

This Hire Agreement is a claim for payment under the Building and Construction Industry Security of Payment Act 1999

1. Definitions

"Owner" of Plant is Coates Hire Operations Pty Limited (ABN 99 074 126 971).

"Customer" refers to the person, firm, organisation, partnership, corporation or other entity hiring Plant from the Owner, as identified in the Hire Agreement

"Plant" means all equipment including tools, portable buildings, vehicles, accessories and parts supplied to the Customer.

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

"Hire Agreement" means the agreement between the Owner and Customer for the hire of Plant which includes:

- (a) any Credit Application;
- (b) these Standard Conditions of Hire, and
- (c) any Hire Agreement provided to the Customer by the Owner, whether signed or not.

2. Title to Plant

- 2.1 The Customer acknowledges that in all circumstances the Owner retains title to the Plant (even if the Customer goes into liquidation or becomes bankrupt during the Hire Period) and in no circumstances will it be deemed to be a fixture. The rights of the Customer to use the Plant are as a bailee only.
- 2.2 The Customer will not be entitled to offer, sell, assign, sub-let, mortgage, pledge or otherwise deal with the Plant in any way which is inconsistent with the rights of the Owner as owner of the Plant.

3. Hire Period

- 3.1 Subject to clause 3.3, the period of hire commences when the Customer takes possession of the Plant or when the Owner delivers the Plant in accordance with the Customer's instructions and the period of hire ends when the Plant is back in the possession of the Owner (in total, the "Hire Period"). The Hire Period includes weekends and public holidays and is irrespective of the time the Plant is being used.
- 3.2 The Customer is to be charged for the Hire Period and the Customer is entitled to use the Plant for the Hire Period. Any variation to the Hire Period must be agreed by the Owner.
- 3.3 Should the Owner agree with the Customer that the Owner will deliver and collect the Plant, hire charges will commence from the time the Plant leaves the Owner's premises and continue until the Owner is notified by the Customer of the date that the Plant is available for collection ("Off-Hire Date"), at which time the Owner will give the Customer a number as verification that such notification has been received ("Off-Hire Number"). The notification will be given by the Customer in time for the Plant to be picked up and returned to the Owner's premises within the Owner's normal business hours by the Off-Hire Date. In the event of insufficient notice being given, the Customer will be charged a minimum of an extra half day hire at the Owner's absolute discretion. The Hire Period on the Hire Agreement will not be deemed notice to the Owner that the Plant is available for collection. Where the Owner agrees to collect the Plant the Customer remains responsible for theft, loss or damage to the Plant until the Plant is collected by the Owner.
- 3.4 The Hire Agreement will specify the type of rate which will apply (e.g. 'daily', 'weekly' or '5 Day +', 'monthly', 'six monthly' or 'annual'). Plant hired for at least 5 days in a seven day continuous period, will be charged at the 'weekly' rate.
- 3.5 The Owner reserves the right to charge a minimum period of hire for certain types of Plant.

4. Hire Charges and Other Charges

- 4.1 **Hire:** Subject to clause 4.10, the Customer will pay the Owner the hire charges set out in the Hire Agreement. The Customer is not entitled to any discount or rebate if the Plant is not used by the Customer for the entire Hire Period. Additional rental charges may apply if the Plant is used for more than 8 hours per day (12 hours for motorised Plant).
- 4.2 **Other Services:** The Owner will, if requested by the Customer, and only if personnel are available, attend the site and instruct the Customer in the operation of the Plant. The Customer will in addition to the hire charges pay the Owner for such services. Any other additional services provided to the Customer, will be paid for by the Customer at rates agreed with the Owner.
- 4.3 **Consumables & Trade Materials:** The Customer will be liable for charges made for consumables and trade materials provided by the Owner.
- 4.4 **Tax and Government Charges:** The Customer will be liable for stamp/hire duty, GST and all other applicable taxes, duties, levies, penalties and any other government charges imposed on the Hire Agreement or in respect of the Hire Period. Where the Customer claims exemption from duty or tax the Customer must furnish appropriate exemption certificates to the Owner.
- 4.5 **Environmental Levy:** The Customer will pay the amount specified by the Owner in the Hire Agreement in consideration of any oil, grease or other environmental contaminants used, applied or discarded in connection with the Plant.
- 4.6 **Credit Card Payments:** The Customer acknowledges that the Owner may impose a charge for accepting payments by credit card.
- 4.7 **Delivery:** If the Customer requires the Owner to deliver, collect or install the Plant, the Customer will be liable for the cost of delivery, collection or installation. The Owner will not be responsible for any delays in delivery or installation or failure to deliver due to causes beyond its control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations or governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.
- 4.8 **Damage Waiver:** The Customer will pay an amount for damage waiver in accordance with this clause and clause 8 below ("Damage Waiver"). Damage Waiver will be automatically charged in addition to the Owner's hire charge. The Customer is not required to pay Damage Waiver if it produces to the Owner a Certificate of Currency for an appropriate policy of insurance that covers loss or damage to the Plant arising from the hire for an amount not less than the full new replacement cost of the Plant.
- 4.9 **Late Return of Equipment:** If the Customer returns the Plant to the Owner's premises after the end of the Hire Period, the Customer will be charged a minimum of an additional half day hire or an additional full day hire, depending upon the time of return. The Customer will remain liable to be charged for the Plant until it is returned to the Owner.
- 4.10 **Early Return of Equipment:** If the Customer wants to return the Plant before the end of the Hire Period, the Customer will remain liable for all hire and other charges payable to the Owner for the entire Hire Period. The Owner may, at its absolute discretion, accept return of the Plant, and if it does so, may:

- (a) attempt to re-hire the Plant, in which case the Customer will be liable for those hire and other charges payable up until the date of the commencement of the re-hire or until the end of the Hire Period, whichever is earlier, and
- (b) revise the hire charges payable by the Customer from the start of the Hire Period to account for the reduction to the Hire Period.

4.11 **Payment Due Date:** The Customer is required to pay all fees, charges and costs that may become due and payable under the Hire Agreement within 30 days of the invoice date.

4.12 **Late Payment:** If a Customer does not pay the amount of the Hire Agreement invoice by the payment due date, a late payment fee of 2% per month, compounding monthly, may be imposed. In addition, without limiting clause 9.4, the Customer will be liable to indemnify the Owner for all expenses incurred by the Owner in recovering any amounts which the Customer fails to pay by the payment due date (including any commission payable to any commercial or mercantile agents and legal costs).

4.13 **Offset:** The Owner may set-off against any credit owed to the Customer any amount owing by the Customer to the Owner.

5. Customer's Hire Obligations

- 5.1 **Possession and Use by Customer:** The Hire Agreement is personal to the Customer and the Customer will not allow nor authorise any other person or entity to use, re-hire or have possession of the Plant at any time during the Hire Period.
 - 5.2 **Suitability:** The Customer agrees that before accepting the Plant it has satisfied itself as to the suitability, condition and fitness for purpose of the Plant. Subject to clause 9.2, the Owner gives no warranty that the plant is suitable for the Customer's purpose.
 - 5.3 **Operation of Equipment:** The Customer warrants that at all times it will:
 - (a) operate the Plant safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
 - (b) ensure persons operating or erecting the Plant are suitably instructed / trained in its safe and proper use and where necessary hold a current Certificate of Competency and be licensed to use it;
 - (c) return the Plant to the Owner in the same good and clean condition it was in when the Customer received it, ordinary fair wear and tear excluded. If the Customer fails to clean the Plant, the Owner will charge the cleaning cost to the Customer;
 - (d) display, maintain all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Plant;
 - (e) ensure all persons operating the Plant wear suitable clothing and protective equipment as required or recommended by the manufacturer or by the Owner;
 - (f) ensure that no persons operating the Plant are under the influence of drugs or alcohol;
 - (g) conduct a job safety analysis prior to using the Plant at a site;
 - (h) accept responsibility for the safe-keeping of and insuring the Plant during the Hire Period;
 - (i) ensure that no persons carry illegal, prohibited or dangerous substances in or on the Plant, and
 - (j) comply with all Environmental Laws from time to time and immediately rectify any breach of an Environmental Law caused by the use of the Plant.
 - 5.4 **Operator:** If the Owner supplies an operator to operate the Plant ("Operator"), the Operator will be under the sole direction and control of the Customer and will during the Hire Period be deemed to be the employee of the Customer and the Customer will not allow any other person to operate the Plant without the Owner's prior written consent.
 - 5.5 **Cleaning and Maintenance:** The Customer must:
 - (a) clean, fuel, lubricate and maintain the Plant in good condition and in accordance with the manufacturer's and the Owner's instructions at the Customer's cost, and
 - (b) not in any way alter, modify, tamper with, damage or repair the Plant without the Owner's written consent.
 - 5.6 **Safekeeping:** The Customer must ensure that during the Hire Period the Plant is stored safely and securely and is protected from theft, seizure or damage.
 - 5.7 **Alteration and Identifying Marks:** The Customer must not alter, deface, remove or erase any notices, safety information, identifying mark, plate or number on the Plant.
 - 5.8 **Inspections:** The Customer consents to the Owner inspecting the Plant from time to time during the Hire Period. In addition, the Customer may arrange a joint inspection with the Owner at the end of the Hire Period.
 - 5.9 **Safe Loading and Transport:** The Customer will ensure the safe loading, securing and transporting of all Plant in accordance with all laws and manufacturer's guidelines. Customer and any transporting contractor will observe any safety directions advised by the Owner and/or manufacturer of the Plant for its loading and safe handling.
 - 5.10 **Location:** The Customer must not remove the Plant from the State in which it was hired without the Owner's written consent. The Plant will be returned to the location it which the Plant was collected by the Customer or delivered by the Owner.
 - 5.11 **Electrical Equipment re-testing and re-tagging:** Customer is responsible for arranging at the Customer's cost the re-testing and re-tagging of the electrical equipment by the manufacturer's agent in accordance with the manufacturer's instructions and the applicable Australian Standard(s) and Regulatory Authority requirements. The Owner is able to arrange, at the Customer's cost, for such re-testing and re-tagging of the electrical equipment. Any damage caused to the Plant resulting from incorrect testing will be at the Customer's cost.
- ## 6. Equipment Breakdown
- 6.1 **Obligations of Customer:** In the event that the Plant breaks down or becomes unsafe to use during the Hire Period the Customer will:
 - (a) immediately stop using the Plant and notify the Owner;
 - (b) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Plant;
 - (c) take all steps necessary to prevent any further damage to the Plant, and
 - (d) not repair or attempt to repair the Plant without the Owner's written consent.
 - 6.2 **Obligations of the Owner:** In the event that the Plant breaks down or becomes unsafe to use through no fault, negligence, recklessness or misuse by the Customer, the Owner will:
 - (a) take all steps necessary to repair the Plant or provide suitable substitute Plant as soon as reasonably possible after being notified by the Customer;
 - (b) not impose a hire charge for that portion of the Hire Period for which the Plant was broken down or unsafe, nor the costs associated with any repair or replacement of the Plant, and
 - (c) not be liable for any expenditure, damages, loss or inconvenience incurred by the Customer arising from a breakdown of Plant, however so caused.

7. Lost, Stolen or Damaged Equipment

The Customer is responsible for the Plant and its attached tools and accessories whilst on hire until the Plant is collected by the Owner, or returned to the Owner by the Customer. If the Plant is lost, stolen or damaged during the Hire Period the Customer will be liable for:

- (a) any costs incurred by the Owner in repairing or the new replacement cost of the Plant, and
- (b) any other costs whatsoever incurred by the Owner as a result of the loss, theft or damage to the Plant, including the continuation of hire charges when the damages were caused by the negligence or act or omission of the Customer, except where the Customer pays the Damage Waiver fee, in which case its liability is subject to the Damage Waiver clause below.

8. Damage Waiver

8.1 Subject to the exclusions in clause 8.2, where Damage Waiver has been charged to the Customer, the Owner agrees, upon prompt submission of a written Police Report from the Customer and any other written or photographic evidence requested by the Owner, to waive its right to claim for loss or damage to the Plant caused by fire, storm, collision, accident, theft or burglary. Such waiving of rights is subject to payment by the Customer of an excess for either the loss of the Plant or damage to the Plant, being the greater of \$500.00 per item or 15% of the cost of repairs or the new replacement cost of the Plant (as the case may be).

8.2 Expressly excluded from the above Damage Waiver is loss or damage as defined below:

- (a) damage due to misuse, abuse or overloading of the Plant or any components thereof;
- (b) wrongful conversion of the Plant or any components thereof;
- (c) loss or damage in contravention of the conditions of this Hire Agreement;
- (d) loss or damage from use in violation of any statutory laws & regulations;
- (e) damage caused to tyres & tube by blowout, bruises, cuts or other causes inherent in the use of the Plant;
- (f) glass breakage or graffiti;
- (g) loss or damage relating to lack of lubrication or other normal servicing of Plant;
- (h) loss or damage to the Plant whilst located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
- (i) loss or damage to motors or other electrical appliances or devices caused by overloading or artificial electrical current, including use of under-rated or excessive length of extension leads on electrical powered tools and machines;
- (j) damage caused by exposure to any corrosive or caustic substance, such as cyanide, salt water, acid, etc;
- (k) theft of the Plant unless reasonably locked and secured;
- (l) loss or damage to Plant during transport, except where transported by the Owner. This sub-clause will not apply to Motor Vehicles, trailers, toilet trailers, caravans or trailerised Plant;
- (m) loss or damage to items which the Customer has elected not to pay Damage Waiver premium and thereby the Customer has accepted liability for the Plant, and
- (n) loss or damage caused by the negligence of the Customer.

8.3 Where the Owner determines that one of the exclusions in clause 8.2 applies, Damage Waiver will not apply unless the Customer is able to establish to the reasonable satisfaction of the Owner that the exclusion does not apply. The Customer will provide the Owner with all the information requested by the Owner for the purpose of establishing whether one of the exclusions in clause 8.2 applies.

8.4 Damage Waiver does not apply to Plant used off-shore, over water or down in under-ground mines. The Customer must produce evidence that they have taken out suitable insurance cover for these items of Plant with such insurance cover to include the Owner as an insured and cover the Owner's liability as a principal in connection with the performance of the Hire Agreement and contain provisions whereby all rights of subrogation or action against any of the persons comprising the insured are waived; the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject to the overall sum insured not being increased as a result); and any non-disclosure or misrepresentation by one insured does not prejudice the right of the other insured to claim under any insurance.

9. Indemnities and Exclusion of Liabilities

9.1 Subject to clause 9.2 and except as expressly provided to the contrary in the Hire Agreement all terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to the Owner's obligations under the Hire Agreement are excluded.

9.2 Where any Act of Parliament implies a term, condition or warranty in this Hire Agreement and that Act prohibits provisions in a contract excluding or modifying the application, exercise or liability under that term, condition or warranty, such term, condition or warranty will be deemed to be included in this Agreement provided that the liability of the Owner for breach of the term, condition or warranty is limited to (at the Owner's election) the repair or replacement of the Plant or the supply of substitute Plant (or the cost of doing so) and in no event will any liability for damages be greater than the cost of the services being supplied under the Hire Agreement.

9.3 Subject to clause 9.2, the Owner will not be under any liability to the Customer for consequential loss or damage (including loss of actual or anticipated profits or revenue, economic loss of any kind or any loss suffered as a result of any claim or claims by third parties) in contract, tort (including negligence) under statute or otherwise from or in relation to the Plant or this Hire Agreement.

9.4 The Customer is liable for and indemnifies the Owner against all liability, claims, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor/client basis, determined without taxation, assessment or similar process and whether incurred or awarded against the Owner and any environmental loss, cost, damage or expense) arising from or incurred in connection with Customer's hire and use of the Plant or its breach of the Hire Agreement.

9.5 Each indemnity in this Hire Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Hire Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Hire Agreement. The Customer must pay on demand any amount it must pay under an indemnity in this Hire Agreement.

9.6 For the purposes of clauses 9.3 to 9.5, use of Plant operated by a person supplied by the Owner will be use of the Plant by the Customer.

10. Termination

10.1 The Owner may terminate the Hire Agreement immediately by notice to the Customer, if:

- (a) the Customer breaches any term of the Hire Agreement, or
- (b) the Customer becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business.

10.2 The Owner may terminate the Hire Agreement for any other reason by 24 hours notice.

10.3 The right of termination is in addition to any other rights under the Hire Agreement and does not exclude any right or remedy under law or equity or the survival of other terms under the Hire Agreement.

11. Recovery of Equipment

If the Customer is in breach of the Hire Agreement or if the Owner has terminated the Hire Agreement with the Customer pursuant to clause 10, the Owner may take all steps necessary (including legal action) to recover the Plant, including entering the Customer's premises to do so.

12. Hire of Motor Vehicles

Where the Plant hired by the Customer is a Motor Vehicle these additional Terms and Conditions also apply to the Hire Agreement:

12.1 Definitions:

"Motor Vehicle" means a car, truck, utility or trailer.

12.2 **Insurance:** The Owner will arrange motor vehicle accident insurance for each Motor Vehicle to cover any damage caused through a motor vehicle accident and the Customer must pay a charge for such insurance. This insurance will not cover the Customer for the loss, theft or other damage to the vehicle (other than a Motor Vehicle accident). If the Motor Vehicle is damaged in a motor accident then the Customer will be liable for the following additional costs:

- (a) the first \$2,500 of the cost of any damage if the driver is 25 years or over;
- (b) the first \$3,500 of the cost of any damage if the driver is under 25 years;
- (c) the cost of repairing damage:
 - (i) to the pantech;
 - (ii) to or caused by a truck mounting device;
 - (iii) to tyres;
 - (iv) caused other than by the normal use of the Motor Vehicle;
 - (v) caused while the Motor Vehicle is being driven on any road that is unsealed or is not a public road, or
 - (vi) caused while the Customer is in breach of any clause of the Hire Contract.

12.3 **Damage to Motor Vehicle:** In the event that the Motor Vehicle is lost, stolen or damaged (not through a motor accident) during the Hire Period, the Customer is liable to pay the amount to replace or repair the Motor Vehicle, except where the Customer pays the Damage Waiver fee, in which case its liability is subject to the Damage Waiver clause (clause 8).

12.4 **Damage to Tyres:** The Customer is liable to pay the cost of repairing or replacing flat or damaged tyres and other damage to tyres arising outside of the ordinary and reasonable use of the Motor Vehicle is the sole responsibility of the Customer.

12.5 **Operation of Motor Vehicles:** The Customer warrants that it will not allow a person to drive a Motor Vehicle if:

- (a) the person does not hold an unrestricted licence to drive that class of Motor Vehicle;
- (b) the person is under the age of 21 years;
- (c) the person is affected by drugs and/or alcohol;
- (d) the person has been convicted of any offence relating to driving a motor vehicle under the influence of drugs or more than the legally prescribed limit of alcohol, or
- (e) the person has previously been refused motor vehicle insurance.

A breach of any of this clause 12.5 will render the insurance void and the Customer liable for the costs of repairs or the replacement cost of the Motor Vehicle.

12.6 **Fines and Government Charges:** The Customer will promptly pay all tolls, fines, penalties and other statutory or Government charges arising out of the use of the Motor Vehicle by the Customer during the Hire Period. If the Owner pays any such charges the Customer must reimburse the Owner within 7 days of receiving notification of the charges from the Owner.

12.7 **Kilometre Charge:** The Customer must pay a charge for the number of kilometres that the Owner reasonably believes the Motor Vehicle has travelled during the Hire Period or for excess kilometres if an agreed usage is made within the hire charge.

12.8 **Driver Information:** Prior to the commencement of the Hire Period the Customer will provide the Owner with all information required by the relevant legislation for those persons who will operate the Motor Vehicle for or on behalf of the Customer. The Owner is also permitted to take a copy of any drivers' licences at the commencement of the Hire Period.

12.9 **Safe Loading:** The Customer warrants that no Motor Vehicle will be laden in excess of the Motor Vehicle's gross vehicle mass at any time during the Hire Period.

12.10 **Consumables:** The Customer must return the Motor Vehicle to the Owner with a full tank of fuel or the Customer will be liable to pay the Owner the reasonable cost of filling the fuel tank.

12.11 **Other Conditions:** The Customer acknowledges that the Standard Conditions of Hire set out in this document (particularly clause 5 – Customer's Hire Obligations) also apply to Motor Vehicles.

13. Hire of Pumps, Shoring and Dewatering Equipment

Where the Plant hired by the Customer is a pump, shoring or dewatering plant, these additional Terms and Conditions also apply to the Hire Agreement.

13.1 **Site Preparation:** The Owner requires unrestricted access to the site(s) nominated by the Customer for the delivery and installation of the pump, shoring or dewatering plant. Accordingly, prior to the commencement of the installation the Customer must, at its own expense:

- (a) isolate the power running through those wires (either above or below ground) that are in close proximity to the site(s);
- (b) clearly mark and identify in-ground and buried services prior to the commencement of pre-drilling or the installation of well points;
- (c) undertake any necessary pre-drilling of well point holes;
- (d) undertake any excavation, drilling or restoration necessary to ensure that the area for installation of the pump, shoring or dewatering plant is free of any obstruction (including, but not limited to, rubble, road base, footpaths and fencing) and is suitable for using water jetting;
- (e) organise a power connection for the dewatering plant if connecting from the main power line;
- (f) provide a crane or excavator for the placement and removal of pumps, shoring or dewatering plant, and
- (g) provide the Owner with all relevant site information and any other site information relevant to the safe delivery and installation of the pump, shoring or dewatering plant.

13.2 **Maintenance:** The Customer is at all times responsible for fuelling and oiling pumps on a daily basis. Correct levels are to be adhered to at all times and engines must be stopped for checking.

13.3 **Insurance:** Prior to the installation of the pumps, shoring or dewatering plant the Customer is to provide the Owner with copies of Certificates of Currency for all appropriate insurance policies including:

- (a) Professional Indemnity Insurance policy covering consultant, in-house engineers and any other relevant employees, and
- (b) Public Liability Insurance policy covering an amount not less than \$10 million per single occurrence which includes the Owner as an insured and covers the Owner's liability as a principal in connection with the performance of the Hire Agreement and contains provisions whereby all rights of subrogation

- or action against any of the persons comprising the insured are waived. The term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject to the overall sum insured not being increased as a result) and any non-disclosure or misrepresentation by one insured does not prejudice the right of the other insured to claim under any insurance.
- 13.4 **Waste Disposal:** The Customer is responsible for the disposal of pumped discharge and all matters relating to such disposal including, but not limited to:
- identification of contaminated discharge, and
 - proper treatment and disposal of contaminated discharge to the satisfaction of all relevant environmental authorities including, but not limited to, the State Environmental Planning Authority.
- 13.5 **Operating Personnel:** Should the Customer require the Owner to provide it with personnel to operate the pumps, shoring or dewatering plant, those persons will do so under the direction and instruction of the Customer or the Customer's representatives.
- 13.6 **Exclusion of Liability:** The Customer acknowledges that the Standard Conditions of Hire set out in this document (particularly clause 9 – Indemnities and Exclusions of Liability) also apply to pumps, shoring and dewatering plant. In addition, the Owner is excluded from all liability related to the hire and use of pumps, shoring and dewatering equipment, including, but not limited to, liability arising from:
- damage to all adjacent or surrounding structures or services on, above or below the ground, including damage caused by subsidence or the adjoining areas;
 - surveying and locating utilities and services;
 - handling storm water and pumping waste;
 - the operation of the pumps, shoring or dewatering plant not adequate for external conditions, including ground water conditions, which are outside the control of Owner;
 - the operation of the pumps, shoring or dewatering plant by Owner personnel while under the direction and instruction of the Customer or the Customer's representatives, or
 - exceeding the maximum noise level prescribed by law.
- 13.7 **Lost or Not-Returned Pumps, Shoring and Dewatering Plant:** If the pumps, shoring or dewatering plant has not been returned to or made available for collection by the Owner within 14 days of the due date specified in the Hire Agreement, the pumps, shoring or dewatering plant will be deemed to have been lost and the Customer will be liable to pay the amount of the full replacement cost of the pumps, shoring or dewatering plant to the Owner. The Customer will be charged full hire rates until the Plant is returned to the Owner or the replacement cost of the Plant is charged under this clause.
14. **Hire of Heavy Earth Moving Plant**
- Where the Plant hired by the Customer is deemed to be heavy earth moving Plant as nominated by the Owner, then these additional terms and conditions also apply to the Customer.
- 14.1 **Excess Hire Charges:** An excess hire charge is payable by the Customer where the Customer uses the heavy earth moving Plant in excess of the number of hours specified in the Hire Agreement. The excess hire charge is payable only in respect of those hours exceeding the specified number of hours.
- 14.2 **Useable Items Charge:** Unless otherwise indicated in the Hire Agreement, the Customer must pay a useable items charge in respect of the fuel, tyres, track gear, ground engaging tools and any other useable items listed in the Hire Agreement. The level of usage will be determined by the Owner as a percentage of the actual cost of the useable item to the Owner. This percentage is to be calculated by deducting the percentage usage at the start of the Hire Period from the percentage usage at the end of the Hire Period. The Customer will not be entitled to a payment or credit in respect of any useable item returned with less usage than at the start of the Hire Period.
- 14.3 **Replacement of Useable Items:** The Customer is responsible for replacing useable items when they become worn out or they run out.
- 14.4 **Wear to Tyres:** The Owner is responsible for the cost of ordinary wear and tear of tyres and tracks. Ordinary wear and tear is considered to be 4,000 SMU hours. The Customer is liable for the cost of repairing or replacing flat or damaged tyres and is responsible for all wear and tear and damage to tyres and tracks which is caused by use of the tyres and tracks in conditions which the Owner considers are adverse or abnormal. At all times the Customer must adhere to the manufacturer's recommended tyre pressure and track tension.
- 14.5 **Bucket and Blade Wear:** The Owner is responsible for the cost of normal bucket and blade wear or damage. The Customer is responsible for the cost of all bucket and blade wear or damage which is caused by use of the buckets or blades in conditions which the Owner considers to be abnormal or adverse.
- 14.6 **Ground Engaging Tools:** The Customer is responsible for all wear and tear to cutting edges, bucket teeth, hardware, ripper teeth and all other ground engaging tools hired. All ground engaging tools hired by the Customer are to be returned to the Owner at the end of the Hire Period in the same condition in which they were supplied. Usage of ground engaging tools will be measured by comparing the percentage of use at the commencement of the Hire Period with the percentage of use at the end of the Hire Period.
- 14.7 **Cleaning and Maintenance:** The Customer will at its own expense service, clean, maintain and return the Plant to the Owner in good and substantial repair and condition, with the exception of reasonable wear and tear. Except as otherwise notified by the Owner:
- the customer is responsible for undertaking all preventative maintenance servicing and minor running repairs (including electrical, hydraulic hoses and oil leaks) in accordance with the manufacturer's specifications, and
 - the Customer is responsible for completing the manufacturer's oil sampling analysis (set out in the Operations and Maintenance Guide) on all compartments. If this is not completed the Customer will be responsible for paying the Owner the reasonable cost of doing so.
15. **Remote Area Hire Conditions**
- 15.1 **Definitions:**
"Remote Area" is a location in excess of 50km from nearest Owner's branch.
"PMP" is the electronically managed preventive maintenance programme operated by the Owner (or its agent) for all Plant. The PMP involves regular attendance on site by the Owner's service personnel to conduct routine (200 hourly) Plant servicing and general maintenance requirements.
- 15.2 The PMP for all Plant operating in a Remote Area will be subject to a per km charge both to and from the site nominated by the Customer, as specified by the Owner. No charge will apply for time on site and there will be no charge for the first 50 km either way.
- 15.3 Multiple Items of Plant hired by the same Customer on the one site will only be charged as one call out.
- 15.4 The Customer remains responsible for daily maintenance and care of all Plant in their possession, including but not limited to, daily checking of all fluids (fuel, oil, water, battery levels etc), general tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points.
- 15.5 If the Plant breaks down in a Remote Area the Customer will also pay the Owner the costs associated with any attendance to the site.
16. **Miscellaneous**
- 16.1 **Severability:** If any part of this agreement becomes void or unenforceable for any reason then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.
- 16.2 **Governing Law and Default Recovery:** The Hire Agreement is governed by the laws of the State or Territory of Australia where the Hire Agreement is entered into by the parties and each party submits to the exclusive jurisdiction of the courts of that State or Territory. The Customer will not object to the Owner using the jurisdiction of New South Wales for the recovery of any outstanding amount.
- 16.3 **Security of Obligations:** As security for the obligations and liabilities of the Customer under the Hire Agreement, the Customer hereby charges for the due and punctual payment and performance of those obligations and liabilities, all of its legal and equitable interest (both present and future) of whatsoever nature held in any and all Real property. Without limiting the generality of the charge in this clause, the Customer agrees, on request by the Owner, to execute any documents and do all things necessary required by the Owner to register a mortgage security over any Real property. The Customer will indemnify the Owner on an indemnity basis against all costs and expenses incurred by the Owner in connection with the preparation and registration of any such mortgage documents. The Customer also consents unconditionally to the Owner lodging a caveat or caveats noting its interest in any Real property.
- 16.4 **Entire Agreement:** The Hire Agreement issued to the Customer, including these Standard Conditions of Hire, comprises the entire agreement between the parties. No additional terms and conditions proposed by the Customer (including any terms contained in any purchase order provided by the Customer) apply to the hire of the Plant unless agreed in writing by the Owner.
- 16.5 **No Reliance:** The Customer acknowledges that neither the Owner or any person acting on the Owner's behalf has made any representation or other inducement to it to enter into the Hire Agreement and that it has not entered into the Hire Agreement in reliance on any representations or inducements (including in relation to the use of the Plant) except for those representations or inducements contained herein.
- 16.6 **Variation:** The Owner may at any time vary the Hire Agreement by giving the Customer 30 days written notice of its intention to do so. Any other variation of these terms and conditions must be agreed in writing by the Owner and the Customer.
- 16.7 **Privacy:**
- The Owner may collect personal information about the Customer. The Owner's Privacy Officer can be contacted on (02) 9701 3300. The Owner may use the Customer's personal information to provide services to the Customer, to fulfil administrative functions associated with these services (for example assessment of credit worthiness), to enter into contracts with the Customer or third parties, and for marketing and client relationship purposes. If the Customer does not provide all information required by the Owner, the Owner will not be able to hire the Equipment or provide the associated services to the Customer. The Owner may disclose the Customer's information to the Owner's service providers and contractors from time to time to help provide and market the Owner's services to the Customer. Generally the Customer has a right to access personal information the Owner holds about the Customer.
 - The Customer consents to and authorises the Owner to use and disclose the Customer's personal information in accordance with clause 16.7(a).
- 16.8 **Notice to Customer:** Any document which by the Hire Agreement may be given by the Owner may be served or rendered by leaving it at or posting it to the address of the Customer as stated in the Hire Agreement or last notified by the Customer in writing to the Owner and will be deemed to have been served or rendered at the time of leaving or, if posted, on the business day following the day of postage and any notice may be signed by an officer, manager or solicitor of the Owner on behalf of the Customer.
- 16.9 **No Waiver:** No delay or omission to exercise any right, power or remedy accruing to the Owner upon any continuing breach or default under the Hire Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of any right of the owner to take action or make a claim in respect of a continuing breach or default or to be acquiescence to it.
- 16.10 **Withdrawal of Credit Accommodation:** Any credit accommodation granted by the Owner to the Customer may be reviewed at any time without notice. Credit may be withdrawn for Customers failing to make payments or use the Plant in accordance with these Standard Conditions of Hire and a statement may be issued at that time requiring payment within 7 days of any amount due and owing.
- 16.11 **Authority of Customer:** The person signing the Hire Agreement for and on behalf of the Customer hereby covenants with the Owner that he or she has the authority of the Customer to make the Agreement on the Customer's behalf and is empowered by the Customer to bind the Customer to the Agreement and hereby indemnifies the Owner against all losses, costs and claims incurred by the Owner arising out of the person so signing the Agreement not in fact having such power and/or authority.
- 16.12 **Previous Editions:** This edition of the Standard Conditions of Hire replaces and supersedes all previously issued Conditions of Sale and Hire by the Owner.
- 16.13 **Time of the Essence:** Time is to be of the essence of all obligations of the Customer in the Hire Agreement.
- 16.14 **Right of Refusal to Hire:** The Owner is in no way obliged to hire any Plant to the Customer and may refuse to hire Plant to a Customer at its absolute discretion, including but not limited to, if the Customer fails to provide adequate identification or if in the opinion of the Owner, the Customer's safety is put at risk by providing them with such Plant.