

General Conditions for Hire Agreement

1. Definitions

1.1 Unless otherwise expressly provided or unless inconsistent with or repugnant to the context in which it is used:

Approved Address means 3 Crocker Street, Rockingham WA 6168 or such other address as Titan may nominate by any one of the methods for service of notices specified herein, or otherwise served on the Hirer.

Cost Price means full replacement value of any given item of the Equipment brand new from the supplier thereof at the Date of Commencement.

Date of Commencement means the start date specified in the schedule.

Date of Return means:

- (a) if the Equipment is in good working order and does not need repair, the date that it is returned to the Approved Address, whether or not Titan is responsible to arrange the return of the Equipment; or
- (b) if the Equipment is damaged whilst in the possession, custody or power of the Hirer, the date that the Equipment is repaired and available for hire by Titan; or
- (c) if the Equipment is lost or destroyed, or otherwise incapable of repair, the date of receipt by Titan of a replacement for that Equipment or if Titan elects not to replace the Equipment the date that it could have received a replacement; or
- (d) the date of the last day of the Term,

whichever is the later date.

Default Rate means 21% per annum.

Demobilisation Costs means all costs reasonably incurred by Titan (including a reasonable charge for all labour provided by Titan) in recovering possession of the Equipment from the Hirer.

Equipment means the plant described in the schedule and a reference to the Equipment includes a reference to any part thereof.

Excess Hours means the number of hours (if any) by which the actual number of hours the Equipment is used by the Hirer in a given period exceeds the product of the Minimum Hours and the number of Minimum Hours Periods in that given period.

Excess Hours Rate means the dollar amount described in the schedule as the Excess hours rate.

Force Majeure means a circumstance beyond the reasonable control of Titan which is not caused by or occurs without the fault or negligence of Titan and includes inevitable accident storm flood fire earthquake explosion strike lockouts peril of navigation hostility war (declared or undeclared) insurrection executive or administrative order or act of either general or particular application of any government, whether de jure or de facto, or of any official purporting to act under the authority of that government prohibition or restriction by domestic or foreign laws regulations or policies quarantine or customs restrictions breakdown or damage to or confiscation of property.

Ground Engaging Tools means any tool attached to Equipment that engages the ground, for example, with graders – cutting edges and ripper tynes, with loaders – cutting edge and bucket teeth on buckets, and with padfoot rollers - scraper teeth.

GST, supply, tax invoice consideration and **taxable supply** have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999*.

Hire means the right to use the Equipment granted by Titan to the Hirer by the Hire Agreement.

Hire Agreement, this agreement means any agreement (whether oral or in writing) between Titan and the Hirer for the hire of Equipment by Titan to the Hirer.

Hire Period means the period from and including the Date of Commencement to and including the Date of Return.

Hire Rate means the dollar amount described in the schedule as the Hire Rate per Period.

Hirer means the person or persons named in the schedule as the Hirer.

Hirer Protection Levy means an amount equal to that percentage of the Hiring Fee described in the schedule as Hirer Protection or if no such percentage is specified and the Hirer Protection Levy is payable by the Hirer, 12% of the Hiring Fee.

Hiring Fee means:

- (a) if the Period is in hours – the sum of:
 - (i) the product of the Hire Rate, the Minimum Hours and the number of Minimum Hours Periods in the Hire Period;
 - (ii) the product of the Excess Hours in the Hire Period and the Excess Hours Rate.
- (b) otherwise - the product of the Hire Rate and the number of Periods in the Hire Period.

hours when used as a Period means the hours or part thereof the Equipment is used as determined by the service meter unit on the Equipment.

Insurance Value means the insurance value specified in the schedule plus GST, or if no value is specified or the value is zero then the Cost Price.

Job Site means the job site specified in the schedule.

Lubricants includes oils and greases.

Minimum Hours means the number of hours described in the schedule as the Min hrs.

Minimum Hours Period means the period of a day or week described in the schedule in relation to the Minimum Hours.

Minor Fault means:

- (a) any individual fault in the Equipment (including without limitation leaks and faults in electrical wiring, lights, switches, starter motors, alternators and belts); or
- (b) any number of faults in the Equipment that in the opinion of Titan should be considered one fault for the purposes of repair;

that in the opinion of Titan would cost \$2,000.00 or less to repair if repaired by a reputable third party repairer.

Mobilisation Costs means all costs reasonably incurred by Titan (including a reasonable charge for all labour provided by Titan) in delivering the Equipment to the Hirer.

Operator means a person or persons supplied by Titan to the Hirer to operate the Equipment.

Period means the period of an hour, day, week or month specified in the schedule.

PM Servicing means such periodical servicing of the Equipment as to Titan seems fit, although generally in accordance with the manufacturer's instructions for periodical service, but does not include the provision of any parts or materials (including without limitation Service Kits, fluids and Lubricants).

Service Kits means such replaceable parts or materials that regularly fail during the course of their usage (including without limitation air filters and oil filters) required for PM Servicing, but does not include fluids or Lubricants.

schedule means the schedule to this agreement, titled "Hire Agreement / Quote".

Term means the period of time described in the schedule as the Term as from and including the Date of Commencement.

Titan means Titan Plant Hire Pty Ltd ACN 095 884 441 of Level 4, 3-5 Bennett Street, East Perth WA 6004.

Tyre Expert means a reputable manufacturer of, or dealer in, tyres in Western Australia.

Undercarriage means the Grouser plates, chains, sprockets, idlers, pins, bushes and bearings (if any) on the Equipment.

2. Hire

Conditions precedent

2.1 It is a condition precedent to the formation of this agreement that:

- (a) Titan receives a credit report on the Hirer from a credit reporting agency that is satisfactory to Titan; and
- (b) this agreement is correctly completed and signed by or on behalf of the Hirer and delivered to Titan within 30 days of the date described in the schedule as the "Date quoted"; and
- (c) the Equipment and (if applicable) an Operator are available for hire during the Term.

If any of the said conditions are not satisfied or waived by Titan within 14 days after this agreement is signed by or on behalf of the Hirer and delivered to Titan, Titan will notify the Hirer accordingly in writing and refund any money paid by the Hirer, whereupon neither party will have any claim against the other of any type whether in tort or in contract, at law or in equity.

2.2 Supply of the Equipment to or at the direction of the Hirer is a sufficient communication by Titan to the Hirer that Titan has signed this agreement.

Hire

2.3 Titan agrees to hire the Equipment to the Hirer and the Hirer agrees to take the Equipment on Hire for the Term and upon and subject to the terms of this agreement.

2.4 The Hirer agrees that number described in the schedule as the "SMU out" is the reading of the service meter unit of the Equipment at the time the Equipment is supplied to the Hirer.

2.5 At the end of the Term or upon the termination of the Hire whether by effluxion of time or for any other reason whatsoever, Titan shall be entitled to immediate possession of the Equipment and subject to sub-clause 3.3 the Hirer shall immediately return the Equipment then in its possession to Titan at the Approved Address or as otherwise directed by Titan.

Extension of Term

2.6 If the Hirer wishes to extend the Term of hire of the Equipment, the Hirer shall give written notice of its request to Titan, specifying the length of time by which the Hirer wishes to extend the Term. Titan may refuse or agree to the extension of the Term on such terms and conditions as Titan in its absolute discretion sees fit. Without limiting the scope of Titan's discretion, Titan may have regard to the availability of the Equipment and (if applicable) an Operator and the extent to which the Hirer has complied with the terms of this agreement. The terms of this agreement shall apply to the extended Term subject to any terms and conditions imposed by Titan.

3. Hiring Fee and other money payable by the Hirer

Hiring Fee

3.1 The Hirer shall:

- (a) if the Hiring Fee is not required to be paid in advance, pay the Hiring Fee at the end of the Term, or if the Term or the Hire Period is greater than one month, so much thereof as has accrued at the end of every calendar month;
- (b) pay any Hiring Fee that has not been paid at the expiration of the Term on that day; and
- (c) pay any Hiring Fee that has not been paid at the Date of Return on that day,

directly to Titan at the Approved Address, provided that if Titan issues an invoice and that invoice specifies a date by which or period of time within which payment must be made, then payment may instead be made by the date or within the period of time specified in the invoice.

Mobilisation and demobilisation

3.2 If:

- (a) an amount (other than zero) is specified for delivery in the schedule under the heading "Freight", then:
 - (i) Titan shall arrange and carry out the transport of the Equipment to the Job Site at the commencement of the Hire;
 - (ii) the Hirer shall pay the amount so specified to Titan upon demand;
- (b) no amount (or an amount of zero) is specified for delivery in the schedule under the heading "Freight", then the Hirer shall at its own expense arrange and carry out the transport of the Equipment to the Job Site at the commencement of the Hire.

3.3 If:

- (a) an amount (other than zero) is specified for return in the schedule under the heading "Freight", then:
 - (i) Titan shall arrange and carry out the transport of the Equipment from the Job Site to the Approved Address or as otherwise nominated by Titan at the end of the Term or upon the expiration of the Hire;
 - (ii) the Hirer shall ensure that the Equipment is available and in a condition suitable for collection and transport by Titan from the Job Site;
 - (iii) the Hirer shall pay the amount so specified to Titan upon demand;
 - (iv) if the Equipment is not available or is in a condition unsuitable for collection and transfer then without prejudice to Titan's other rights and remedies:
 - (A) Titan may elect not to arrange and carry out the transport of the Equipment; and
 - (B) the Hirer shall pay to Titan upon demand any costs incurred by Titan as a consequence of the breach of item 3.3(a)(ii);
- (b) no amount (or an amount of zero) is specified for return in the schedule under the heading "Freight", then the Hirer shall at its own expense arrange and carry out the transport of the Equipment from the Job Site to the Approved Address or as otherwise nominated by Titan at the end of the Term or upon the expiration of the Hire.

Other costs

3.4 Subject to clause 9, the Hirer also promises to pay Titan on demand:

- (a) the cost of any consumables provided by Titan;
- (b) the cost of filling any fuel tank forming part of the Equipment;
- (c) Mobilisation Costs and Demobilisation Costs;
- (d) all costs incurred by Titan or for which it becomes liable (including a reasonable charge for all labour provided by Titan) to service, clean, repair or replace the Equipment by reason of or arising out of or in any way relating to this Hire;
- (e) all stamp duty payable on this agreement at the Date of Commencement and on any security;
- (f) any taxes, duties, levies, fees, imposts, penalties or other charges, whether governmental or semi-governmental, now or hereafter applied, payable or charged upon the Equipment or otherwise chargeable against or to Titan in relation to or as a result of this agreement;

- (g) if any default notice is issued by Titan under this agreement, \$100.00 or the reasonable legal fees and disbursements incurred by Titan in issuing the default notice whichever is the greater amount payable within 7 days of being notified of the amount; and
- (h) all costs and expenses incurred by Titan or for which Titan becomes liable (including without limitation all legal costs and disbursements) of, concerning, arising out of or in any way relating to:
 - (i) the exercise by Titan of its rights under this agreement including without limitation all costs charges and expenses of and incidental to repossessing or attempting to repossess the Equipment, all legal costs, including the cost of any litigation commenced by Titan against the Hirer to recover the Equipment, money owing, and or damages pursuant to this agreement, and all costs, charges and expenses (including solicitors' costs) incurred by Titan for the purpose of and incidental to the preparation and service of a notice requiring the Hirer to remedy a breach of the covenants herein contained or implied notwithstanding termination for such breach;
 - (ii) any default by the Hirer; and
 - (iii) any enforcement of this agreement or any security given by or in relation to this agreement (including without limitation the costs of any court action);

such costs and expenses to include all costs except so far as they are of an unreasonable amount or have been unreasonably incurred so that subject to the above exceptions Titan will be completely indemnified by the Hirer for its said costs and expenses.

Wear on tyres

- 3.5 The Hirer will at its own expense replace any tyre on the Equipment that is lost or destroyed or damaged beyond repair whilst in the possession of the Hirer and will at its own expense repair any part of any tyre that is damaged whilst in the possession of the Hirer.
- 3.6 In the schedule there is reference to the condition of tyres on the Equipment by reference to Pos. 1 to Pos. 16. Each reference is a reference to the position of a tyre on a vehicle from tyre 1 to tyre 16 as recognised in the tyre industry. If a percentage of tyre condition is recorded it represents the condition (in percentage terms) of the tyre to which it relates when compared to a new tyre, where 100% means that the tyre is as new and has no significant wear and 0% means the tyre has been completely worn.
- 3.7 Titan shall assess the percentage wear on each tyre on the Equipment at the beginning and at the end of the Hire. Titan may in its absolute discretion appoint a Tyre Expert to carry out the said assessments. Titan shall bear the costs of the Tyre Expert provided that if the Hirer requests that Titan appoint a Tyre Expert, and Titan agrees so to do, the Hirer shall bear the costs of the Tyre Expert or reimburse Titan for the said cost on demand.
- 3.8 If any percentage of tyre condition is recorded in the schedule, the Hirer agrees that at the beginning of the Hire the condition in percentage terms of the tyre to which it relates when compared to a new tyre is the recorded percentage.
- 3.9 Subject to clause 9, at the end of the Hire, with respect to each tyre, if the percentage of tyre condition has decreased the Hirer will pay to Titan the percentage decrease multiplied by the cost of a new tyre of the same type and quality as at the Date of Return. Titan will supply a copy of the assessment by Titan or the Tyre Expert (as the case may be) with its request for payment. If the Hirer informs Titan that it disputes the assessment of wear by notice in writing within 10 days after notification by Titan of the wear on each tyre, a dispute will arise as to the wear of tyres during the Hire. Otherwise the Hirer will be irrevocably deemed to have accepted the said assessment.
- 3.10 Any dispute as to the wear of a tyre on the Equipment during the Hire shall be referred to and determined by a person appointed by the Chairman of the Institute of Arbitrators and Mediators Australia, WA Chapter at the direction of the parties or either of them, who shall act as an expert not an arbitrator and whose decision shall, absent manifest error or fraud, be final and binding on the parties. If the said expert determines that the assessment by Titan or the Tyre Expert (as the case may be) is accurate within 10%, the costs of the said

Institute in making the said appointment and the costs of the said expert so appointed shall be borne by the Hirer. Otherwise they will be borne by Titan. If the Hirer is liable to pay the said fees and fails to do so, Titan may pay the fees which will thereupon be a debt due and owing by the Hirer to Titan under this agreement.

Undercarriage and Ground Engaging Tools

- 3.11 The Hirer will at its own expense replace any part of the Undercarriage or Ground Engaging Tool that is lost or destroyed or damaged beyond repair whilst in the possession of the Hirer and will at its own expense repair any part of the Undercarriage or Ground Engaging Tool that is damaged whilst in the possession of the Hirer.
- 3.12 In the schedule there is reference to the condition of the Undercarriage and Ground Engaging Tools of the Equipment. If a percentage of condition is recorded it represents the condition (in percentage terms) of the Undercarriage or the Ground Engaging Tool to which it relates when compared to a new part, where 100% means that the part is as new and has no significant wear and 0% means the part has been completely worn.
- 3.13 If any such percentage of Undercarriage or Ground Engaging Tool condition is recorded the Hirer agrees that at the beginning of the Hire the condition in percentage terms of the Undercarriage or the Ground Engaging Tool to which it relates when compared to a new part is the recorded percentage.
- 3.14 Subject to clause 9, at the end of the Hire Titan will assess the condition of the Undercarriage and each Ground Engaging Tool that has a percentage of condition recorded in the schedule. With respect to the Undercarriage and each Ground Engaging Tool, if the percentage of condition has decreased the Hirer will pay to Titan the percentage decrease multiplied by the cost of a new Undercarriage or Ground Engaging Tool (as the case may be) of the same type and quality as at the Date of Return. Titan will supply the assessment with its request for payment. If the Hirer informs Titan that it disputes the assessment of wear by notice in writing within 10 days after service on it of the said assessment a dispute will arise as to the wear during the Hire. Otherwise the Hirer will be irrevocably deemed to have accepted the said assessment.
- 3.15 Any dispute as to the wear of the Undercarriage or a Ground Engaging Tool during the Hire shall be referred to and determined by a person appointed by the Chairman of the Institute of Arbitrators and Mediators Australia, WA Chapter at the direction of the parties or either of them, who shall act as an expert not an arbitrator and whose decision shall, absent manifest error or fraud, be final and binding on the parties. If the said expert determines that the assessment by Titan is accurate within 10%, the costs of the said Institute in making the said appointment and the costs of the said expert so appointed by the Chairman shall be borne by the Hirer. Otherwise they will be borne by Titan. If the Hirer is liable to pay the said fees and fails to do so, Titan may pay the fees which will thereupon be a debt due and owing by the Hirer to Titan under this agreement.

Stand downs

- 3.16 The Hirer shall not be entitled to any discount, concession or rebate if the Hirer fails to use the Equipment for the whole or any part of the Hire Period, provided that Titan may allow a discount for the stand down of the Equipment on the following terms:
- (a) if the Hirer seeks a discount for the stand down of the Equipment for a day, the Hirer must contact Titan by no later than 8.00am on the morning that the Equipment is to be stood down;
 - (b) Titan may refuse or agree to grant a discount for the stand down of the Equipment on such terms and conditions as Titan in its absolute discretion sees fit;
 - (c) if Titan grants a discount for the stand down of the Equipment, then:
 - (i) Titan will allocate a stand down number to the Hirer;
 - (ii) the Hire Rate shall be reduced by 50% for the duration of the stand down;
 - (iii) the Hirer must not use or allow to be used the Equipment for the day in respect of which the discount is granted;

- (iv) if the Hirer uses or allows to be used the Equipment during the day in respect of which the discount is granted, the discount shall be cancelled without prejudice to Titan's other rights and remedies.

Late return of Equipment

- 3.17 For the avoidance of doubt, the Hirer acknowledges that the Hirer shall be responsible to pay the Hiring Fee in respect of the period to:
- (a) if the Equipment is in good working order and does not need repair - the date that it is returned to Titan at the Approved Address, whether or not Titan is responsible to arrange the return of the Equipment; or
 - (b) if the Equipment is damaged whilst in the possession, custody or power of the Hirer - the date that the Equipment is repaired and available for hire by Titan; or
 - (c) if the Equipment is lost or destroyed, or otherwise incapable of repair - the date of receipt by Titan of a replacement for that Equipment or if Titan elects not to replace the Equipment the date that it could have received a replacement; or
 - (d) the date of the last day of the Term,
- whichever is the later date.

Payment terms

- 3.18 All other monies payable by the Hirer to Titan under this agreement shall be paid to Titan at the Approved Address on the respective dates the same become due and payable, provided that if Titan issues an invoice and that invoice specifies a date by which or period of time within which payment must be made, then payment may instead be made by the date or within the period of time specified in the invoice. Time shall be of the essence in relation to payment of all money by the Hirer to Titan.
- 3.19 Any payment of the Hiring Fee or other moneys made otherwise than to the Approved Address and any payments sent by post shall be at the Hirer's risk until received at the Approved Address. No cheque or other remittance received by Titan shall be treated as payment until cleared.
- 3.20 Payment shall be made as aforesaid notwithstanding the termination of the Hire or this agreement for any reason whatsoever.

Interest

- 3.21 If the Hirer is in default in the payment of any money under this agreement interest will be charged on the amount owing and unpaid from time to time at the Default Rate as from and including the due date for payment until it has been repaid. At the end of every month any unpaid interest shall be capitalised for the purpose of calculating interest, namely it will be added to and increase the amount due and owing and thereafter interest shall be charged on the sum of the amount then due and owing and the unpaid interest at the Default Rate. In other words compound interest shall be charged on overdue interest at the Default Rate from and including the first day of the next calendar month following the capitalisation of interest. Unless otherwise advised by Titan payments shall be applied first in payment of interest. The provisions of this clause are without prejudice to any of Titan's other rights and remedies.

4. Use maintenance and repair of the Equipment

Possession and use by Hirer

- 4.1 Without the consent in writing of Titan first had and obtained the Hirer will keep the Equipment in or about the Job Site all times save only when it returns it to Titan.
- 4.2 The Hirer shall comply with all legal obligations relating to the Equipment, its possession and use.
- 4.3 Without limiting the other obligations of the Hirer under this agreement in any way, the Hirer will take reasonable care of the Equipment as if it was the beneficial owner thereof.

- 4.4 The Hirer will display, maintain and draw attention to any safety signs and instructions in relation to the Equipment.

Operation of Equipment

- 4.5 The Hirer will only use the Equipment safely, strictly in accordance with all laws, for a purpose for which it is designed to be used and in accordance with the manufacturer's instructions.
- 4.6 The Hirer shall ensure that anyone who operates the Equipment whilst it is in the possession of the Hirer is fully conversant with the Equipment and has the appropriate skills and qualifications for the safe and efficient operation of the Equipment and that all necessary permits, licenses and permission relating to the operation of the Equipment are in place prior to the operation of the Equipment.
- 4.7 The Hirer will ensure that all operators of the Equipment wear suitable clothing and protective equipment as stipulated by the manufacturer of the Equipment or Titan.

Maintenance

- 4.8 Subject to clause 9, the Hirer will service the Equipment as specified by the manufacturer thereof and supply all items required for the safe operation and proper daily maintenance and or servicing of the Equipment. Without limitation the Hirer will every day before it uses the Equipment:
- (a) apply grease to all parts of the Equipment that take grease;
 - (b) visually inspect the whole of the Equipment for any defect, damage or wear and check and if necessary add or replace (as the case requires) oil, water and air filters; and
 - (c) repair or replace any tyre or Ground Engaging Tool as required.
- 4.9 Save as aforesaid no one other than a person authorised in writing by Titan shall maintain or repair the Equipment.

Safekeeping

- 4.10 The Hirer shall store the Equipment safely whilst the Equipment is in the possession of the Hirer and not in use.

Alteration and identifying marks

- 4.11 The Hirer shall not alter the Equipment nor alter, deface or erase any identifying number, mark or plate thereon.

5. Strict liability

- 5.1 The Hirer is strictly liable for any loss or destruction of or any damage to the Equipment whilst it has possession thereof.
- 5.2 The Hirer agrees that it has possession of the Equipment from and including the Date of Commencement, even if transport of the Equipment to the Hirer is arranged by or carried out by Titan, to and including the date that the Equipment is delivered up to or at the direction of Titan, even if transport of the Equipment to or at the direction of Titan is arranged by or carried out by Titan.
- 5.3 The Hirer and Titan agree that the value of the Equipment to Titan is the Insurance Value as defined above. In the event the Equipment is lost, destroyed or substantially destroyed so as to be incapable of repair the Hirer shall pay to Titan the Insurance Value therefor. If the Equipment is damaged but capable of being repaired, the Hirer shall pay to Titan the cost incurred by it or for which it becomes liable to repair that Equipment or the Insurance Value, whichever is the smaller amount.

Insurance & Hirer Protection Levy

- 5.4 Subject to the following sub-clause, the Hirer shall:
- (a) insure the Equipment whilst it has possession and thereafter and at all times to and including the Date of Return with a reputable insurer under an enforceable policy not subject to being defeated or avoided by reason of any non-disclosure, misrepresentation or breach of warranty in Titan's name as owner and in

the Hirer's name as hirer for an amount equal to the Insurance Value against fire, accident and theft and such other risks as Titan may require from time to time; and

- (b) deliver up to Titan before the Date of Commencement the said policy or evidence thereof, evidence of payment of the premium from the insurer or the broker of the Hirer and a certificate issued by the insurer of the currency of the said policy.
- 5.5 If the Hirer does not deliver up to Titan the policy and or evidence set out in paragraph 5.4(b) before the Date of Commencement or before the Equipment is collected by or despatched for delivery to the Hirer (whichever is the later), then the Hirer shall be deemed to have elected to pay the Hirer Protection Levy.
- 5.6 The Hirer shall not to do anything which may prejudice at any time any insurance cover over the Equipment including without limitation any insurance taken out by Titan.
- 5.7 Titan shall be entitled to receive all moneys payable to the Hirer by any insurer under any relevant policy or by any other person with respect to any damage to or loss or destruction of the Equipment howsoever caused and the Hirer appoints Titan the Hirer's attorney to recover and or compromise in the Hirer's and or Titan's respective names any claim for any such damage, loss or destruction and to give effectual releases and receipts for the same and the Hirer irrevocably authorises and directs the insurer to pay all money payable under the policy to Titan.
- 5.8 If the Hirer elects or is deemed to have elected to pay the Hirer Protection Levy on the Equipment for the Term, the following terms shall apply:
- (a) In this sub-clause the term **Equipment** shall not include any tools, accessories, parts, grease guns, hoses or similar electrical cords, cables, gas cylinders, fire extinguishers, radios, beacons, batteries, air conditioners, light globes and other similar accessories, Ground Engaging Tools, Undercarriage, tyres, rims or glass.
 - (b) The Hirer shall pay the Hirer Protection Levy to Titan upon demand;
 - (c) The Hirer agrees to pay the Hirer Protection Levy for any renewal or extension of the Term or any holding over after the expiration of the Term upon demand;
 - (d) Titan promises to the Hirer that:
 - (i) it will insure the Equipment against accidental loss and damage (**Equipment Insurance**);
 - (ii) it will supply to the Hirer a copy of the policy for the Equipment Insurance upon request;
 - (iii) it will deduct from any liability of the Hirer to Titan under this agreement for any loss, destruction or damage to the Equipment any amount it receives from its insurer under the Equipment Insurance in respect of that loss or damage (excluding any excess); and
 - (iv) the insurer of the Equipment Insurance will not exercise any right of subrogation it may have against the Hirer save in the circumstances specified in the Equipment Insurance;
 - (e) Subject to the following paragraph, the Hirer's liability to Titan for accidental loss of, or accidental damage to, the Equipment shall (after deducting any amount Titan receives from its insurer under the Equipment Insurance in respect of that loss or damage excluding any excess) be limited to whichever is the greater of:
 - (i) \$2,000; or
 - (ii) if the Equipment is capable of repair – 10% of the cost to repair the Equipment; or
 - (iii) if the Equipment is lost, destroyed or incapable of repair – 10% of the Insurance Value, for any one event;
 - (f) The Hirer's liability will not be so limited where:
 - (i) the loss of, or damage to, the Equipment arises from or is caused in whole or in part:

- (A) by a breach by the Hirer of this agreement including without limitation a failure to lubricate or otherwise maintain or service the Equipment;
 - (B) by the negligence of the Hirer or the Hirer's abuse, misuse or improper use of the Equipment including without limitation overloading the Equipment, exceeding its rated capacity or improperly servicing it;
 - (C) during the loading, transportation or unloading of the Equipment;
 - (D) by an artificial electrical current or exposure of the Equipment to any corrosive substance or environment;
 - (E) by using or locating the Equipment in, on or over water or on bridges, vessels or structures of any kind;
- (ii) Titan makes a claim against the Equipment Insurance but the claim is rejected for reasons other than a default by Titan;
- (g) Titan may in its absolute discretion, but shall not be required to, make a claim against the Equipment Insurance; and
 - (h) For the avoidance of doubt the Hirer acknowledges that paragraph (e) limits liability in respect of loss of, or damage to, the Equipment only, and does not limit liability in respect of other matters including without limitation third party claims in respect of the Hire or use of the Equipment.

5.9 The inclusion of a percentage for Hirer Protection in the schedule shall be conclusive evidence of the Hirer's election to pay the Hirer Protection Levy.

5.10 For the avoidance of doubt, the Hirer acknowledges that its liability for any loss, destruction or damage to the Equipment shall not be affected by:

- (a) the fact that the Hirer shall take out Equipment Insurance;
- (b) the fact that the Hirer elects or is deemed to have elected to pay the Hirer Protection Levy;
- (c) the fact that Titan does not make a claim against the Equipment Insurance; nor
- (d) the fact that any claim against an insurance policy is rejected by the insurer.

6. Loss destruction of or damage to the Equipment

6.1 If the Equipment is lost, destroyed, breaks down, is damaged in any way or for any reason the Hirer cannot use the Equipment because of some defect therein, the Hirer will inform Titan immediately in writing and by telephone.

6.2 If the Equipment breaks down or is damaged in any way, the Hirer will immediately stop using the Equipment, take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment, and take all steps necessary to prevent further break down or damage to the Equipment.

6.3 If for any reason the Equipment cannot be used by the Hirer because of some defect in the Equipment Titan will arrange for it to be repaired by a technician at the Job Site if a reasonably competent technician is able to do so as soon as is practicable in all the circumstances.

6.4 If the said technician is not able to repair the Equipment Titan may either:

- (a) replace the Equipment with equipment the same as or similar to the Equipment;
- (b) remove the Equipment to a place where it can be repaired and then return it to the Job Site; or
- (c) elect by notice in writing to terminate the Hire.

6.5 If the fact that the Equipment cannot be used by the Hirer because of some defect in the Equipment did not arise because of some act or omission of the Hirer in breach of this agreement then the Hirer is not obliged to pay the

Hiring Fee in respect of the period that the Equipment cannot be so used. Otherwise all costs of and incidental to the repair or replacement of the Equipment shall be borne by the Hirer.

- 6.6 Titan's obligations under this clause are suspended during any Force Majeure.
- 6.7 The Hirer agrees that any items described in the schedule under the heading "Accessories and attachments provided" are supplied with or attached to the Equipment and in good working condition at the time the Equipment is supplied to the Hirer. Without prejudice to Titan's other rights and remedies, the Hirer will replace any such item that is lost, destroyed or damaged beyond repair whilst the Equipment is in the possession of the Hirer and will at its own expense repair any such item that is damaged whilst the Equipment is in the possession of the Hirer. The lack of any entry under the heading "Accessories and attachments provided" in the schedule does not mean that no accessories or attachments were provided.

7. Other promises by the Hirer

- 7.1 The Hirer shall not conceal nor refuse to disclose the whereabouts of the Equipment nor part with possession or control of the same without the consent in writing of Titan first had and obtained.
- 7.2 The Hirer shall take out and keep in force at all times during the continuance of this agreement:
- (a) a policy of public liability insurance in the names of the Hirer and Titan for their respective rights and interests with an insurance company approved in writing by Titan, such insurance to be in the sum of not less than ten million dollars (\$10,000,000.00) for any one event with automatic reinstatement, to provide cover for liability for injury or loss related to the Equipment or related to any act omission or negligence of the Operator (if any), to provide a full indemnity without any claim for contribution being made on any insurance policy taken out by Titan, and to include a provision to insure the Hirer and Titan respectively against any claim or cross-claim brought by one against the other in proceedings in any court of law of the nature of third party proceedings; and
 - (b) all insurances required by law including without limitation workers compensation insurance.
- 7.3 If the Hirer shall at any time fail to take out or keep in force the said insurance policies, Titan may do all things necessary to effect and maintain such insurance and any money expended by Titan for that purpose will thereupon be a debt due and owing by the Hirer to Titan under this agreement.
- 7.4 The Hirer shall, on or before the Date of Commencement, deliver to Titan a certificate, issued by the Hirer's insurers, of the currency of the said insurance policies.
- 7.5 The Hirer indemnifies Titan against all actions, suits, claims and demands whatsoever which may be brought against it and also all costs, damages and expenses which Titan may in any way pay or incur in defending or settling the same in consequence or arising out of or by reason of the Hirer's use of the Equipment or the Hirer having possession of the Equipment or any accident or other incident involving the Equipment.
- 7.6 Titan may enter on any premises or vessel where Titan believes the Equipment is located or on any premises or vessel occupied by the Hirer for the purpose of performing any of Titan's obligations under this agreement in respect of the Equipment, inspecting and or testing the Equipment or serving any notice or demand in relation to the Equipment and, upon termination of the Hire, for the purpose of repossessing the Equipment.
- 7.7 The Hirer shall not sell, dispose of or encumber the Equipment or any right, title or interest therein or attempt, purport or agree so to do.
- 7.8 Any accessories, replacements or other goods now or hereafter supplied with or for or attached to the Equipment shall become a part thereof.
- 7.9 Titan shall not be responsible for any property or articles alleged by the Hirer to have been left with, repossessed or returned with the Equipment and any property or article found in or with the Equipment may be sold by Titan unless collected by the Hirer within one month of Titan serving on the Hirer notice of its intention to sell them, and the net proceeds (after deducting therefrom all costs, charges and expenses of and incidental to the sale thereof)

credited to the Hirer's account. Should Titan be unable to sell any of the said property or articles within a reasonable time they may be disposed of by Titan as Titan may see fit or may be destroyed.

7.10 The Hirer promises to Titan that:

- (a) it will not assign its estate or any part thereof or enter into a deed of arrangement for the benefit of its creditors;
- (b) no execution is now or will be levied on or against any of its property; and
- (c) it shall notify Titan immediately in writing of any change in the Hirer's address, it is responsible for the accounts for the email address and the mobile telephone specified in the schedule as its email address and mobile telephone number, that email address and telephone number exist and are functioning and it will inform Titan of any change thereto or if they or any of them are cancelled or cease to exist.

7.11 The Hirer hereby irrevocably authorises Titan to appropriate any moneys the Hirer pays to Titan or which Titan receives in connection with this agreement towards any debt or liability of the Hirer to Titan on any account whatsoever.

7.12 The Hirer authorises Titan to disclose to any person who may inquire any credit information about the Hirer.

8. Wet hire

8.1 If the table with the heading "Responsibilities" in the schedule is marked to indicate that Titan is responsible for "Operator", then this clause shall apply.

8.2 Titan will provide to the Hirer an Operator to operate the Equipment. Subject to this clause, the Operator shall comply with reasonable directions of the Hirer in relation to the operation of the Equipment.

8.3 The Hirer shall pay to Titan:

- (a) a fuel levy of an amount equal to 8% (or such other percentage as is notified to the Hirer from time to time) of the Hiring Fee, to be paid at the same time and in the same manner as the Hiring Fee;
- (b) all expenses incurred by Titan in the course of, incidental to, or as a consequence of the hire of the Operator to the Hirer.

8.4 The Hirer shall:

- (a) provide and ensure that the Operator attends an induction or job familiarisation program prior to the Operator commencing work for the Hirer;
- (b) not require the Operator to undertake work other than operation of the Equipment without obtaining the prior consent in writing of Titan;
- (c) conduct all operations involving the Equipment in accordance with generally accepted industry and work standards and practices, including without limitation:
 - (i) providing a safe work environment to enable the Operator to carry out the Operator's duties in a safe and efficient manner including a site-specific, or where applicable, job-specific, safety induction program prior to the commencement of work by the Operator;
 - (ii) complying with all generally accepted industry and work standards and practices relating to occupational safety and health as if the Operator were an employee of the Hirer;
 - (iii) applying its own fatigue policy to the Operator as if the Operator were an employee of the Hirer; and
 - (iv) complying with all laws relating to occupational safety and health including the *Occupational Safety and Health Act 1984* (WA) as if the Operator were an employee of the Hirer;
- (d) at all times comply with the provisions of any statute relating to earthmoving, mining, labour, occupational safety and health, and without limiting the generality of the foregoing shall:

- (i) take out and keep in force all licences and permits required for the carrying on of any business conducted by it;
 - (ii) comply with all laws governing equal opportunity and non-discrimination;
 - (e) provide all safety and protective equipment for the Operator and ensure that the Operator wears the said equipment at all relevant times.
- 8.5 The Hirer acknowledges that Titan has a duty of care and obligations to its Operator and as such has its own occupational safety and health procedures. In the event of any difference between the Hirer's occupational safety and health policies and Titan's own policies and procedures:
- (a) the Hirer shall consult with Titan to resolve such difference;
 - (b) the Hirer shall not require the Operator to perform any duty until such difference is resolved.
- 8.6 Titan may by its officers, agents and employees enter upon any site of the Hirer at all reasonable times and upon reasonable notice to the Hirer to conduct inspections, incident investigations and audits.
- 8.7 The Hirer acknowledges that Titan is not performing, and is not contracting to perform, the services which the Hirer wishes the Operator to undertake. Titan's obligation under this agreement is to provide an Operator.
- 8.8 The Hirer acknowledges that the Operator shall be under the care, control and supervision of the Hirer for the duration of the Hire Period. The Hirer shall be responsible for all acts and omissions of the Operator, and shall:
- (a) release to the full extent permitted by law Titan from all claims and demands of every kind whether by the Hirer or any third party resulting from any accident, loss, damage or injury caused by any act, omission or negligence of the Operator; and
 - (b) indemnify and keep indemnified Titan from and against all claims, demands, writs, summonses, actions, suits, proceedings, judgements, orders, decrees, damages, costs, losses and expenses of any nature whatsoever brought by any person whomsoever which Titan may suffer or incur as a consequence of, incidental to, or in any way arising out of the work to be carried out by the Operator or occasioned wholly or in part by any act, neglect, default or omission by the Operator, or loss of life or any injury suffered by the Operator.
- The Hirer shall notify Titan as soon as practicable upon becoming aware of any incident involving an Operator.
- 8.9 In the event of the Operator being injured while performing any duty pursuant to this agreement, the Hirer shall have joint responsibility with Titan for the rehabilitation of the injured Operator. Where an injury to the Operator is occasioned wholly or in part by any act, neglect, default or omission by the Hirer, then without prejudice to Titan's other rights and remedies the Hirer shall indemnify and keep indemnified Titan from and against all damages, costs, losses and expenses of any nature whatsoever which Titan may suffer or incur in rehabilitating the Operator.
- 8.10 The Hirer shall take out and keep in force at all times during the Hire in the names of the Hirer and Titan for their respective rights and interests with an insurance company approved in writing by Titan, a policy of insurance against all liability to the Operator, whether arising by virtue of any applicable workers compensation law or at common law, engaged in doing anything for the purposes of the Hire or any activity directly or indirectly therewith. The policy obtained shall provide unlimited common law cover in respect of any one accident to the Operator and a full indemnity without any claim for contribution being made on any insurance policy taken out by Titan, and shall include a provision to insure the Hirer and Titan respectively against any claim or cross-claim brought by one against the other in proceedings in any court of law of the nature of third party proceedings.
- 8.11 If the Hirer shall at any time fail to take out or keep in force the said insurance policy, Titan may do all things necessary to effect and maintain such insurance and any money expended by Titan for that purpose will thereupon be a debt due and owing by the Hirer to Titan under this agreement.

- 8.12 The Hirer shall, on or before the Date of Commencement, deliver to Titan a certificate, issued by the Hirer's insurer, of the currency of the said insurance policy.
- 8.13 Titan shall not be responsible for any failure or delay to fulfil any term of this clause if fulfilment has been delayed, hindered or prevented by any circumstances whatsoever which are not under its control including without limiting the generality of the foregoing illness of the Operator, injury or death of the Operator whether or not such injury or death was caused or contributed to by Titan, resignation or dismissal of the Operator, the Operator being unavailable to work for the Hirer for any reason arising after the execution of this agreement, strikes, lockouts, go-slow, ban, any other labour conflict or industrial dispute or disturbance, acts of god or nature and adverse weather conditions. Titan shall make reasonable endeavours to make good and resume compliance with the obligation which is delayed, hindered or prevented, provided however that it shall not be obliged to settle any labour difficulty or dispute on terms unacceptable to it.
- 8.14 Unless the table with the heading "Responsibilities" in the schedule is marked to indicate that Titan is responsible for "Operator travel", the Hirer shall:
- (a) pay Titan for the time taken for the Operator's travel to and from the Operator's residence to the Job Site during the Hire at the Hire Rate per hour; and
 - (b) pay for, or reimburse Titan on demand for the payment of, the cost of such travel.
- The lack of any entry in relation to "Operator travel" in the schedule does not affect the obligation of the Hirer to pay the Hiring Fee in respect of the Operator's travel.
- 8.15 Where the Job Site is at a distance from the Operator's residence so that overnight accommodation for the Operator is reasonably necessary, the Hirer shall pay for, or reimburse Titan on demand for the payment of, the Operator's accommodation and meals during such period that overnight accommodation is reasonably necessary, provided that if the table with the heading "Responsibilities" in the schedule is marked to indicate that Titan is responsible for "Accom / meals", then Titan shall pay for such accommodation and meals. The lack of any entry in relation to "Accom / meals" in the schedule does not affect the obligation of the Hirer to pay for accommodation and meals of the Operator.

9. Specific responsibilities of Titan

- 9.1 If the table with the heading "Responsibilities" in the schedule is marked to indicate that Titan is responsible for "Minor repairs", then Titan will at its own expense repair any Minor Fault save for any Minor Fault caused by any wilful act or omission by the Hirer, its servants or agents. The lack of any entry in relation to "Minor repairs" in the schedule does not affect the obligations of the Hirer to repair the Equipment.
- 9.2 If the table with the heading "Responsibilities" in the schedule is marked to indicate that Titan is responsible for "PM servicing", then Titan will at its own expense carry out PM Servicing provided that:
- (a) the Hirer shall at its own expense provide any parts or materials required by Titan for PM Servicing or pay Titan on demand the cost of any parts or materials provided by Titan;
 - (b) in carrying out PM Servicing, Titan is not required to use parts or materials identical to those mentioned in the manufacturer's instructions.
- The lack of any entry in relation to "PM servicing" in the schedule does not affect the obligations of the Hirer to service the Equipment.
- 9.3 If the table with the heading "Responsibilities" in the schedule is marked to indicate that Titan is responsible for "Service kits", then Titan will at its own expense provide Service Kits, provided that:
- (a) Titan is not required to provide parts or materials identical to those mentioned in the manufacturer's instructions; and
 - (b) Titan is not required to install or replace the Service Kits.

The lack of any entry in relation to “Service kits” in the schedule does not affect the obligation of the Hirer to service the Equipment.

- 9.4 If the table with the heading “Responsibilities” in the schedule is marked to indicate that Titan is responsible for “Undercarriage wear”, then sub-clauses 3.12 to 3.15 both inclusive of this agreement shall not apply in relation to the Undercarriage. The lack of any entry in relation to “Undercarriage wear” in the schedule does not affect the obligation of the Hirer to pay for wear to the Undercarriage.
- 9.5 If the table with the heading “Responsibilities” in the schedule is marked to indicate that Titan is responsible for “Tyre wear”, then sub-clauses 3.6 to 3.10 both inclusive of this agreement shall not apply. The lack of any entry in relation to “Tyre wear” in the schedule does not affect the obligation of the Hirer to pay for tyre wear.
- 9.6 If the table with the heading “Responsibilities” in the schedule is marked to indicate that Titan is responsible for “GET wear”, then sub-clauses 3.12 to 3.15 both inclusive of this agreement shall not apply in relation to the Ground Engaging Tools. The lack of any entry in relation to “GET wear” in the schedule does not affect the obligation of the Hirer to pay for wear to Ground Engaging Tools.
- 9.7 If the table with the heading “Responsibilities” in the schedule is marked to indicate that Titan is responsible for “Fuels”, then Titan will at its own expense provide such fuels (not including Lubricants) as are necessary to operate the Equipment during the Hire. The lack of any entry in relation to “Fuels” in the schedule does not affect the obligations of the Hirer in relation to fuel.
- 9.8 If the table with the heading “Responsibilities” in the schedule is marked to indicate that Titan is responsible for “Lubricants”, then Titan will at its own expense provide such Lubricants as are necessary to operate the Equipment during the Hire, provided that Titan is not required to apply the Lubricants. The lack of any entry in relation to “Lubricants” in the schedule does not affect the obligations of the Hirer to service the Equipment.

10. Other obligations of Titan

- 10.1 Titan warrants that on the Date of Commencement the Equipment will be in working order and any fuel tank forming part of the Equipment will be full.
- 10.2 In the event Titan is in breach of any warranty whether express or implied and not excluded as hereinafter provided, its liability therefor is limited to:
- (a) in the case of services:
 - (i) the supplying of the relevant service again; or
 - (ii) the payment of the cost of having the relevant service supplied again;
 - (b) in the case of goods:
 - (i) the replacement of the goods or the supply of equivalent goods; or
 - (ii) the repair of the goods.
- 10.3 Except as herein provided, to the fullest extent permitted by law all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness for any purpose design, assembly, installation, delivery, materials workmanship or otherwise of the Equipment (or any of it) and as to due care and skill of any services provided are expressly excluded and Titan shall not be liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation, commissioning, operation delivery or use of the Equipment, arising out of the provision of any service or arising out of the negligence Titan or the Operator or in anyway whatsoever.
- 10.4 Every exemption from liability, defence and immunity of whatsoever nature applicable to Titan or to which Titan is entitled hereunder shall also be available and shall extend to protect every one of its servants or agents acting hereunder or making or giving statements, information or advice and for the purposes of this clause Titan shall be or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might

be its servants or agents from time to time as well as on its own behalf and all such persons shall to this extent be or be deemed to be parties to this agreement.

11. Dispute of fact

11.1 Subject to sub-clauses 3.10 and 3.15, any dispute between the parties as to a question of fact in relation to the Equipment or the Operator where the amount in issue does not or is unlikely to exceed \$10,000 shall be referred to and determined by a person appointed by the Chairman of the Institute of Arbitrators and Mediators Australia, WA Chapter at the direction of the parties or either of them, who shall act as an expert not an arbitrator and whose decision shall, absent manifest error or fraud, be final and binding on the parties. The costs of the said Institute in making the said appointment and the costs of the said expert so appointed shall be borne by the parties in equal shares. If the Hirer fails to pay its share of the costs, Titan may pay the fees that will thereupon be a debt due and owing by Hirer to Titan under this agreement.

12. Default

12.1 The Hire may be terminated by notice in writing to that effect:

- (a) from one party (in this paragraph called the **Innocent Party**) to the other (in this paragraph called the **Defaulting Party**) as a consequence of any breach of this agreement by the Defaulting Party of which not less than 7 days' notice in writing has already been given by the Innocent Party to the Defaulting Party and which breach has not been remedied by the Defaulting Party to the reasonable satisfaction of the Innocent Party at the time of service of said notice of termination on the Defaulting Party;
- (b) from Titan to the Hirer without notice in the event that:
 - (i) the Hirer defaults in the payment of the Hiring Fee by more than 2 days;
 - (ii) the Hirer removes the Equipment from the Job Site;
 - (iii) the Hirer, being a company shall enter into liquidation whether compulsorily or voluntarily or enter into any arrangement or composition for the benefit of its creditors or appoint an administrator or not being a company shall assign his estate or enter into a deed of arrangement for the benefit of his creditors;
 - (iv) any execution either by property (seizure and sale) order or equivalent or by appointment of a Receiver is levied on or against any of the property or assets of the Hirer;
 - (v) any cheque given by the Hirer to or at the direction of Titan or its agent is dishonoured; or
 - (vi) the Hirer has made a false statement in or in relation to this agreement.

13. Miscellaneous provisions

Amendment of terms

13.1 Titan may change any term of this agreement without prior notice to the Hirer and without the consent of the Hirer.

Third party interests

13.2 The Hirer acknowledges and agrees that:

- (a) a person other than Titan may be the legal owner of the Equipment (**Owner**) and Titan may have entered into an agreement to lease or hire the Equipment from the Owner (**Headlease**). The exercise of any rights by the Owner under the Headlease will not constitute a breach or default under this agreement by Titan or otherwise entitle the Hirer to terminate, rescind or revoke this agreement; and
- (b) the Hirer's rights in respect of Equipment are expressly subject and subordinated to the rights of the Owner (whether arising under the Headlease, at law or otherwise). Nothing in this agreement will in any way limit, reduce, vary or otherwise qualify the rights of the Owner under or in connection with the

Headlease and the Owner will be entitled to exercise all of its rights under or in respect of the Headlease to the same extent as if this agreement had not been entered into.

GST

- 13.3 All taxable supplies under this agreement are exclusive of GST and the recipient of the taxable supply will pay GST thereon.
- 13.4 If GST is imposed on a taxable supply made under, by reference to, or in connection with this agreement, then the consideration provided for that supply is increased by the rate at which that GST is imposed.
- 13.5 The additional consideration is payable at the same time and in the same manner as the consideration to which it relates except where the liability to pay GST arises or is confirmed after the consideration has been paid, in which case the additional consideration is payable on demand.

No assignment

- 13.6 The Hirer may not assign the benefit of this agreement or any interest therein without the express written consent of Titan first had and obtained.

Entire agreement

- 13.7 This agreement sets forth the entire agreement and understanding between the parties as to the subject matters hereof and merges and supersedes all prior discussions, agreements and understandings of every kind and every nature between them and no party hereto shall be bound by any condition, definition, warranty or representation other than as expressly provided for in this agreement, or any subsequent agreement in writing between the parties.

Service of notices

- 13.8 Any notice or other document or writing required to be served by Titan on the Hirer may be served by:
- (a) facsimile transmission to the number of the Hirer specified in the schedule if any, and any such notice shall be deemed to be served on the day of transmission; or
 - (b) by pre-paid post addressed to the Hirer at the Hirer's address herein or at such other address as the Hirer may have notified to Titan in writing from time to time and any such notice or other document in writing shall be deemed to be served at the time the same would normally be delivered in the ordinary course of the post.

Service of originating process

- 13.9 In the event of any action in respect of this agreement being begun the process by which it is begun may be served on any party hereto at the address and in the manner hereinbefore prescribed for the service of any notice or other document in writing by pre-paid post.

Waiver

- 13.10 No waiver or indulgence by any party to this agreement shall be binding upon that party unless in writing and in any event no waiver of one breach of any term or condition of this agreement shall operate as a continuing waiver unless so expressed nor shall it operate as a waiver of another breach of the same or any other term or condition of this agreement. The demand for or the payment of any money or interest thereon due and owing under this agreement shall be without prejudice to Titan's rights pursuant to this agreement at law or in equity.

Jurisdiction

- 13.11 This agreement shall be deemed to have been made in the State of Western Australia and the construction, validity and performance of this agreement shall be governed in all respects by the laws of that State and the parties submit to the exclusive jurisdiction of the courts within Perth, Western Australia.

Severance

13.12 The parties hereby agree that in the event that any provision of this agreement is contrary to any statutory enactment in force in the Commonwealth of Australia then that provision shall, if capable of being severed, be severed from this agreement and the balance of this agreement shall remain in full force and effect.

Holding over

13.13 Should the Hirer continue to retain possession of the Equipment after the Term expires with or without the consent of the Hirer it shall continue to pay the Hiring Fee and be bound by the provisions of this agreement without prejudice to the rights of Titan.

Interpretation

13.14 Titan means and includes Titan and its successors and assigns; the word **person** shall include a corporation; words importing the singular number or plural number shall include the plural number and the singular number respectively; and words importing the masculine or neuter genders shall include every gender. References to statutes shall include all statutes amending, consolidating or replacing the statutes referred to; references to any statutory body shall include any statutory body exercising the same or similar powers to the relevant statutory body either in conjunction therewith or in lieu thereof. When two or more parties enter into covenants, obligations and or agreements together, those covenants, obligations and or agreements on their part contained refer to and shall bind them and any two or greater number of them jointly and each of them severally; the captions, headings and clause numbers appearing in this agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of the clauses of this agreement nor in any way affect this agreement.