clean condition it was in when the Hirer received it, ordinary fair wear and tear excluded;
- (e) display and maintain safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Plant;
- (f) immediately report any matter to police where any damage or loss to the Plant arises as a result of any damage or loss of Plant that falls within the scope of the *Crimes Act 1900* (NSW);
- (g) immediately, and in any event within 24 hours, notify the Company of any matter which comes to its attention that may result in liability to either the Hirer or the Company;
- (h) take out and maintain, at the Hirer's sole cost, all applicable and comprehensive insurances with an insurer reasonably acceptable to the Company for:
 - (i) the full replacement value of the Plant for the use, storage, operation, loss, theft and damage of the Plant during the Term and until such time as the Plant is returned to the Company; and
 - (ii) damage to third party property (to such an amount as the Company may determine, being not less than \$1,000,000 per event),
 which insurances must note the Company as an interested party. The Hirer must provide to the Company certificates of currency for the insurances prior to the commencement of the Term and afterwards on demand;
- (i) reimburse the Company on demand for all cost, expenses, fees, premiums and excesses suffered or incurred by the Company in any way associated with any insurance which the Company may arrange in respect of the Plant let to the Hirer, if the Hirer does not insure the Plant in accordance with these Standard Conditions or fails to supply details of its insurance policies;
- (j) comply with all Environmental Laws from time to time and immediately rectify any breach of any Environmental Law caused by the use of the Plant;
- (k) clean, fuel, lubricate and maintain the Plant in good condition and in accordance with the manufacturer's and the Company's instructions at the Hirer's cost;
- (l) not in any way alter, deface, modify, tamper with, damage or repair the Plant;
- (m) allow the Company to enter onto its premises or any other premises where the Plant is being stored in order to inspect the condition of the Plant;
- (n) use best endeavors to ensure that, during the Term and such time that the Plant is returned to the Company, the Plant is stored safely and securely and is protected from theft, seizure or damage;
- (o) not remove the Plant from the Australian State in which the Hirer agreed to use and store the Plant, as set out in the Schedule, without the Company's written consent; and
- (p) notify the Company immediately on any change to the premises or location where the Plant is used or stored during the Term or after the Term if the Plant is not returned to the Company as required by this Hire Contract.

5. Fees and Charges

- 5.1 During the Term and from time to time, the Company will issue monthly tax invoices at the end of the month to the Hirer setting out the Hire Fees, plus any other fees, charges and costs that are payable by the Hirer arising from or in connection with the hire of the Plant, including, but not limited to, the matters set out in clause 5.5.
- 5.2 Unless otherwise agreed to by the Company in writing, the Company will charge the Hirer and the Hirer must pay the Company the Hire Fees from the Commencement Date until such time that the Hirer has returned the Plant, which must be returned on the End Date.
- 5.3 The Hirer must pay the amount set out on an invoice within the periods for payment stated in the Schedule, as applicable to the Hirer.
- 5.4 The Hirer agrees that the Company may debit the Hirer's credit card, as provided for payment of Hire Fees set out in the Schedule, in accordance with terms of payment between the Company and the Hirer, to satisfy any part or all of the Hire Fees payable by the Hirer to



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the Company for Plant.

- 5.5 Any credit accommodation granted by the Company to the Hirer may be reviewed at any time without notice. Credit may be withdrawn if the Hirer fails to make payments or use the Plant in accordance with these Standard Conditions and a statement may be issued at that time requiring payment within 7 days of any amount due and owing to the Company.
- 5.6 The Hirer acknowledges and agrees that it may be liable to pay the Company on account of:
- charges made for consumables and trade materials provided by the Company to the Hirer from time to time;
 - GST and all other applicable taxes, duties, levies, and any other government charges imposed on the Hire Contract or in respect of the Plant;
 - amounts in consideration of any oil, grease, or other environmental contaminants used, applied, or discarded in connection with the Plant;
 - all fines and penalties that may be imposed in relation to or arising from the use or operation of the Plant during the Term, including after the Term if the Plant is not returned to the Company in accordance with the Hire Contract;
 - additional fees for the costs of delivery, collection or installation, in the event that the Hirer requires the Company to deliver, collect or install the Plant;
 - cleaning fees in the event that the Hirer fails to return the Plant in the same good and clean condition that it was supplied at the Commencement Date;
 - additional Hire Fees for the late return of the Plant after the End Date, which are calculated on a pro-rata basis; and
 - early return of the Plant prior to the End Date if this is stated in the Schedule.
- 5.7 The imposition of the fees set out in clauses 5.6 does not mean that the Company agrees to extend the Term for the Plant.
- 5.8 If the Hirer is in default of any payments due and owing to the Company, the Company may at its option and in addition to any of 'default charges' set out in the Schedule:
- exercise its rights set out in clause 10.2; or
 - charge a late payment fee of 2% per month, compounding monthly, on the unpaid balance of the outstanding invoice(s).
- 5.9 If the Hirer fails to return the Plant to the Company's premises after the End Date, the Hirer will remain liable to be charged for the Plant until it is returned to the Company.

- 5.10 The Hirer must indemnify and keep indemnified the Company for all Losses and expenses incurred by the Company in recovering any amounts that the Hirer fails to pay by the payment due date (including any commission payable to any commercial or mercantile agents and legal costs).
- 5.11 The Company may set-off against any credit owed to the Hirer, any amounts which are owing by the Hirer to the Company pursuant to this Hire Contract or otherwise. The Hirer must not set-off any amounts payable to the Company.
- 5.12 The Company reserves the right to charge the Hirer for a minimum period of hire for certain types of Plant.
- 5.13 The Hirer acknowledges that the Company may impose a charge for accepting any payments made by the Hirer by credit card.

6. Hirer Acknowledgements

- 6.1. The Hirer acknowledges and agrees that:
- except as provided by law these Terms do not entitle the Hirer to demand to receive from the Company any site inspection, installation or service of Plant supplied or delivered and if the Hirer does require the Company's services in respect of the site inspection, installation or service of Plant, then the Hirer and the Company must enter into a separate written agreement in respect of such inspection, installation or service;
 - unless the parties have entered into a separate installation or servicing agreement for Plant, the Company is not liable to the Hirer for any loss or damage whatsoever in connection with the installation or servicing of Plant and Hire releases and indemnifies the Company from any claims in connection with the installation or servicing of Plant;
 - it does not rely on the information, skill or judgment of the Company in relation to the suitability of the Plant for a particular purpose. Any advice, recommendation, information or assistance provided by the Company in relation to the Plant is provided without any liability by the Company whatsoever.
 - the matters set out in the Schedule by the Hirer are a true description of the purpose for which the Plant hired hereby are to be applied in respect of the work required to be performed by such Plant and that Hirer may forfeit any rights that the Hirer may have against the Company for the supply of the Plant.
- 6.2. To the fullest extent permitted by law, Hirer forfeits any right of claim against the Company if any alteration to the Plant or quote is carried out without the Company's consent.

7. Damaged, Lost or Stolen Plant



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7.1. In the event that the Plant breaks down or becomes unsafe to use during the Term for any reason, the Hirer must:

- (a) immediately stop using the Plant;
- (b) immediately notify the Company and follow the Company's instructions (if any);
- (c) use best endeavours to prevent injury occurring to persons or property as a result of the condition of the Plant;
- (d) use best endeavours to prevent further damage to the Plant; and
- (e) not repair or attempt to repair the Plant without the Company's written consent.

7.2. In the event that the Plant breaks down or becomes unsafe to use through no fault, negligence, recklessness or misuse by the Hirer, the Company will:

- (a) take all steps reasonably necessary to repair the Plant or provide a suitable substitute Plant as reasonably possible after being notified by the Hirer;
- (b) not impose Hire Fees for that portion of the Term for which the Plant was broken down or unsafe, nor the costs associated with any repair or replacement of the Plant.

7.3. The Company is not liable for Losses or inconvenience suffered or incurred by the Hirer arising from the breakdown of Plant, however so caused.

7.4. The Hirer is responsible for the Plant during the Term and until such time that the Plant is returned to the Company (**Period**). If the Plant is lost, stolen or damaged during this Period other than for the reasons set out in clause 7.2, the Hirer is liable for and must pay to the Company on demand, or within 24 hours of the loss, theft or damage occurring to the Plant:

- (a) any direct costs incurred by the Company in repairing or replacing the Plant, and
- (b) all other costs that are incurred by the Company as a result of the loss, theft or damage to the Plant, including but not limited to transport costs, except where the Hirer pays the Damage Waiver fee, in which case its liability is subject to the Damage Waiver set out in clause 8.
- (c) If the Equipment is lost, stolen or damaged in any way, or by anyone (including third parties) during the Hire Period, the Customer shall be liable for:
 - (a) Any costs incurred by the Owner in recovering, repairing or replacing the Equipment;
 - (d) Any other costs whatsoever incurred by the Owner as a result of the loss, theft or damage to the Equipment.
- (e) The Fees for the balance of the Hire Period until

such time that the Equipment has been repaired or replaced; and

- (f) If the Equipment has not been repaired or replaced during the Hire Period, the Customer will continue to pay the Company a hire fee as if the Equipment were on hire to the Customer, until such time that the Equipment is repaired or replaced.

8. Damage Waiver

8.1. Where the Hirer does not have a certificate of currency for the insurances with respect to damage of the Plant as required pursuant to clause 4.1(h)(i), the Company makes available to the Hirer a Damage Waiver by which the Hirer can reduce their potential liability to the Company in the event of damage to the Plant (**Damage Waiver**) in accordance with the Schedule.

8.2. Acceptance of the Damage Waiver must be noted by the Hirer on the Schedule for the Damage Waiver to apply. By accepting the Damage Waiver and making payment of the Damage Waiver fee set out in the Schedule, and subject always to the exclusions in clause 8.3 and the age excess in clause 8.6, the Hirer will only be liable to the Company for the damage to the Plant to the maximum liability stated in the Schedule.

8.3. The Damage Waiver does not apply and the Hirer is liable (even where Damage Waiver fees and further reduction surcharges have been paid or where another part of the Hire Contract says otherwise) for loss or damage to the Plant during the Term and after the Term if the Plant is not returned to the Company in accordance with the Hire Contract:

- (a) arising from any failure by the Hirer to take all reasonable precautions against such loss or damage;
- (b) due to abandonment;
- (c) due to improper use, including, without limitation:
 - (iii) driving Plant whilst exceeding the applicable limits of design, weight or dimension, including excess height;
 - (iv) racing, pacemaking, reliability trial, speed attempt, hill climbing and the like;
 - (v) overloading or incorrect loading of the Plant or any part or component of the Plant;
 - (vi) overloading of artificial electrical currents to the Plant, including motors or other electrical appliances or devices, including, but not limited to, the use of under-rated or excessively long extension leads;
- (d) due to negligence, recklessness or failure to comply with applicable laws, codes and standards for use of the Plant;
- (e) caused by unauthorised repairs or alterations to the Plant;



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- (f) due to operation of Plant by a person under the influence of any drug or intoxicating liquor;
 - (g) due to the Plant becoming unsafe or unroadworthy whilst under the control of the Hirer, where the Hirer should have been reasonably aware of the fact;
 - (h) where a driver or operator of the Plant:
 - (i) does not hold the applicable license for the operation of the Plant or any license at all;
 - (ii) is not otherwise authorised to operate the Plant;
 - (iii) (in the case of articulated vehicles) is not experienced in the use of the Plant and this fact has not been disclosed to the Company before entering into the Hire Contract; or
 - (iv) is under 21 years of age;
 - (i) due to fraud;
 - (j) resulting from fines and penalties issued in respect of the Plant arising from the Commencement Date until such time that the Plant is returned to the Company;
 - (k) resulting from radioactive, chemical or biological contamination;
 - (l) resulting from exposure to corrosive or caustic substances, including, but not limited to, cyanide, salt water and acid;
 - (m) caused whilst the Plant are used, operated, located, loaded, unloaded or transported over water, underwater, underground or outside of Australia, or from aviation, airport or airside activities;
 - (n) resulting from carrying hazardous or dangerous goods, unless expressly disclosed and agreed to by the Company;
 - (o) where the Hirer has not paid the Damage Waiver fees and/or further reduction surcharges or has not paid them on time;
 - (p) where the Hirer has paid the Damage Waiver fee and/or the further reduction surcharges after the relevant loss or damage occurred;
 - (q) where the loss or damage is to:
 - (v) tyres or tubes, including punctures, blowouts, bursts, bruises or cuts or other types of loss or damage that are an inherent risk of the use or operation of the Plant;
 - (vi) glass, including breakage; or
 - (vii) paintwork;
 - (r) caused by vandalism, including graffiti;
 - (s) due to the wrongful conversion of the Plant or any component or part of the Plant; and
 - (t) due to the transportation of the Plant by the Hirer (except where the Plant is a motor vehicle or trailer or is trailerised).
- 8.4. Where the Hirer has not obtained a Damage Waiver from the Company under this clause 8 or where the Damage Waiver does not apply because any one or more of the exclusions in clause 8.3 applies, the Hirer must obtain and maintain insurance in accordance with clause 4.1(h)(i) for the Plant for which the Damage Waiver(s) have not been obtained.
- 8.5. Nothing in this clause 8 relieves the Hirer from its obligation to effect and maintain the insurance specified in clause 4.1(h)(ii).
- 8.6. Where loss or damage occurs to the Plant and the operator of the Plant is:
 - (a) is at least 21 years of age but under 25 years of age; or
 - (b) has less than 2 years' relevant experience in the use of goods similar to the Plant;
 the customer is liable to pay the Additional Amount set out in the Schedule.
- 8.7. The Hirer is liable for all damages sustained where the driver is under 21 years of age, in accordance with clause 8.3(h)(iv).
- 9. Liability and Indemnities**
- 9.1. To the full extent permitted by law, the Company's liability in respect of a breach of the Hire Contract relating to any Plant not of a kind ordinarily acquired for personal, domestic or household use is limited at the Company's option to:
 - (a) in the case of Plant;
 - (i) replacing the Plant or the supply of equivalent equipment;
 - (ii) the repair of the Plant;
 - (iii) the payment of the cost of replacing the Plant or of acquiring equivalent equipment; or
 - (iv) the payment of the cost of having the Plant repaired; and
 - (b) in relation to services;
 - (i) re-supplying the services;
 - (ii) reimbursing the consumer for paying someone else to supply the services.
- 9.2. To the full extent permitted by law, all other matters not referred to in clause 9 and any other warranties whether implied or otherwise not set out in the Hire Contract are excluded and the Company is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Hirer for



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any Losses.

9.3. To the full extent permitted by law, the Hirer indemnifies and will keep indemnified the Company from and against any and all Losses that the Company directly or indirectly sustains or incurs arising from or in connection with:

- (a) any act or omission, including the use of the Plant;
- (b) any breach of the Hire Contract or any law; and
- (c) any injury to persons or damage property, including the Plant,

by the Hirer, its Personnel or its subcontractors or agents.

9.4. The Company shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- (a) Hirer failing to properly maintain or store any Plant;
- (b) Hirer using the Plant for any purpose other than that for which they were designed;
- (c) Hirer continuing the use of any Plant after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) Hirer failing to follow any instructions or guidelines provided by the Company; or
- (e) fair wear and tear, any accident or act of God,

and the Hirer acknowledges that it will be liable for the matters in clause 9.4 other than for the matters included in clause 9.4(e).

9.5. Each indemnity in the Hire Contract is a continuing obligation, separate and independent from the other obligations of Hirer and survives the termination of the Hire Contract or the expiration of the Term.

9.6. It is not necessary for the Company to incur an expense, make a payment or mitigate its loss before enforcing a right of indemnity conferred by this Hire Contract. The Hirer must pay on demand any amount it must pay to the Company under an indemnity.

9.7. Damage Waiver fee is charged at 10% of the Hire Fees + excess at \$5000 Per Claim made or up to 2% of the insured value whichever is applicable.

10. Termination of the Hire Contract

10.1. On the End Date, the Hirer must return the Plant to the Company by delivering and unloading the Plant at the Company's designated premises.

10.2. The Company may terminate the Hire Contract immediately by notice to the Hirer, if:

- (a) the Hirer breaches the terms of the Hire Contract; or
- (b) the Hirer suffers an Insolvency Event.

10.3. The Company may terminate the Hire Contract for any other reason with 24 hours' notice to the Hirer.

10.4. In the event that the Company terminates the Hire Contract for any of the matters set out in clause 10.2, the Hirer must pay on demand the balance of the Hire Fees that would have been payable to the Company had the Hirer been in possession of the Plant until the End Date.

10.5. If the Company has terminated the Hire Contract pursuant to clauses 10.2 or 10.3 or in the event that the Hirer fails to return the Plant on the End Date, then without prejudice to any other rights that the Company may have at law or under this Hire Contract, the Company may, without notice to the Hirer:

- (a) enter the Hirer's premises or any premises under the control of the Hirer for the purposes of recovering the Plant; or
- (b) if the Plant cannot be distinguished from similar goods which the Hirer has or claims to have paid for in full, the Company may in its own absolute discretion seize all goods matching the description of the Plant and hold same for a reasonable period so that the respective claims of the Company and the Hirer may be ascertained. The Company must promptly return to the Hirer any goods that are the property of the Hirer and the Company is in no way liable or responsible for any loss or damage to those goods or for any loss, damage or destruction to the Hirer's business howsoever arising from the seizure of any of the goods.

10.6. If the Company is unable to recover the Plant for any reason pursuant to clause 10.5, the Company may, in addition to all of its rights and remedies under this Hire Contract, enforce the Hire Contract and repossess the Plant for and on behalf of any third-party owner of the Plant as well as for itself. For that purpose, the Company may commence proceedings in its own name to enforce all obligations and liabilities of the Hirer and make any claim which any third-party owner of the Plant may have against the Hirer.

10.7. The Company's rights in this clause 10 are in addition to all other rights and remedies under the Hire Contract, under law and at equity.

11. Trust and Trustees

Where Hirer is a trustee, the Hirer:

- (a) agrees to produce a stamped copy of the trust deed (with all amendments) and accounts of the trust if and when requested by the Company;
- (b) warrants that it has full power and authority to enter into the Hire Contract on behalf of the trust and that it shall be bound by the Hire Contract both personally and in their capacity as trustee irrespective of whether or not it discloses to the Company that it is a trustee at the time of entering



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into any credit agreement with the Company;

- (c) warrants that the trust has agreed to indemnify the trustee in respect of all liability incurred by the trustee pursuant to the Hire Contract; and
- (d) acknowledges that it has entered into the Hire Contract in its capacity as trustee of the trust and also in its own capacity.

12. General

- 12.1. The terms of the Hire Contract survive the Term of the hire.
- 12.2. The Hire Contract is governed by the laws of New South Wales and the parties submit exclusively to the jurisdiction of its courts.
- 12.3. To the extent permitted by law, in relation to the subject matter of the Hire Contract, the Hire Contract:
- 12.4. embodies the entire understanding of the parties and constitutes the entire terms agreed upon between the parties; and
- 12.5. supersedes any prior agreement between the parties (whether or not in writing).
- 12.6. Clerical errors in computations, typing or otherwise of catalogue, quotation, acceptance offer, invoice, delivery docket, credit note or specifications of the Company are subject to correction.
- 12.7. The Company may novate or assign the whole or any part of this Hire Contract without the prior written consent of the Hirer and the Hirer must execute all documents necessary to give effect to any novation or assignment to of the whole or any part of this Hire Contract. The Hirer may not novate or assign the whole or any part of this Hire Contract without the prior written consent of the Company.
- 12.8. No failure by the Company to enforce its rights or remedies under this Hire Contract constitutes a waiver of any such rights or remedies.
- 12.9. If a provision in the Hire Contract is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part thereof is deemed deleted without affecting the validity or enforceability of the remainder of the provision or any other provision of this Hire Contract.
- 12.10. This Hire Contract may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Hire Contract, all of which together constitute one Hire Contract.
- 12.11. Signatures to this Hire Contract transmitted by facsimile transmission, by electronic mail in 'portable document format' (.pdf) or by any other electronic means intended to preserve the original graphic and pictorial appearance of the document will have the same effect as physical delivery of the paper document bearing the original signature.