



Thomas Kingsley Resources Pty Ltd T/A TKR PLANT HIRE

Terms and Conditions of Hire

1. Definitions

“Authorised Representative” means any person who presents themselves at the Site or at TKR’s premises as authorised by the Client to take delivery of, operate, return, or sign documents in respect of the Equipment, and whom a reasonable person in TKR’s position would accept as so authorised; and the Client warrants that each such person has the Client’s actual authority to bind the Client in respect of the matters that person undertakes.

“Charges” means the cost of the hire of the Equipment (plus any GST where applicable) as agreed between TKR and the Client subject to clause 6 of this Contract.

“Client” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting TKR to provide the services as specified in any proposal, quotation, order, invoice or other documentation, and:

- a) if there is more than one Client, is a reference to each Client jointly and severally; and
- b) if the Client is a partnership, it shall bind each partner jointly and severally; and
- c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
- d) includes the Client’s executors, administrators, successors and permitted assigns.

“Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including Personal Information) and pricing details.

“Contract” means the terms and conditions contained herein, together with any quotation, Hire Form, invoice or other document or amendments expressed to be supplemental to this Contract.

“Cookies” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client’s computer. If the Client does not wish to allow Cookies to operate in the background when using TKR’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.

“CoR Laws” means the Heavy Vehicle National Law (as enacted in each applicable State and Territory) and the associated regulations, and all other laws, codes and standards that impose obligations on parties in the Chain of Responsibility in relation to heavy vehicles, including those dealing with mass, dimension and loading, fatigue, speed, load restraint and vehicle standards.

“Decontamination Costs” means all reasonable costs incurred by TKR in decontaminating, cleaning, testing, certifying, disposing of, or replacing, any Equipment or part of the Equipment which has been contaminated with a Hazardous Substance during the hire period.

“Dry Hire” shall mean hire of the Equipment without an operator supplied by TKR.

“Election” means the Client’s written election in Schedule 1 of these terms (or in an equivalent form attached to the relevant quotation) as to whether the Standard LTD Waiver, the LTD Waiver Plus or neither applies to the hire.

“Environmental Laws” means all laws, regulations and statutory requirements relating to the protection of human health, safety and the environment, including those dealing with pollution, contamination, waste, hazardous substances,



dangerous goods, noise, emissions, water quality and soil condition, as in force in each jurisdiction in which the Equipment is used.

“Equipment” means all Equipment (including any accessories) supplied on hire by TKR to the Client (and where the context so permits shall include any incidental supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by TKR to the Client. Where the Equipment is a Motor Vehicle or Heavy Vehicle, the additional provisions in clause 16.8 and the Chain of Responsibility provisions in clause 27 also apply.

“Excessive Cleaning” means cleaning that either (a) requires more than three (3) hours of labour, or (b) is required to remove materials or residues that the Equipment is not designed to be exposed to in the course of ordinary use, including (without limitation) paint, resin, grout, concrete, cement, bitumen, slurry, tar, oil spills, food waste, biological material, chemicals or similar contaminants.

“Full Day’s Hire” shall mean 8 machine hours or 1 day’s hire.

“GET” means ground engaging tools, including (without limitation) bucket teeth, adapters, shrouds, side cutters, cutting edges, rippers, tynes, wear plates and similar consumable or wear items.

“GST” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

“Guaranteed Minimum Hire” means the minimum quantum of hire for which the Client is liable to pay Charges, expressed as a minimum period (in days, weeks or months), a minimum number of machine hours, or both, as specified on the quotation, Hire Form, invoice or other order documentation issued by TKR. The Client remains liable for the full Guaranteed Minimum Hire notwithstanding that the Equipment is returned early, off-hired before expiry, or used for fewer hours than the specified minimum. Where the quotation specifies both a period and an hours minimum, the greater of the two shall apply. Where no Guaranteed Minimum Hire is specified, the Minimum Hire Period shall apply.

“Hazardous Substance” means any substance, material or thing that is classified, regulated or treated as hazardous under any Environmental Law or work health and safety law, including (without limitation) asbestos and asbestos-containing materials, lead, silica, chemicals, dangerous goods, contaminated soil or water, hydrocarbons, biological contaminants and radioactive materials.

“Heavy Vehicle” has the meaning given by the Heavy Vehicle National Law.

“Long Distance Location” means any Site, pickup point or other location that is more than seventy-five (75) kilometres by the most direct reasonable road route from the TKR branch from which the Equipment is supplied.

“LTD Waiver” means either the Standard LTD Waiver or the LTD Waiver Plus, as elected by the Client in accordance with clause 18.2.

“LTD Waiver Excess” means the amount calculated in accordance with clause 18.4 (for the Standard LTD Waiver) or clause 18.5 (for the LTD Waiver Plus) which remains payable by the Client notwithstanding the operation of the LTD Waiver.

“LTD Waiver Fee” means the Standard LTD Waiver Fee or the LTD Waiver Plus Fee, as applicable.

“LTD Waiver Plus” means the enhanced Loss, Theft & Damage Waiver described in clause 18.5, available at the LTD Waiver Plus Fee.

“LTD Waiver Plus Fee” means fifteen percent (15%) of the total hire Charges (excluding GST).

“Minimum Hire Period” means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by TKR to the Client.



“Motor Vehicle” means any vehicle supplied by TKR on hire that is a motor vehicle within the meaning of the Road Transport Act or equivalent legislation of the jurisdiction of operation, including (without limitation) utilities, trucks, service vehicles, floats, trailers and prime movers.

“Off-Hire Number” means a unique reference number issued by TKR to the Client confirming the date and time from which the hire Charges for the Equipment cease to run, issued in accordance with clauses 7.5A and 7.5B.

“Off-Hire Report” means the written report recording the condition, fuel level, hour-meter reading, accessories and other particulars of the Equipment immediately following its return or collection, together with details of any damage, loss, shortage or contamination identified, prepared jointly by the Client (or the Client’s Authorised Representative) and TKR where the Client or its Authorised Representative is present, or prepared by TKR alone where neither is present at the time of return inspection, in which case the report so prepared by TKR shall be deemed accepted by the Client as accurate.

“On-Hire Report” means the written report recording the condition, fuel level, hour-meter reading, accessories and other particulars of the Equipment immediately prior to or on delivery, prepared jointly by the Client (or the Client’s Authorised Representative) and TKR where the Client or its Authorised Representative is present, or prepared by TKR alone where neither is present at the time of delivery, in which case the report so prepared by TKR shall be deemed accepted by the Client as accurate.

“Personal Information” means any information or opinion about an identified or reasonably identifiable individual, including (without limitation) name, address, date of birth, occupation, driver’s licence details, electronic contact details (email, Facebook or Twitter details), medical insurance details, next of kin and other contact information (where applicable), previous credit applications, credit history, IP address, browser and email client type, and website usage and traffic data.

“Prestart Record” means the record of a daily pre-operational inspection of the Equipment completed by or on behalf of the Client prior to each day’s use, identifying the condition of the Equipment, any defects, damage, fluid levels, hours and other matters required by TKR’s Prestart System or, where applicable under clause 16.1(d), the Client’s own prestart procedure. A Prestart Record is taken to include any photographs, notes or supporting records generated as part of the inspection.

“Rate Card” means TKR’s published schedule of standard hire Charges, operator hourly rates, attachment rates, cleaning rates, mobilisation and transport rates, per-kilometre vehicle charges, and other ancillary charges, as issued by TKR and amended from time to time. The Rate Card in force at the relevant time is available on request.

“Site” means the location/s at which the Equipment is to be operated.

“Specified Geographic Area” means the geographic area within which the Client is permitted to use the Equipment as notified to TKR in writing before the hire commences and recorded on the quotation, Hire Form or delivery docket; absent any such notification, the State or Territory in which the Equipment is delivered.

“Standard LTD Waiver” means the Loss, Theft & Damage Waiver described in clause 18.4, available at the Standard LTD Waiver Fee.

“Standard LTD Waiver Fee” means ten percent (10%) of the total hire Charges (excluding GST).

“Sub-Hirer” means any third party to whom the Client has sub-hired, on-hired, lent, assigned possession of, or otherwise provided access to the Equipment with TKR’s prior written consent under clause 16.7.

“Telematics Data” means all data and information generated by or extracted from telematics, GPS, engine-management, hour-meter, geolocation, diagnostic, sensor or similar on-board monitoring systems fitted to the Equipment, including (without limitation) data relating to location, speed, hours of operation, engine performance, fault codes, fuel consumption, idle time and operator behaviour.

“TKR” means Thomas Kingsley Resources Pty Ltd T/A TKR Plant Hire, its successors and assigns or any person acting on behalf of and with the authority of Thomas Kingsley Resources Pty Ltd T/A TKR Plant Hire.



“TKR Prestart System” means the electronic prestart inspection system maintained by TKR and accessed via the QR code affixed to each item of Equipment, or such replacement or successor system as TKR may notify to the Client from time to time.

“Wet Hire” shall mean that the Equipment is hired with an operator supplied by TKR, who shall at all times remain an employee of TKR.

2. Acceptance

2.1 The parties acknowledge and agree that:

- a) they have read and understood the terms and conditions contained in this Contract; and
- b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Equipment.

2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.

2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.

2.4 The Client acknowledges that the hire of Equipment on credit shall not take effect until the Client has completed a credit application with TKR and it has been approved with a credit limit established for the account.

2.5 In the event that the hire of Equipment requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, TKR reserves the right to refuse delivery.

2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

3.1 The Client acknowledges and accepts that TKR shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):

- a) resulting from an inadvertent mistake made by TKR in the formation and/or administration of this Contract; and/or
- b) contained in/omitted from any literature (hard copy and/or electronic) supplied by TKR in respect of the Equipment hire and/or/services.

3.2 In circumstances where the Client is required to place an order for the Equipment, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for the Equipment (“Client Error”). The Client must pay for all Equipment it orders from TKR notwithstanding that such Equipment suffers from a Client Error and notwithstanding that the Client has not taken or refuses to take Delivery of such Equipment. TKR is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.



4. Change in Control

4.1 The Client shall give TKR not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by TKR as a result of the Client's failure to comply with this clause.

5. Credit Card Information

5.1 TKR will:

- a) keep the Client's personal details, including credit card details for only as long as is deemed necessary by TKR;
- b) not disclose the Client's credit card details to any third party; and
- c) not unnecessarily disclose any of the Client's personal information, except in accordance with the Privacy Act (clause 22) or where required by law.

5.2 The Client expressly agrees that, if pursuant to this Contract, there are any unpaid Charges, other amounts due and outstanding by the Client, any Equipment (or any part of them) supplied on hire that are lost or damaged or any other additional Charges are due from the Client which were not known at the time of the return of the Equipment, TKR is entitled to immediately charge the Client's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Client pursuant to the terms of this Contract.

6. Charges and Payment

6.1 At TKR's sole discretion, the Charges shall be either:

- a) as indicated on invoices provided by TKR to the Client upon placement of an order for the Equipment; or
- b) TKR's Charges, at the date of delivery of the Equipment, as set out in the Rate Card, as previously disclosed to the Client upon the Client's placement of an order for the Equipment; or
- c) TKR's quoted Charges (subject to clause 6.3) which shall be binding upon TKR provided that the Client shall accept in writing TKR's quotation within fifteen (15) days.

6.2 In the event of Wet Hire, Charges shall be tracked by means of:

- a) TKR's daily plant hire order book;
- b) TKR's digital docket system; or
- c) where agreed in writing between the parties, the Client's own docket system,

which shall be completed by TKR's operator and, on each day of hire, signed, electronically signed, digitally accepted, acknowledged or otherwise confirmed by the Client or the Client's appointed supervisor (whether by physical signature, electronic signature, in-app acceptance, email confirmation or other verifiable means). The daily docket shall record the hours worked by the Equipment and the hours of use of any attachments supplied with the Equipment (including, without limitation, buckets, hammers, rock breakers, augers, auger drives, rippers, grabs, mulchers and any other hydraulic or mechanical attachment), each of which shall be charged separately in accordance with TKR's quotation or the Rate Card. Hire Charges shall be calculated on, and payable by reference to, the hours recorded on the daily docket as so signed or accepted, and not on the machine's service meter unit (SMU) reading. In the event of any inconsistency between docket hours and SMU hours, the docket hours shall prevail.



6.3 TKR reserves the right to change the Charges:

- a) if a variation to TKR's quotation is requested; or
- b) where TKR is required to mobilise and demobilise Equipment when TKR is required to transport the Equipment to and from TKR's depot, unless otherwise agreed; or
- c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the Site, incorrect physical dimensions, weights, or distances etc.) which are only discovered on commencement of the Services; or
- d) if during the course of the Services, the Equipment ceases to be available from TKR, then TKR reserves the right to provide alternative Equipment, subject to prior confirmation and agreement of both parties; or
- e) where Equipment is used outside TKR's standard working hours or on a weekend or public holiday; or
- f) where rates in respect of TKR's personnel are subject to additional Charges for loading, penalties and allowances as applicable to TKR's personnel pursuant to their terms of engagement (including, but not limited to, night shifts, weekends, standby, overtime, public holidays, meals, travel and accommodation rates); or
- g) as a result of an increase in TKR's costs due to changes in statutory, government, or local body charges, taxes, levies, stamp duties etc., with respect to the Services, increases to TKR in the cost of labour or materials or due to relevant industry awards (e.g., Site allowance and severance pay), which are outside the control of TKR.

6.3A In addition to the variation rights in clause 6.3, where the hire period (including any extension or renewal under clauses 8.1 or 19.4(b)) exceeds three (3) months, TKR may review and adjust the Charges every three (3) months during the hire period by giving the Client not less than thirty (30) days' prior written notice of the adjusted Charges. If the Client does not terminate the hire by written notice served before the effective date of the adjustment, the adjusted Charges shall apply from that date. Any such adjustment shall be consistent with the Rate Card or reflect a reasonable assessment of movement in TKR's costs since the previous review.

6.4 Variations will be charged for on the basis of TKR's quotation, and will be detailed in writing, and shown as variations on TKR's invoice. The Client shall be required to respond to any variation submitted by TKR within ten (10) working days. Failure to do so will entitle TKR to add the cost of the variation to the Charges. Payment for all variations must be made in full at the time of their completion.

6.5 At TKR's sole discretion, a reasonable deposit (in the form of a bond) shall be required at the commencement of this Contract in accordance with any quotation provided by TKR or as notified to the Client prior to the placement of an order for the Equipment, which shall be refunded to the Client by within thirty (30) days of the return of the Equipment, provided that the Client has complied with their obligations hereunder. The deposit may be used to offset any applicable Charges payable by the Client under clause 16.3, and any outstanding balance thereof shall be due as per clause 6.6.

6.6 Time for payment for the Equipment being of the essence, the Charges will be payable by the Client on the date/s determined by TKR, which may be:

- a) on or before delivery of the Equipment; or
- b) for approved credit account holders thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
- c) the date specified on any invoice or other form as being the date for payment; or
- d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by TKR.



6.7 Payment may be made by cash, electronic/online banking, credit card, or by any other method as agreed between the Client and TKR. Where payment is made by credit card, TKR may apply a surcharge not exceeding the reasonable cost to TKR of accepting the card (inclusive of merchant service fees, scheme fees and interchange costs) and not exceeding the maximum permitted from time to time under the Reserve Bank of Australia's standards for card payment surcharging. The surcharge applicable at the date of this Contract is two and a half percent (2.5%) of the transaction value for all credit card types, which TKR may vary from time to time by written notice to the Client.

6.8 TKR may in its discretion allocate any payment received from the Client towards any invoice that TKR determines and may do so at the time of receipt or at any time afterwards. On any default by the Client TKR may re-allocate any payments previously received and allocated. In the absence of any payment allocation by TKR, payment will be deemed to be allocated in such manner as preserves the maximum value of TKR's Purchase Money Security Interest (as defined in the PPSA) in the Equipment.

6.9 The Client shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Client by TKR nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify TKR in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as TKR investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in TKR placing the Client's account into default and subject to default interest in accordance with clause 20.1.

6.10 Unless otherwise stated the Charges do not include GST. In addition to the Charges the Client must pay to TKR an amount equal to any GST TKR must pay for any supply by TKR under this or any other agreement for the hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Charges. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.

6.11 Receipt by TKR of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

6.12 Where the Equipment is delivered to, used at, or serviced at a Long Distance Location, TKR may, in addition to the Charges, invoice the Client for:

- a) a per-kilometre vehicle charge calculated on the return distance between the TKR branch and the Site, at the per-kilometre rate set out in the Rate Card;
- b) the hourly labour rate of any TKR personnel required to travel to or from the Long Distance Location, charged for the actual travel time;
- c) airfare, accommodation, meal and sundry reasonable expenses incurred by TKR personnel in attending the Long Distance Location, charged at cost; and
- d) any additional freight, transport or lifting costs incurred by TKR in delivering or collecting the Equipment to or from the Long Distance Location.

TKR will give the Client a reasonable estimate of these charges before incurring them where practicable.

6.13 Where the Client requests, or is required by its Site protocols to provide, training, induction, or instruction to TKR's personnel in respect of the Equipment (whether in a Wet Hire or a Dry Hire context) during the hire period, the Client shall pay TKR for the time reasonably spent by TKR's personnel in attending that training or induction at the hourly rate set out in the Rate Card (plus any applicable overtime loadings), notwithstanding that the Equipment may not be in use during that time.



7. Hire Period

7.1 For Equipment in which a timing device is installed the hire period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Client's possession.

7.2 Where the Equipment does not have a timing device installed hire Charges shall commence from the time the Equipment departs from TKR's premises and will continue until the return of the Equipment to TKR's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

7.3 The date upon which the Client advises of termination shall in all cases be treated as a Full Day's Hire.

7.4 Subject to clause 7.4A, no allowance will be made for time during which the Equipment is not in use for any reason unless TKR agrees otherwise in writing.

7.4A Notwithstanding clause 7.4, and subject to the Client notifying TKR in writing in accordance with clause 7.4B, the following stand-down allowances apply during the hire period:

- a) **Equipment breakdown** — no Charges are payable for any complete hour during which the Equipment is not operable by reason of mechanical breakdown, provided that the breakdown is not attributable to the Client's negligence, misuse, failure to maintain, or breach of clause 16; and the Client has notified TKR by telephone of the breakdown within four (4) hours of its occurrence;
- b) **Inclement weather** — no Charges are payable for any day during which the Client, acting reasonably and with evidence, stands the Equipment down because of inclement weather preventing the safe operation of the Equipment, capped at a maximum of five (5) inclement-weather days in any calendar month;
- c) **Public** holidays**** — no Charges are payable for any gazetted public holiday in the jurisdiction of the Site on which the Equipment is not operated;
- d) **Christmas/Easter shutdown** — no Charges are payable for any industry Christmas shutdown (taken as the period from 24 December to 2 January inclusive) and the Easter shutdown (taken as Good Friday to Easter Monday inclusive) where the Client provides written notice before the shutdown commences;
- e) **Rostered days off and industry shutdowns** — fifty percent (50%) of the daily Charges is payable for any rostered day off or industry-wide shutdown day properly notified to TKR in advance in writing.

7.4B A stand-down allowance under clause 7.4A is available only if:

- a) the Client notifies TKR of the stand-down event, in writing or verbally, by 9:00 am on the day the stand-down commences (or, in the case of a breakdown, in accordance with clause 7.4A(a));
- b) TKR issues the Client with a stand-down number;
- c) where the Equipment is fitted with telematics or similar monitoring equipment, the Telematics Data is consistent with the Equipment not being in use during the claimed stand-down period, and where the Equipment is not so fitted, TKR is reasonably satisfied (on the basis of site records, photographs, supervisor confirmation or other reasonable evidence) that the Equipment was not in use; and
- d) the Equipment remains secured and available for TKR to collect, inspect or repair throughout the stand-down period.

7.4C No stand-down allowance is available for time during which the Equipment is not in use by reason of the Client's own operational decisions, the Client's failure to arrange access to the Site, the Client's failure to have suitably qualified operators available, or any cause attributable to the Client or any person acting on the Client's behalf.

7.5 The hire period for the Equipment shall not cease, and hire Charges shall continue to accrue, until the earliest of:



- a) the time at which TKR (or TKR's nominated carrier) collects the Equipment from the Site;
- b) the time at which the Client returns the Equipment to TKR's premises; and
- c) the effective time recorded on an Off-Hire Number issued by TKR in accordance with clauses 7.5A and 7.5B.

7.5A The Client may request an Off-Hire Number by contacting TKR's hire desk by telephone or email. A request received by TKR before 9:00 am on a business day shall take effect from the start of that business day; a request received after 9:00 am on a business day shall take effect from the start of the next business day; and a request received on a day that is not a business day shall take effect from the start of the next business day.

7.5B The issue of an Off-Hire Number is conditional on the Client granting TKR (or TKR's nominated carrier) prompt, safe and unimpeded access to the Site to collect the Equipment and on the Equipment, together with all attachments supplied with it (including, without limitation, buckets, hammers, rock breakers, augers, auger drives, rippers, grabs, mulchers and any other hydraulic or mechanical attachment), being available, secure, cleaned for transport and ready for collection at the time the Off-Hire Number takes effect. If the Client fails to meet these conditions in respect of the Equipment or any such attachment, hire Charges shall continue to accrue (in respect of the Equipment and any affected attachment) until all conditions are met or the Equipment and attachments are otherwise returned.

7.5C An Off-Hire Number is a statement of the date and time from which hire Charges cease to run only. It is not an acknowledgement of the condition of the Equipment, does not constitute an Off-Hire Report under clause 11, and does not relieve the Client of any liability for loss, damage, Excessive Cleaning, unpaid Charges, or breach of this Contract identified during or after the Off-Hire Report inspection.

8. Extension of the Hire Period

8.1 If, and only if not later than one (1) month before the expiry of the hire period, the Client gives notice to TKR requesting an extension of the hire period, such extension is, if any, subject to TKR's agreement, the availability of the Equipment and the following conditions:

- a) the Charges and all other payments due under this Contract having been received by TKR in full as at the expiry of the hire period;
- b) there is no breach of the Client's covenants, the hire period shall be extended for the period specified between the parties, commencing on the day following the date of expiration of the hire period and at the Charges, as varied, on the same terms and conditions of this Contract, except for the insertion of the extended term.

9. Delivery

9.1 Delivery ("Delivery") of the Equipment is taken to occur at the time that:

- a) the Client or the Client's nominated carrier takes possession of the Equipment at TKR's premises; or
- b) TKR (or TKR's nominated carrier) delivers the Equipment to the Client's nominated address even if the Client is not present at the address.

9.2 The cost of Delivery will be payable by the Client in accordance with the quotation provided by TKR to the Client, or as otherwise notified to the Client prior to the placement of an order for the Equipment.

9.3 A minimum of twenty-four (24) hours' notice shall be given for standby.

9.4 TKR may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.



9.5 The Client shall be responsible for free access by TKR to the Site on which the Equipment is located. If there are any delays due to free access not being available, then the Client shall be responsible and shall reimburse TKR for all lost hire fees associated with the Equipment being unavailable. The Client shall also be responsible for all other expenses and costs incurred by TKR due to delays in accessing the Equipment.

9.6 Any time specified by TKR for Delivery of the Equipment is an estimate only and TKR will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Equipment to be supplied at the time and place as was arranged between both parties. In the event that TKR is unable to supply the Equipment as agreed solely due to any action or inaction of the Client, then TKR shall be entitled to charge a reasonable fee for re-supplying the Equipment at a later time and date, and/or for storage of the Equipment.

9.7 Any person who presents themselves at the Site or at TKR's premises and holds out as authorised by the Client to take delivery of, to return, or to sign any document in respect of the Equipment shall be deemed to be an Authorised Representative of the Client. The Client warrants that each such person has the Client's actual authority to bind the Client for the purposes of this Contract, and the Client shall be bound by the acts and signatures of each Authorised Representative as if they were those of the Client. TKR is entitled to rely on the signature of an Authorised Representative as conclusive evidence of delivery, return, or the matters certified in any On-Hire Report or Off-Hire Report.

10. Risk

10.1 TKR retains ownership of the Equipment nonetheless all risk for the Equipment passes to the Client on Delivery.

10.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies TKR for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.

10.3 The Client will insure, or self-insure, TKR's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

10.4 The Client accepts full responsibility for and shall keep TKR indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons.

11. Condition of Equipment and Inspections

11.1 The Equipment shall be inspected by a representative of each party to establish its condition and a written statement of condition shall be prepared as follows:

- a) **On-Hire Report** — immediately prior to or upon delivery of the Equipment, the Client (or its Authorised Representative) and TKR (or its nominated carrier) shall jointly inspect the Equipment and complete an On-Hire Report. Each party shall sign the On-Hire Report, which shall be conclusive evidence as between the parties of the condition of the Equipment at delivery, absent manifest error. If the Client declines to sign, refuses to inspect, or is not available at delivery, TKR's inspection record shall be conclusive;
- b) **Off-Hire Report** — as soon as reasonably practicable following the collection or return of the Equipment, and in any event within five (5) business days, TKR shall conduct an Off-Hire Report. The Client shall be entitled to be present at the Off-Hire Report inspection, provided that the Client gives TKR written notice within one (1) business day of off-hire of its intention to attend. If the Client does not elect to attend, or having elected to attend does not attend at the scheduled time, TKR's Off-Hire Report shall be conclusive.



11.1A Where the Client attends an Off-Hire Report inspection and disputes any finding recorded in it, the Client shall record the dispute on the Off-Hire Report at the time. Where the Client has not attended an Off-Hire Report inspection, the Client shall give TKR written notice of any dispute with the Off-Hire Report within three (3) business days of receipt of the Off-Hire Report, failing which the Off-Hire Report shall be deemed to be accepted by the Client.

11.1B If the Client gives timely notice of a dispute under clause 11.1A, TKR shall give the Client a reasonable opportunity to inspect the Equipment and any supporting photographic or documentary evidence within five (5) business days. If the dispute remains unresolved, it shall be dealt with under clause 26.1 (Disputes).

11.2 The Client acknowledges and agrees that they will, at their own cost, reinstate the Equipment to its condition as specified in the On-Hire Report, normal wear and tear excepted.

11.3 TKR, TKR's servants and agents may at all reasonable times inspect the Equipment and operate it for the purpose of testing or repairing it and the Client irrevocably permit and license TKR to take possession of the Equipment and to remove it and for this purpose to enter upon the Site as the Client's agent.

12. Title

12.1 The Equipment is and will at all times remain the absolute property of TKR, and the Client must return the Equipment to TKR upon request to do so.

12.2 If the Client fails to return the Equipment to TKR as is required under this Contract or when requested to do so, then TKR or TKR's agent may (as the invitee of the Client) enter upon and into any land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused. Any costs incurred by TKR as a result of TKR so repossessing the Equipment shall be charged to the Client.

12.3 The Client is not authorised to pledge TKR's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

13. Personal Property Securities Act 2009 ("PPSA")

13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

13.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Equipment that has previously been supplied and that will be supplied in the future by TKR to the Client.

13.3 The Client undertakes to:

- a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which TKR may reasonably require to:
- b) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- ii) register any other document required to be registered by the PPSA; or
- iii) correct a defect in a statement referred to in clause 13.3(a)(i) or 13.3(a)(ii);
- b) indemnify, and upon demand reimburse, TKR for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Equipment charged thereby;



- c) not register a financing change statement in respect of a security interest without the prior written consent of TKR;
- d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without the prior written consent of TKR.

13.4 To the extent permitted by section 115 of the PPSA, TKR and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

13.5 To the extent permitted by the PPSA, the Client waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

13.6 To the extent permitted by the PPSA (and in particular section 115(7)), the Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

13.7 Unless otherwise agreed to in writing by TKR, and to the extent permitted by the PPSA, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.

13.8 The Client must unconditionally ratify any actions taken by TKR under clauses 13.3 to 13.5.

13.9 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

13.10 The parties acknowledge that where the total period during which the Equipment is in the Client's possession (including any extensions under clause 8.1, any renewals under clause 19.4(b), and any hold-over period following the end of the stated hire term) is or exceeds, or with reasonable foresight is likely to exceed, one (1) year in the case of motor vehicles and watercraft or two (2) years in the case of any other Equipment, the hire shall constitute a "PPS Lease" within the meaning of section 13 of the PPSA. In all other respects, this clause 13 applies generally for the purposes of the PPSA.

13.10A Notwithstanding any other provision of this Contract (including clause 19.4(b)), the total period for which the Equipment may remain on hire to the Client under this Contract shall not exceed twenty-three (23) months, at which point the Contract shall automatically terminate unless TKR and the Client enter into a fresh hire agreement (with a fresh PPSA registration if required by TKR). This clause does not limit TKR's right to terminate earlier in accordance with this Contract.

14. Security and Charge

14.1 In consideration of TKR agreeing to supply the Equipment on hire, the Client grants TKR a security interest by way of a floating charge (registerable by TKR pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Client or owned by the Client in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Equipment on hire under this Contract and/or permit TKR to appoint a receiver to the Client in accordance with the Corporations Act 2001 (Cth).

14.2 The Client indemnifies TKR from and against all TKR's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising TKR's rights under this clause.

14.3 In the event that the Client defaults or breaches any term of this Contract and as a result, the security provided in clauses 12.1, 13.2 and 14.1 as applicable, is deemed insufficient by TKR to secure the repayment of monies owed by the Client to TKR, the Client hereby grants TKR a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Client now, or owned by the Client in the future, to secure the performance of the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).



14.4 Where the Client has, at the time of credit application or otherwise in connection with this Contract, delivered to TKR a Directors'/Guarantor's Guarantee and Indemnity executed by the Client's directors, shareholders, principals or trustees ("Guarantors"):

- a) that Guarantee and Indemnity is additional to, and not in substitution for, the securities granted by the Client under clauses 13 and 14, and the remedies available under that document may be exercised concurrently with the remedies under this Contract;
- b) the Client shall promptly notify TKR of any change in the identity of its directors, shareholders, principals or trustees and, on TKR's request, shall procure that any new director, shareholder, principal or trustee execute an additional Guarantee and Indemnity on terms acceptable to TKR;
- c) the failure of any Guarantor to execute, or the invalidity or unenforceability of, any Guarantee and Indemnity does not affect the Client's own liability under this Contract; and
- d) where TKR has not received any Guarantee and Indemnity from the Client at the time of credit application or subsequently, TKR may require such a Guarantee and Indemnity as a condition of continued supply of Equipment on credit.

15. Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")

15.1 The Client must inspect the Equipment on Delivery and must within twenty-four (24) hours of Delivery notify TKR in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow TKR to inspect the Equipment.

15.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).

15.3 TKR acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, TKR makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Equipment. TKR's liability in respect of these warranties is limited to the fullest extent permitted by law.

15.5 If the Client is a consumer within the meaning of the CCA, TKR's liability is limited to the extent permitted by section 64A of Schedule 2 to the CCA. In particular:

- a) **in respect of the supply of any Equipment (being goods)** — TKR's liability is limited, at TKR's election, to the replacement of the Equipment, the supply of equivalent Equipment, the repair of the Equipment, or the payment of the cost of any of the foregoing; and
- b) **in respect of the supply of any services (including delivery, Wet Hire services, training, induction, and any other services provided by TKR)** — TKR's liability is limited, at TKR's election, to supplying the services again or paying the cost of having the services supplied again.

15.6 If TKR is required to rectify, re-supply, or pay the cost of re-supplying any services or Equipment under this clause or the CCA, but is unable to do so, then TKR may refund any money the Client has paid for the services or Equipment but only to the extent that such refund shall take into account the value of any services or Equipment and consumables which have been provided to the Client which were not defective.

15.7 If the Client is not a consumer within the meaning of the CCA, TKR's liability for any defect or damage in the Equipment or services supplied under this Contract is:



- a) limited to the value of any express warranty or warranty card provided to the Client by TKR at TKR's sole discretion;
- b) limited to any warranty to which TKR is entitled as between TKR and the manufacturer or supplier of the Equipment, if TKR did not manufacture the Equipment; and
- c) otherwise excluded to the fullest extent permitted by law.

15.8 Notwithstanding clauses 15.1 to 15.7 but subject to the CCA, TKR shall not be liable for any defect or damage which may be caused or partly caused by, or arise as a result of:

- a) the Client failing to properly maintain or store any Equipment;
- b) the Client interfering with the Equipment in any way without TKR's written approval to do so;
- c) the Client using the Equipment for any purpose other than that for which it was designed;
- d) the Client continuing the use of the Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- e) the Client failing to follow any instructions or guidelines provided by TKR;
- f) fair wear and tear, any accident, or act of God.

15.9 The Client acknowledges and agrees that:

- a) TKR does not provide, and has not provided, professional advice, engineering advice, site-specific safety advice, geotechnical advice, or advice on the suitability of the Equipment for the Client's particular purpose, site conditions, or project, except to the extent expressly agreed in writing between the parties;
- b) any general information, literature, specifications or opinions provided by TKR in respect of the Equipment are provided for general guidance only and the Client has not relied, and is not entitled to rely, on TKR's skill or judgement in selecting the Equipment or determining its suitability for a particular purpose; and
- c) the Client has satisfied itself, using its own professional advisers where appropriate, that the Equipment is suitable for the Client's intended use, and the Client bears sole responsibility for that assessment.

Nothing in this clause 15.9 limits the Non-Excluded Guarantees in clause 15.2.

16. Client's Responsibilities

16.1 The Client shall:

- a) satisfy itself at commencement that the Equipment is suitable for its purposes;
- b) notify TKR immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
- c) maintain the Equipment as is required by TKR (including, but not limited to, maintaining (where applicable) water, oil and fluid levels and tyre pressures);
- d) complete a daily prestart inspection of the Equipment prior to each day's use and record the inspection as a Prestart Record. The Client shall use the TKR Prestart System, accessed via the QR code affixed to the Equipment, to record each Prestart Record. Where the Client is required by its own systems to use an alternative prestart procedure, a legible copy of each completed Prestart Record shall be provided to TKR by the end of the following



business day. Failure to complete and record daily Prestart Records in accordance with this clause may, at TKR's discretion, render the Client liable for any damage, wear or mechanical issue that a properly conducted prestart would reasonably have identified;

- e) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by TKR, posted on the Equipment, or made available electronically online (including via QR code, link or manufacturer's website);
- f) ensure that:
- g) all persons operating or erecting the Equipment are fully licensed and hold a current Certificate of Competency, Verification of Competency (VOC), or relevant Resources and Infrastructure Industry (RII) unit of competency appropriate to the Equipment, and shall provide evidence of the same to TKR upon request;
- ii) the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;
- iii) all reasonable care is taken by the driver in handling and/or parking the Equipment and that the Equipment is left locked and/or securely stored when not in use.
- g) be liable for:
- h) any parking or traffic infringement, impoundment, towage and storage costs incurred during the hire period and will supply relevant details as required by the Police and/or TKR relating to any such matters or occurrences; and
- ii) damage to the Equipment caused by the collision with a bridge, carpark, awning, gutter, tree, or any other overhead structure or object due to insufficient clearance;
- h) comply with all work health and safety laws relating to the Equipment and its operation;
- i) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to TKR;
- j) refuel the Equipment prior to its return from hire. In the event the Equipment needs to be refuelled upon its return from hire then the costs of refuelling shall be charged to the Client in addition to the costs of the Equipment hire;
- k) keep the Equipment in the Client's own possession and control, and not sub-hire, on-hire, lend, assign, transfer possession of, or permit any third party to use the Equipment, except with TKR's prior written consent under clause 16.7 and then only on the terms of that clause. The Client shall not be entitled to any lien over the Equipment;
- l) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
- m) indemnify and hold harmless TKR in respect of all claims arising out of the Client's use of the Equipment;
- n) where any Equipment is or includes electrical equipment requiring testing and tagging under AS/NZS 3760 (or any successor standard), be responsible for, and bear the cost of, all in-service inspection, testing and tagging required during the hire period, and provide TKR with evidence of testing on request. The Client indemnifies TKR against any loss, damage or liability arising from non-compliance with AS/NZS 3760 (or any successor standard) during the hire period, including any damage to the Equipment caused by incorrect testing or testing by an unqualified person.

16.2 The Client shall not:



- a) alter or make any additions to the Equipment including, but without limitation, altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- b) exceed the recommended or legal load and capacity limits of the Equipment (including the recommended number of passengers (if applicable), electrical overloads, a surge in electrical current or the use of under-rated or excessive lengths of extension leads with electrical Equipment);
- c) expose the Equipment to any corrosive or caustic substances i.e. cyanide, salt water, acid etc.;
- d) transport the Equipment on or over water, wharves, bridges or vessels of any kind without the express approval of TKR;
- e) carry any animals, illegal, prohibited or dangerous on, or in, the Equipment supplied without the prior written permission of TKR;
- f) use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
- g) fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.

16.3 Immediately on request by TKR the Client will pay:

- a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to TKR;
- b) all costs incurred by TKR in cleaning the Equipment in excess of ordinary cleaning, including (without limitation) any Excessive Cleaning; such costs to be calculated at the cleaning rate set out in the Rate Card or, at TKR's election, on a time-and-materials basis;
- c) all costs of repairing any damage caused by:
 - d) the ordinary use of the Equipment;
 - ii) the negligence of the Client or the Client's agent;
 - iii) vandalism, or (in TKR's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client.
- iv) the cost of fuels, tyres, tubes and consumables provided by TKR and used by the Client. Where TKR supplies fuel as part of the hire, TKR retains the right to claim any fuel tax credits available to TKR under the Fuel Tax Act 2006 (Cth) in respect of that fuel, and the Client shall not claim or purport to claim any such credit in respect of fuel supplied by TKR;
- e) any:
- f) lost hire fees TKR would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
- ii) costs incurred by TKR in picking up and returning the Equipment to TKR's premises if the Client does not return the Equipment to TKR's premises or any pre-agreed pickup location when it was originally agreed that the Client would do so;
- iii) insurance excess payable in relation to a claim made by either the Client or TKR in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or TKR's. Where the Client has elected and paid the LTD Waiver Fee under clause 18, the Client's liability for loss, theft or damage to the Equipment is limited to the LTD Waiver Excess in accordance with that clause, and this sub-clause 16.3(e)(iii) is subject to that limitation.



16.4 The Client's obligations in relation to Hazardous Substances are as follows:

- a) **Disclosure.** Before the hire commences and thereafter as soon as the Client becomes aware, the Client shall disclose to TKR in writing the presence, suspected presence, or reasonable risk of any Hazardous Substance at any Site at which the Equipment is to be used. Where the Site is a workplace required under work health and safety law to maintain an asbestos register, the Client shall provide a current copy of that register to TKR on request.
- b) **Prohibition without consent.** The Client shall not use, direct the use of, or permit the use of the Equipment in, on, or in contact with, any Hazardous Substance without TKR's prior written consent. TKR may give or withhold consent in its absolute discretion and may make consent conditional on additional insurance, site controls, or rate loadings.
- c) **Compliance.** Where TKR has consented under clause 16.4(b), the Client shall ensure that all use of the Equipment in connection with Hazardous Substances complies with all applicable Environmental Laws, work health and safety laws, codes and standards (including the relevant Code of Practice for how to manage and control asbestos in the workplace).
- d) **Decontamination.** The Client shall return the Equipment free from contamination by any Hazardous Substance. Where TKR reasonably considers that the Equipment has been, or may have been, contaminated during the hire period, TKR may (at the Client's cost):
 - e) arrange for the Equipment to be tested and decontaminated by a suitably qualified person;
 - ii) withhold return of any deposit or bond pending the outcome of the testing and decontamination;
 - iii) invoice the Client for all Decontamination Costs; and
 - iv) where the Equipment cannot be decontaminated at a reasonable cost, or cannot safely or lawfully be returned to service, invoice the Client for the new replacement cost of the Equipment, in which event title to the affected Equipment (or the residue of it) shall transfer to the Client upon receipt of payment.
- e) **Indemnity.** The Client indemnifies TKR against all loss, damage, liability, penalty, fine and cost (including legal costs on an indemnity basis) arising out of or in connection with any breach of this clause 16.4, any presence of a Hazardous Substance in or on the Equipment during or at the end of the hire period, and any failure to disclose a Hazardous Substance under clause 16.4(a).
- f) **LTD Waiver.** The LTD Waiver in clause 18 does not apply in respect of any loss, damage, contamination, or replacement cost arising out of a breach of this clause 16.4. The Client's full liability under this clause 16.4 is not limited by the LTD Waiver Excess.

16.5 The Client acknowledges that tyres, tubes, tracks, GET, undercarriage components (including rollers, idlers, sprockets and chains), cutting edges and similar wear items are consumable items excluded from the LTD Waiver under clause 18.3. The following apply:

- a) **Fair wear and tear benchmarks.** The following shall be deemed fair wear and tear during the hire period, consistent with normal duty-cycle use, and shall not be chargeable to the Client:
- b) for tyres — wear not exceeding the lesser of (A) four thousand (4,000) service-meter-unit-hours of use, and (B) five percent (5%) of original tread depth per 400 hours of use;
- ii) for tracks and undercarriage — wear consistent with the proportion of available component life consumed on the service-meter-unit-hours, measured from the On-Hire Report to the Off-Hire Report;
- iii) for GET and cutting edges — wear consistent with normal digging conditions for the type of Equipment, measured by percentage of remaining material from the On-Hire Report to the Off-Hire Report.



- b) **Abnormal wear.** Any wear in excess of the benchmarks in clause 16.5(a), and any damage caused by misuse, overloading, impact, abrasion beyond normal duty, operation in abrasive conditions not notified to TKR, or failure to maintain proper tension, pressure or adjustment, is abnormal wear and is chargeable to the Client at the rate set out in the Rate Card or at the actual cost of replacement (whichever is higher).
- c) **Measurement.** The condition of tyres, tracks, GET and undercarriage at the start and end of the hire shall be recorded on the On-Hire Report and Off-Hire Report respectively, by reference to tread depth, remaining-material percentage, hour-meter readings, and such other measurements as TKR reasonably applies. Disputes over measurement shall be dealt with under clauses 11.1A and 11.1B.

16.6 The Client shall not, without TKR's prior written consent (which may be given or withheld in TKR's absolute discretion and may be made conditional on additional insurance or rate loadings):

- a) move or use the Equipment outside the Specified Geographic Area;
- b) use the Equipment offshore, over water, or on any wharf, jetty, pontoon, barge, or vessel;
- c) use the Equipment in any underground workings, tunnel, shaft, mine or quarry below ground level;
- d) transport or relocate the Equipment across a State or Territory border; or
- e) use the Equipment at any site not notified to TKR on the quotation, Hire Form, or delivery docket.

If the Client uses the Equipment in breach of this clause 16.6, the LTD Waiver in clause 18 shall not apply to any loss, theft or damage occurring during the period of that breach (see clause 18.8(1)), TKR may terminate this Contract by written notice with immediate effect, and the Client shall indemnify TKR against any resulting loss or liability.

16.7 Where TKR consents in writing to the sub-hire of the Equipment to a Sub-Hirer:

- a) the Client remains primarily liable to TKR for all obligations under this Contract, including payment of Charges and responsibility for the Equipment, as if the Client were in possession of the Equipment at all times;
- b) the Client shall ensure that the Sub-Hirer is bound by terms no less onerous than the terms of this Contract in respect of the care, use, return, insurance and protection of the Equipment, and shall provide TKR with a copy of the sub-hire contract on request;
- c) the Client grants to TKR, and shall procure that the Sub-Hirer also grants to TKR, all rights under the PPSA to perfect and protect TKR's security interest, including by way of further registration if required;
- d) the Client shall, at TKR's request, register its own PPSA security interest over the Equipment against the Sub-Hirer and shall hold that security interest on trust for TKR, and shall assign that security interest to TKR on request;
- e) the Client shall provide TKR on request with the Sub-Hirer's full name, ABN, address, ACN (if applicable), and the Site at which the Equipment is being used;
- f) the Client shall immediately notify TKR of any default by the Sub-Hirer under the sub-hire contract, and of any event that places the Equipment at increased risk; and
- g) the Client shall indemnify TKR against any loss, damage or cost suffered by TKR arising out of the sub-hire, including any shortfall in recovery against the Sub-Hirer.

16.8 Where the Equipment is a Motor Vehicle, the following additional conditions apply in addition to the general Client obligations in this clause 16:



- a) any person driving the Motor Vehicle must hold a current Australian driver's licence of the correct class for the vehicle, be aged not less than twenty-one (21) years (or twenty-five (25) years for a rigid truck or prime mover), and have not less than two (2) years' continuous licensed driving experience of the relevant class;
- b) the Motor Vehicle shall not be driven by any person under the influence of alcohol, illicit drugs, or any prescription drug that may impair driving ability; and the Client shall ensure that all drivers comply with the zero-alcohol limit applicable to heavy vehicle drivers where relevant;
- c) the Client shall comply with all applicable road rules, speed limits, mass and dimension limits, load restraint requirements, licensing conditions and CoR Laws, and shall ensure that the Motor Vehicle is not used in any manner that would void TKR's registration or insurance;
- d) the Client is liable for, and shall pay on demand, all traffic infringements, parking fines, tolls, impoundment fees, towage costs and storage costs incurred in respect of the Motor Vehicle during the hire period, together with an administration fee of fifty dollars (\$50.00) plus GST for each such infringement processed by TKR;
- e) in addition to any LTD Waiver Excess, the Client shall pay a Motor Vehicle excess of three thousand five hundred dollars (\$3,500.00) plus GST for any single damage event to a Motor Vehicle, which excess is not waivable under the LTD Waiver (Standard or Plus); and
- f) any single-vehicle collision, rollover, or damage caused by the driver being aged under twenty-five (25) is excluded from the LTD Waiver entirely.

17. Wet Hire

17.1 In the event of Wet Hire, the operator of the Equipment remains an employee of TKR and operates the Equipment in accordance with the Client's instructions. As such TKR shall not be liable for any actions of the operator in following the Client's instructions.

17.2 Unless otherwise agreed to in writing between the parties, TKR shall not be deemed the principal contractor and shall not be obligated to maintain any contract works insurance cover or be responsible with regard to any work cover requirements (including, but not limited to, compliance under any relevant legislation or policy, etc.).

17.3 The Client shall:

- a) be responsible for ensuring that TKR is notified of the location of any underground services on the Site; and
- b) provide amenities and first aid services to TKR's employees in compliance with all applicable work health and safety legislation in operation in the state where the services are undertaken; and
- c) should it be necessary for the Equipment to be towed in, or out of the Site, then the Client shall be responsible for all damage and/or salvage costs involving the Equipment, and said costs shall be in addition to the Charges.

17.4 Notwithstanding that the operator of the Equipment is an employee or representative of TKR, the operator shall operate the Equipment in accordance with the instructions of the Client, and accordingly, the Client shall be liable for all responsibility and costs incurred as a result of the actions of the operator whilst following the Client's instructions.

17.5 In the event the Client requires an employee of TKR to undertake a Site induction during working hours, the Client will be liable to pay the hourly charges for that period, notwithstanding that the Equipment is not being operated during such time. If any induction is undertaken outside of the hire period, then the Client shall be liable to pay TKR standard (and/or overtime, if applicable) hourly labour rate. This clause 17.5 applies in addition to, and is subject to, clause 6.13 (which deals with training, induction and instruction more generally). To the extent of any inconsistency between this clause 17.5 and clause 6.13, clause 6.13 prevails.



17.6 Pre-start** inspection allowance.** The Client shall pay TKR's operator for twenty (20) minutes at the operator hourly rate set out in the Rate Card at the start of each shift, representing the pre-start inspection, daily safety check, and fuel and fluid checks required by TKR's operating procedures and work health and safety law. This allowance is payable notwithstanding that the Equipment is not under load during this period.

17.7 Transportation time. Where the operator is required to travel from TKR's depot to the Site (or between multiple Sites during the day), transport time shall be charged at the operator hourly rate set out in the Rate Card from the time the operator leaves the depot until the time the operator returns to the depot, together with mobilisation and demobilisation of the Equipment.

17.8 Client's public liability insurance. The Client shall maintain a current policy of public and products liability insurance with a limit of indemnity of not less than twenty million dollars (\$20,000,000) for any one occurrence, insuring against loss, damage and injury to third parties arising out of the use of the Equipment by TKR's operator at the direction of the Client. The Client shall provide a Certificate of Currency to TKR on request.

17.9 Inclement weather notification. For any shift to be stood down on the grounds of inclement weather, the Client shall notify TKR by telephone and in writing by not later than 5:00 am on the morning of the proposed stand-down. If notice is not given by that time, the full operator and Equipment Charges will be payable for four (4) hours.

17.10 Cleaning during or at the end of shift. The foreseeable mud, dirt and water ingress. Where, during a shift, the operator is directed by the Client to operate the Equipment in conditions that a reasonable person would foresee would result in the Equipment becoming subject to excessive mud, dirt, slurry, water ingress or similar build-up (including, without limitation, operation in low-lying, water-logged, boggy or saturated ground):

- a) the Client acknowledges that mud, dirt and similar build-up, if not addressed promptly, causes accelerated wear to the undercarriage, tracks, rollers, idlers, sprockets, GET and other components of the Equipment;
- b) the operator shall be entitled, and is expected, to undertake reasonable cleaning of the Equipment to remove such build-up as soon as practicable, whether during the shift or at the end of the shift, in order to minimise such wear and to restore the Equipment to a condition fit for ongoing operation, transport or storage;
- c) all time reasonably spent on cleaning under sub-paragraph (b) (whether during the shift or at the end of the shift) shall be charged to the Client at TKR's normal wet hire rate for the Equipment (inclusive of operator and machine), in addition to the Charges otherwise payable, and shall be recorded on the daily docket under clause 6.2;
- d) where the Equipment is returned to TKR's premises with such build-up still present, the build-up shall be treated as Excessive Cleaning for the purposes of clause 16.3(b) and the further provisions of that clause shall apply; and
- e) nothing in this clause 17.10 limits the operator's right or obligation to decline to operate the Equipment where to do so would breach any work health and safety law or TKR's safe operating procedures, or to stop operation to address build-up that is causing or is likely to cause damage to the Equipment.

18. Loss, Theft & Damage Waiver (LTD Waiver)

18.1 This clause 18 sets out the Loss, Theft & Damage Waiver offered by TKR. The LTD Waiver is offered in two tiers — the Standard LTD Waiver (clause 18.4) and the LTD Waiver Plus (clause 18.5) — or may be declined (clause 18.6). The LTD Waiver is *not* a contract of insurance; it is a contractual limitation of the Client's liability to TKR in the circumstances set out in this clause, subject to payment of the LTD Waiver Excess and the exclusions in clauses 18.3 and 18.8.

18.2 Election. The Client shall make an Election for each hire in Schedule 1 (or in an equivalent form attached to the quotation) selecting one of:

- a) Standard LTD Waiver (clause 18.4);



- b) LTD Waiver Plus (clause 18.5); or
- c) Decline LTD Waiver (clause 18.6), in which case the Client must provide a Certificate of Currency satisfying the requirements of that clause.

If no Election is made before the hire commences, or if an Election to Decline is made but no compliant Certificate of Currency is provided, the Standard LTD Waiver shall apply by default and the Standard LTD Waiver Fee shall be payable.

18.3 Items not covered by the LTD Waiver. For the purpose of this clause 18 the term “Equipment” does *not* include any tools, accessories, parts, grease guns, hoses, electrical cords, lights, light globes, and other similar accessories, GET, tracks, tyres, tubes, windscreens, mirrors, glass, and perspex, and further excludes attachments (including but not limited to buckets, hammers, rock breakers, augers, auger drives, rippers, grabs, tilt hitches, mulchers and any other hydraulic or mechanical attachment). All such items remain the Client’s full risk regardless of whether the LTD Waiver Fee has been paid.

18.4 Standard LTD Waiver. Where the Client elects the Standard LTD Waiver and pays the Standard LTD Waiver Fee of ten percent (10%) of the total hire Charges (excluding GST), the Client’s liability to TKR for loss, theft or damage to the Equipment shall, subject to clauses 18.3, 18.7, 18.8 and 18.9, be limited to the LTD Waiver Excess calculated as follows:

- a) **Damage Excess** (partial damage capable of repair) — the **lesser** of five thousand dollars (\$5,000.00) + GST, or twenty percent (20%) of the actual cost of repair; provided that where the cost of repair is less than the lesser of those amounts, the LTD Waiver Excess shall equal the actual cost of repair.
- b) **Theft / Loss / Total Loss Excess** (Equipment stolen, lost or damaged beyond economic repair) — the **greater** of fifteen thousand dollars (\$15,000.00) + GST, or fifteen percent (15%) of the new replacement cost; provided that where the new replacement cost is less than fifteen thousand dollars (\$15,000.00), the LTD Waiver Excess shall equal the new replacement cost.

18.5 LTD Waiver Plus. Where the Client elects the LTD Waiver Plus and pays the LTD Waiver Plus Fee of fifteen percent (15%) of the total hire Charges (excluding GST), the Client’s liability to TKR for loss, theft or damage to the Equipment shall, subject to clauses 18.3, 18.7, 18.8 and 18.9, be limited to the LTD Waiver Excess calculated as follows:

- a) **Damage Excess** (partial damage capable of repair) — the **lesser** of two thousand dollars (\$2,000.00) + GST, or ten percent (10%) of the actual cost of repair; provided that where the cost of repair is less than the lesser of those amounts, the LTD Waiver Excess shall equal the actual cost of repair.
- b) **Theft / Loss / Total Loss Excess** (Equipment stolen, lost or damaged beyond economic repair) — the **greater** of seven thousand five hundred dollars (\$7,500.00) + GST, or ten percent (10%) of the new replacement cost; provided that where the new replacement cost is less than seven thousand five hundred dollars (\$7,500.00), the LTD Waiver Excess shall equal the new replacement cost.

18.5A New replacement cost basis. For the purposes of both clauses 18.4(b) and 18.5(b), TKR may reasonably determine the new replacement cost of the Equipment by reference to the current market price for equivalent equipment of the same make, model, year and specification. Where TKR elects to repair rather than replace, the Damage Excess (and not the Theft / Loss / Total Loss Excess) applies.

18.6 Declining the LTD Waiver. The Client may decline the LTD Waiver and shall not be charged an LTD Waiver Fee from the date the Client produces, before the hire commences, a current Certificate of Currency for a policy of insurance that:

- a) covers physical loss, theft and damage to the Equipment during the hire period for an amount not less than the full new replacement value of the Equipment;
- b) notes TKR’s interest in the Equipment as loss payee;
- c) includes public and products liability cover of not less than twenty million dollars (\$20,000,000) any one occurrence; and



- d) remains current for the whole of the hire period.

The Client is liable to pay the Standard LTD Waiver Fee for any portion of the hire period during which a compliant Certificate of Currency is not on foot ("Uninsured Period") and is not entitled to any credit or reimbursement in respect of the Uninsured Period. Where the Client has declined the LTD Waiver, the Client remains fully liable for any excess under its own insurance, for any shortfall between the insurance proceeds and the cost of repair or new replacement, and for any consequential loss suffered by TKR (including loss of hire).

18.7 Application of ****the LTD**** Waiver**** **** Where the Client has paid the applicable LTD Waiver Fee, TKR will waive its right to claim against the Client for loss, theft, or damage to the Equipment in excess of the applicable LTD Waiver Excess if:

- a) for theft, the Client has reported the incident to the police within twenty-four (24) hours of discovery and provided TKR with a written police report including a police reference number;
- b) the Client has co-operated with TKR and provided it with the details of the incident, including any written or photographic evidence TKR reasonably requires, within forty-eight (48) hours of the incident; and
- c) the loss, theft or damage does not fall into any of the circumstances set out in clause 18.8.

18.8 Exclusions — when the LTD Waiver does not apply. The LTD Waiver (whether Standard or Plus) shall not apply, and the Client shall remain fully liable for the actual cost of repair or replacement of the Equipment (not limited to the LTD Waiver Excess), in any of the following circumstances:

- a) loss, theft or damage caused by any wilful, reckless, malicious or grossly negligent act or omission of the Client, the Client's employees, agents, contractors or invitees;
- b) operation of the Equipment by any person who is not suitably qualified, trained, licensed (including all required high-risk work and operator tickets) or authorised by the Client to operate the Equipment;
- c) operation of the Equipment by any person under the influence of alcohol or any prescription or non-prescription drug that may impair their ability to operate the Equipment safely;
- d) damage caused by overloading, exceeding the rated operating capacity, lift capacity, or manufacturer's specifications of the Equipment;
- e) damage caused by immersion, submersion, flood, tidal surge, or operation of the Equipment in water exceeding depths specified by the manufacturer;
- f) damage caused by collision with a bridge, carpark, awning, gutter, tree, overhead powerline or any other overhead structure or object due to insufficient clearance;
- g) damage or loss arising during loading, unloading, transport, towing, or rolling of the Equipment where such transport is arranged by or on behalf of the Client;
- h) strikes on or damage to underground or overhead services where the Client has not obtained a current Dial Before You Dig (DBYD) referral or equivalent and complied with its responses prior to excavation or ground-disturbance works;
- i) theft or attempted theft where the Client has not taken reasonable precautions to secure the Equipment (including, without limitation, removing keys, locking cabs, immobilising the Equipment and securing the Site after hours) or where there is no evidence of forced entry;
- j) theft or loss not reported to the police within twenty-four (24) hours of discovery, or where no police report or reference number is provided to TKR;



- k) damage to, or theft of, attachments, tools, tyres, tracks, hoses, GET and other items excluded under clause 18.3;
- l) loss, theft or damage occurring while the Equipment is outside the Specified Geographic Area, or is being used on a site not notified to TKR;
- m) consequential loss, loss of use, loss of profit, liquidated damages, third party property damage or personal injury, for which the Client remains fully liable under clauses 10 and 16;
- n) failure by the Client to comply with manufacturer instructions, safety warnings, work health and safety laws, or TKR's reasonable directions regarding the safe operation, maintenance or use of the Equipment.

18.9 Client notification obligations. As a condition precedent to the operation of the LTD Waiver (whether Standard or Plus), the Client must:

- a) notify TKR by telephone and in writing of any loss, theft, damage or incident affecting the Equipment as soon as reasonably practicable and in any event within twenty-four (24) hours of the Client becoming aware of the event;
- b) take all reasonable steps to mitigate further loss or damage and to protect the Equipment from further harm pending TKR's attendance or recovery;
- c) provide to TKR, on request, a signed written incident report, photographs, witness details, police report (for theft) and any other information or documentation TKR reasonably requires to assess the claim; and
- d) not admit liability to any third party, repair or attempt to repair the Equipment, or dispose of any part of the Equipment without TKR's prior written consent.

18.10 Saving. Even if the Client has paid an LTD Waiver Fee, TKR will not waive its rights to claim against the Client for loss, theft or damage to the Equipment where the loss, theft or damage has arisen from anything referred to in clause 18.8. The operation of the LTD Waiver does not limit the Client's obligations or TKR's rights in relation to any third-party claim, consequential loss, or personal injury.

19. Cancellation

19.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("the Breaching Party") the other party may suspend or terminate the supply of Equipment on hire to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party shall be liable for any costs associated with a party suspending/cancelling the Contract under this clause 19.1.

19.2 If TKR, due to reasons beyond TKR's reasonable control, is unable to deliver any Equipment to the Client, TKR may cancel any Contract to which these terms and conditions apply or cancel Delivery of the Equipment at any time before the Equipment is delivered by giving written notice to the Client. On giving such notice TKR shall repay to the Client any money paid by the Client for the Equipment to be hired. TKR shall not be liable for any loss or damage whatsoever arising from such cancellation.

19.3 The Client may cancel Delivery of the Equipment by written notice served within forty-eight (48) hours of placement of the order. If the Client cancels Delivery in accordance with this clause 19.3, the Client will not be liable for the payment of any costs of TKR, except where a deposit is payable in accordance with clause 6.5. Failure by the Client to otherwise accept Delivery of the Equipment shall place the Client in breach of this Contract.

19.4 After the forty-eight (48) hour time period has lapsed in accordance with clause 19.3, and in the event that the Client:

- a) cancels the provision of Services or Equipment prior to the expiry of any Guaranteed Minimum Hire, the Client shall be liable to pay for the provision of the Services or Equipment until the expiration of the hire term, less any



amount TKR actually earns, or could reasonably earn, from re-hiring the Equipment to another client during the unexpired portion of the hire term. TKR shall use reasonable endeavours to re-hire the Equipment during that period but shall not be required to prioritise re-hire of the Equipment over its other inventory or to re-hire at below TKR's then-current market rate; or

- b) fails to return the Equipment by the expiry of the hire term and has not given notice of an intention to cancel or extend, then:
- c) the hire shall continue on a day-to-day basis at the daily Charges set out in the Rate Card, until the Equipment is returned or collected;
 - ii) either party may terminate the continuing hire by giving seven (7) days' written notice to the other;
 - iii) the continuing hire shall not extend beyond the cap set out in clause 13.10A (PPS Lease cap); and
 - iv) all other terms of this Contract shall continue to apply during the continuing hire.

20. Default and Consequences of Default

20.1 Interest on overdue invoices shall accrue daily from the date on which payment becomes due until the date of actual payment, at a simple rate of two percent (2%) per calendar month (equivalent to twenty-four percent (24%) per annum simple), after as well as before any judgment. Interest shall not compound. Nothing in this clause 20.1 prevents TKR from recovering any other loss or cost suffered by TKR in connection with the overdue payment, including the costs and indemnities set out in clause 20.2.

20.2 If the Client owes TKR any money, the Client shall indemnify TKR from and against all costs and disbursements:

- a) incurred; and/or
- b) which would be incurred and/or
- c) for which by the Client would be liable;

in regard to legal costs on a solicitor and own client basis incurred in exercising TKR's rights under these terms and conditions, internal administration fees, TKR's contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.

20.3 Further to any other rights or remedies TKR may have under this Contract, if the Client has made payment to TKR, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by TKR under this clause 20 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.

20.4 Without prejudice to TKR's other remedies at law TKR shall be entitled to cancel all or any part of any order of the Client which remains unperformed and all amounts owing to TKR shall, whether or not due for payment, become immediately payable in the event that:

- a) any money payable to TKR becomes overdue, or in TKR's opinion the Client will be unable to meet its payments as they fall due; or
- b) the Client has exceeded any applicable credit limit provided by TKR;
- c) the Client becomes insolvent, convenes a meeting of its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or



- d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

21. Compliance with Laws

21.1 The Client and TKR shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Equipment.

Modern Slavery

21.2 For the purposes of clauses 21.2 to 21.7:

- a) **“Act”** means the Modern Slavery Act 2018 (Cth);
b) **“Modern Slavery”, “Modern Slavery Statement”** and **“Reporting Entity”** have the meanings given by the Act.

21.3 If the Client is a Reporting Entity, it shall comply with all of its obligations under the Act.

21.4 Whether the Client is a Reporting Entity or not, the Client shall:

- a) use reasonable endeavours to identify, assess and address risks of Modern Slavery practices in its operations and supply chains;
b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery;
c) use its reasonable endeavours to ensure that if at any time the Client becomes aware of Modern Slavery practices in its operations and supply chains, the Client must as soon as reasonably practicable take all reasonable steps to address or remove these practices;
d) provide to TKR a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and
e) within seven (7) days of TKR's request (or such longer period as TKR agrees), provide to TKR any information or assistance reasonably requested by TKR;
f) concerning the Client's compliance with the Act;
ii) concerning the Client's operations and supply chains;
iii) to enable TKR to prepare a Modern Slavery Statement or otherwise comply with the Act; or
iv) to enable TKR to assess and address risks of Modern Slavery practices in its operations and supply chains.

21.5 The parties agree that in the circumstances a breach arises pursuant to this clause or the terms of the Act, the parties will try and resolve the breach by way of remediation and TKR will be able to terminate the Contract for any breach by the Client.

21.6 The Client warrants that any information supplied to TKR is true and accurate and may be relied upon for the purposes of the Act.

21.7 The Client shall indemnify TKR against any loss or liability suffered by TKR as a result of the Client's breach of this clause 21.



Environmental Compliance

21.8 Environmental Laws compliance. The Client shall ensure that the Equipment is operated in compliance with all Environmental Laws applicable in the jurisdiction of the Site, including those relating to fuel and oil spillage, noise limits, dust and emissions, handling of contaminated water and soil, and the lawful disposal of waste generated in connection with the use of the Equipment.

21.9 Environmental rectification. The Client shall, at its own cost, remedy any environmental contamination, spillage, pollution or breach of Environmental Laws caused by or arising out of the use of the Equipment during the hire period, and shall indemnify TKR against any loss, fine, penalty, rectification cost or liability arising from such contamination, spillage, pollution or breach.

21.10 Environmental levy. TKR may, at its discretion, include in the Charges an environmental levy (being a contribution towards TKR's costs of compliance with Environmental Laws, spill-kit provisioning, and environmental reporting) of up to three percent (3%) of the total hire Charges. The levy shall be itemised on the invoice and is payable on the same terms as the Charges.

22. Privacy Policy

22.1 All emails, documents, images or other recorded information held or used by TKR is Personal Information, as defined in clause 1, and therefore considered Confidential Information. TKR acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). TKR acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by TKR that may result in serious harm to the Client, TKR will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

22.2 Notwithstanding clause 22.1, privacy limitations will extend to TKR in respect of Cookies where the Client utilises TKR's website to make enquiries. TKR agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:

- a) IP address, browser, email client type and other similar details;
- b) tracking website usage and traffic; and
- c) reports are available to TKR when TKR sends an email to the Client, so TKR may collect and review that information.

22.3 If the Client consents to TKR's use of Cookies on TKR's website and later wishes to withdraw that consent, the Client may manage and control TKR's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

22.4 The Client agrees for TKR to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by TKR.

22.5 The Client agrees that TKR may exchange information about the Client with those credit providers and with related body corporates for the following purposes:



- a) to assess an application by the Client; and/or
- b) to notify other credit providers of a default by the Client; and/or
- c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.

22.6 The Client consents to TKR being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.

22.7 The Client agrees that personal credit information provided may be used and retained by TKR for the following purposes (and for other agreed purposes or required by):

- a) the provision of Equipment; and/or
- b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Equipment; and/or
- c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- d) enabling the collection of amounts outstanding in relation to the Equipment.

22.8 TKR may give information about the Client to a CRB for the following purposes:

- a) to obtain a consumer credit report;
- b) allow the CRB to create or maintain a credit information file about the Client including credit history.

22.9 The information given to the CRB may include:

- a) Personal Information as defined in clause 1;
- b) name of the credit provider and that TKR is a current credit provider to the Client;
- c) whether the credit provider is a licensee;
- d) type of consumer credit;
- e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- f) advice of consumer credit defaults (provided TKR is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and TKR has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- g) information that, in the opinion of TKR, the Client has committed a serious credit infringement;
- h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

22.10 The Client shall have the right to request (by e-mail) from TKR:



- a) a copy of the Personal Information about the Client retained by TKR and the right to request that TKR correct any incorrect Personal Information; and
- b) that TKR does not disclose any Personal Information about the Client for the purpose of direct marketing.

22.11 TKR will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

22.12 The Client can make a privacy complaint by contacting TKR via e-mail. TKR will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

22.13 The Client acknowledges that:

- a) Telematics Data collected by equipment-based monitoring systems may constitute Personal Information where it identifies or is capable of identifying an individual (for example, where the identity of an operator can be associated with specific operating data);
- b) the collection, use, disclosure and retention of Telematics Data is separately addressed in clause 28 of this Contract; and
- c) where the Client's employees, contractors or personnel will operate the Equipment, the Client shall ensure that those individuals are informed of, and where necessary have consented to, the collection of Telematics Data in accordance with clause 28 and the Privacy Act 1988 (Cth).

23. Service of Notices

23.1 Any written notice given under this Contract shall be deemed to have been given and received:

- a) by handing the notice to the other party, in person;
- b) by leaving it at the address of the other party as stated in this Contract;
- c) by sending it by registered post to the address of the other party as stated in this Contract;
- d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- e) if sent by email to the other party's last known email address.

23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

24. Trusts

24.1 If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not TKR may have notice of the Trust, the Client covenants with TKR as follows:

- a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;



- b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- c) the Client will not during the term of the Contract without consent in writing of TKR (TKR will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- d) the removal, replacement or retirement of the Client as trustee of the Trust;
- ii) any alteration to or variation of the terms of the Trust;
- iii) any advancement or distribution of capital of the Trust; or
- iv) any resettlement of the trust fund or trust property.

25. Building Industry Fairness (Security of Payment) Act 2017

25.1 At TKR's sole discretion, if there are any disputes or claims for unpaid Equipment and/or Services then the provisions of the Building Industry Fairness (Security of Payment) Act 2017 may apply.

25.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Building Industry Fairness (Security of Payment) Act 2017 of Queensland, except to the extent permitted by the Act where applicable.

26. General

26.1 Any dispute or difference arising out of or in connection with this Contract (including any dispute as to its existence, validity or termination) shall be resolved in accordance with the following procedure:

- a) **Notice of Dispute.** A party claiming that a dispute has arisen shall give the other party a written Notice of Dispute setting out the nature and particulars of the dispute, together with a short statement of the relief sought.
- b) **Representatives' meeting.** Within fourteen (14) days of the Notice of Dispute, each party shall appoint a representative with authority to settle the dispute, and those representatives shall meet (in person or by video conference) and negotiate in good faith to resolve the dispute.
- c) **CEO conference.** If the dispute is not resolved within fourteen (14) days of the representatives' meeting, the chief executive officer (or equivalent) of each party shall meet and negotiate in good faith to resolve the dispute within a further fourteen (14) days.
- d) **Mediation.** If the dispute is not resolved by the CEO conference, either party may refer the dispute to mediation administered by the Resolution Institute under its mediation rules. The parties shall share equally the mediator's fees and their own costs of the mediation.
- e) **Court proceedings.** A party may not commence court proceedings in respect of a dispute until the escalation procedure in clauses 26.1(a) to (d) has been completed, except that a party may at any time seek urgent injunctive or declaratory relief.

26.1A Any claim by the Client against TKR in respect of any matter arising out of or in connection with this Contract shall be commenced within six (6) months after the Client first becomes aware (or ought reasonably to have become aware) of



the facts giving rise to the claim, failing which the claim shall be absolutely barred. This time-bar does not apply to claims in respect of personal injury.

26.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

26.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which TKR has its principal place of business and are subject to the jurisdiction of the courts in that state.

26.4 TKR may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.

26.5 The Client cannot assign or licence without the written approval of TKR.

26.6 TKR may elect to subcontract out any part of the provision services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of TKR's sub-contractors without the authority of TKR.

26.7 The Client agrees that TKR may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for TKR to provide Equipment on hire to the Client.

26.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics, or the implementation of regulations, directions, rules or measures being enforced by Governments or embargo, including but not limited to Government-imposed border lockdowns ("Force Majeure") or other event beyond the reasonable control of either party, provided that:

- a) the affected party gives the other party prompt written notice of the Force Majeure event and uses reasonable endeavours to mitigate the effects of the event and to resume performance;
- b) where the Force Majeure event prevents the Client from using the Equipment at all, hire Charges shall abate by one hundred percent (100%) during the period of prevention;
- c) where the Force Majeure event materially but not wholly impairs the Client's ability to use the Equipment, hire Charges shall abate by fifty percent (50%) during the period of impairment;
- d) abatement under clauses 26.8(b) and (c) shall not continue for more than thirty (30) consecutive days, after which either party may terminate this Contract by written notice with immediate effect; and
- e) once the parties agree that the Force Majeure event has ceased, the Client's payment obligations shall resume in full, and any amounts accrued but not abated during the event remain payable.

26.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.

26.10 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.

26.11 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.



27. Chain of Responsibility

27.1 The Client acknowledges that where the Equipment is a Heavy Vehicle or is transported by Heavy Vehicle to, from or between Sites, both TKR and the Client are parties in the “Chain of Responsibility” under the CoR Laws and each have independent obligations under those laws.

27.2 The Client shall:

- a) comply with all CoR Laws applicable to the Client’s conduct in connection with the Equipment, including those dealing with mass, dimension and loading, fatigue, speed, load restraint and vehicle standards;
- b) ensure that any Heavy Vehicle used to transport the Equipment is lawfully loaded, does not exceed permitted mass or dimension limits, and is loaded, restrained and secured in accordance with the Load Restraint Guide and all applicable CoR Laws;
- c) ensure that any driver of a Heavy Vehicle transporting the Equipment holds the correct class of licence, complies with fatigue management requirements, holds any necessary permits, and operates the Heavy Vehicle within legal speed limits;
- d) not direct, request or encourage any driver to breach any CoR Law (including any fatigue, speed, load or dimension law), whether by schedule pressure, payment incentives, or otherwise;
- e) maintain and, on TKR’s request, produce to TKR copies of all records, weighbridge tickets, permits, work diaries, training records and other documentation demonstrating compliance with this clause 27 and the CoR Laws; and
- f) immediately notify TKR of any event that may reasonably be considered to constitute, or give rise to an investigation in respect of, a breach of CoR Laws in connection with the Equipment.

27.3 Where the Client arranges transport of the Equipment (whether directly or through a nominated carrier), the Client is solely responsible for ensuring that the carrier, driver and vehicle comply with the CoR Laws, and the Client indemnifies TKR against any fine, penalty, loss or liability arising from a breach of CoR Laws in connection with transport arranged by the Client.

27.4 Where TKR arranges transport of the Equipment on behalf of the Client, the Client shall provide TKR with all information TKR reasonably requires to plan and execute the transport lawfully (including accurate particulars of the Equipment’s mass, dimensions, height, width, balance point, lifting points and any special handling requirements), and warrants the accuracy of that information.

27.5 TKR may audit the Client’s records relating to compliance with the CoR Laws on reasonable written notice. The Client shall co-operate with any such audit and make available relevant records, personnel and premises.

27.6 A breach of this clause 27 is a material breach of this Contract, entitling TKR to suspend or terminate the supply of Equipment under clause 19.1 and to recover all resulting loss and cost.

28. Telematics Data

28.1 The Client acknowledges that Equipment supplied by TKR may be fitted with telematics, GPS, engine-management, hour-meter, geolocation, diagnostic, sensor or similar on-board monitoring systems that generate Telematics Data before, during and after the hire period.

28.2 The Client consents, and warrants that it has obtained or will obtain the consent of its employees, contractors and any other operator of the Equipment, to:

- a) the collection by TKR of Telematics Data during the hire period (and for any holdover or continuing hire period);



- b) the use of Telematics Data by TKR for any of the purposes set out in clause 28.3; and
- c) the retention of Telematics Data by TKR for such period as is reasonably required for those purposes and for any legal, audit or regulatory purpose.

28.3 TKR may use Telematics Data for any or all of the following purposes:

- a) locating, monitoring, servicing, maintaining and recovering the Equipment (including investigating theft or misuse);
- b) calculating and verifying hire Charges, fuel use, hour-meter readings and stand-down eligibility under clause 7.4A;
- c) assessing wear on tyres, tracks, GET and undercarriage under clause 16.5;
- d) investigating breakdowns, accidents, contamination events, or other incidents;
- e) determining compliance with clauses 16 and 27 (including CoR Laws);
- f) determining whether the circumstances in clause 18.8 apply to a claim under the LTD Waiver;
- g) improving TKR's fleet management, safety and operational efficiency; and
- h) complying with any legal or regulatory obligation.

28.4 As between TKR and the Client, Telematics Data is owned by TKR. The Client shall not remove, disable, tamper with, mask or interfere with any telematics or monitoring system fitted to the Equipment. Any such interference is a material breach of this Contract and excludes the LTD Waiver under clause 18.8 in respect of any loss, theft or damage occurring during the period of interference.

28.5 Where Telematics Data constitutes Personal Information about an identified or reasonably identifiable individual, TKR shall handle that data in accordance with the Privacy Act 1988 (Cth) and clause 22 of this Contract.

28.6 On written request by the Client, TKR may (but is not obliged to) provide the Client with a copy of, or summary of, Telematics Data relating to the Equipment during the hire period, subject to TKR's reasonable charges for the extract.



SCHEDULE 1 — LTD WAIVER ELECTION

At-a-Glance Comparison

The LTD Waiver is not insurance. It is a contractual limit on your liability to TKR for loss, theft or damage to the hired Equipment, subject to the excesses and exclusions set out in clauses 16 and 18 of the Terms of Hire. Please read those clauses before making an election.

	Standard LTD Waiver	LTD Waiver Plus	Decline
Fee	10% of hire Charges (ex GST)	15% of hire Charges (ex GST)	Nil — own insurance required
Damage Excess (repair)	Lesser of \$5,000 or 15% of repair cost	Lesser of \$2,000 or 10% of repair cost	Full liability (own excess applies)
Theft / Loss / Total Loss Excess	Greater of \$15,000 or 15% of replacement cost	Greater of \$7,500 or 10% of replacement cost	Full liability (own excess applies)
Exclusions (same for both tiers)	Attachments, tyres, tracks, GET, hoses, glass. Wilful or reckless acts. Unlicensed or impaired operators. Overloading. Immersion/water damage. Collisions with overhead structures. Transport damage arranged by Client. DBYD non-compliance. Unsecured theft. Consequential loss. See clauses 16 and 18.8 for full list.		

Please tick ONE option below:

OPTION A — STANDARD LTD WAIVER (10% fee)

I elect the Standard LTD Waiver and agree to pay 10% of hire Charges (ex GST). My maximum liability for partial damage is the lesser of \$5,000 or 15% of the repair cost. My maximum liability for theft or total loss is the greater of \$15,000 or 15% of the new replacement cost. Exclusions in clauses 16 and 18.8 apply.

OPTION B — LTD WAIVER PLUS (15% fee)

I elect the LTD Waiver Plus and agree to pay 15% of hire Charges (ex GST). My maximum liability for partial damage is the lesser of \$2,000 or 10% of the repair cost. My maximum liability for theft or total loss is the greater of \$7,500 or 10% of the new replacement cost. Exclusions in clauses 16 and 18.8 apply.

OPTION C — DECLINE (own insurance)

I decline the LTD Waiver and will provide, before the hire commences, a current Certificate of Currency for a policy of insurance that covers physical loss, theft and damage to the Equipment for the full new replacement value, noting TKR's interest as loss payee, together with public and products liability cover of not less than \$20,000,000 any one occurrence. I acknowledge I remain fully liable for any excess under my policy and for any shortfall between insurance recovery and the cost of repair or replacement.

Policy Number: _____ **Insurer:** _____

Sum Insured: \$ _____ **Policy Expiry:** _____

If no option is ticked before the hire commences, Option A (Standard LTD Waiver) will apply by default and the 10% fee will be charged.