

GOLDFIELDS TRUCK & PLANT HIRE



Application of General Terms and Conditions

- 1.1 These General Terms and Conditions will apply to the sale, hire or supply of any Goods and the provision of any Services by the Company to the Customer and will form part of any Contract resulting from the Company's acceptance of an Order.
- 1.2 In the event of any inconsistency between the terms of the Contract and the terms of a document issued by the Customer, the Customer agrees the terms of the Contract will prevail.
- 1.3 If the Customer provides the Company with a Purchase Order or otherwise requests the supply of Goods, Parts A, B, C and F of these General Terms and Conditions will apply and form part of the Purchase Contract.
- 1.4 If the Customer provides the Company with an Order for Hire or otherwise requests the hire of Goods, Parts A, B, D and F of these General Terms and Conditions will apply and form part of the Hire Contract.
- 1.5 If the Customer provides the Company with a Purchase Order for Services, Parts A, B and F of these General Terms and Conditions will apply and form part of the Contract.
- 1.6 If the Customer provides the Company with a Purchase Order or otherwise requests the carriage of goods, Parts A, B, E and F of these General Terms and Conditions will apply and form part of the Contract.

Part A – General Terms

2. Quotations

- 2.1 Any quotation issued by the Company is not an offer to sell, hire or supply any Goods or Services and may be withdrawn or varied at any time prior to a related Order being accepted by the Company in accordance with clause 3. A quotation will only be valid for 30 days from its date of issue unless extended in writing by the Company. All prices quoted by the Company are subject to variation in accordance with clause 31.2 and relate to the sale, hire or supply of Goods, or Services, on these General Terms and Conditions.

3. Acceptance of Orders

- 3.1 The Customer may request the Company to sell, hire or supply Goods or Services to the Customer in accordance with these General Terms and Conditions by providing an Order to the Company. All Orders received by the Company are subject to acceptance by the Company in writing. The Company may accept or reject an Order in whole or in part in its absolute discretion. The issue by the Company of a written acceptance of an Order will not be or imply acceptance of any terms or conditions in the Order which are inconsistent with these General Terms and Conditions or, if the Customer has a Credit Account with the Company, which are inconsistent with the terms of the Credit Agreement.

4. Late payments and interest

- 4.1 Interest must be paid on any unpaid or outstanding amount payable to the Company, calculated from the due date for payment until final payment has been received by the Company, charged at the rate of 12% per annum.
- 4.2 Any and all expenses, costs and disbursements incurred by the Company in recovering or seeking to recover any outstanding monies due from the Customer including (without limitation) debt collection, agency fees and solicitor's costs, shall be payable by the Customer to the Company on demand.
- 4.3 All sums payable by the Customer to the Company, whether or not such amounts are due for payment, will immediately become due and payable if:
 - (a) any payment by the Customer to the Company is overdue, in whole or in part;
 - (b) the Customer is otherwise in default under any Contract or Credit Agreement or any Contract or Credit Agreement is terminated; or
 - (c) the Customer or any Guarantor shall become bankrupt or commit any act of bankruptcy or enter into an arrangement with its creditors or have judgment entered against it in any court or, being a Company, have a provisional liquidator, voluntary administrator, receiver or manager appointed or otherwise suffer some form of insolvency administration.

5. Taxes and duties

- 5.1 Unless stated otherwise, prices quoted to the Customer or set out in the Contract do not include the taxes, imposts and duties described in clause 5.2.
- 5.2 The Company may recover from the Customer, and the Customer must pay, the amount of any sales tax, customs duty, use tax, consumption tax, goods and services tax, value-added tax or any similar tax, impost or duty levied on any supplies made by the Company to the Customer under or in connection with these General Terms and Conditions (excluding any income tax imposed on the Company), whether that tax, impost or duty is currently in force or comes into force after the date of any Contract. Any such tax, impost or duty must be paid by the Customer at the same time as when payment for the supplies in respect of which the tax, impost, or duty is levied is due.
- 5.3 The acceptance by the Company of the Customer's sales tax certificate or other documents claiming exemption from any taxes, imposts or duties is at the Company's absolute discretion and any such acceptance does not exempt the Customer from paying any taxes, imposts or duties (including any interest and penalties) subsequently imposed.

6. Packing

- 6.1 Prices quoted to the Customer or set out in the Contract do not include the cost of any packing. The cost of providing packing requested by the Customer must be paid for by the Customer.

7. Amendment and Cancellation

- 7.1 The Customer will not, after a Contract is formed, cancel or amend the Order on which the Contract is based in any way without the prior written approval of the Company. The Company may, on consenting to an amendment, revise its price and other terms of supply and amend the Contract to reflect such change(s). In the event of an amendment or cancellation, the Customer must reimburse the Company for all costs and expenses already incurred by the Company and any additional costs and expenses resulting from the amendment or cancellation.

8. Termination

- 8.1 The Company may, without notice, terminate a Contract if:
 - (a) the Customer breaches any term of the Contract (including, without limitation, failing to pay an amount payable by the due date or failing to insure the Goods as required under the Contract);
 - (b) the Customer becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or

- (c) ceases to carry on business; or
the Customer's conduct indicates that it no longer intends to be bound by the Contract.

9. PPS Laws

- 9.1 To the extent that a Security Interest arises under any Credit Agreement or Contract or any transaction contemplated by them in favour of the Company as the secured party:
- (a) the Customer acknowledges that the Security Interest will attach to any proceeds or any accession;
 - (b) the Customer agrees to the Company effecting a registration on the PPS Register (in any manner the Company considers appropriate) in relation to any Security Interest and the Customer agrees to provide all assistance reasonably required to facilitate this (including paying all costs in connection with effecting, maintaining, amending or discharging that registration);
 - (c) the Customer waives the right to receive any verification statement (or notice of any verification statement) in respect of a registration made on the PPS Register; and
 - (d) the Customer must not, without first giving the Company 14 days' prior written notice, change its name, ABN or any other identifiers which are required to be recorded on the PPS Register in connection with any Security Interest.
- 9.2 The Customer and the Company agree that to the extent section 115(1) of the PPS Act allows them to be excluded, sections 95 (to the extent that it requires the Company to give notice to the Customer), 96, 121(4), 125, 130 (to the extent that it requires the Company to give notice to the Customer), 132(3)(d), 132(4), 142 and 143 do not apply to the enforcement by the Company of any Security Interest arising under any Credit Agreement or Contract or the transactions contemplated by them.

10. Application of payments

- 10.1 All payments to the Company must be made in the way reasonably required by the Company (which may include electronic funds transfer).
- 10.2 If the Customer makes a payment to the Company at any time, whether in connection with a Contract or otherwise, the Company may apply the payment to any part of the amounts owed by it to the Company as the Company sees fit.
- 10.3 The Company may, in its absolute discretion, offset any amount due from the Company to the Customer against any amount due from the Customer to the Company, or which will in the future be due from the Customer to the Company, whether in connection with a Contract or otherwise.

11. Confidentiality

- 11.1 The Company and the Customer acknowledge and agree that, subject to clause 11.2, neither party may disclose any information or documents supplied by another party that is not publicly available, including information of a kind referred to in section 275(1) of the PPSA.
- 11.2 A party may disclose information or documents as follows:
- (a) the Company may disclose information:
 - (i) in accordance with clause 12;
 - (ii) in assigning or enforcing or seeking to assign or enforce any Contract, supply arrangement or Credit Agreement or arrangement;
 - (iii) in a proceeding arising out of or in connection with any Contract, supply arrangement or Credit Agreement or arrangement;
 - (iv) to a ratings agency;
 - (v) to any person with whom the Company may enter into a transaction; or
 - (vi) to the extent that disclosure is regarded by the Company as necessary to protect its interests;
 - (b) if required under a binding order of a Government Agency or in any procedure for discovery in any legal proceedings;
 - (c) if required under any law, or any administrative guideline, directive, request or policy whether or not having the force of law and, if not having the force of law, the observance of which is in accordance with the reasonable industry practice;
 - (d) to legal advisers or other professional advisers; or
 - (e) with the prior consent of the other party, which must not be unreasonably withheld.
- 11.3 For the avoidance of doubt, clause 11.2 does not require the Company to disclose any information of the kind referred to in section 275(1) of the PPSA.

12. Personal Information and Privacy Statement

- 12.1 In order for the Company to supply the Customer with the Goods or Services under the Contract and in order for the Company to access any Application for Credit submitted by the Customer, the Customer and the Guarantors:
- (a) must provide the Company with all information which the Company reasonably requests;
 - (b) consents to the Company seeking any information relating to the Customer or the Guarantors which the Company reasonably requires from any third parties (including but not limited to credit reporting agencies and trade references); and
 - (c) must take all actions reasonably requested by the Company in order for the Company to gain access to or to receive any information which the Company reasonably requires relating to the Customer or the Guarantors.
- 12.2 The Company will collect, use and disclose the information provided to the Company in accordance with its Privacy Policy.
- 12.3 The Customer agrees that the Company can use the information provided by the Customer:
- (a) to supply goods and services to the Customer;
 - (b) to fulfil the Company's obligations under these General Terms and Conditions; and
 - (c) to provide the Customer with information about the Company's business and services, and the business and services of its contractors and agents.
- 12.4 The Company may disclose the information provided by the Customer and any Guarantor:
- (a) to its related bodies corporate, agents and contractors;
 - (b) to any manufacturer or supplier of any of the Goods;
 - (c) to debt collection agencies and credit reporting agencies; and
 - (d) as authorised by law.
- 12.5 Personal information may be processed by staff or by other third parties operating outside Australia who work for the Company or for one of its suppliers, manufacturer's agents, partners or related companies.
- 12.6 By submitting personal information to the Company, the Customer and the Guarantors expressly agree and consent to the disclosure, transfer, storing or processing of the Customer's and the Guarantors' personal information outside of Australia. In providing this consent the Customer and the Guarantors understand and acknowledge that countries outside Australia do not always have the same privacy protection obligations as Australia in relation to personal information.
- 12.7 The Privacy Act requires the Company to take such steps as are reasonable in the circumstances, to ensure that any recipients of the Customer's and the Guarantors' personal information outside of Australia do not breach the privacy principles contained within the Privacy Act. By the Customer and the Guarantors providing consent, under the Privacy Act, the Company is not required to take such steps as may be reasonable in the circumstances. However, despite this, the Company acknowledges the importance of protecting personal information and has taken reasonable steps to ensure that the Customer's and the Guarantors' information is used by third parties securely and in accordance with the terms of the Company's Privacy Policy.
- 12.8 If the Customer or the Guarantors do not agree to the transfer of their personal information outside Australia, they must contact the Company as soon as reasonably

- practicable after disclosing personal information to the Company.
- 12.9 To access the personal information relating to the Customer or the Guarantor which is held by the Company, the Customer or the Guarantor must contact the Company on 90915060.
- 13. Arbitration**
- 13.1 If at any time any question, dispute or difference whatsoever shall arise between the Customer and the Company upon, in relation to, or in connection with a sale, hire or supply of Goods or Services ("Dispute") such Dispute must be dealt with by the parties following this procedure before either party may take legal actions against the other:
- (a) The disputing party shall provide a written notice to the other party outlining the Dispute ("Dispute Notice").
 - (b) After receipt of the Dispute Notice the parties shall, within 7 days, arrange for a meeting of senior representatives to attempt to resolve the Dispute.
 - (c) If the Dispute cannot be resolved by the senior representatives then either party may refer the Dispute to arbitration in Australia by a person to be mutually agreed upon or, in default of agreement, by a person appointed by the President for the time being of the Institute of Industrial Engineers, Australia. The submission will be deemed to be a submission to arbitration within the meaning of the *Commercial Arbitration Act 1985* (WA) (as amended or replaced from time to time).
- 14. Trust**
- 14.1 If the Customer is a trustee of any trust or settlement including, but not limited to, any trust specified in an Application for Credit, the Customer:
- (a) enters into any Credit Agreement or Contract in its personal capacity and in its capacity as trustee, and is liable in both of those capacities;
 - (b) represents and warrants that:
 - (i) any Credit Agreement or Contract is for the benefit of the trust;
 - (ii) it is the sole trustee of the trust;
 - (iii) it is not in breach of the trust;
 - (iv) it has authority to enter into any Credit Agreement or Contract; and
 - (v) it has the right to be fully indemnified out of the trust assets for obligations incurred under any Credit Agreement or Contract and
 - (c) agrees to ensure that nothing happens that would prevent it from repeating the representations and warranties in clause 26.1(b).
- 14.2 If the Customer is a trustee of any trust or settlement including but not limited to any trust specified in Application for Credit, the Customer must not without the prior written consent of the Company permit:
- (a) any resettlement or distribution of capital of the trust;
 - (b) any retirement or replacement of the trustee or any appointment of a new trustee of the trust deed establishing the trust;
 - (c) any amendment to the trust deed establishing the trust;
 - (d) any further encumbrance (including a Security Interest) or charging of any nature of any of the assets of the trust; or
- 14.3 any breach of the provisions of the trust.
If any of the events listed in clause 14.2 occur (with or without the Company's prior consent), the Customer must immediately notify the Company in writing.
- 15. No Assignment**
- 15.1 The Customer must not, without the Company's prior written consent, transfer, assign, encumber or otherwise dispose of any of the Customer's rights or obligations under any Contract, Credit Agreement or these General Terms and Conditions. The Company may assign or novate any rights or obligations under any Contract, Credit Agreement or these General Terms and Conditions without notice to the Customer.
- 15.2 For the purposes of clause 15.1, if the Customer is a corporation, the Customer will be deemed to have assigned its rights and obligations if there is a change of effective control of the corporation or its ultimate holding Company.
- 16. Waiver**
- 16.1 No waiver of any term of any Contract, Credit Agreement or these General Terms and Conditions will be valid unless such waiver is in writing and signed by the Company. If the Company does not enforce any right or delays in enforcing any right under any Contract, Credit Agreement or these General Terms and Conditions, this must not be construed as a waiver of such right.
- 17. Other services**
- 17.1 If the Company agrees to provide any Other Services to the Customer including but not limited to the assembly, disassembly or installation of the Goods, instructing the Customer, its personnel or any other person in the use or operation of the Goods (Other Services):
- (a) the Company will provide the Other Services on the terms nominated by the Company in its absolute discretion;
 - (b) all costs, expenses and liabilities incurred or to be incurred by the Company or associated with providing the Other Services must be paid by the Customer to the Company on demand; and
 - (c) the Company will not be liable for any delay or failure to supply the Other Services within any time period nominated or requested by the Customer.
- 17.2 Without limiting clause 25, the Customer:
- (a) releases and discharges the Company from all claims and demands on the Company and any loss or damage whatsoever and whenever caused to the Customer of any other person of any nature or kind; and
 - (b) indemnifies and holds the Company harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Company and from and against all actions, proceedings, claims or demands made against the Company, arising from the provision of the Other Services.
- 17.3 Without limiting clause 24 or any other provision in this clause 17, any employee, agent or contractor of the Company supplying or providing Other Services for or on behalf of the Company to the Customer will be deemed to be an employee of the Customer for the period in which the person is providing the Other Services.
- 18. Governing law**
- 18.1 These General Terms and Conditions and any Contract will be governed by and determined in accordance with the laws of Western Australia.
- 19. Attorney**
- 19.1 The Customer irrevocably appoints the Company its attorney with the rights at any time to:
- (a) comply with the obligations of the Customer under a Contract;
 - (b) do everything that in the Attorney's reasonable opinion is necessary or expedient to enable the exercise of any right of the Company in relation to a Contract.

Part B – General terms of supply of Goods and Services

20. Point of Delivery of Goods

- 20.1 The Goods will be delivered and made available to the Customer “ex-works at such other location within Western Australia as nominated by the Company acting reasonably (“Delivery Point”) and all costs of removing the Goods from the Delivery Point will be paid by the Customer. Delivery will be deemed to occur when the Customer is informed by the Company that the Goods are ready for collection from the Delivery Point (“Delivery Date”).
- 20.2 The Customer must remove the Goods from the Delivery Point within 28 days of the Delivery Date.
- 20.3 If the Company agrees, following a request from the Customer, to arrange for the Goods to be freighted to or otherwise provided to the Customer at a location other than the Delivery Point:
- (a) the Customer will be deemed to take Delivery of the Goods and the Goods will be at the Customer’s risk from earlier of the Delivery Date and the Goods leaving the Delivery Point;
 - (b) all costs and expenses associated with packing, transporting and removing the Goods from the Delivery Point and providing them to the Customer at a location other than the Delivery Point must be paid for by the Customer;
 - (c) the Company will not be liable for any delay or failure to supply the Goods to the Customer at a location other than the Delivery Point; and
 - (d) without limiting clause 25, the Customer:
 - (i) releases and discharges the Company from all claims and demands on the Company and any loss or damage whatsoever and whenever caused to the Customer of any other person of any nature or kind; and
 - (ii) indemnifies and holds the Company harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Company and from and against all actions, proceedings, claims or demands made against the Company, arising from or associated with the Company providing the Goods to the Customer at a location other than the Delivery Point.

21. Time for Delivery

- 21.1 The time within which the Company may advise the Customer that it will make Delivery of Goods will be regarded as a best estimate, but will not be guaranteed and may be subject to extension to cover delays caused by or contributed to by Government priorities, manufacturers or suppliers, strikes, lockouts, breakdowns, delays in transport, fire, late delivery of raw material or components, or any other cause beyond the control of the Company and no responsibility will be accepted by the Company for the consequences of any such delays.
- 21.2 If, as a result of cause beyond the Company’s reasonable control, the Company determines that it will not be able to deliver all or part of the Goods the subject of a Contract within a reasonable timeframe, the Company may terminate the Contract. On such termination, both parties release each other from any Claims in relation to the Contract and in respect of the termination.
- 21.3 The Company may effect Delivery of the Goods the subject of a Contract as a whole or in separate parts.
- 21.4 The Customer acknowledges and agrees that the Company will not be liable for and the Customer releases the Company from any liability in respect of any loss, damage or expense that the Customer may suffer or incur arising out of or contributed to by any delays in obtaining the Goods.

22. Provision of Repair, Service and Maintenance Services

- 22.1 The Customer unless otherwise specified as the responsibility of Company in the Schedule, at its own expense and at every Servicing Period, undertake a Minor and Major service in accordance with all manufacturer’s recommendations and specifications, Operating Instructions and guidelines or other reasonable directions of Company given from time to time and otherwise ensure the Equipment is in proper working order and condition and in good substantial repair. Full copies of all service sheets and evidence of such servicing must be provided immediately to Company on request.
- (a) Major Services due during Customer not used by the Customer will be expensed at the nearest usage of hours e.g. 250,500,750 or prorated on % percentage of costs. Company will supply service kits to reduce the expenses in these circumstances.
 - (b) All Major Services shall include (but shall not be limited to) checking and, if required, repairing or adjusting to a satisfactory condition fluid levels, electrical wiring, electrical switches, lights, leaks, vee belts, tyre/track/undercarriage wear, ground engaging tools (GETs) and bucket/tray.
- 22.2 Unless otherwise agreed, the Customer shall:
- (a) complete the manufacturer’s oil sampling analysis at every oil change period, or as otherwise directed by Company, on all compartments in the Equipment and provide SOS sampling records to Company, or to any other party as directed by Company, within 24 hours of completing the oil sampling analysis, or as otherwise directed by Company;
 - (b) complete daily servicing, supply and apply all fuel, oil, lubricants, water, grease, coolant and other consumables necessary for the operation, service and maintenance of the Equipment.
 - (c) promptly replace all parts which may from time to time become worn out, lost, stolen, compulsorily acquired, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use by damage or obsolescence. All replacement parts will be the property of Company;
 - (d) clean the Equipment on a regular basis, and when directed by Company;
 - (e) repair and check all tyre and track wear, including (but not limited to) damage, checking correct PSI pressure, ensuring correct steering tyres, correct balance of tyres, o rings, replacement, fitting, carnage, disposal and excessive wear;
 - (f) repair all GETs, including (but not limited to) buckets, rock breakers, cutting edges, moldboards, scarifiers and ripper tyres;
 - (g) clean the Equipment on a regular basis, and when directed by Company;
 - (h) repair and replace, when necessary, fire extinguishers and any other fire safety equipment provided with the Equipment;
 - (j) be responsible for attending to all Minor and Major Repairs, at the Customer’s cost; and
 - (l) do, repair or undertake any other thing as indicated in this Contract.
- 22.3 For the avoidance of doubt, the Customer shall be liable for any and all costs and expenses for wear and tear in connection with the Customer or the Operator’s use of the Equipment’s:
- (a) tyres, tracks, undercarriage and
 - (b) GETs
- 22.4 Repair, service and maintenance costs incurred by the Company will be invoiced to the Customer which shall be payable in accordance with the terms of payment on the invoice and otherwise in accordance with the payments terms set out in these General Terms and Conditions.
- ### **23. Insurance and Risk**
- 23.1 All Goods (and any part of the Goods) will be at the Customer’s risk from the Delivery Date. The Company will not be responsible for any loss or damage to the Goods occurring after such time and no such loss or damage will affect the obligation of the Customer to pay any amount relating to the supply of the Goods in accordance with these General Terms and Conditions.
- 23.2 The Customer must take out and maintain an insurance policies, which terms satisfy the Company’s insurer, to cover the following:
- (a) any insurable loss in respect of the Goods howsoever caused between the Delivery Date and the earlier of:
 - (i) the Company receiving full payment of the Invoice relating to the Goods; and
 - (ii) the Customer returning the Goods to the Company and the Company accepting the return of the Goods in accordance with these General Terms and Conditions.
 - (b) General Third Party Public and Products Liability with a limit of liability of not less than \$20,000,000.
 - (c) Worker’s Compensation and Occupational/Industrial Disease and any other insurance required at law relating to the Customer’s Worker’s

- Compensation liability to any person for the amount of \$50,000,000.
- 23.3 The insurance policy must:
- (a) note the Company's interest in the Goods;
 - (b) be on terms and for an amount satisfactory to the Company; and
 - (c) be with an insurer approved by the Company.
 - (d) extend to indemnify the Company as principal and provide a waiver by the insurer of all rights of subrogation action or relief against the Company.
- 23.4 The Customer must provide written evidence of such insurance policy to the Company within 7 days of receiving a request to do so from the Company.
- 23.5 Unless the Company otherwise agrees in writing, the Company will not insure the Goods after the Delivery Date. If the Company does agree to insure the Goods after the Delivery Date, such insurance will be at the Customer's expense.
- 23.6 Notwithstanding the termination, completion or expiry of any Contract, the Customer must keep any Goods which are the property of the Company and are in its custody, possession or control, safe and secure.
- 24. Warranties**
- 24.1 The Company's Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 24.2 Subject to any warranties which are implied by law and cannot otherwise be excluded, the Company excludes all other warranties, conditions or liability in relation to the manufacture, sale, hire, use or supply of the Goods and the supply of the Services and the Company will not be liable for any claim for direct, indirect or consequential loss or damage arising out of or contributed to by the manufacture, sale, hire, use or supply of the Goods or the supply of the Services.
- 24.3 Subject to clause 24.2, to the extent that the Company's liability cannot be excluded, the Company's liability shall be limited to, in its sole discretion, either in respect of Goods, repairing the defective Goods or part of the Goods or replacing it with the same Goods (or part of the Goods) or a comparable product and in respect of Services either repairing the defective Service or resupplying the Service or covering the cost of resupply of the Service.
- 24.4 The Company makes no representation or warranty in relation to the supply of spare parts or the availability of facilities for the repair of the Goods (or any part of the Goods).
- 24.5 The Customer acknowledges and agrees that it has made its own enquires as to the suitability of the Goods (or any part of the Goods) for the Customer's intended use and the Customer does not rely on any statement, representation or information provided by or on behalf of the Company in relation to the Goods (including the use of the Goods) other than the statements, representations and information set out in writing in the Contract for the Goods.
- 25. Brokering**
- 25.1 Where the Company sells, hires or supplies Goods as an agent for the owner of the Goods, the Company makes no representations and gives no warranties in relation to the Goods.
- 25.2 Without limiting clause 25.1, the Customer acknowledges and agrees that where the Company sells, hires or supplies Goods as an agent for the owner of the Goods, the Company makes no representations and gives no warranties that:
- (a) Goods are of acceptable quality when Delivered to the Customer;
 - (b) Goods will be reasonably fit for any purpose the Customer specified;
 - (c) the Company's description of Goods is accurate;
 - (d) Goods will match any sample or demonstration model and any description provided;
 - (e) Goods will satisfy any extra promises made about them;
 - (f) no one will try to repossess or take back the Goods, or prevent the Customer using the Goods; or
 - (g) Goods are free of any Security Interests and will remain so.
- 26. Release and Indemnity**
- 26.1 The Customer releases and discharges the Company from all claims and demands on the Company and any loss or damage whatsoever and whenever caused to the Customer of any other person of any nature or kind and indemnifies and holds the Company harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Company and from and against all actions, proceedings, claims or demands made against the Company, arising in either case as a result of, or which has been contributed to by:
- (a) the Customer's failure to comply with any laws, rules, standards, or regulations applicable to the Goods or Services or use of the Goods or Services;
 - (b) the Customer's failure to keep any Goods which are the property of the Company safe and secure;
 - (c) any use of the Goods contrary to any instructions or warnings given by the Company or the manufacturer of the Goods;
 - (d) any other negligence or any breach of duty by the Customer;
 - (e) any compliance or adherence by the Company with any instruction by the Customer; or
 - (f) any reliance by the Company on any representation by the Customer.
- 26.2 The parties agree and acknowledge that, for the purposes of clause 26.1, a reference to the Customer includes the Customer's agents, employees, directors, representatives and contractors and any person or party who uses the Goods or claims an interest in the Goods as a result of a transaction with, or otherwise with the permission of, the Customer.
- 27. Intellectual Property and use of drawings and specifications**
- 27.1 Title, right and interest in the Intellectual Property is and will remain the property of the Company.
- 27.2 In dealing with the Intellectual Property, the Customer must not:
- (a) disclose or furnish the Intellectual Property to any other person and all reasonable precautions must be taken to protect such confidentiality;
 - (b) copy, distribute, transmit, display, perform, reproduce, publish, licence, modify, rewrite, allow or permit derivative works to be created from, transfer or sell the Intellectual Property; or
 - (c) allow copies of the Intellectual Property to be printed, published, made, reproduced or otherwise communicated without acknowledging the Company's right, title and interest in the Intellectual Property.
- 27.3 The Customer must ensure that the Intellectual Property is not subjected to any treatment which is prejudicial to the reputation of, or which would infringe the moral rights of, the author.
- 27.4 Any drawings, specifications, descriptions and other documents attached to any quotation are for tendering purposes only and may not be included in any Order and will not form the basis of, nor be part of, any Contract.
- 27.5 The details contained in any quotation, any attachment to a quotation or any drawings, specifications, descriptions and other documents otherwise provided by the Company to the Customer will be submitted in good faith as being correct but any errors, omissions or defects therein will not be grounds for cancellation of the Contract nor entitle the Customer to make any Claim against the Company.
- 27.6 The Company will provide, if it has agreed in writing to do so, copies of available drawings, specifications and manuals for the Goods to the Customer upon Delivery of the Goods (or such other time the Company may agree to in writing). Any additional manuals, drawings or documentation requested by the Customer will be provided by the Company at the Company's absolute discretion and at the Customer's expense. Clauses 27.1 to 27.5 apply to any documents or items provided to the Customer pursuant to this clause 27.6.
- 28. Inspection and Testing**
- 28.1 The Customer must inspect all Goods or Services immediately upon the Goods or Services being Delivered and notice of any Claim by the Customer in relation to

- the Goods or Services (including but not limited to any Claim that the Goods were damaged prior to Delivery or do not accord with the relevant Order) must be made by the Customer in writing and received by the Company within 24 hours of the Delivery Date and, subject to clauses 24 and 25, any Claims not made within that period will be deemed to be waived.
- 28.2 Where the Delivery Point is the Company's premises, the Customer's inspectors will be given full access to all relevant areas of the Company's premises on the Delivery Date for the purpose of inspection and testing of the Goods or Services. Inspectors are required to seek appointments for those inspections through the Company's appointed representative by giving at least 2 days' prior notice. The Customer's inspectors must be accompanied at all times by the Company representative while inspecting and testing the Goods or Services. Where the Delivery Point is located on a site or on premises other than the Company's premises, the Company will take all reasonable steps to organise and facilitate the inspection of the Goods or Services by the Customer's inspectors. The costs of the inspection and testing, and travel and related expenses for the inspection and testing of the Goods or Services is at the Customer's expense.
- 29. Customer's Property**
- 29.1 No responsibility is accepted by the Company for any loss or damage to the Customer's equipment or other goods left in the Company's possession or at the Company's premises.
- 30. Sub-leasing**
- 30.1 The Customer must not lease, hire or otherwise part with possession of any Goods which are the property of the Company except in accordance with clause 30.2.
- 30.2 If the Customer leases or hires the Goods to another person, the Customer must:
- (a) have the terms on which the Customer leases or hires the Goods to another person approved by the Company before the Customer enters into the lease or hire arrangement or gives possession of the Goods to that person;
 - (b) have and maintain a policy relating to the PPS Laws which is at least consistent with the Customer's obligations in this clause 30;
 - (c) either:
 - (i) unless the Company consents in writing to the Customer leasing or hiring the Goods on terms which would constitute a PPS lease ensure that any lease or hire is not a PPS lease; or
 - (ii) if the Company consents in writing to the Customer leasing or hiring the Goods on terms which would constitute a PPS lease the Customer must comply with clause 30.4 at all times;
 - (d) require the other person to acknowledge the Company's Security Interest in the Goods and that the other person's interest in the Goods is subject to or subordinate to the Company's Security Interest;
 - (e) give the Company possession of any Chattel Paper relating to a lease or hire arrangement or ensure any such Chattel Paper is marked in such a way that no other person could take possession of the Chattel Paper without acquiring actual or constructive knowledge of the Company's Security Interest; and
 - (f) ensure the other person returns the Goods to the Customer at the end of the lease or hire.
- 30.3 In addition to any other Security Interest arising under or contemplated in these General Terms and Conditions, if the Customer lease or hires the Goods to another person, the Customer grants a Security Interest in any Chattel Paper relating to the lease or hire arrangement to secure payment and performance of the Customer's obligations under the Credit Agreement and/or Contract.
- 30.4 The Customer must perfect and continuously maintain perfection of any Security Interest that the Customer has over the Goods (including perfection as a Purchase Money Security Interest).
- 30.5 The Company may but is under no obligation to do so, exercise its rights of power of attorney pursuant to clause 19.

Part C – Special Conditions of Sale

- 31. Retention of Title**
- 31.1 The Goods will remain the sole and absolute property of the Company as legal and equitable owner, and property in and title to the Goods will not pass from the Company to the Customer, until the Customer has paid the Company for the Goods in full.
- 31.2 Where the Company is acting as an agent for the owner of the Goods, the Goods will remain the sole and absolute property of the owner and property in and title to the Goods will not pass from the owner to the Customer until the Customer has paid the Company for the Goods in full.
- 31.3 Any payment made by or on behalf of the Customer which is later avoided or reduced by the application of any law will be deemed not to discharge the Company's title in the Goods or the Customer's indebtedness to the Company.
- 31.4 The Customer must not sell, transfer, hire, lease, dispose of or part with possession of the Goods to any person without the Company's prior written consent until all amounts owed to the Company are paid in full. If the Customer does anything which breaches this clause 30.4, the proceeds must be held by the Customer on trust for the Company irrespective of whether the proceeds are held in a separate account by the Customer or otherwise.
- 31.5 Until title in the Goods has passed pursuant to clause 31.1, the Customer holds the Goods as bailee in the capacity of a fiduciary for the Company. The Customer will keep the Goods supplied to it by the Company in its possession and take good care of them and store them and mark them in a manner that identifies the Goods supplied and clearly shows that they belong to the Company.
- 31.6 If the Contract relating to the Goods is terminated before title in the Goods has passed to the Customer, the Company may retake possession of the Goods and the Customer must do everything in the Customer's power and at the Customer's own expense to ensure the Company can lawfully enter any premises where the Goods are located and remove the Goods.
- 32. Terms of Payment**
- 32.1 The Company will invoice the Customer for:
- (a) the price of the Goods being the price set out in the Purchase Contract, as varied in accordance with clause 32.2;
 - (b) any applicable GST or other tax, stamp duty or statutory charges or levies payable in relation to or in connection with the supply of the Goods in accordance with clause 5; and
- 32.2 Any change, after the earlier of the date of the Company's quotation (if applicable), the Order or the Contract and before the date of the Invoice, in the cost of labour, materials, transport, essential services, tariffs, duties, exchange, or any other costs or expenses incurred by the Company must be paid for by the Customer.
- 32.3 Time for payment of the Invoice will be stated on the Invoice and, if no time is stated, then payment will be due within 7 days of the date of the Invoice. If the Customer has provided the Company with a Purchase Order, the Company will not be required to Deliver the Goods to the Customer until payment has been received in accordance with this clause 32.
- 32.4 Notwithstanding clause 32.3, if the Customer possesses a current Credit Account with the Company then payment of the Invoice will be due within the period required under the Credit Agreement or, if no period is stated in the Credit Agreement, within 30 days of the Delivery Date.
- 32.5 The Customer must pay the amount stated in the Invoice in full and in cleared funds on or before the Payment Date, without demand, deduction or set-off. If payment is made by way of cheque or electronic funds transfer, the Company will be deemed to receive payment of the funds on the date the Company receives cleared funds in its bank account.
- 32.6 The Company reserves the right to issue an Invoice for partial Deliveries and Deliveries delayed at the request of the Customer.
- 33. Return of Goods**

- 33.1 The Customer may not return Goods or otherwise fail to take delivery of the Goods without the Company's prior written consent. The Company may, in its absolute discretion, agree to accept the return of any Goods and credit the Customer with the Invoiced value of the Goods, provided the Goods are returned in the same condition and the Company has given its written approval for the return of the Goods. The Company reserves the right to charge an administrative fee for the return of any such Goods by the Customer.

Part D – Special Conditions for Hire

34. Ownership of and interest in the Goods

- 34.1 The Goods (including any accessory, part or add-on) remain the property of the Company at all times and the Customer only has a right to use them.
- 34.2 The Customer must ensure that any replacement part, accessory or add on becomes the Company's property and is not subject to any Security Interest. Any replacement part, accessory or add on forms part of the Goods.
- 34.3 The Customer must protect the Company's interests in the Goods and must not do anything inconsistent with those interests, including attempting to sell or dispose of, grant any interest (including any Security Interest) in or over, part possession with, or place any plates, stickers or marks on, the Goods. However, if the Company requests or if otherwise required pursuant to these General Terms and Conditions, the Customer must put plates, stickers or marks on the Goods which identifies the Company's interest in them and must not remove any plates, stickers or marks on the Goods which identifies the Company's interest in them.
- 34.4 The Company may, without the Customer's consent, transfer the Goods, its interest in any Credit Agreement or Contract or grant another person an interest (including a Security Interest) over either or all of the Goods and a Contract.
- 34.5 The Customer must ensure that it has all necessary rights, licences, permits and expertise to use the Goods.

35. Wet Hire

- 35.1 In the event of Wet Hire of the Goods:
- (a) the Operator shall operate the Goods in accordance with the Customer's lawful direction and instructions and where applicable manufacturer guidelines for the Goods;
 - (b) the Company shall not be liable for any actions of the Operator or any direct or indirect loss or damage suffered or incurred either directly or indirectly by the Customer or the Customer's officers, employees, contractors or agents in connection with the operation of the Goods by the Operator. The Operator is deemed to be an employee of the Customer for the period of the Wet Hire;
 - (c) the Customer shall provide amenities and first aid services to the Operator in compliance with all relevant Health & Safety legislation;
 - (d) subject to any applicable workplace safety or other relevant laws, the fees applicable for the hire of an Operator shall be based on signed timesheets but will be no less than a minimum working day of ten (10) hours per day, allowing a thirty (30) minute unpaid lunch break. Additional charges shall apply if the Goods are used in addition to these hours or on a weekend or public holiday at the Company's discretion;
 - (e) the Customer must ensure that any required safety courses, medicals and inductions are attended or completed by the Operator and acknowledges that any time taken to attend or complete such course shall be charged as per the normal Wet Hire charges;
 - (f) the Company and the Operator shall not be required to comply with any direction or instruction from the Customer if it is unsafe or unreasonable to do so;
 - (g) the Customer must provide any necessary specialized or non-standard personal protection equipment;
 - (h) the Customer must pay the Company a finder's fee of \$10,000 in the event the Customer engages the Operator in any capacity within three (3) months of the expiration or termination of this Contract;
 - (i) Without limiting clause 25, the Customer:
 - (i) releases and discharges the Company from all claims and demands on the Company and any loss or damage whatsoever and whenever caused to the Customer of any other person of any nature of kind; and
 - (ii) indemnifies and holds the Company harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Company and from and against all actions, proceedings, claims or demands made against the Company, arising from the provision of the Wet Hire.

36. Hire Charges

- 36.1 The Customer must pay the Company, the Hire Charges, together with any other amounts payable by the Customer pursuant to this clause 36 on the Payment Dates set out in the Hire Contract or, if no period is stated in the Hire Contract, on the Delivery Date and monthly thereafter during the Term (and any extension or deemed extension of the Term).
- 36.2 In addition to the Hire Charges, the Customer must pay the following amounts, if applicable to the Goods hired, on the earlier of the next Payment Date or 30 days after receiving a demand from the Company to do so:
- (a) consumables and/or trade materials including but not limited to fuel, grease, oil, seals and lubricants supplied or provided by the Company;
 - (b) any levies, registration fees, permit costs, safety certifications or similar expenses relating to the Goods or their use;
 - (c) any costs, expenses or liabilities associated with the use, application or disposal of potential dangerous goods or environmental contaminants including oil or grease including but not limited to any environmental levy set out in the Hire Contract; and
 - (d) any amounts incurred or payable pursuant to clause 5.
- 36.3 Notwithstanding clauses 36.1 and 36.2, if the Customer possesses a current Credit Account with the Company, then payment will be due within the period required under the Credit Agreement.
- 36.4 The Hire Charges and any other amounts (including fees, charges and expenses) paid under the Hire Contract are not refundable. Unless the Company otherwise agrees in writing, the Customer must pay the Hire Charges for the duration of the Term (and any extension or deemed extension of the Term) regardless of whether the Customer is using the Goods or has returned the Goods to the Company.
- 36.5 In addition to any other right the Company may have following a breach of these General Terms and Conditions and notwithstanding the expiry or termination of the Term, the Customer must continue to pay the Hire Charges until the Goods have been returned to the Company in accordance with clause 41.2.
- 36.6 Any change, after the earlier of the date of the Company's quotation (if applicable), the Order or the Contract and before the Payment Date, in the cost of labour, materials, transport, essential services, tariffs, duties, exchange, or any other costs or expenses incurred by the Company must be paid for by the Customer.

37. Location of Goods

- 37.1 The Customer must ensure that in preparing the Goods for transport and in transporting the Goods it:
- (a) complies with all applicable laws, regulations, approvals, licences or permits;
 - (b) complies with the supplier's or manufacturer's specifications and any specific directions provided by the Company; and
 - (c) acts in accordance with best safety practices and Good Operating Practice.
- 37.2 The Customer must not attach the Goods to any property without the Company's consent. If the Goods are attached to land, they do not become fixtures and the Company can remove them in accordance with this Contract and, if the Customer is not the owner of the land, the Customer must acquire from the land owner (including any mortgagee) an agreement that the Goods are not fixtures.
- 37.3 The Customer must notify the Company in writing of the location of where the Goods are to be used or ordinarily kept. The Customer must not change the place where the Goods are used or ordinarily kept without the Company's consent.
- 37.4 The Customer must allow the Company to enter any place where any Goods are located to inspect and test the Goods, to ensure that the terms of this Contract are being complied with or to exercise any of the Company's rights under this Contract. If the Goods are kept on a premises which the Customer does not own, the Customer must within 3 business days get all necessary consents from the owner of the premises (including any mortgagee) to allow the Company to inspect and, if necessary, remove the Goods. Full Hire Charges accrue for any period of delay to the removal of Goods.

38. Use and Maintenance

- 38.1 The Customer must use the Goods only in its business operations and for the purposes for which they are designed. The Customer must ensure that:
- (a) it complies with all applicable laws, regulations, approvals, licences or permits relating to the use and possession of the Goods;
 - (b) it keeps the Goods clean, properly serviced, in proper working order and condition and in good and substantial repair (fair wear and tear excepted, excluding GET, tracks, undercarriage and tyres);
 - (c) it uses, operates and possesses the Goods in accordance with the supplier's or manufacturer's specifications;
 - (d) it uses, operates and possesses the Goods in accordance with any specific directions provided by the Company;
 - (e) the Goods are only operated by suitably qualified and trained operators;
 - (f) the Goods are kept safe and secure;
 - (g) its use, operation and possession of the Goods is in accordance with Good Operating Practice; and
 - (h) its use, operation and possession of the Goods is in accordance with best safety practices including, but not limited to, ensuring that operators wear suitable clothing and protective equipment, are sober and not under the influence of any drugs, hold adequate licences or competency certificates and observe all safety signs and instructions.
- 38.2 The Customer agrees to use, operate and possess the Goods at the Customer's risk. Without limiting clause 26, the Customer:
- (a) releases and discharges the Company from all claims and demands on the Company and any loss or damage whatsoever and whenever caused to the Customer of any other person of any nature or kind; and
 - (b) indemnifies and holds the Company harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Company and from and against all actions, proceedings, claims or demands made against the Company, arising in either case as a result of, or which has been contributed to by the Customer's possession, operation or use of the Goods.
- 38.3 If required by law or otherwise requested by the Company in writing, the Customer must register the Goods and maintain such registrations.
- 38.4 The Customer must take proper care of the Goods and keep them clean and in good working order and in good repair (fair wear and tear excepted, excluding GET, tracks, undercarriage and tyres). The Customer must ensure the Goods are serviced and maintained at its own cost (if the Customer does not have access to a suitable professional it can request the Company to do so and the Company may accept at its discretion), in accordance with the supplier's or manufacturer's specifications and the Company's or any insurer's reasonable requests. The Customer must do all things necessary to maintain the supplier's and manufacturer's warranties. For the avoidance of doubt the Customer is responsible for the replacement and repair of tyres, tracks and ground engaging tools.
- 38.5 The Customer must keep all maintenance records, log books and all other records relating to the inspection, commissioning, use or alteration of the Goods and make these records available to the Company on request.

39. Condition of Goods

- 39.1 If the Goods become unsafe or in a state of disrepair, the Customer agrees to immediately discontinue use of the Goods and to notify the Company immediately. The Customer must:
- (a) on no account attempt to repair the Goods without the consent of the Company;
 - (b) take all steps necessary to prevent any injury, damage or loss occurring to any property or person as a result of the condition of the Goods;
 - (c) take all necessary steps to prevent further damage or loss to the Goods; and
 - (d) immediately return the Goods to the Company's premises if required to do so by the Company.
- 39.2 Without limiting clauses 24 or 40, if the failure of the Goods referred to in clause 39.1 is as a result of a malfunction of a major component of the Goods (eg turbo, engine, driveline), or reasonable wear and tear and for no other reason (including the Customer's negligence or misuse), the Company agrees, in its discretion, to consider:
- (a) the repair the Goods within a reasonable time; or
 - (b) to make similar Goods available; or
 - (c) to adjust the Hire Charges.

40. Loss or Damage

- 40.1 The Customer must protect the Goods from loss or damage.
- 40.2 The Customer must notify the Company as soon as possible if any Goods are lost, stolen, destroyed, confiscated or damaged in whole or in part.
- 40.3 If any of the things in clause 40.2 occur and subject to clause 42, the Customer must:
- (a) at the Company's election and in the Company's sole discretion either:
 - (i) at the Customer's cost, repair the Goods to the satisfaction of the Company or replace the affected Goods with like goods approved by the Company which have at least the same relative value; or
 - (ii) pay the Company on demand any costs incurred by the Company in repairing or replacing the Goods; and
 - (b) pay the Company on demand any costs, liabilities or expenses incurred or to be incurred by the Company as a consequence of the occurrence of the event in clause 40.2.

41. End of the Term and return of Goods

- 41.1 The Customer shall hire the Goods for the Term, subject to the terms of the Hire Contract, any Credit Agreement and these General Terms and Conditions, commencing on the Delivery Date.
- 41.2 The Customer must, on or before the last day of the Term (or such other time as agreed between the Customer and the Company):
- (a) return the Goods to the Company, at the Customer's expense, in good working order, a clean condition and in good repair (fair wear and tear excepted, excluding GET, tracks, undercarriage and tyres) at a place nominated by the Company or, if no place is nominated, at the Delivery Point;
 - (b) give the Company any certificates of registration, insurance certificates, warranties, log books, instructions and service manuals and other documents relating to them and a signed transfer of all such documents in favour of the Company (or such other person the Company nominates); and
 - (c) pay any amount owing to the Company.
- 41.3 Without limiting any other clause in these General Terms and Conditions, if the Company terminates any Contract pursuant to clause 8, the Term shall immediately expire and the Customer must return the Goods in accordance with clauses 41.2(a) to 41.2(c).
- 41.4 If the Company does not receive the Goods in the state required pursuant to clause 41.2(a), the Company may, without limiting any of its other rights following a breach of the Hire Contract or these General Terms and Conditions, take such steps as the Company considers necessary, at the Customer's cost, to ensure that the Goods are in good working order, a clean condition and in good repair (fair wear and tear excepted, excluding GET, tracks, undercarriage and tyres).
- 41.5 Without limiting the Company's rights following a breach of clause 41.2, if the Customer retains the Goods with the consent of the Company after the end of the Hire Period and the Customer has not entered into a new rental agreement with the Company with respect to the Goods:
- (a) the Customer must continue paying Hire Charges as if the last date of the Term had not occurred and the Contract had not ended;
 - (b) these General Terms and Conditions continue to apply; and
 - (c) the Company can give notice to the Customer at any time after the end of the Hire Period to return the Goods. If the Customer gives the Company notice under this clause 41.5(c), the Customer must return the Goods in accordance with clauses 41.2(a) to 41.2(c) as if the date specified in the notice was the last date of the Term.
- 41.6 Without limiting the Company's rights following a breach of clause 41.2, if the Customer retains the Goods without the consent of the Company, the Company may repossess the Goods notwithstanding any other provision in these General Terms and Conditions.

Part E – Special Conditions of Carriage

42. Carriage

- 42.1 The Company is not a common carrier and will accept no liability as such.
- 42.2 Any Goods, objects or materials of whatever nature being the subject of a request by the Customer for carriage by the Company are referred to in this clause 43 as an item or items as the case may be.
- 42.3 The Company reserves the right to refuse to carry or deal with any item or class of item for any person at its discretion.
- 42.4 The Customer warrants that, when the Customer gives, or arranges for another person to give, the Company or a subcontractor, items for carriage by the Company, the Customer is acting as agent for each person who has an interest in the items, each of them is a party to the contract and is bound by these conditions in the same way as the Customer.
- 42.5 The Company is entitled to depart from instructions given to it by the Customer (including deviating from the usual route or changing the place of storage or mode of carriage) at the Company's absolute discretion.
- 42.6 The Company may use a subcontractor to perform all or part of the services instead of the Company. The Company enters into this agreement as agent or trustee for any subcontractor used. Each of them is a party to each agreement the Company enters into with the Customer. This agreement applies as if the subcontractor were the Company. The Company, or a subcontractor, may agree with a subcontractor to any terms that the subcontractor requires.
- 42.7 Delivery of the items takes place when the Company leaves them at the place the Customer nominates. If no-one is there, the Company may choose whether to leave the items there, store them, or return them to the Customer. If the Company decides to store the items, or to return them to the Customer, the Customer must pay the Company's reasonable charge. If the Customer asks the Company to on forward the items, the Company delivers them when it gives them to the on forwarding agent.
- 42.8 Any storage of items by the Company or arranged by the Company shall be as agent of the Customer and shall be solely at the Customer's risk.
- 42.9 A receipt from a person at the destination is proof of delivery.
- 42.10 The Customer warrants that the items are properly packaged, labelled, unitized scheduled and identified to the Company and without limiting the foregoing warrants that:
- (a) The items are specifically declared and fully described on the consignment note;
 - (b) Except as specifically declared and fully described on the consignment note, the items do not include:
 - (i) Items which are liquid, explosive, inflammable, radioactive, corrosive, poisonous, infectious or otherwise of a dangerous, hazardous or noxious nature which are capable of causing damage or injury to any person, property, animal, store, vessel, vehicle, aircraft or other conveyance in which of with which such items may be loaded, carried, packed or stored; or
 - (ii) Items the carriage or storage of which would be illegal or prohibited by any law or regulation relating to the nature, condition, packaging or labelling of such items;
 - (c) It has complied with all laws and regulations relating to the nature, packaging, labelling, storage or carriage of the items and that the items are packed in a manner adequate to withstand the ordinary risks or storage and /or carriage having regard to their nature;
 - (d) It has disclosed in writing to the Company prior to this agreement any matter relating to the nature of the items or any particular care and attention which should be applied to the items and which could affect the likelihood of them being damaged or causing loss, damage or injury to any person or property.
- 42.11 The Company is entitled to open anything in which the items are placed or carried in order to inspect them to find out their nature, condition or destination, or who owns them. The Company shall not be liable for any loss or damage to the items caused by or arising directly or indirectly as a result of such opening and inspection.
- 42.12 The Company reserves the right to unpack any unitized freight and shall not be liable for any loss or damage to the items caused by or arising directly or indirectly as a result of such unpacking.
- 42.13 If the Company considers that the items are or may become dangerous or offensive, it may do anything it believes appropriate to avoid or minimise any loss, damage or offence. This includes destroying the items. This does not affect any other rights the Company may have.
- 42.14 The Customer must comply with all legal requirements, and any requirements of the consignee, in relation to the items, including requirements relating to their shape, packaging, labelling and transportation. The Customer is liable for any loss or damage to the items caused directly or indirectly by their packaging.
- 42.15 At the end of the carriage, the Customer must make sure that the Customer returns to their owner any containers, pallets or packaging which is delivered to the Company with the items.
- 42.16 The price for the carriage of items is payable as soon as the items are received by the Company for carriage and/or storage and under no circumstances will any amounts paid to the Company be refunded.
- 42.17 Insurance cover is not included in the Company's charges and will not be arranged by the Company.
- 42.18 The Company has a lien over the items and any relevant documents, and over other items and related documents of the Customers in the Company's possession, as security for payment of any amounts the Customer owes the Company. The Company may sell the items or documents without giving the Customer notice. If the Company does so, it is entitled to offset the amount it received against the amounts the Customer owes the Company. This does not affect any other rights the Company may have.
- 42.19 The Customer shall indemnify the Company in respect of:
- (a) The Company's liability for any loss of or damage or injury to any person, property or thing caused by, occurring during or arising from any packaging, loading, removal, assembly, erection or storage of the items.
 - (b) Any loss or damage which may be suffered by the Company as a result of any breach by the Customer of these terms and conditions.
 - (c) Any loss or damage to the Company's property which occurs due to the nature or condition of the items.

Part F – Definitions and Interpretation

43. Definitions and Interpretation

In these General Terms and Conditions:

“**Application for Credit**” means an application for credit form completed by the Customer and submitted to the Company;

“**Chattel Paper**” has the same meaning as in the PPS Law;

“**Claim**” includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, order, settlement sum, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving the Company, the Customer, any Guarantors or a third party;

“**Commencement Date**” means the date of supply of Goods or Services by the Company to the Customer;

“**Contract**” means, as the context permits or requires, a Purchase Contract, a Hire Contract;

“**Credit Account**” means the Customer's credit account with the Company established on the terms set out in the Credit Agreement;

“**Credit Agreement**” means the agreement between the Company and the Customer for the supply of Goods on credit, formed by written acceptance by the Company of the Credit Application;

“**Delivery**” means the Company making the Goods available to the Customer in the manner set out in clause 20;

“**Delivery Date**” means the date on which the Goods are deemed to be Delivered to the Customer as determined in accordance with clause 21;

“**Delivery Point**” means the location at which the Goods will be Delivered to the Customer as determined in accordance with clause 20;

“**Extended Rental Period**” means any extended rental period for the Goods after the end of the original term as determined in accordance with clause 41.4;

“Good Operating Practice means the highest practical standards from time to time, including practices, methods and acts, together with the exercise of that degree of skill, diligence, prudence and foresight that reasonably would be expected from an experienced and competent person under conditions comparable to those applicable to the relevant activities in light of known facts which reasonably should have been known at the time, and consistent with applicable laws and authorisations;

“Goods” means all goods or services supplied by the Company to or at the direction of the Customer from time to time (and, in relation to any security interest in the Goods, includes any proceeds). The Goods may be “other goods” (such as spare parts) or “motor vehicles” or both as classified under the PPS Law;

“Guarantor” means a person that guarantees to the Company the performance of the Customer;

“Hire Charges” mean rental instalments set out in any Order for Hire or other document that forms part of the Hire Contract;

“Hire Contract” means a contract for the hire of Goods by the Company to the Customer formed on the acceptance by the Company of the Customer’s Order for Hire;

“Intellectual Property” means all rights in any knowledge of secret processes, technical know-how, techniques, discoveries, inventions, ideas, research, engineering and manufacturing methods, practices, systems, formulae, drawings, designs, specifications, manuals, trade secrets and special purpose computer programmes, financial, marketing and other confidential information and data subsisting in or relating to the Goods, the supply, hire or sale of the Goods or the Company’s business;

“Invoice” means an invoice issued by the Company to the Customer in accordance with clause 32.1;

“Operator” means an operator of Goods hired by the Company to the Customer as a Wet Hire;

“Order” means as the context permits or requires, a Purchaser Order or an Order for Hire;

“Order for Hire” means a written offer by the Customer to hire Goods from the Company;

“Other Services” means any services provided by the Company to the Customer other than the sale, hire or supply of the Goods or the provision of the Services;

“Payment Date” means:

- (a) with regards to a Purchase Contract, the latest date on which the Customer must pay an Invoice as determined in accordance with clause 32;
- (b) with regards to a Hire Contract, the dates on which the Hire Charges are payable as set out in any Order for Hire or other document that forms part of the Hire Contract; and

“PPS Law” means the PPSA together with any subsidiary legislation or regulations made under the PPSA and any amendment to a PPS Law from time to time;

“PPS Register” means the register established under the PPS Law;

“PPSA” means the *Personal Properties Securities Act (2009) (Cth)* as amended from time to time;

“Privacy Act” means the *Privacy Act 1988 (Cth)* as amended from time to time;

“Purchase Contract” means a contract for the sale of Goods by the Company to the Customer formed on the acceptance by the Company of the Customer’s Purchase Order;

“Purchase Order” means a written offer by the Customer to purchase Goods or Services from the Company;

“Security Interest” has the same meaning as under the PPS Law;

“Services” means the carriage, repair or maintenance services to be carried out by the Company in accordance with these General Terms and Conditions;

“Term” means, as the context permits or requires the period commencing on the Delivery Date and ending on the date or at the expiry of the period set out in the Order for Hire (as varied in accordance with clause 41);

“Wet Hire” means where Goods are hired by the Company to the Customer together with an Operator.