

HIRE TERMS

These Hire Terms, together with any Hire Form (defined in clause 1(a)), set out the agreement (this **Agreement**) under the terms of which you or NRQ Machine Hire which you represent (the **Customer, you**) will rent the Equipment or Services from the Trustee for Jack Keating Family trust ABN 88 101 281 400 (**NRQ Machine Hire, we, us, our**).

1 HIRE FORM, THIS AGREEMENT

- (a) These Hire Terms will apply to all the Customer's dealings with NRQ Machine Hire, including being incorporated in all agreements, quotations or orders under which NRQ Machine Hire is to rent equipment and/or provide services to the Customer (each a '**Hire Form**') together with any additional terms included in such a Hire Form (provided such additional terms are recorded in writing).
- (b) The Customer will be taken to have accepted this Agreement if the Customer accepts a Hire Form, or if the Customer orders, accepts or pays for any equipment and/or services provided by NRQ Machine Hire after receiving or becoming aware of this Agreement or these Hire Terms.
- (c) In the event of any inconsistency between these Hire Terms and any Hire Form, the clauses of these Hire Terms will prevail to the extent of such inconsistency, except that any "Special Conditions" (being terms described as such in a Hire Form) will prevail over these Hire Terms to the extent of any inconsistency.

2 HIRE

NRQ Machine Hire provides to the Customer and the Customer accepts from NRQ Machine Hire the hire of the Equipment and/or Services upon and subject to the provisions of this Agreement.

3 PRE HIRE

The Customer warrants that they:

- (a) will send a copy of their valid driver's licence/s within 24 hours of confirming the booking to NRQ Machine Hire's contact email address set out in the Hire Form;
- (b) have read and understood any instructional materials provided by NRQ Machine Hire;
- (c) will obtain up to date information from relevant authorities, (for example, by using the "Dial Before You Dig" service), about any infrastructure networks at the Job Site; and
- (d) ensure that any person collecting or taking delivery of the Equipment on behalf of the Customer is authorised by the Customer to do so and the Customer will not allege that any such person is not so authorised.

4 EQUIPMENT USE

4.1 USE

- (a) The Customer must ensure that the Equipment is only used:
 - (i) on the Job Site;
 - (ii) in a proper and skilful manner, by Personnel who are appropriately trained, licensed, certified and competent;
 - (iii) in accordance with the Equipment manufacturer's requirements, recommendations and instructional materials provided to the Customer; and
 - (iv) in accordance with all Laws, rules and regulations applicable to the Equipment and its use and/or relating to the Job Site.
- (b) The Customer must not, and must not allow any Personnel or third party to:
 - (i) tow trailered Equipment with an unsuitable or unroadworthy Equipment or on unsealed roads;
 - (ii) tow trailered Equipment, if the driver is not the holder of a valid driver licence;

- (iii) use the Equipment for any dangerous or illegal purpose;
- (iv) use or allow the Equipment to be used to carry passengers for payment of any kind and/or for racing;
- (v) make any alterations to the Equipment, including by unauthorised repair;
- (vi) use or allow the Equipment to be used while the operator is under the influence of alcohol or drugs;
- (vii) use the Equipment when it is damaged or unsafe;
- (viii) affix or install any accessories, equipment or device on or to the Machine (other than the Included Attachments set out in the Hire Form) without NRQ Machine Hire's prior written consent;
- (ix) sub-hire the Equipment; and
- (x) use the Equipment for the conveyance or towing of any load.

4.2 MAINTENANCE

- (a) The Customer must, when the Equipment is unattended, always keep it locked and keep the keys under their control.
- (b) The Customer is responsible for the performance and cost of daily maintenance and care of all Equipment in its possession, including:
 - (i) daily checking of all fluids (fuel, oil, water, battery levels etc);
 - (ii) general tightening of any loose nuts, bolts, belts or fittings;
 - (iii) the lubrication of all grease points every day the Machine has been used;
 - (iv) if applicable, the adjustment of the tracks tension weekly; and
 - (v) if, applicable, the lubrication of the slew ring every **fifty (50) hours**.
- (c) If the Customer does not comply with clause 4.2(b) above, and replaces any of the pins, slew rings and/or tracks within a reasonable time following the return of the Machine, the Customer must promptly pay for such replacement, on demand from NRQ Machine Hire.
- (d) If instructed by Company, the Customer must cover the Equipment with waterproof material in wet weather conditions.

4.3 OPERATOR

The Customer agrees that they are responsible for the acts and omissions of any other person they allow to use the Equipment.

4.4 FUEL

The Customer must:

- (a) ensure that the Machine has a full tank of fuel when it is returned to NRQ Machine Hire, unless specified otherwise in the Hire Form;
- (b) only fill the Equipment with fuel of a type that meets the Machine's specifications; and
- (c) promptly pay to NRQ Machine Hire the costs of refuelling the Machine, at the Fuel Rate for each litre of fuel required to refill the Machine's tank, if the Customer fails to comply with clause 4.4(a) at the Fuel Refill Rate.

4.5 PERSONAL PROPERTY

NRQ Machine Hire is not liable to any person for any loss of, or damage to, personal property that is left in the Equipment after its return to NRQ Machine Hire or stolen from the Equipment or otherwise lost during the Hire Term.

4.6 CLEANING

The Customer acknowledges that the Equipment is rented out in a clean condition. The Customer must return the Equipment in the same state of cleanliness (inside and out) it was in on the Start

Date (**Clean**). If the Equipment is not Clean upon return, a cleaning fee covering the total cost to Company to clean the Equipment will apply.

5 RETURN

- (a) Unless the Services include return of the Equipment by NRQ Machine Hire and subject to clause 14, the Customer must on the Return Date and by the Return Time specified in the Hire Form, return the Equipment to NRQ Machine Hire at the Return Address in the same condition as it was in on the Start Date.
- (b) If the Customer does not comply with clause 5(a), the Customer must pay the Late Charge for every additional 24 hour period after the Return Time on the Return Date for which the Customer retains possession of the Equipment.
- (c) If the Customer returns the Equipment before the Return Date:
 - (i) the discount set out in the Early Return Discount section of the Hire Form will be applied; or
 - (ii) if no Early Return Discount is set out in the Hire Form, the Customer will be liable for the full Fees as if the Equipment was in its possession from the Start Date until the Return Date, notwithstanding any early return of the Equipment.

6 OFF HIRE

This clause only applies to Equipment for which off hire discount rates apply, as set out in the Hire Form. For Equipment this clause 6 applies to, NRQ Machine Hire will apply the off hire discount rate set out in the Hire Form in respect of that Equipment and for a particular date, subject to the following:

- (a) the Equipment not being subject to a rent to buy arrangement; and
- (b) NRQ Machine Hire receiving a written notice from the Customer before 9AM on the relevant date, requesting an off hire rate on one of the following grounds:
 - (i) wet weather conditions, provided that the Equipment is **insert** tonnes or over in weight;
 - (ii) the date being a public holiday; or
 - (iii) the date being a rostered day off.

NRQ Machine Hire will determine in its reasonable discretion whether any of these grounds apply.

7 STAND-DOWN

- (a) This clause only applies in respect of Equipment for which stand down rates apply, as set out in the Hire Form.
- (b) For Equipment this clause applies to, NRQ Machine Hire will apply the stand down discount rate set out in the Hire Form in respect of that Equipment and for a particular date, subject to the following:
 - (i) NRQ Machine Hire receiving a written notice from the Customer before 9AM on that date, requesting a stand down rate on the grounds that the Customer will not be using that Equipment on that date; and
 - (ii) the Equipment not being subject to a rent to buy arrangement.

8 FAULTY EQUIPMENT

- (a) If the Equipment is faulty, breaks down or becomes unsafe to use during the Hire Term (**Breakdown**), the Customer must immediately:
 - (i) notify NRQ Machine Hire;
 - (ii) stop using the Equipment;
 - (iii) take all steps necessary to prevent injuries from occurring to any person or property as a result of the condition of the Equipment;

- (iv) take all steps necessary to prevent the Equipment from sustaining any further damage;
 - (v) not repair or attempt to repair the Equipment without NRQ Machine Hire's written consent; and
 - (vi) comply with NRQ Machine Hire's directions in relation to the return of the Equipment.
- (b) Subject to clause 8(c), if, upon inspection of the Equipment, NRQ Machine Hire determines that a Breakdown was:
- (i) caused by a fault in the Equipment (not caused or contributed to by the Customer) (**Equipment Fault**) then NRQ Machine Hire will provide the Customer with a pro-rata refund of any Fees paid for the period of the Hire Term during which the Breakdown persisted; or
 - (ii) not caused by an Equipment Fault, then the Customer will still be required to pay Fees in accordance with the Hire Form.
- (c) Clause 8(b) does not limit:
- (i) any of the Customer's rights under the *Competition and Consumer Act 2010* (Cth); or
 - (ii) any rights or remedies NRQ Machine Hire may have access to in relation to a Breakdown, under this Agreement or otherwise.

9 REPLACEMENT, LOSS AND DAMAGE

9.1 LOSS, DAMAGE AND PERSONAL INJURY

The Customer will be fully liable to NRQ Machine Hire for:

- (a) any loss or damage to the Equipment during the Hire Term, or otherwise when the Equipment is in the Customer's possession, and must give reasonable notice to NRQ Machine Hire in writing of any such loss or damage; and
- (b) all damage to the property of any person which is caused or contributed to by the Equipment during the Hire Term, or otherwise when the Equipment is in the Customer's possession.

9.2 REPLACEMENT

If NRQ Machine Hire notifies the Customer in writing, the Customer must replace all parts of the Equipment which during the Hire Term have become worn out, lost, stolen, damaged beyond repair or permanently rendered unfit for use (fair wear and tear excepted), provided that the Customer must not make any replacement, alteration or addition of any nature which may lead to a material reduction in the value of the Equipment.

10 INCIDENTS, INSURANCE AND DAMAGE WAIVER FEES

10.1 INSURANCE

- (a) The Customer acknowledges that NRQ Machine Hire may, in its discretion, hold insurances in relation to the Equipment but such insurances may not cover the Customer or the Customer's use of the Equipment and NRQ Machine Hire will have no obligation or requirement to insure the Customer's use of the Equipment under this Agreement. The Customer is strongly encouraged to take out adequate insurance to cover all potential liabilities that could arise from their use of the Equipment.
- (b) If NRQ Machine Hire notifies the Customer that it holds insurance in relation to the Equipment, or if the Customer has paid an Excess Reduction Fee, the Customer must not do or permit anything to be done which may make NRQ Machine Hire's insurance invalid or able to be cancelled or which may increase NRQ Machine Hire's insurance premiums.
- (c) NRQ Machine Hire reserves the right to apply any insurance policy it does hold in respect of the Equipment during the Hire Term, to damage or loss caused or contributed to by the

Customer, however NRQ Machine Hire is under no obligation to. If NRQ Machine Hire chooses to make a claim under an applicable insurance policy in accordance with this clause in respect of any damage or loss during the Hire Term, the Customer will be required to pay any excess payable by NRQ Machine Hire in respect of such a claim.

10.2 INCIDENTS, LOSS AND DAMAGE

- (a) Subject to any NRQ Machine Hire insurance policy that covers the Customer, which NRQ Machine Hire has indicated it will claim against to cover the Customer, if the Equipment is lost, damaged, destroyed or stolen during the Hire Term, or otherwise while the Equipment is in the Customer's possession, the Customer must compensate NRQ Machine Hire for any costs of repair or replacement.
- (b) If the Equipment is involved in an accident or claim, damaged, destroyed, stolen or if damage or loss is sustained to the property of any third party in connection with the Equipment during the Hire Term, or otherwise when the Equipment is in the Customer's possession (**Incident**), the Customer:
 - (i) must promptly report the Incident to the local police (if required by Law);
 - (ii) must report the Incident to NRQ Machine Hire in writing within one Business Day;
 - (iii) must, if such damage, destruction or theft is covered by and compensated to NRQ Machine Hire under an insurance policy, pay the relevant excess amount to NRQ Machine Hire, as well as any other reasonable costs that NRQ Machine Hire incurs in relation to such damage, destruction or theft;
 - (iv) must not, without NRQ Machine Hire's prior written consent, make or give any offer, promise of payment, settlement, waiver, release or admission of liability in relation to the Incident, except as required by Law;
 - (v) must, if requested, permit NRQ Machine Hire or its insurer bring, defend, enforce or settle any legal proceedings in the Customer's name in relation to the Incident; and
 - (vi) must, if requested, provide to NRQ Machine Hire, within a reasonable time, any statement, information or assistance which NRQ Machine Hire or its insurer requests, including by attending a lawyer's office or a court to give evidence.

10.3 DAMAGE WAIVER

- (a) Subject to the terms of this Agreement, if the Customer has paid the Damage Waiver Fee set out in the Hire Form, the amount NRQ Machine Hire may claim from the Customer in connection with this Agreement for any loss or damage caused by fire, storm, earthquake, collision, accident or theft will be limited, per incident, to a maximum of \$500 (**Damage Waiver**).
- (b) This Damage Waiver does not apply to loss or damage:
 - (i) occasioned by the Customer failing to take reasonable care of the Equipment;
 - (ii) caused to the Equipment as a result of any illegal activity, misappropriation or wrongful conversion of the Equipment by the Customer;
 - (iii) caused by the Customer's misuse, overuse, abuse, overloading, exceeding the rated capacity or improper servicing or repairs of the Equipment;
 - (iv) caused by the exposure of the Equipment to corrosive substances, salt water or toxic materials;
 - (v) to the Included Attachments and/or tools, accessories, parts, grease guns, hoses, electrical cords, lights, light globes and other similar accessories, ground engaging tools, tracks, tyres and glass;
 - (vi) that occurred while the Equipment was in transit, including during loading and unloading; and
 - (vii) arising in circumstances where a claim has been made by or against a third party.

11 PAYMENT

11.1 FEES

The Customer must pay the Fees to NRQ Machine Hire in the amounts set out in the Hire Form or as otherwise agreed in writing.

11.2 TIME FOR PAYMENT

Unless otherwise agreed in writing or in a Hire Form:

- (a) the Customer must pay for all Equipment on or before the Start Date; and
- (b) if NRQ Machine Hire issues an invoice to the Customer, payment must be made by the time(s) specified in such invoice.

11.3 PAYMENT METHOD

The Customer must pay Fees using the payment method specified in the Hire Form.

11.4 LATE PAYMENT

If the Customer does not pay NRQ Machine Hire the amounts due and payable under an invoice on or before its due date, without limiting any of NRQ Machine Hire's other rights under this Agreement, the Customer must pay NRQ Machine Hire interest at the rate of [REDACTED] % per annum on each amount outstanding, from the due date for payment to the date on which the payment is received by NRQ Machine Hire.

11.5 GST

Unless otherwise indicated, amounts stated in a Hire Form do not include GST. In relation to any GST payable for a taxable supply by NRQ Machine Hire, the Customer must promptly pay the GST subject to NRQ Machine Hire providing a tax invoice.

11.6 CARD SURCHARGES

NRQ Machine Hire reserves the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card (including Visa, MasterCard or American Express).

11.7 SECURITY BOND

- (a) To hire the Equipment, we require the payment of a Security Bond as set out in the Hire form or as otherwise specified by us, to cover any fees, damage or issues with the Equipment (**Security Bond**).
- (b) Upon return of the Equipment, we may claim the Security Bond against any amount owed by the Customer to us under this Agreement.

11.8 ONLINE PAYMENT PARTNER

We may use third-party payment providers (**Payment Providers**) to collect payments. The processing of payments by the Payment Provider will be, in addition to this Agreement, subject to the terms, conditions and privacy policies of the Payment Provider and we are not liable for the security or performance of the Payment Provider. We reserve the right to correct, or to instruct our Payment Provider to correct, any errors or mistakes in collecting your payment.

11.9 PAYMENTS OTHER THAN FEES

- (a) Immediately on request by NRQ Machine Hire, the Customer will pay:
 - (i) the price of any Equipment which is for whatever reason not returned to NRQ Machine Hire;
 - (ii) the full cost of repairing any damage to the Equipment caused or contributed to by the Customer;
 - (iii) all costs incurred by NRQ Machine Hire in delivering and recovering possession of the Equipment; and

- (iv) any expenses and legal costs (including commission payable to a commercial agent) incurred by NRQ Machine Hire in enforcing this Agreement due to the Customer's default.
- (b) Without limiting the ability of NRQ Machine Hire to recover all amounts owing to it, the Customer authorises NRQ Machine Hire to charge any amounts owing by the Customer to any credit card or account which the Customer provides in a Hire Form.

12 OWNERSHIP, POSSESSION AND TITLE

12.1 OWNERSHIP

- (a) The Equipment is and will at all times remain the property of NRQ Machine Hire, notwithstanding delivery of the Equipment to the Customer or the possession and use of the Equipment by the Customer.
- (b) The Customer will not have any right, title or interest in or to the Equipment except as expressly set out in this Agreement.

12.2 POSSESSION

- (a) The Customer must not, without NRQ Machine Hire's prior written consent, part with possession of the Equipment during the Hire Term.

12.3 ENCUMBRANCES

The Customer must not allow any security interest, encumbrance, charge or lien of any kind to arise or remain in relation to the Equipment, including a repairer's lien, except:

- (a) if a repairer's lien arises, the Customer must take all necessary steps to have it removed or satisfied, or, at NRQ Machine Hire's option, NRQ Machine Hire may remove or satisfy the lien at the Customer's cost; and
- (b) a security interest, lien or charge that arises by Law in respect of unpaid rates, taxes, fees or duties of any kind, in which event the Customer must pay any money due so that the Equipment will be free of the lien or charge.

13 PERSONAL PROPERTY SECURITIES

The Customer grants a security interest in all of its present and after acquired property and in all of its present and future rights, title, estate and interest, whether legal and equitable, in relation to any personal property, including any debts owed to the Customer, in favour of NRQ Machine Hire to secure the performance of its liabilities and obligations hereunder or on any account whatsoever.

If requested by NRQ Machine Hire the Customer must immediately sign any documents, provide all necessary information and do anything else required by NRQ Machine Hire to ensure that the security interest created in NRQ Machine Hire's favour is a perfected security interest.

The Customer must not grant any other security interest in favour of any party until NRQ Machine Hire has perfected its security interest created under these Terms.

The Customer must not do or permit anything to be done that may result in the security interest granted to NRQ Machine Hire ranking in priority behind any other security interest.

The Customer acknowledges that these Terms constitute a security agreement for purposes of the PPSA and the Customer will do all things necessary to enable a security interest to be registered under the PPSA, and will comply with all requirements of the PPSA.

To the fullest extent permitted by the PPSA, the Customer agrees to contract out of the application of the provisions listed in sections 115(1) and 115(7) and the sections listed therein shall not apply.

The Customer hereby waives any rights the Customer may otherwise have to:

- (a) receive any notices or statements the Customer would otherwise be entitled to receive under sections of the PPSA including for the avoidance of any doubt the sections referred to in sections 115(1) and 115(7) of the PPSA;
- (b) apply to a Court for an order concerning the removal of an accession under section 97 of the PPSA;

- (c) object to a proposal of the Customer to purchase or retain any collateral under sections 130 and 135 of the PPSA; and
- (d) receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest created under this document.

For the purpose of this clause and other relevant clauses in this Agreement, the expressions “accession”, “collateral”, “financing statement”, “financing change statement”, “security agreement”, “security interest”, “perfected security interest” and “verification statement” have the meanings given to them under, or in the context of the PPSA.

14 EARLY RETURN

Notwithstanding any other clause in this Agreement, NRQ Machine Hire may demand the early return of the Equipment to the Return Address, or retake possession of the Equipment, if NRQ Machine Hire reasonably suspects that:

- (a) damage to the Equipment or injury to any person in connection with the Equipment is reasonably likely; or
- (b) the Equipment may be used for an unlawful purpose.

15 THIRD PARTY GOODS AND SERVICES

- (a) If NRQ Machine Hire is required to acquire goods or services supplied by a third party, the Customer may be subject to the terms and conditions of that third party (**‘Third Party Terms’**).
- (b) The Customer agrees to any Third Party Terms applicable to any goods or services supplied by a third party that the Customer or NRQ Machine Hire acquires as part of renting the Equipment and NRQ Machine Hire will not be liable for any loss or damage suffered by the Customer in connection with such Third Party Terms.

16 SUBCONTRACTING

NRQ Machine Hire may subcontract any aspect of providing the Services and the Customer hereby consents to such subcontracting.

17 LIABILITY, WARRANTIES AND INDEMNITIES

17.1 LIABILITY

To the maximum extent permitted by Law, NRQ Machine Hire’s liability for all claims in aggregate (whether those claims be for breach of contract, negligence or otherwise, and whether those claims are for economic loss, or for personal injury or other damage) arising under or in connection with this Agreement:

- (a) is totally excluded, to the extent it concerns liability for indirect, special and consequential damages, and damages (whether direct or indirect) reflecting loss of revenue, loss of profits and loss of goodwill (except to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth)); and
- (b) is limited, insofar as it concerns other liability, to the total money paid to NRQ Machine Hire under this Agreement as at the date the event giving rise to the relevant liability occurred (or, where there are multiple events, the date of the first such event).

17.2 WARRANTIES

- (a) The Customer acknowledges that in deciding to rent the Equipment and/or acquire the Services and in entering into this Agreement the Customer has not relied on the skill or judgment of NRQ Machine Hire and that the Customer has satisfied itself as to the condition and suitability and fitness for the Customer’s purpose of the Equipment and/or the Services.

- (b) To the maximum extent permitted by applicable Law, all express or implied representations and warranties (whether relating to fitness for purpose or performance, or otherwise) not expressly stated in this Agreement are excluded.
- (c) Nothing in this Agreement is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**). Under the ACL, the Customer may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services provided.

17.3 INDEMNITIES

The Customer indemnifies NRQ Machine Hire from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of:

- (a) the casual maintenance, use, storage or operation of the Equipment during the Hire Term or otherwise when the Equipment is in the Customer's possession;
- (b) injuries to or deaths of persons and damage to property in connection with the Equipment during the Hire Term or otherwise when the Equipment is in the Customer's possession;
- (c) any breach of this Agreement by the Customer; or
- (d) any negligent, fraudulent or criminal act or omission of the Customer or its Personnel.

18 TERMINATION

18.1 TERMINATION BY NRQ MACHINE HIRE

NRQ Machine Hire may terminate this Agreement in whole or in part immediately by written notice to the Customer, if the Customer is in breach of any term of this Agreement.

18.2 TERMINATION BY THE CUSTOMER

The Customer may only terminate this Agreement in whole or in part by written notice to NRQ Machine Hire at least 24 hours prior to:

- (a) the Start Time set out in a Hire Form; or
- (b) if there is no Start Time set out in Hire form, then 8:00AM of the Start Date.

18.3 EFFECT OF TERMINATION

Upon termination of this Agreement, the Customer must promptly:

- (a) pay any payments required by NRQ Machine Hire in respect of the period of the Hire Term prior to the date of termination; and
- (b) subject to any contrary direction given by NRQ Machine Hire, deliver the Equipment and any other goods included in a Hire Form to the Return Address.

18.4 SURVIVAL

Any clause that by its nature would reasonably be expected to be performed after the termination or expiry of this Agreement will survive and be enforceable after such termination or expiry.

19 DISPUTE RESOLUTION

- (a) A party claiming that a dispute has arisen under or in connection with this Agreement must not commence court proceedings arising from or relating to the dispute, other than a claim for urgent interlocutory relief, unless that party has complied with the requirements of this clause.
- (b) A party that requires resolution of a dispute which arises under or in connection with this Agreement must give the other party or parties to the dispute written notice containing reasonable details of the dispute and requiring its resolution under this clause.
- (c) Once the dispute notice has been given, each party to the dispute must then use its best efforts to resolve the dispute in good faith. If the dispute is not resolved within a period of 14 days (or such other period as agreed by the parties in writing) after the date of the notice, any party to the dispute may take legal proceedings to resolve the dispute.

20 NOTICES

- (a) A notice or other communication to a party under this Agreement must be:
- (i) in writing and in English; and
 - (ii) delivered via email to the other party, to the email address specified in this Agreement, or if no email address is specified in this Agreement, then the email address most regularly used by the parties to correspond regarding the subject matter of this Agreement as at the date of this Agreement (**Email Address**). The parties may update their Email Address by notice to the other party.
- (b) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:
- (i) 24 hours after the email was sent, unless that falls on a Saturday, Sunday or a public holiday in the state or territory whose laws govern this Agreement, in which case the notice will be taken to be given on the next occurring Business Day in that state; or
 - (ii) when replied to by the other party,
- whichever is earlier.

21 GENERAL

21.1 GOVERNING LAW AND JURISDICTION

This Agreement is governed by the law applying in Queensland, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

21.2 AMENDMENTS

This Agreement may only be amended in accordance with a written agreement between the parties.

21.3 WAIVER

No party to this Agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

21.4 SEVERANCE

Any term of this Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this Agreement is not limited or otherwise affected.

21.5 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

21.6 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other party.

21.7 COUNTERPARTS

This Agreement may be executed in any number of counterparts. Each counterpart constitutes an original of this Agreement and all together constitute one agreement.

21.8 COSTS

Except as otherwise provided in this Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Agreement.

21.9 ENTIRE AGREEMENT

This Agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this Agreement.

21.10 INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(currency)** a reference to \$; or “dollar” is to Australian currency;
- (c) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (d) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (e) **(person)** a reference to “person” or “you” includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (f) **(party)** a reference to a party includes that party’s executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (g) **(this Agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) **(document)** a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (i) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (j) **(includes)** the word “includes” and similar words in any form is not a word of limitation; and
- (k) **(adverse interpretation)** no provision of this Agreement will be interpreted adversely to a party because that party was responsible for the preparation of this Agreement or that provision.

22 DEFINITIONS

In addition to capitalised terms defined in the Hire Form above, or as otherwise defined by bolded words or phrases, capitalised terms used in this Agreement will have the following meanings:

Term	Meaning
Business Days	means a day (other than a Saturday, Sunday or any other day which is a public holiday) on which banks are open for general business in Queensland.
Hire Term	means the period of Equipment Hire, from the Start Date set out in the Hire Form until the Equipment is returned to Company.
Laws	mean any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the relevant jurisdiction(s) where the Services are provided and includes any industry codes of conduct.
Personnel	means, in respect of a party, that party’s officers, employees, contractors (including subcontractors) and agents.
PPSA	means the <i>Personal Property Securities Act 2009</i> (Cth) and PPS Register means the register established and maintained under that Act.