

STANDARD CONDITIONS OF HIRE

1. DEFINITIONS AND INTERPRETATION

1.1. Defined terms have the following meanings:

Agreement means the document signed by the Hirer called the Rental Agreement, these standard conditions of hire, any document issued by the Owner referred to in those documents and the Credit Terms.

Claim means any action, claim, demand, investigation, judgment, litigation, proceeding, notice, suit or other process whether based in contract, tort (including negligence), statute or otherwise.

Cleared Funds means cash, bank cheque or telegraphic or other electronic means of transfer of funds into a bank account nominated in advance by the Owner so that the funds are available immediately.

Consumable Parts includes ground engaging tools (GET), tyres, tracks, hoses, batteries, filters, mirrors, glass and lights.

Credit Terms means the terms and conditions of credit pursuant to an application for credit by the Hirer approved by the Owner.

Default Rate means the Reference Rate as published by ANZ Bank for business finance as at the due date, or other similar benchmark rate selected by the Owner, plus 3%.

Equipment means the equipment described in the Rental Agreement.

Event of Default means any of the events specified in clause 6.1.

Hirer means the entity, party or person identified as the Hirer or customer in the Rental Agreement (hiring the Equipment from the Owner).

Insurable Value means the value identified as the Insurable Value in the Rental Agreement.

Liability means any charge, cost, damage, expense, loss, outgoing, penalty or other liability of whatever description and whether present, unascertained, contingent or prospective, and includes legal costs on an indemnity basis.

Loss means any Claim or Liability.

OEM means the original equipment manufacturer of the Equipment.

O&M Requirements means the requirements for operating and maintaining the Equipment issued by the Owner and includes those in the OEM's Operation and Maintenance Manual.

Owner means Hastings Deering (Australia) Limited ABN 49 054 094 647 of 98 Kerry Road, Archerfield, Qld 4108.

PPSA means *Personal Property Securities Act 2009* (Cth) (as amended or replaced from time to time).

PPSR means Personal Property Securities Register.

Rental Period means the period from:
the earlier of:

(a) if the Owner is to deliver the Equipment to the Hirer or to a Delivery Point, either:

(i) if the Owner is to commission the Equipment for use by the Hirer, the date when the Owner informs the Hirer that the Equipment is ready for handover;

(ii) otherwise, the date of delivery;

(b) the date on which the Hirer collects the Equipment from the Owner;

until the latest of:

(a) either

(i) if the Owner is to collect the Equipment from the Hirer or a Collection Point: the earlier of:

A. the date on which the Equipment is collected;

B. 30 days after the Owner's receipt of a written notice from the Hirer stating that the Equipment is ready for collection from the Collection Point and, to the extent that the Hirer is so responsible, ready for loading and transportation back to the Owner plus such further period equal to any delay to the collection due to any act or omission of the Hirer; or

(ii) otherwise, the date on which the Equipment is returned to the Owner;

(b) the end of the Rental Term, and

(c) the date on which the Equipment complies with the Return Conditions.

Rental Rate means the hourly, daily, weekly, monthly or other rate of hire or rent specified in the Rental Agreement (to be paid by the Hirer to the Owner).

Rental Term means the period from the Start Date to the Expiry Date set out in the Rental Agreement, if no such date, then the date stipulated by the Owner, as extended by agreement.

Return Conditions means the conditions specified in the return conditions document issued by the Owner.

Security Agreement means the security agreement under PPSA created between the Hirer and the Owner by or under the Agreement.

Security Interest has the meaning given to it by PPSA.

1.2. Where more than one person is the Hirer, then a reference to the Hirer includes all of those persons jointly and severally.

1.3. Reference to a monetary amount means in Australian dollars unless otherwise specified.

2. TERM OF AGREEMENT

The Agreement commences on the earlier of the date of the Agreement or the start of the Rental Period and continues until the obligations under the Agreement are fully performed unless terminated earlier in accordance with the terms of the Agreement.

3. HIRER'S WARRANTIES

The Hirer agrees and warrants that:

(a) for the purposes of entering into the Agreement and selecting the Equipment, it has not relied on any representations made by or on behalf of the Owner, other than those set out in the Agreement;

(b) it has satisfied itself prior to entering into the Agreement that the Equipment is suitable for its purposes;

(c) the Equipment will at all times only be operated by a qualified and licensed operator in accordance with the O&M Requirements;

(d) the Hirer will operate the Equipment safely, strictly in accordance with all laws, including all workplace health and safety laws relating to the Equipment and its operation, only for its intended use and otherwise in accordance with the O&M Requirements;

(e) it will conduct a thorough hazard and risk assessment prior to operating the Equipment at any time;

(f) it has power to enter into and perform its obligations under the Agreement; and

(g) its obligations under the Agreement are valid and binding and are enforceable against it in accordance with these terms.

4. HIRER'S OBLIGATIONS

4.1. **(Possession)** The Hirer agrees:

- (a) that the Equipment will remain in the possession and control of the Hirer at all times during the Rental Period;
- (b) that the Agreement will not be assigned without the written consent of the Owner first being obtained;
- (c) to notify the Owner immediately in writing of any change in the Hirer's address and/or the address where the Equipment is located; and
- (d) the Equipment is a chattel and will not be affixed to any land.

4.2. **(Use)** The Hirer agrees:

- (a) to use the Equipment only for the nature of the work for which the Equipment is designed;
- (b) that the Equipment will only be operated by properly licensed and skilled operators and serviced by qualified personnel at all times and in accordance with the O&M Requirements;
- (c) not to damage the Equipment;
- (d) to ensure that the Equipment is stored safely and securely when not in use;
- (e) to comply with the law at all times in relation to the use of the Equipment;
- (f) to ensure that all safety information supplied with the Equipment is attached to the Equipment at all times and conveyed to any person using the Equipment; and
- (g) not to use the Equipment to carry or move any illegal, prohibited or dangerous substance or in any illegal or prohibited or dangerous activity.

4.3. **(Maintenance)** The Hirer agrees:

- (a) to keep the Equipment in good order and repair, fully serviced and maintained, at the Hirer's cost;
- (b) to ensure maintenance is carried out in accordance with the O&M Requirements, and, if that maintenance is not carried out, to indemnify the Owner for any Loss, including the costs to repair the Equipment;
- (c) to be responsible for the servicing, maintenance and repair, and, where necessary, (unless otherwise agreed) replacement of all Consumable Parts;
- (d) not to alter or make any addition to the Equipment without the prior written consent of the Owner and where consent is given, the addition (eg: accessories) will form and be part of the Equipment; and
- (e) where the Hirer undertakes repair of the Equipment resulting in the replacement of existing parts of the Equipment, to use only replacement parts recommended by the OEM or Owner, and the parts will become the property of the Owner.

4.4. **(Equipment Breakdown)** The Hirer agrees:

- (a) to advise the Owner of any malfunctioning of the Equipment as soon as practically possible and to cease operating the Equipment as soon as it becomes aware of any malfunction;
- (b) apart from the repair of any major component failure covered by an OEM warranty, to be responsible for the repair of the Equipment during the Rental Period; and
- (c) to pay the Rental Rate despite any breakdown or failure of or damage to the Equipment.

4.5. **(Return of the Equipment)** The Hirer must:

- (a) return the Equipment to the Owner at the expiration of the Rental Term or upon earlier termination of the Agreement, in accordance with the Return Conditions; and
- (b) be responsible for the transportation of the Equipment to and from the Owner (except as expressly agreed otherwise).

4.6. **(Insurance)** The Hirer must:

- (a) insure and keep the Equipment insured with a reputable insurer for not less than the Insurable Value against loss or damage including by fire, accident, theft and transport and such other risks as the Owner may reasonably require;
- (b) insure for third party and public liability for use of the Equipment with indemnity cover of not less than \$10,000,000 per occurrence;
- (c) not do or permit or allow to be done anything which might or could prejudice any insurance of or relating to the use of the Equipment;
- (d) pay promptly all premiums and stamp duty in respect of each of the Hirer's policies of insurance;
- (e) provide the Owner with evidence of compliance with this clause (including certificates of currency of insurance) when requested by the Owner; and
- (f) pay any excess if a claim is made against any of the Hirer's policies of insurance and irrevocably authorises the Owner to receive all insurance proceeds, to the extent of the Owner's Loss.

4.7. **(Payment)** Subject to clause 4.8, the Hirer agrees to pay the Owner in Cleared Funds:

- (a) the amount calculated in accordance with the Rental Rate within the time period/s agreed or specified in the Rental Agreement;
- (b) on demand, any Liability of the Hirer under the Agreement, including any charges for excess usage or other levy;
- (c) on demand, any Liability of the Owner to make good any failure by the Hirer to comply with its obligations under the Agreement (including for the protection of the Equipment or the Owner repossessing or attempting to repossess of the Equipment);
- (d) if requested by the Owner, interest calculated at the Default Rate on any late payment of any amount payable under the Agreement.

4.8. **(Credit)** To the extent the Hirer has an approved credit account with the Owner already established, with sufficient funds available to pay the full Rental Rate and any other amounts due and payable under the Rental Agreement:

- (a) Owner may issue an invoice for payment on the last day of each month on account of Equipment rented, or undertaken to be rented, in the following month; and
- (b) within 30 days after the date of an invoice issued the Hirer must pay, and ensure Owner receives in full, cleared funds and without any deduction or set off, the amount invoiced

4.9. **(Indemnity)** The Hirer agrees to indemnify the Owner against:

- (a) any Loss relating to the destruction of, or loss or damage to, the Equipment during the Rental Period;
- (b) any Loss suffered or incurred by the Owner in relation to the Hirer's breach of the Agreement including any Event of Default or to a matter for which the Hirer is responsible;
- (c) any Claim by a third party (including any employee, contractor, supplier or customer or insurer of the Hirer) in relation to any property loss or damage (including any environmental harm) or personal injury or death suffered or caused (whether directly or indirectly) by the Hirer's use or operation, transport, storage, servicing, maintenance or repair of the Equipment; and

- (d) all taxes and duties payable in relation to the Agreement or any payments or receipts under the Agreement.

5. TITLE AND RISK IN THE EQUIPMENT

5.1. The risk of loss and damage to the Equipment passes to the Hirer upon delivery of the Equipment (either being loaded onto transport arranged by the Hirer at the Owner's premises or arrival at the Hirer's premises, as applicable) and does not pass back to the Owner until the Equipment is returned to the Owner (either being unloaded from transport arranged by the Hirer at the Owner's premises or loaded onto transport arranged by the Owner at the Hirer's premises, as applicable).

5.2. Without limiting the Hirer's obligations under the Agreement, the Hirer is responsible for any Liability relating to loss or damage to the Equipment, which, in the reasonable opinion of the Owner, relates to, arises from or is caused by:

- (a) any negligent act or omission of the Hirer or its employees or agents;
- (b) the improper use of the Equipment;
- (c) transporting, loading or unloading of the Equipment;
- (d) lack of lubrication or other normal service or maintenance or improper servicing or maintenance of the Equipment;
- (e) failing to maintain the Equipment;
- (f) misuse or abuse of the Equipment;
- (g) overloading or exceeding the rated capacity of the Equipment;
- (h) exposure to any corrosive substance or environment; or
- (i) use or location of the Equipment in or over water or on a bridge or structure of any kind or vessel.

5.3. The Owner retains title in the Equipment at all times and the Hirer does not obtain any proprietary interest in the Equipment under the Agreement.

5.4. If the Hirer suspects that the Equipment is stolen, the Hirer must report the theft to the police as soon as practicable and provide the Owner with written evidence verifying that report and any information and assistance required by the Owner to investigate the matter.

5.5. If the Equipment is involved in an incident, the Hirer must report the incident to the Owner as soon as practicable (and within 6 hours) and provide the Owner with any information, documents and assistance required by the Owner to investigate the matter.

5.6. Despite any other provision,
(a) the Hirer is not released from its obligations under the Agreement until the Owner is paid all amounts due to it under the Agreement (even if the Equipment is lost, damaged or destroyed); and
(b) the Owner will not be liable to the Hirer for any indirect or consequential loss (including but not limited to loss of revenue, profit, production, opportunity, goodwill or reputation) in any circumstance.

6. EVENT OF DEFAULT

6.1. There is an Event of Default if:

- (a) the Hirer does not pay the Owner the Rental Rate or other amount as required by the Agreement;
- (b) the Hirer fails to return the Equipment to the Owner as required by the Agreement;
- (c) the Hirer fails to rectify a breach of the Agreement within seven days after written notice to remedy the breach from the Owner;
- (d) where the Hirer is a company, an application is made or a resolution passed to place the company into administration or to wind up the company;
- (e) where the Hirer is the trustee of a trust, the trust is wound up or the trustee is removed for any reason;
- (f) where the Hirer is an individual, the individual applies for bankruptcy or is declared bankrupt or enters into a debt agreement or a personal insolvency agreement;
- (g) any execution or other process of any court or authority is issued against the Hirer or any of the Hirer's assets;
- (h) a receiver, receiver and manager, administrator, controller or liquidator is appointed to the Hirer or any of the Hirer's assets;
- (i) the Hirer ceases or threatens to cease to carry on its business or to pay its debts; or
- (j) any of the Hirer's policies of insurance required under the Agreement is cancelled or not renewed.

6.2. Where an Event of Default occurs, the Owner may, by written notice to the Hirer, do one or more of the following:

- (a) terminate the Agreement;
- (b) repossess the Equipment;
- (c) enforce performance of the Agreement;
- (d) recover damages for breach of the Agreement.

6.3. The Owner may take any or all of the actions set out in clause 6.2 without limiting its rights at law or under the Agreement and even although the Owner may have waived any previous default by the Hirer.

7. RIGHTS ON EXPIRATION OR TERMINATION

7.1. At the expiration of the Rental Term or where the Owner exercises its right of termination:

- (a) the Hirer will at its own expense immediately return the Equipment to the Owner;
- (b) the Owner will be entitled to recover from the Hirer as a debt due and owing on demand the cost of any cleaning, renovation, services or repairs performed by the Owner to return the Equipment to good order and repair, fair wear and tear excepted, and to otherwise comply with the Return Conditions;
- (c) the Owner will not be required to mitigate its loss (for example: by sale of the Equipment) or account to the Hirer (for example: for any proceeds of sale, if the Equipment is sold by the Owner).

7.2. The expiration of the Rental Term or termination of the Agreement does not alter the Hirer's obligations or the Owner's rights, powers and remedies under or in relation to the Agreement and those obligations and rights, powers and remedies survive the expiration or termination.

8. REPOSSESSION OF EQUIPMENT

8.1. Where the Owner exercises its right to repossess the Equipment pursuant to clause 6.2:

- (a) the Hirer's obligation to pay the Rental Rate will continue for the remainder of the Rental Term or until the earlier re-hiring of the Equipment by the Owner;

- (b) the Hirer authorises the Owner to enter upon the property of the Hirer for the purposes of repossessing the Equipment and, if necessary, to sever the Equipment from the land and to do such things as are necessary or incidental in that regard;
- (c) the Hirer indemnifies the Owner against any and all Loss relating to the Owner's actions to repossess the Equipment, including costs for transportation and storage and legal costs and any costs of cleaning, renovation, servicing or repairs of the Equipment to return the Equipment to good order and repair, fair wear and tear excepted, and to otherwise comply with the Return Conditions;
- (d) the Owner may recover from the Hirer as a debt due and owing on demand any and all Loss relating to the Owner's actions in seeking to repossess the Equipment; and
- (e) the Owner will not be required to mitigate its loss.

9. HOLDING OVER

- 9.1. Upon expiration of the Rental Term, the parties may agree to continue to hire the Equipment upon the same terms and conditions as in the Agreement, except that:
- (a) the Rental Term will be month to month;
 - (b) the Owner may demand the possession of the Equipment at any time and the Hirer must then return the Equipment to the Owner in accordance with the demand; and
 - (c) the Hirer may return the Equipment to the Owner at any time provided that the Hirer must pay for the full month's hire.

10. WARRANTIES AND LIABILITY OF OWNER

- 10.1. The Hirer will have the benefit of any OEM's warranty with respect to the Equipment during the Rental Period, subject to the terms of that warranty.
- 10.2. Other than as expressly set out in the Agreement (including the warranty referred to in clause 10.1), the Hirer acknowledges that:
- (a) neither the Owner, nor any person acting on the Owner's behalf, has made any representation or made any promise or undertaking or warranty in relation to the condition, suitability or quality of the Equipment, its fitness for purpose, its safety or the use of the Equipment; and
 - (b) all warranties with respect to the Equipment (including in relation to the condition, suitability, quality, fitness or safety of any Equipment) are excluded to the fullest extent permissible by law.
- 10.3. In circumstances where the law does not permit the Owner to exclude or limit its liability under the Agreement, then the liability of the Owner for any breach of condition, warranty or Loss will be limited to (at the Owner's discretion):
- (a) the resupply of the Equipment;
 - (b) the supply of equivalent replacement equipment (so far as reasonably possible); or
 - (c) the repair of the Equipment.

11. PPSA

- 11.1. The Agreement constitutes a Security Agreement. A Security Interest may be registered by the Owner in relation to the Equipment and the proceeds arising in respect of any dealing the Equipment in accordance with the PPSA.
- 11.2. The Hirer must not:

- (a) create any Security Interest over the Equipment;
 - (b) lease, hire, bail or give possession of the Equipment to another person;
 - (c) permit the Equipment to become an accession to or commingled with any other asset of the Hirer or any other person; or
 - (d) change its name or relocate its principal place of business to a place outside Australia or change its place of registration or incorporation without first giving the Owner 14 days' notice of the proposed change.
- 11.3. The Hirer must do anything (such as obtaining consents and signing and providing documents) which the Owner requires for the purposes of:
- (a) ensuring that the Owner's Security Interest in the Equipment is enforceable, perfected and otherwise effective under PPSA;
 - (b) enabling the Owner to gain first priority (or any other priority agreed to by the Owner in writing) for its Security Interest in the Equipment; and
 - (c) enabling the Owner to exercise rights in relation to the Owner's claim of the Security Interest in the Equipment.
- 11.4. The Hirer hereby gives the Owner an irrevocable power of attorney to do anything the Owner considers the Hirer should do under this clause 11.
- 11.5. Neither the Owner nor the Hirer will disclose information of the kind mentioned in section 275(1) of PPSA and the Hirer will not authorise, and will ensure that no other person authorises, the disclosure of such information. This clause does not prevent disclosure where such disclosure is required under section 275 of PPSA because of the operation of section 275(7) of PPSA.
- 11.6. To the extent that Chapter 4 of PPSA applies to any Security Interest under the Agreement, the following provisions of PPSA do not apply and, for the purposes of section 115 of PPSA are "contracted out" of under the Agreement: section 95 (notice of removal of accession to the extent it requires the Owner to give a notice to the Hirer); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires the Owner to give a notice to the Hirer); section 129(2) and 129(3); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re-instatement of security agreement).
- 11.7. The Hirer waives its right to receive a verification statement under section 157 of PPSA.
- 11.8. The Hirer agrees to pay all Liability arising from the collection of overdue monies or registration, maintenance, enforcement or discharge of the Owner's Security Interest in the Equipment. The Liability may be recovered as a liquidated debt due and owing to the Owner upon demand.

12. GOODS AND SERVICES TAX

- 12.1. Unless expressly included, the consideration for any supply under or in connection with the Agreement does not include GST.
- 12.2. To the extent that any supply made under or in connection with the Agreement is a Taxable Supply (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)), the Hirer must pay, in addition to the consideration to be provided under the Agreement

for that supply (unless it expressly includes GST), an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.

13. OTHER PROVISIONS

- 13.1. Despite any other remedy available to the Owner under the Agreement or at law, if the Hirer fails to pay an amount to the Owner on the date on which the payment is due (time being of the essence for any payment), the Hirer is liable for interest at the Default Rate from the due date for payment until the date that payment is made, payable upon demand.
- 13.2. If an amount claimed by the Owner is in dispute:
- (a) the amount not in dispute must be paid by the Hirer in accordance with the Agreement; and
 - (b) any disputed amount that is ultimately determined to have been payable to the Owner must be paid by the Hirer with interest at the Default Rate from the original due date until the payment is made, payable upon demand.
- 13.3 The Hirer consents to the Owner accessing, collecting, using and retaining information generated during the use of the Equipment, including from any connected devices or software and that the Owner becomes the owner of that data.
- 13.4 The Hirer agrees that the Owner may disclose information relating to the Agreement and the use of the Equipment to Caterpillar Inc and its subsidiaries to assist with the recording of data relating to the rental and use of Caterpillar equipment in Queensland and the Northern Territory.

14. NOTICES

Any notice to be given may be given by:

- (a) posting the notice to the address of the party which is the intended recipient specified in the Agreement and will be deemed received 4 days after posting by ordinary prepaid post; or
- (b) emailing the notice to the address of the party which is the intended recipient specified in the Agreement and will be deemed received at the time notified on the transmitter's computer terminal that the email has been received, error free, by the other party's computer.

15. JURISDICTION

The Agreement is governed by and construed in accordance with the law of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.

16. SEVERABILITY

If any provision of the Agreement is held to be invalid, unenforceable or illegal for any reason, the Agreement will remain otherwise in full force apart from that provision which will be deemed deleted.