



ABN: 45 168 039 781

**ID Fleet Hire**

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CREDIT APPLICATION  
BUSINESS CONTACT INFORMATION

Company name:

Phone: Fax: E-mail:

Registered company address:

City: State: Postcode:

If a Company: ACN ABN

Date business commenced:

Sole proprietorship: Partnership: Company: Other:

**Directors:**

Surname Christian Names Residential Address Date of Birth Telephone

Surname	Christian Names	Residential Address	Date of Birth	Telephone

BUSINESS AND CREDIT INFORMATION

Primary business address:

City: State: Postcode:

Postal address:

City: State: Postcode:

Telephone: Fax: E-mail:

Bank name:

Bank address:

BUSINESS/TRADE REFERENCES

**Company name:**

Address:

City: State: Postcode:

Phone: Fax: E-mail:

**Company name:**

Address:

City: State: Postcode:

Phone: Fax: E-mail:

**Company name:**

Address:

City: State: Postcode:

Phone: Fax: E-mail:

Do you always quote purchase order numbers? Yes / No

Name of Accountant:

Bankers: Branch:

PRIVACY ACT:

The applicant agrees to the Company obtaining from its Bank credit reporting agencies or others a credit report containing personal credit information about the applicant in relation to commercial credit provided by the Company. The applicant agrees that the Company may give to and seek from any trade references or credit providers named in this credit application and any credit providers that may be named in a credit report issued by a credit reporting agency, information about the applicant's arrangements. The applicant understands that this information can include any information about its credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act.

The applicant agrees that the Company may continue to seek or give commercial/consumer credit information relating to the applicant's credit worthiness and relating to the collection of overdue payments.

SIGNATURES

Signature _____	Signature _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

GUARANTEE

WE the person(s) who have signed this Guarantee ("the Guarantor") IN CONSIDERATION of the Company granting to the Customer the facilities specified below do hereby jointly and each of them severally guarantee payment of the Customer's account and all monies now or hereafter owed by the Customer to the Company and the due and punctual performance of the Customer's obligations under the Terms and Conditions annexed hereto. This guarantee is a continuing guarantee and is irrevocable until the Company has been paid all monies owing to it by the Customer.

INDEMNITY

As a separate independent agreement each Guarantor shall hold the Company fully indemnified against all loss or damages suffered as a result of the whole of any part of the amount owed by the Customer to the Company not being recoverable from the Customer and/or the Guarantor(s) by reason of any legal limitation or any act or circumstances whether known to the Company or not.

CONTINUING GUARANTEE

The continuing guarantee hereby created shall remain in full force and effect and shall not be discharged until the expiry of not less than 7 months from the date of receipt of the last payment by the Company from the Customer and/or Guarantor(s) in satisfaction of any monies due to the Company.

Executed as a Deed the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Guarantors  
Full Names and Addresses

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

1. \_\_\_\_\_ Signature \_\_\_\_\_ witness

2. \_\_\_\_\_ Signature \_\_\_\_\_ witness

3. \_\_\_\_\_ Signature \_\_\_\_\_ witness



# Terms of Hire

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## 1. Definitions

- “**Additional Costs**” means the addition costs specified in Item 7 of the Schedule;
- “**Business Day**” mean any day which is not a Saturday, Sunday or public holiday in Western Australia;
- “**Condition Report**” means a report prepared in accordance with clause 4.1;
- “**Director**” means a director or directors of the Renter, if any, specified in Item 2 of the Schedule;
- “**Damage Waiver**” means optional damage coverage as specified in clause 11.1;
- “**GET**” means Ground Engaging Tools, including but not limited to Pick holders, Drums, Chain, Sprockets, Base Plates, Tracks, Track Plates and Drive Sprockets.
- “**GST**” has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;
- “**Hire Charges**” means both the Rental Charges and the Additional Costs;
- “**Hired Equipment**” means the equipment specified in item 7 of the Schedule, and includes any and all accessories, tools, attachments, parts, manuals, instructions and transportable materials, substitute and replacement equipment unless indicated to the contrary;
- “**Owner**” means I.D Rentals Pty Ltd (ABN 14 106 597 086) trading as ID Fleet Hire.
- “**PPSA**” means the *Personal Property Securities Act 2009 (Cth)* and any regulations made pursuant to it.
- “**PPSR**” means the Personal Property Securities Register established pursuant to the PPSA;
- “**Proceeds**” has the same meaning as in the PPSA;
- “**Remote Area**” means a location greater than 50km from the Owners premises.
- “**Renter**” means the person specified in Item 2 of the Schedule;
- “**Rental Payments**” means the rental payments specified in Item 3 of the Schedule;
- “**Security Interest**” has the same meaning as in the PPSA;
- “**Term**” means the term set out in Item 2 of the Schedule.

## 2. Hire of Equipment & Hire Charges

- 2.1 The Owner agrees to supply to the Renter each item of Hired Equipment in clean and good working order for the Term commencing on the Commencement Date upon the terms of this Agreement.
- 2.2 The Renter shall pay the Owner the Hire Charges. The Renter shall return each item of Hired Equipment at the end of the Term, unless the Term is extended with the consent of the Owner.
- 2.3 If the Term for an item of Hired Equipment is extended pursuant to clause 15, or the Renter does not return an item of Hired Equipment on the due date, pro-rata Hire Charges shall be payable by the Renter until each item of Hired Equipment is returned.
- 2.4 The owner reserves the right to designate a minimum term for certain types of hired equipment.

## 3. Payment

- 3.1 The Owner shall provide a valid tax invoice in respect of the Hire Charges which are the responsibility of the Renter pursuant to this Agreement.
- 3.2 The Renter shall pay the Hire Charges each month during the Term from the Commencement Date until the end of the Term, or the Hired Equipment is returned to the Owner, whichever is later.
- 3.3 The owner reserves the right to impose a charge for accepting payments by credit card.
- 3.4 If payment is made by cheque, the cheque shall be collateral only and shall not discharge the Renter's obligation to pay under this Agreement until the cheque has been cleared by the drawer's bank. If the Renter's cheque is dishonoured or if money owing pursuant to this Agreement remains unpaid after the due date, the Owner may require the return of each item of Hired Equipment until full payment is made of after payment has been made.
- 3.5 The Renter shall pay:
- interest on any overdue amounts at the rate of 10% per annum, compounding monthly, from the date the payment became overdue to the date of receipt of payment; and
  - an administrative fee of \$50.00 for each reminder letter sent by the Owner seeking payment of an overdue account.

## 4. Inspection and Condition Report

- 4.1 Prior to the Commencement Date, the Renter and the Owner may conduct an inspection of the Hired Equipment at the Owner's Premises, and complete the Condition Report annexed at Annexure A.
- 4.2 At the expiry of the Term, the Renter and the Owner shall conduct a final inspection of the Hired Equipment and check the condition of the Hired Equipment against the Condition Report.
- 4.3 If the equipment is damaged, shows excessive wear or is in a state that the Owner deems “unacceptable” then additional charges in accordance with clause 7 will apply

## 5. Delivery

- 5.1 The Renter will ensure the safe loading, securing and transporting of the Hired Equipment in accordance with manufacturers guidelines and relevant laws. The Renter and transport company will observe any safety directions given by the Owner and/or manufacturer for equipment loading and safe handling.
- 5.2 The Renter must take delivery of the Hired Equipment at its own expense, and must make any arrangements necessary to enable the Renter to obtain delivery.
- 5.3 The Owner will not be liable for any delay in obtaining delivery or for any damage to the Hired Equipment in the course of delivery.
- 5.4 The Renter acknowledges that the Owner has not given any representation or warranty as to the date of delivery of the Hired Equipment and agrees that the Renter's obligation to make the payments set out in clause 3 will not be affected by any delay in delivery, except any delay directly caused by the Owner.
- 5.5 If the Renter requires the Owner to install or commission the hired equipment, the Renter will be liable for the cost as quoted by the Owner.

## 6. Risk

- 6.1 Risk in the Hired Equipment passes to the Renter upon delivery of the Hired Equipment and remains with the Renter until the Hired Equipment is returned to the Owner.

## 7. Condition and Use of Hired Equipment

- 7.1 The Renter must at all times:
- keep and maintain each item of Hired Equipment in proper working order and condition and in good and substantial repair (other than in relation to regular servicing or repairs envisaged by sub-clause 7.3 and must pay for all fuel and/or top-up oil (as appropriate);
  - comply with the reasonable requirements of the Owner as to any repair, removal or replacement or the remedying of any deficiency or defect in any item of Hired Equipment;
  - ensure that the Hired Equipment is operated and maintained safely, and strictly in accordance with any manufacturer's and the Owner's instructions and/or standards of operation, whether supplied by the Owner or the manufacturer or posted on the equipment;
  - ensure that all operators' manuals and instructions are understood and followed by its operators;
  - ensure that operators use all personal and protective safety equipment, and also all safety equipment supplied by the Owner;

### 7.2 The Renter must not:

- make any replacement, alteration or addition of any nature which may lead to a material reduction in the value of any item of Hired Equipment; or
- take the Hired Equipment out of the State of hire, without the prior written consent of the Owner.

7.3 Each item of Hired Equipment will be serviced and/or repaired by the Owner or such competent and (where appropriate) properly qualified, trained and licensed personnel appointed by the Owner, at the Owner's cost. The Renter is to make the Hired Equipment available for routine service and maintenance at a mutually agreeable time but no later than the Hired Equipment's service and test schedule dates. Excessive wear to the Hired Equipment (where appropriate) will be charged to the Renter at the Owner's discretion and at its then current rates.

7.4 The Hired Equipment remains subject to the terms of this Agreement during any service and maintenance periods including any period of repair required due to damage caused by an act or omission by the Renter.

7.5 The Owner may at times supply other equipment at no additional cost to the Renter if such equipment is available at times of service or down time of the Hired Equipment. This is solely at the Owner's discretion.



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- 7.6 The Owner shall make due allowance for normal wear and tear but each item of Hired Equipment must at all times be capable of being operated fully and efficiently for the purpose, and to the capacity, for which that item of Hired Equipment was intended at the corresponding Commencement Date.
- 7.7 The Renter must give reasonable notice to the Owner in writing of any loss or damage in excess of normal wear and tear within 24 hours of the occurrence of the loss or damage.
- 7.8 If upon return of any item of Hired Equipment that item of Hired Equipment is not returned complete and in a clean working condition the Renter shall pay the Owner the cost to restore, clean and carry out any works required to the Hired Equipment, including damage due to the attachment of magnetic signs to the bodywork and vandalism. Where appropriate, the Renter shall ensure that the fuel tanks are full.
- 7.9 Should any item of Hired Equipment while under the care of the Renter be stolen or destroyed, the Renter shall compensate the Owner to the replacement value of that item of Hired Equipment so stolen or destroyed.
- 7.10 The Owner's invoice for the replacement and/or repair cost is conclusive as to the amount the Renter shall pay pursuant to sub-clauses 7.2, 7.8 and 7.9.
- 7.11 The Renter acknowledges that the Hired Equipment does not include 2-way Radios and any 2-way Radio that is required or desired shall be supplied by the Renter and removed at the expiry of the Term at the Renters cost.
- 7.12 Ensure that the Hired Equipment is re-tested and re-tagged in accordance with the manufacturer's instructions, applicable Australian Standards and Regulatory Authorities at the Renter's cost. Any damage caused to the Hired Equipment resulting from incorrect testing will be charged to the Renter.
- 8. Ownership of Hired Equipment**
- 8.1 The Owner retains full title to each item of Hired Equipment notwithstanding:
- the delivery of each item of Hired Equipment to the Renter; or
  - the possession and use of each item of Hired Equipment by the Renter; or
  - any temporary attachment of any item of Hired Equipment to any land or buildings to facilitate use of that item of Hired Equipment,
- subject only to the rights of the Renter as a mere Bailee of each item of Hired Equipment with a right only to use them in accordance with, and under, this Agreement.
- 9. No disposal of any interest in Hired Equipment**
- 9.1 The Renter must not without the Owner's prior written consent:
- agree, attempt, offer or purport to sell, assign, sublet, lend, pledge, mortgage, let on hire or otherwise part with or attempt to part with possession of or otherwise deal with any item of Hired Equipment; or
  - conceal or alter any item of Hired Equipment or make any addition to any item of Hired Equipment except as required pursuant to this Agreement.
- 10. Notification of the Owner's ownership of Hired Equipment**
- 10.1 The Renter must notify any person seizing or attempting to seize any item of Hired Equipment of the ownership of the Owner and must give immediate written notice to the Owner of such seizure.
- 11. Damage Waiver**
- 11.1 Notwithstanding clause 13.2 the Renter may elect to pay the Damage Waiver in accordance with this clause instead of maintaining insurance in accordance with clause 13.2. If the renter elects to pay the Damage Waiver, the Damage Waiver will be automatically charged in addition to the Hire Charges.
- 11.2 Where Damage Waiver has been charged to the Renter, the Owner agrees, upon submission of a written police report and other evidence requested by the Owner, to waive its right to claim loss or damage to the Hired Equipment caused by accident, theft, fire, storm or collision. The waiving of rights is subject to the payment by the Renter of an excess for the loss or damage of \$750 per item or 15% of the repair or replacement of the Hired Equipment, whichever is the greater.
- 11.3 The Damage Waiver does not apply and will not limit the Renters liability in the following circumstances;
- The operator is not suitably licensed;
  - The operator is affected by drugs and/or alcohol;
  - The equipment has been wilfully damaged by the Renter or its employees or agents;
  - The damage is caused by a collision with a bridge, car park, awning, gutter, tree or any other overhead structure or object whatsoever due to insufficient clearance;
- The damage is caused while the Hired Equipment is being driven or towed on any road that is unsealed or is not a public road;
  - The damage is caused by overloading.
  - Loss or damage due to contravention of the terms and conditions of this Agreement.
  - Damage to tyres
  - Loss or damage due to neglecting of daily checks and maintenance as outlined in the operation manual.
  - Loss or damage whilst the Hired Equipment is located on or over water, wharves, bridges, or vessels
  - Loss or damage whilst the Hired Equipment is located offshore;
  - Loss or damage whilst the Hired Equipment is located underground;
  - Loss or damage to motors or electrical devices caused by overloading or artificial electrical current.
  - Theft of equipment that is not locked and secured
  - Loss or damage during transport where the Owner is not providing the transport.
  - Loss or damage due to an act or omission by the Renter.
- The Renter must ensure that they maintain insurance in respect of the above exceptions.
- 12. Hire of Vehicles**
- If the equipment hired by the Renter is classified as a motor vehicle then the following conditions will apply;
- "motor vehicle" is defined as a car, truck, utility or trailer.
- 12.1 Insurance
- The Owner will arrange for Motor Vehicle insurance for each motor vehicle that is hired to the Renter and the Renter will pay a fee for such insurance. The insurance will cover any damage to the Motor Vehicle that is caused through an accident but will not cover the vehicle for loss, theft or damage that is not caused through a Motor Vehicle accident. If the motor vehicle is damaged in a motor vehicle accident the customer will be liable for additional costs as set out in the insurance policy.
- 12.2 Damage
- If the Motor Vehicle is lost, stolen or damaged other than in a Motor Vehicle accident then the Renter is liable for the repair or replacement of the vehicle.
- 12.3 Tyres
- The Renter is liable to pay for costs of damage or excessive wear to tyres outside of "normal" wear and tear.
- 12.4 Operation
- The Renter warrants that it will not allow a person to drive a vehicle if:
- The person has been previously refused Motor Vehicle insurance.
  - The person is under the influence of drugs or alcohol.
  - The person is under 21 years of age.
  - The person does not hold the relevant licence to drive the Motor Vehicle.
- 12.5 Fines and Charges
- The Renter is responsible for the payment of all fines, charges and penalties whilst using the Motor Vehicle during the Term. If the Owner pays such charges the Owner will charge the Renter who must reimburse the Owner under the conditions of the hire agreement
- 12.6 Driver Information
- The Owner reserves the right to take a copy of the designated drivers licence at the commencement of the Term.
- 12.7 Safe Loading
- The Renter warrants the Motor Vehicle will not be laden in excess of the Motor Vehicle's gross vehicle mass during the hire period.
- 12.8 Other
- All other terms and conditions as outlined in this Agreement apply to Motor Vehicles.
- 13. Insurance**
- 13.1 Subject to clause 13.2, the Renter is liable to the Owner for any and all loss and damage to the Hired Equipment, including the cost of repairing or replacing the Hired Equipment at the full new replacement cost, salvage costs and Rental Payments incurred while the Hired Equipment is being repaired or replaced.
- 13.2 The Renter must effect and maintain at all times during the Term, and any renewal or extension thereof:
- general insurance against damage or destruction caused by accident for the full insurable value of the Hired Equipment;
  - public liability insurance covering the operation of the Hired Equipment;
  - insurance for any other insurable risk commonly insured against in regard to equipment of a similar nature to the Hired Equipment; and
  - such other insurable risks as the Owner may reasonably stipulate.



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- 13.3 In satisfaction of clause 13.2, the Renter may engage the Owner to arrange insurance, at the Renter's cost.
- 13.4 The Renter acknowledges that a failure to comply with clause 13.2 may render the Renter liable to the Owner pursuant to clause 13.1 and/or others pursuant to clause 17.4.
- 14. Inspection, Warranties and Representations**
- 14.1 The Renter acknowledges that before signing this Agreement, the Renter inspected each item of Hired Equipment. As a result of that inspection the Renter was satisfied as to the condition, quality and safety of each item of Hired Equipment, its fitness for the Renter's purpose and its compliance with its description. To the extent permitted by law, the Owner does not warrant that the Hired Equipment will be suitable for the Renters purpose or use.
- 14.2 The Renter agrees that to the full extent permitted by law neither the Owner gives, nor any person purporting to act with the authority of the Owner has given, any condition, warranty or representation whatsoever in favour of the Renter:
- (a) as to the condition or quality of each item of Hired Equipment including, without limitation, latent and other defects and whether or not discoverable by the Owner or the Renter;
  - (b) that each item of Hired Equipment is in a clean working condition and that no works or repairs are required at the time of hire,
  - (c) that the Owner is aware of the proper use for each item of Hired Equipment; and
  - (d) to the correspondence of the Hired Equipment to any description of them
- 15 Extension of Term**
- 15.1 Renter may make a written request to the Owner to vary this Agreement by extending the Term until a particular date. The Owner must within 14 days of receiving the Renter's request, notify the Renter in writing whether or not the Owner agrees to grant that request.
- 15.2 The Owner reserves the right to review and increase the Rental Payment for any extended term, and may make the grant of an extension of the Term conditional on the Renter's acceptance of the reviewed rental payment for the extended term.
- 15.3 The Term may be extended under this clause 15 as often as the Owner and the Renter may so agree.
- 16 Termination Provisions**
- 16.1 Each of the following events is an Event of Default, namely:
- (a) if the Renter fails to pay the Hire Charges on the due date as required under this Agreement and such failure continues for more than 5 for Business Days;
  - (b) if the Renter fails to perform or observe any of the covenants or provisions of this Agreement on the part of the Renter to be performed or observed and (if capable of remedy) such default continues for more than 10 Business Days (or such longer period as the Owner in its absolute discretion permits) after notice from the Owner requiring the Renter to remedy the same;
  - (c) a receiver, manager administrator or controller is appointed to the Renter;
  - (d) any insurance policy in respect of the Hired Equipment is cancelled, or an insurance renewal or insurance proposal made by the Renter in respect of the Hires Equipment is declined.
- 16.2 An Event of Default will result in the automatic termination of this Agreement and the Owner has the right to the return of each item of Hired Equipment and will be entitled to retain all Hire Charges and other moneys previously paid by the Renter to the Owner under this Agreement;
- 16.3 Upon such termination, the Renter shall forthwith:
- (a) return each item of Hired Equipment at the Renter's expense in the condition required by clause 4 (as at the time of delivery), to such address as is notified by the Owner to the Renter from time to time, and
  - (b) discharge any outstanding Hire Charge.
- 16.4 If any item of Hired Equipment is not returned to the Owner as and when required by clause 16.3(a), the Owner may retake possession of that item of Hired Equipment. For that purpose the Owner and its employees and agents may, without notice, liability or legal process, enter upon or into any location containing any item of Hired Equipment and may break open any gate, door or fastening and detach or dismantle any item of Hired Equipment from anything to which any item of Hired Equipment have been affixed. The Owner is not obliged to collect any Hired Equipment that the Renter fails to return and the Renter agrees that it is barred from alleging that the Owner failed to mitigate its losses as a defence to any claim for outstanding Hire Charges and/or possession of any item of Hired Equipment.
- 16.5 If the Hired Equipment is repossessed by the Owner pursuant to clause 16.4, the Owner may recover from the Renter as a debt due and owing:
- (a) any costs incurred by the Owner in re-taking possession of the Hired Equipment;
  - (b) any storage fees paid in respect of the Hired Equipment;
  - (c) any transportation costs in respect of the re-possession of the Hired Equipment; and
  - (d) any costs of renovation, repair or
  - (e) maintenance on the Hired Equipment to return the Hired Equipment to good order and repair.
- 17 Limitation of Liability**
- 17.1 The Owner's liability is limited:
- (a) in the case of each item of Hired Equipment - to any one or more of the following at the Owner's option:
    - (i) the replacement of that item of Hired Equipment or the supply of equivalent Hired Equipment;
    - (ii) the repair of that item of Hired Equipment;
    - (iii) the payment of the cost of replacing that item of Hired Equipment or of acquiring an equivalent item of Hired Equipment; or
    - (iv) the payment of the cost of having that item of Hired Equipment repaired,
  - or
  - (b) in the case of services - to any one or both of the following:
    - (i) the supplying of the services again;
    - (ii) the payment of the cost of having the services supplied again; and
  - (c) In either case, to any lesser liability permitted by the relevant law.
- 17.2 The Owner will not be liable for, and the Renter releases and discharges the Owner from, any loss or damage whatsoever and whenever caused to the Renter or its agents or employees, including, but not limited to, special, indirect or consequential damages, loss of profit, goodwill, revenue or loss of anticipated saving or loss, whether by way of death of, or injury to, any person of any nature or kind, accident or damage to property, delay, financial loss or otherwise, arising directly or indirectly from or incidental to a breakdown of, or defect in, the Hired Equipment or any accident to or involving the Hired Equipment or its use, operation, repair, maintenance or storage (whether occasioned by the negligence of the Owner or otherwise) or which may otherwise be suffered or sustained in, upon or near the Hired Equipment, or as a result of a breach of the terms and conditions of this Agreement by it or as a result of a breach of duty of care or negligence arising at law.
- 17.3 To the maximum extent permitted by law, the Owner's liability to the Renter under this Agreement is limited to the value of this contract.
- 17.4 The Renter shall indemnify the Owner from and against all claims and demands proceedings judgments damages costs and losses of any nature whatsoever arising out of, or resulting from, or in connection with, the hire of Hired Equipment and any services under this Agreement.
- 18 Loss, Damage and Enforcement Expenses**
- 18.1 The Renter shall reimburse the Owner for all reasonable fees and expenses incurred by the Owner in connection with the recovery of overdue accounts and replacement of any item of Hired Equipment, including legal fees on a solicitor and client basis.
- 19 Intellectual Property**
- 19.1 The Renter must not:
- (a) reproduce, adapt or reverse engineer the Hired Equipment or any part thereof, and
  - (b) during the Term and any extension thereof and for 12 months after this Agreement is terminated:
    - (i) develop a product that competes with the Hired Equipment or any part thereof;
    - (ii) engage a third party to develop a product that competes with the Hired Equipment or any part thereof;
    - (iii) assist a third party to develop a product that competes with the Hired Equipment or any part thereof;
    - (iv) directly or indirectly, carry on or be concerned or interested in a business that does any of those things set out in sub-clause 19.1(b)(i) to (iii), either:



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- (c) alone; or
- (d) jointly with or as a director, consultant, manager, servant, agent, or partner of any person, firm, or corporation; or with their respective employees, servants, or agents; or
- (e) as the trustee or beneficiary any trust; or
- (f) otherwise by any means whatsoever.

### 20 Director Provisions

- 20.1 In consideration of the Owner, at the request of the Renter and the Directors, entering this Agreement, the Directors jointly and severally:
- (a) guarantee to the Owner the due and punctual performance and observance by the Renter of the terms of this Agreement; and
  - (b) indemnify the Owner and agree to keep the Owner indemnified from and against all actions claims demands notices losses damages costs and expenses of any nature whatsoever suffered or incurred by the Owner by reason of any breach or non-performance by the Renter of any of the terms and conditions of this Agreement.
- 20.2 The Directors' obligations shall not be subject to any prior notice to the Directors with regard to any default of the Renter.

### 21 PPSA

- 21.1 The Renter acknowledges that if the Owner's interest under this Agreement is a Security Interest for the purposes of the PPSA:
- (a) that Security Interest relates to the Hired Equipment and all Proceeds of any kind; and
  - (b) this Agreement is a security agreement for the purposes of the PPSA.
- 21.2 The Renter consents to the Owner effecting a registration on the PPSR (in any manner the Owner considers appropriate) in relation to the Security Interest arising under or in connection with this Agreement and the Renter agrees to provide all assistance reasonably required by the Owner to facilitate this.
- 21.3 Despite clause 24.1, notices or documents required or permitted to be given to the Owner for the purposes of the PPSA must be given in accordance with the PPSA.
- 21.4 The Renter waives its right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- 21.5 If Chapter 4 of the PPSA applies to the enforcement of a Security Interest arising under or in connection with this Agreement, the Renter agrees the following provisions of the PPSA will not apply to the enforcement of that Security Interest:
- (a) section 92 (notice of removal of accession), to the extent that it requires the Owner to give the Renter a notice;
  - (b) Section 96 (when a person with an interest in the whole may retain accession);
  - (c) Subsection 121(4) (enforcement of liquid assets – notice to grantor);
  - (d) Section 125 (obligation to dispose of or retain collateral);
  - (e) Section 130 (notice of disposal), to the extent that it requires the Owner to give the Renter a notice;
  - (f) paragraph 132(3)(d) (contents of statement of account after disposal);
  - (g) subsection 132(4) (statement of account if no disposal);
  - (h) section 142 (redemption of collateral);
  - (i) section 143 (reinstatement of security agreement).
- 21.6 Where a person is a controller in relation to the Hired Equipment, the parties agree that Part 4.3 of the PPSA will not apply to the enforcement of any Security Interest in the Hired Equipment by that controller.

### 22 Trenching and Drilling Equipment

- 22.1 Schedule of Rates
- The Schedule of Rates for each item of Plant /Equipment is to be treated as an individual separable portion of this agreement.
- Hours are charged at the quoted rate per SMU with a minimum Weekly charge applicable as quoted.
- 22.2 Ground Engaging Tools (GET) All GET equipment will be issued with a GET Condition Report detailing the GET's condition at the Commencement Date.

### 23 Remote Area Conditions

If the Hired Equipment is utilised in a Remote Area, the Renter must pay the costs incurred by the Owner in travelling to and from the Hired Equipment to service or

repair the Hired Equipment in accordance with the Service Maintenance Program. There will be no additional charge for the time on site.

The Renter remains responsible for daily checks and maintenance of Hired Equipment in Remote Area's in accordance with clause 7.

### 24 Miscellaneous Provisions

- 24.1 Any notice required to be served on either of the parties may be served personally or be left at or sent by letter addressed to the other party at the party's address specified in the Schedule. If posted, the notice shall be deemed to be served 2 business days after posting. Notices sent by facsimile shall be deemed to be duly given within 1 business day of receipt by the sender of a transmission control report from the dispatching machine indicating successful transmission.
- 24.2 If any part of this Agreement is or becomes void and unenforceable then that part is or will be severed from this Agreement and the remainder shall not be affected.
- 24.3 This Agreement shall be governed by the laws of Western Australia and the parties submit to the exclusive jurisdiction of the Courts of Western Australia.
- 24.4 Unless otherwise stated expressly all payments referred to in this Agreement are exclusive of GST and the Renter must on demand pay to the Owner, and the Owner reserves the right to recover from the Renter, all GST payable in respect of any supply made pursuant to this Agreement.
- 24.5 The Renter shall be liable for duty and all other applicable taxes, duties, levies, penalties and any other government charges imposed in connection with this Agreement.
- 24.6 If the Renter comprises more than one person, each person shall be jointly and severally liable to perform the Renter's obligations under this Agreement.
- 24.7 Neither party may assign its rights and obligations under this Agreement without the prior written consent of the other party.
- 24.8 No failure to exercise and no delay in exercising any right, power or remedy under this Agreement will operate as a waiver, nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.
- 24.9 Except as expressly provided in this agreement, this Agreement may be amended or varied only by agreement in writing signed by the parties.
- 24.10 No failure or omission by the parties to perform any of their obligations under this Agreement, except a failure to pay money will be a breach of this Agreement; or will create any liability, if such failure or omission arises from any cause or causes beyond the control of the relevant party, including but not limited to acts of god, fire, storm, lightning, flood, earthquake, acts of the public enemy, war, rebellion, insurrection, riot, invasion, strikes and lockouts. A party seeking to rely upon this clause must promptly advise the other party by notice in writing of the details of the relevant event.
- 24.11 In any case where, under or pursuant to this Agreement, the doing or execution or any act, matter or thing by the Renter is dependent on the approval of the Owner, such consent or approval may be given conditionally or unconditionally or may be withheld by the Owner in its absolute uncontrolled discretion, unless this Agreement otherwise expressly provides.
- 24.12 The Renter must at its expense do any further act and execute any further documents which the Owner may reasonably request in order to protect the Owner's title to the Hired Equipment and to the Owner's rights, powers and remedies under the Agreement.