

# Terms and Conditions

## TERMS AND CONDITIONS

### 1. DEFINITIONS

The following terms have the meaning set out in the Schedule:

“**Commencement Date**”;

“**Contract**”;

“**Deposit**”;

“**Guarantor**”;

“**Hire End Date**”;

“**Hirer**”;

“**Single Shift Maximum Hours**”;

“**Site**”

“**Stand-by Rate**”;

“**Wear Materials**”.

“**Accessories**” means any and all plant, equipment and accessories provided with the Equipment at the time of hire, or as otherwise specified in the Schedule.

“**Additional Charges**” means any other amounts payable to Munganya as set out in this Contract.

“**Dry Hire**” means the lease of the Equipment to the Hirer without an Operator or labour provided by Munganya.

“**Equipment**” means the equipment (including any Accessories) specified in the Schedule.

“**Fees**” means the Hire Fee, the Operator Fee and any other Additional Charges.

“**Hire Fee**” means the hire fee, and any other applicable rates, set out in the Schedule.

“**Hire Period**” means the period of hire specified in the Schedule, starting on the Commencement Date and ending on the Hire End Date (if specified) or as otherwise provided in this Contract, and as extended by the parties in writing from time to time.

“**Loss**” means any claim, action, damage, loss, liability, cost, charge or expense.

“**Major Repairs**” means any maintenance or repairs for the Equipment which costs more than the value set out in the Schedule for a Minor Repair.

“**Major Service**” means any major service conducted at the applicable Servicing Periods, in accordance with manufacturer’s recommendations and any Operating Instructions.

“**Minor Repairs**” means any maintenance or repairs for the Equipment, equal or less than the amount set out in the Schedule.

“**Minor Service**” means any minor service conducted at the applicable Servicing Periods, in accordance with manufacturer’s recommendations and any Operating Instructions.

“**Munganya**” means Munganya Pty Ltd (ACN 658 362 246) as trustee for Munganya (ABN 25 658 362 246), its successors and permitted assigns.

“**Operating Instructions**” means any operating instructions or manual provided to the Hirer with respect to the Equipment.

“**Operator**” means the person or person(s) provided by Munganya to operate the Equipment for the purpose of a Wet Hire.

“**Operator Fee**” means the operator fee for the provision of the Operator, as set out in the Schedule.

“**Pre-Inspection Report**” means a report provided by Munganya to the Hirer, on or before the Commencement Date, in regard to the condition of the Equipment prior to the Commencement Date.

“**Schedule**” means the schedules included with these terms and conditions and incorporated into this Contract.

“**Servicing Period**” means the accumulated hourly usage of the Equipment by the Hirer as specified in the manufacturer’s manual of the Equipment, or if not specified in the manufacturer’s manual, then as otherwise specified in the Schedule.

“**Wet Hire**” means the lease of the Equipment to the Hirer with an Operator or labour by Munganya.

### GRANT

#### Hire of Equipment

Munganya agrees to lease the Equipment to the Hirer for the Hire Period on either a Dry Hire or Wet Hire basis as set out in the Schedule.

### CHANGE IN CONTROL

The Hirer shall give Munganya not less than 14 days’ prior notice of any proposed change of ownership of the Hirer and/or any other change in the Hirer’s details (including, but not limited to, changes in the Hirer’s name, address, contact details, or business practice).

The Hirer shall be liable for any Loss incurred by Munganya as a result of the Hirer’s failure to comply with this clause.

### FEES AND PAYMENT

#### Fees and Deposit

The Hirer shall pay the Fees in accordance with this Contract.

Where required, the Hirer shall pay the Deposit on or before the Commencement Date. Munganya reserves the right not to provide the Equipment to the Hirer if the Hirer fails to pay the Deposit in full.

Where the Schedule sets out minimum hours for any Equipment and in any given month the Hirer uses the Equipment for less than the minimum hours, then the Hirer must pay Munganya the Hire Fee for that Equipment as if it was used for the minimum hours. The minimum hours will be reduced pro-rata where the Hire Period commences or ends partway through the month, or where the Equipment is unavailable due to any negligence by Munganya. Any hours of use above

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the minimum hours will be charged at the relevant Hire Fee and will not roll over to the following month.

(d) If the Schedule does not specify a Hire End Date, then Munganya may vary the Fees from time to time by giving the Hirer 30 days' notice.

**4.2 Payment**

The Hirer must pay:

- (i) the Fees within 30 days of the date of the end of the calendar month in which each invoice provided to the Hirer by Munganya, without set off or deduction;
- (ii) by electronic funds transfer to a bank account nominated by Munganya, or as otherwise agreed between the parties; and
- (iii) interest at the rate of 10% per annum on all overdue amounts calculated on a daily basis from the due date for payment until the actual date of payment.

**4.3 Hirer's other payments**

Unless otherwise agreed by the parties in writing (including in the Schedule), the Hirer must pay all repair and operating expenses in respect of the Equipment including (without limitation) the cost of fuel and lubricant, the cost of replacement parts and accessories and the costs of complying with any other requirements referred to in this Contract.

**4.4 Daily Rates and Double Shifting**

Unless otherwise agreed and made explicit in the Schedule, all daily rates are for a single shift only. Where the Hirer uses the Equipment in excess of the Single Shift Maximum Hours, they must in addition to the daily rate:

- (a) pay the hourly rate specified in the Schedule for any hours in excess of the Single Shift Maximum Hours; and
- (b) perform additional servicing for the Equipment as reasonably directly by Munganya, at the Hirer's cost in all things.

**5. DELIVERY AND INSTALLATION**

**5.1 Delivery**

(a) Unless agreed otherwise in writing (including in the Schedule), transportation costs to and from the Site, including the supply of additional labour, equipment, materials, transportation expenses and other requirements are at the cost of the Hirer.

(b) Unless agreed otherwise in writing (including in the Schedule), the Hirer is responsible for the supply of all necessary craneage, labour and other handling equipment to offload, assemble, erect, dismantle and load the Equipment at the Site.

(c) Delivery of the Equipment is taken to occur at the time that Munganya delivers the Equipment to the Equipment Collection Location, even if the Hirer is not present at the address, or when the Equipment is collected by the Hirer from Munganya.

(d) Delivery of the Equipment to a third party nominated by the Hirer is deemed to be delivery to the Hirer for the purposes of this Contract.

(e) Munganya may deliver the Equipment by separate instalments, and may separately invoice the Hirer for each instalment.

(f) In the event that the Hirer is unable to accept delivery of the Equipment as arranged between the Hirer and Munganya, then the Hirer must pay Munganya' actual costs plus a 20% handling fee for redelivery of the Equipment.

(g) Any time or date for delivery provided by Munganya to the Hirer is an estimate only. Munganya will use reasonable efforts to deliver the Equipment by the estimated time or date. The Hirer must accept delivery of the Equipment even if late and Munganya will not be liable for any Loss incurred by the Hirer as a result of late delivery. If the Hirer cancels delivery of the Equipment, the Hirer shall be liable for any and all Loss suffered or incurred (whether direct or indirect) by Munganya in connection with that cancellation.

**5.2 Prior Inspection**

(a) Munganya must provide a Pre-Inspection Report to the Hirer on or before the Commencement Date.

(b) The Hirer may provide Munganya with notice of any fault or defect in the Equipment (**Defect Notice**) within 2 business days of the delivery or collection of the Equipment. If the Hirer does not provide a Defect Notice to Munganya within that time period, the Hirer will be deemed to have fully and unconditionally accepted the Equipment on an "as is" basis with any faults or defects, including those set out in the Pre-Inspection Report, other than for any latent defects that could not possibly have been detected by the Hirer through a thorough and expert inspection of the Equipment. Munganya must attend to repairs of any defects outlined in the Defects Notice within:

- (i) 1 business day of receipt of the Defect Notice if the Equipment is located within the Perth Metropolitan area; or
- (ii) 3 business days of receipt of the Defect Notice if the Equipment is located outside the Perth Metropolitan area.

(c) If any defect identified in the Defect Notice is material to the operation of the Equipment and is not capable of being repaired, then the Hirer may elect for Munganya to collect the Equipment from the Equipment Return Location by giving notice to Munganya. If the Hirer does not elect to return the Equipment within 5 Business Days of the date of the Defect Notice, then the Hirer is deemed to have accepted the Equipment with the identified defect and waives any claim against Munganya in respect of that defect.

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- (e) The Hirer acknowledges that Munganya may acquire the Equipment for the sole purpose of this Contract. Accordingly, if the Hirer fails to accept delivery of the Equipment in accordance with this clause 5:
  - (i) the Hirer acknowledges that Munganya will suffer loss and damage; and
  - (ii) the Hirer must pay Munganya, by way of liquidated damages, the sums the Hirer would have been liable to pay under this Contract had the Hirer accepted the Equipment in accordance with clause 5 and then immediately returned the Equipment to Munganya.
- (f) The Hirer acknowledges that the liquidated damages represents Munganya' genuine pre-estimate of the loss and damage likely to be suffered by it if the Hirer fails to accept delivery of the Equipment in accordance with this clause 5, and is not a penalty.
- (g) If this clause 5.2 is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Munganya from claiming liquidated damages, Munganya is entitled to claim against the Hirer damages at law for the Hirer's failure to accept delivery of the Equipment in accordance with this clause 5.

**5.3 Mobilisation and Demobilisation**

- (a) If Munganya agrees to, or exercises any right to mobilise or demobilise the Equipment, the Hirer must provide Munganya with full access to the location of the Equipment.
- (b) Unless agreed otherwise in writing (including in the Schedule), the Hirer is responsible for mobilisation and demobilisation. If the Hirer fails to return the Equipment to Munganya as required under this Contract, or (if applicable) fails to provide access to the Equipment, the Hire Fee will continue to be payable until the Equipment has been returned or access is provided as required.
- (c) If Munganya agrees to install, mobilise, demobilise or transport the Equipment, the Hirer must pay Munganya all of its associated reasonable costs, plus a margin of 20%, unless agreed otherwise in writing.

**5.4 Holding Over**

- (a) At any time before the expiry of the Hire Period, the Hirer may request that it be permitted to retain possession of the Equipment after the expiry of the Hire Period without using it (**Holding Over**).
- (b) If Munganya (in its absolute discretion) agrees, then the Hirer may retain possession of the Equipment and must pay the Stand-by Rate to Munganya.
- (c) Holding Over can be terminated at any time by either party with 30 days' notice, and the Hirer must return the Equipment to the Equipment

Return Location if Holding Over is terminated by notice.

- (d) If, during Holding Over, the Equipment is used for any reason other than mobilisation or demobilisation, then Holding Over will immediately cease, the Equipment will deemed to be hired by the Hirer from the date of use and the full Hire Fee will be payable from the date of use until the hire of the Equipment is terminated by either party with 30 days' notice.

### 6. SERVICE & MAINTENANCE

Munganya will supply consumable lists, service part lists and service sheets with thorough information to conduct the Major/Minor Service for each machine on hire to the Hirer.

#### Major Service

Unless agreed otherwise in writing (including in the Schedule), and subject to this clause 6, at every Servicing Period the Hirer must, at its own expense , undertake a Major Service of each item of Equipment in accordance with the manufacturer's recommendations and specifications, Operating Instructions, guidelines or the reasonable directions of Munganya given from time to time, must otherwise ensure that the Equipment and any Accessories is in proper working order, condition and in good substantial repair, and must immediately provide full copies of all service sheets and evidence of servicing to Munganya on request.

If the time of any Major Service falls due shortly after the Commencement Date, Munganya will credit the Hirer with the cost of the Major Service so that the Hirer's cost (as estimated by Munganya) is reduced to the percentage of hours accrued by the Hirer between Major Services. For example, if a Major Service is due for a piece of Equipment every 1000 hours, the Hirer is obliged to undertake the Major Service, and the Hirer has used 100 hours, then Munganya will credit the Hirer with 90% of the cost of the Major Service. Munganya may supply service kits to reduce the cost of any Major Service and that reduced cost will be considered part of the credit provided by Munganya.

If Major Services are the responsibility of the Hirer and the Equipment is demobilised, the Hirer must pay Munganya the expected costs of the next Major Service, as reasonably determined by Munganya, but reduced to the percentage of hours accrued by the Hirer between Major Services. For example, if a Major Service is due every 1000 hours, and the Hirer has used 100 hours, then the Hirer must pay 10% towards the next Major Service.

#### Minor Service

Unless agreed otherwise in writing (including in the Schedule) and subject to this clause 6, at

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every Servicing Period the Hirer must at its own expense and, undertake a Minor Service in accordance with all manufacturer's recommendations and specifications, Operating Instructions and guidelines or other reasonable directions of Munganya given from time to time, must otherwise ensure the Equipment is in proper working order and condition and in good substantial repair, and must promptly provide full copies of all service sheets and evidence of servicing to Munganya on request.

**6.3 General**  
Unless agreed otherwise in writing (including in the Schedule), the Hirer must:

- (a) complete the manufacturer's oil sampling analysis at every oil change period, or as otherwise directed by Munganya, on all compartments in the Equipment and provide SOS sampling records to Munganya, or to any other party as directed by Munganya, within 24 hours of completing the oil sampling analysis, or as otherwise directed by Munganya;
- (b) complete daily servicing and pre-start checks, supply and apply all fuel, oil, lubricants, water, grease, coolant and other consumables necessary for the proper and prudent operation, service and maintenance of the Equipment.
- (c) promptly replace all parts which may from time to time become worn out, lost, stolen, compulsorily acquired, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use by damage or obsolescence. All replacement parts will be the property of Munganya;
- (d) clean the Equipment on a regular basis, and when directed by Munganya;
- (e) inspect, maintain and repair all tyre/rims, including (but not limited to) damage, checking correct PSI pressure, ensuring correct steering tyres, correct balance of tyres, o rings, replacement, fitting, carnage, disposal and excessive wear;
- (f) repair all GETs, including (but not limited to) buckets, rock breakers, cutting edges, moldboards, scarifiers and ripper tyres;
- (g) inform Munganya before the start of the Hire Period if the Equipment may be exposed to water, salt or corrosion during the Hire Period. The Hirer acknowledges that salt, water and corrosive damage to the mechanisms, paint work, electrical wiring, pumps, and tanks of the Equipment, and may not be visible. If the Hirer informs Munganya that the Equipment may be exposed to water, salt or corrosion during the Hire Period, Munganya may elect to prepare the Equipment to protect it, and the Hirer must pay Munganya' costs of preparing the Equipment. If the Hirer does not inform Munganya that the Equipment may be exposed to water, salt or corrosion during the Hire

Period, then the Hirer is liable for any damage to the Equipment (including excessive wear and tear) caused by water, salt or corrosion.;

- (h) keep complete and proper records with respect to the obligations of the Hirer specified in this clause and provide such records to Munganya on demand;
- (i) not remove any accessories provided with the Equipment and maintain those accessories at the Hirer's cost in good working order; and
- (j) ensure that all data collected by the Equipment and any accessories, including any OEM Electronic Technician and Service Information System is not tampered with, corrupted or deleted. All data collected by the Equipment and any accessories is owned by Munganya unless agreed otherwise in writing.

**6.4** Munganya may require the return of the Equipment at any time to repair or service it. The Hirer must promptly provide the Equipment to Munganya (or its agent) on request for this purpose. If the Hirer has materially failed to comply with clause 6, or the Equipment has been damaged by the Contractor's neglect or breach of this Contract, the return will be at the Hirer's cost, otherwise Munganya will reimburse the Contractor for the its reasonable costs in providing the Equipment to Munganya under this clause.

Unless agreed otherwise in writing (including in the Schedule), the Hirer is liable for any and all costs and expenses for wear and tear in connection with the Hirer or the Operator's use of the Equipment's ground engaging tools, tyre wear, track wear, undercarriage wear, GETs, brake wear, blade wear, bucket wear, tray wear and any other kind of wear set out in the Schedule including (but not limited to any Wear Materials). This will be presented and expensed as measure in and measure out to the Hirer.

### DAMAGE

Unless the Equipment is hired on a Wet Hire basis or where any damage is caused to the Equipment by reason of the negligence of the Operator, the Hirer must provide notice as soon as practicable to Munganya if there is any significant or serious damage or disrepair to the Equipment (including any corrosion or damage caused by salt water).

If the Equipment is damaged, Munganya may:

- (a) provide notice to the Hirer requiring the Hirer to immediately repair or service the Equipment in accordance with Munganya' directions and at the Hirer's sole cost;

- (b) terminate the Hire Period and/or this Contract; or
- (c) have the Equipment repaired by Munganya (or its contractors) at the Hirer's cost (including any mobilisation, demobilisation, salvage and transport costs)

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7.3 All Fees and any other amounts payable under this Contract shall continue to be payable while any repair or service is carried out.

7.4 Any obligation on Munganya for Major Repairs is subject to this clause 7.

7.5 This clause 7 does not apply to damage directly caused by:

(a) fair, wear and tear to the Equipment as a result of ordinary use by a prudent operator; or

(b) the Operator or Munganya.

**8. OBLIGATIONS**

**8.1 General**

The Hirer must:

(a) use the Equipment in a skilful and proper manner and only for the purposes and within the capacity for which the Equipment was designed;

(b) ensure that any person using or operating the Equipment operates the Equipment safely and in accordance with the Operating Instructions and all relevant statutes, laws, regulations, by-laws and requirements of any authority that apply to the Equipment;

(c) ensure that all persons operating the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to Munganya upon request;

(d) ensure that the Equipment is stored safely and securely and is protected from theft, seizure or damage;

(e) comply in all respects with all applicable laws, regulations, requirements and rules reasonably necessary for the safe and lawful operation of the Equipment, including the obtaining of any required permits or authorisations required for the use of the Equipment;

(f) inform Munganya immediately if the Equipment or any items or part of the Equipment are stolen, lost, destroyed or damaged;

(g) not remove or cover up any plates or other marks that Munganya may affix or cause to be affixed to the Equipment to indicate that the Equipment is the property of Munganya;

(h) not undertake any modifications to the Equipment without Munganya' prior approval; and

(i) keep complete and proper records with respect to the obligations of the Hirer specified in this clause 8 and provide such records to Munganya on demand.

**8.2 Wet Hire**

(a) If the Equipment hire is a Wet Hire, Munganya will provide the Hirer with an Operator that is suitably qualified and licensed to operate the Equipment.

(b) The Hirer must, at all times when hiring the Equipment on a Wet Hire basis:

(i) not separately contract with an Operator or any other Munganya employee for any services that may be compete with those offered by Munganya, unless specifically agreed in writing by Munganya;

(ii) pay the Stand-by Rate where:

A. the Equipment is not used or cannot be used due to any reason, other than for the negligence of Munganya or the Operator; and

B. an Event described in clause 12.1 occurs;

(iii) pay Munganya a 'spotters' fee of a single payment of \$2,000 if the Hirer employs, or contracts with the Operator (in any capacity) within three (3) months of the expiration or termination of this Contract;

(iv) provide all safety, Site and site induction and other relevant and lawful training to the Operator;

(v) at the Hirer's cost, arrange for all and any accommodation and travel, as and when required by Munganya, for the Operator to conduct the Wet Hire services.

Munganya must instruct the Operator to:

(i) always comply with the Hirer's safe, lawful and reasonable directions; and

(ii) not take any directions from any third party, unless authorised by the Hirer and Munganya.

Munganya is not liable for any direct or indirect Loss incurred by the Hirer in connection with the operation of the Equipment by the Operator in accordance with any direction given by the Hirer, or its officers, employees, agents, contractors or clients.

If the Hirer requests to convert the hire of Equipment from Wet Hire to Dry Hire, Munganya may in its sole discretion agree to do so, in which case the Hirer will be:

(i) subject to all Dry Hire conditions under this Contract; and

(ii) liable for all and any travel costs associated with an Operator returning to Munganya' premises;

If Munganya does not agree, Munganya may elect to terminate the Hire Period and/or this Contract by notice to the Hirer.

The Operator is not an employee or agent of the Hirer.

**9. UNSAFE EQUIPMENT**

If the Equipment becomes unusable or unsafe to use for any reason, the Hirer must:

(a) immediately stop using the Equipment;

(b) take all necessary steps to prevent injury to any person or damage to any property as a result of the condition of the Equipment;

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- (c) take all necessary steps to prevent any further damage to the Equipment; and
- (d) not repair or attempt to repair the Equipment without Munganya' prior written approval.

9.2 Where the Equipment is hired on a Wet Hire basis and the Equipment becomes unusable or unsafe to operate, Munganya may immediately stop using the Equipment and if it does so, it will take reasonable steps to re-engage the Equipment as soon as practicable.

### 10. MUNGANYA' OBLIGATIONS

Munganya must:

- (a) ensure that the Equipment remains licensed and registered during the Hire Period (to the extent required);
- (b) ensure that the insurances specified in clause 14 are effected and maintained during the Hire Period; and
- (c) promptly undertake any repairs specified in the Schedule as the responsibility of Munganya (if any).

### 11. SUSPENSION

11.1 Without prejudice to any other remedies Munganya may have, if at any time the Hirer is in breach of any obligation (including those relating to payment) under this Contract, Munganya may (in its discretion):

- (a) provide the Hirer with notice stating:
  - (i) that the Hirer is in breach of an obligation under the Contract;
  - (ii) the obligation that has been breached; and
  - (iii) Munganya intends to, not less than 2 business days' after providing the notice, suspend the provision of the Equipment for hire by the Hirer or take back the Equipment for any amount of time until such breach (including payment of any outstanding amount) has been remedied; or
- (b) provide the Hirer with notice stating:
  - (i) that the Hirer is in breach of an obligation under the Contract;
  - (ii) the obligation that has been breached;
  - (iii) Munganya intends to, not less than 2 business days' after providing the notice, and provided that the Hirer has not remedied the breach to Munganya' satisfaction, terminate the Contract with immediate effect.

11.2 Munganya will not be liable for any Loss whatsoever suffered, or alleged to be suffered, by the Hirer or by any person claiming through the Hirer for the suspension of the hire of the Equipment or termination of the hire of the Equipment or this Contract in accordance with clause 11.1.

### 12. FORCE MAJEURE

- 12.1 A party (Affected Party) is not liable for any delay or failure to perform an obligation under this Contract (other than to pay any amount payable under this Contract) caused by:
  - (a) an act of God;
  - (b) war, terrorism, riot, insurrection, vandalism, pandemic or sabotage;
  - (c) strike, lockout, ban, limitation of work or other industrial disturbance; or
  - (d) law, rule or regulation of any government or governmental agency and executive or administrative order or act of general or particular application.

12.2 The Affected Party must notify the other party as soon as is practicable of any anticipated failure caused by an event referred to in clause 12.1 (Event).

12.3 The Hirer must take all reasonable steps to overcome or reduce the Event and its effects.

12.4 The performance of the Affected Party's obligation is suspended for the period of delay caused by the Event.

12.5 Notwithstanding any other provision contained in this Contract, and for the avoidance of doubt, for the duration of the Event the Hirer is liable to pay Munganya the applicable Stand-by Rate.

12.6 If an Event persists for more than 3 months, either party may by notice to the other terminate the Hire Period.

### 13. TITLE

13.1 The Hirer acknowledges that in all circumstances Munganya retains title to the Equipment (even if the Hirer goes into liquidation or becomes bankrupt during the Hire Period) and no part of the Equipment is intended to be a fixture.

13.2 The Hirer is not authorised to pledge Munganya's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

### 14. INSURANCE

#### 14.1 Munganya' insurance

Munganya shall maintain in respect of the Equipment:

- (a) third party risks insurance against all third party risks including liability for damage or injury of any kind to any property or person and also against other risks to the full extent required by law by a policy inuring for the benefit of Munganya;
- (b) public risk insurance relating to the Equipment for an indemnity (including damage to property of any person) of not less than \$20,000,000.00;
- (c) motor vehicle insurance and/or plant and equipment insurance (if required by Munganya);
- (d) transit insurance; and
- (e) any other insurances reasonably required by Munganya from time to time.

14.2 The Hirer must reimburse Munganya for the costs and expenses with respect to the insurances specified in this clause 14.1 on demand.

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14.3 **Hirer's insurance**  
The Hirer must, at the Hirer's cost, take out and maintain in respect of the Equipment:

- (a) full comprehensive mobile plant and equipment insurance for offroad and a fully comprehensive motor vehicle insurance for on road equipment (at its sole cost) covering loss, theft, damage or destruction (including whilst in Transit) of the Equipment for an amount not less than the market replacement value of the Equipment. The Hirer is solely responsible for any excess or deductible;
- (b) third party liability insurance against all third-party risks including liability for damage or injury of any kind to any property or person and also against other risks to the full extent required by law. The policy must extend to cover damage to property for any unregistered item or item being used as a tool of trade, with a limit of \$20,000,000, and a principal indemnity extension and waiver of subrogation in favour of Munganya. The Hirer will be solely responsible for any excess or deductible;
- (c) any other insurance Munganya reasonably requires or that is required by law, and the Hirer must ensure that Munganya is listed as an interested party (as owner of the Equipment) on each policy.
- (d) The Hirer must provide Munganya with certificates of currency for its insurances within 5 days of any request. Failure by the Hirer to provide Munganya with any certificate of currency will result in a damage waiver fee of 12.5% of the Hire Fee being charged to the Hirer until all certificates of currency are provided.

14.4 If any of the Equipment is damaged or destroyed, Munganya is entitled to receive all insurance proceeds payable for the Equipment, in full and without deduction. The production of these terms and conditions by Munganya is agreed to be sufficient evidence of Munganya' rights to receive the insurance proceeds without the need for any person to make further enquiries.

**15. PERSONAL PROPERTY SECURITIES ACT**

15.1 For the purposes of this clause 15, "PPSA" means the Personal Property Securities Act 2009 and the Personal Property Securities Regulations 2010, as amended from time to time.

15.2 If the Equipment is subject to the PPSA, then Munganya may register its 'security interest' (as defined in the PPSA) in the Equipment. The Hirer must do anything (including obtaining consents and signing documents) that Munganya requires to:

- (a) register Munganya' security interest, including (but not limited to) providing sufficient details of any item of collateral to complete the registration;
- (b) ensure that Munganya' security interest is and remains enforceable, perfected and otherwise effective;
- (c) gain and retain first priority for its security interest; and
- (d) exercise its rights in connection with the security interest or the PPSA.

15.3 Munganya' rights under this Contract are in addition to and not in substitution for Munganya' rights under any other law (including the PPSA) and Munganya may choose whether to exercise rights under this Contract, and/or under any other law in its discretion.

15.4 The parties contract out of, and agree that the following provisions of the PPSA (to the extent permitted by section 115) will not apply to this Contract: sections 95, 96, 121(4), 130, 129(2), 132(3)(d), 132(4), 135, 142 and 143.

15.5 In addition to any rights conferred upon Munganya under the PPSA, the Hirer agrees and acknowledges that, if the Hirer is in material default of this Contract, Munganya has the right to seize, take possession or apparent possession, retain, deal with or dispose of the Equipment, not only under those provisions under the PPSA but also, as additional and independent rights under this Contract. The Hirer agrees that Munganya may exercise any of its rights under this clause 15.5 in any way it deems fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

15.6 The Hirer waives its right to receive a verification statement under section 157(3) of the PPSA.

15.7 Munganya and the Hirer agree that neither party will disclose information of the kind referred to in section 275(1) of the PPSA, and the parties contract out of the operation of that section.

15.8 The Hirer must not sell, encumber, assign, or otherwise deal with the Equipment without the express written consent of Munganya.

15.9 The Hirer must not lease, hire, sub-hire, bail, lend or part with possession of the Equipment (Sub-hire) without Munganya' prior written consent .

15.10 If Munganya consents to a Sub-hire:

- (a) the Sub-hire must be agreed in writing in a form acceptable to Munganya and expressed to be subject to the rights of Munganya under this Contract
- (c) the Hirer must not vary the terms of the Sub-hire without Munganya' prior written consent .
- (b) the Hirer must ensure that the Hirer is provided at all times (and provide to Munganya on request) with up-to-date information about the Sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the Sub-hire and the location and condition of the Equipment.

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- (c) the Hirer must take all steps as may be required, including registration under the PPSA, to:
  - (i) ensure that any security interest of the Hirer in the Equipment arising under or in respect of the Sub-hire is enforceable, perfected and otherwise effective under the PPSA;
  - (ii) enable the Hirer to gain (subject always to the rights of Munganya) first priority (or any other priority agreed by Munganya in writing) for the security interest;
  - (iii) enable Munganya and the Hirer to exercise their respective rights in connection with the Equipment.

### **16. LIABILITIES, WARRANTIES, REPRESENTATIONS AND CONDITIONS**

- 16.1 To the fullest extent permitted by law:
  - (a) all conditions, warranties, terms, and representations (whether express, implied, statutory, or otherwise), including those as to the state, quality, merchantability, or fitness of the Equipment for any purpose, are expressly excluded.; and
  - (b) Munganya is not liable to the Hirer, whether in contract, tort, or otherwise, for any loss or damage (including direct, indirect, or consequential loss, or loss of profits) arising from or in connection with:
    - (i) any defect, malfunction, breakdown or failure of performance of the Equipment;
    - (ii) the termination of this Contract by Munganya, and
  - (c) the Hirer releases Munganya from all claims, demands and liabilities in respect of the subject matter of this clause.
- 16.2 The Hirer warrants and represents that:
  - (a) the Hirer has full power and authority to execute this Contract and to perform all of its terms;
  - (b) this Contract has been duly executed by the Hirer and is a legal and binding deed enforceable against it in accordance with its terms;
  - (c) the Hirer has disclosed to Munganya all facts, circumstances and other information that the Hirer knows or should reasonably know relevant to the hire of the Equipment and that is material to Munganya;
  - (d) the Hirer holds all licences, permits and authorities required to operate the Equipment; and
  - (e) the Hirer's hire and use of the Equipment will not breach any law or requirement or direction of any authority.
- 16.3 If Munganya provides the Hirer with a Topcon, Trimble or similar device, Munganya is not responsible for and the Hirer releases Munganya from liability for any Loss arising from the co-ordinates and frequencies being incorrect or inaccurate. The Hirer must rectify any issue of this kind at its own cost.

### **17. INDEMNITY**

- 17.1 Except to the extent caused by Munganya' gross negligence or wilful misconduct, the Hirer indemnifies and holds harmless Munganya (including its officers, employees and Related Entities (as defined in the *Corporations Act 2001* (Cth)) from and against all Loss (including legal costs on a full indemnity basis and collection costs), whether direct or indirect, arising from or in connection with any one or more of:
  - (a) any warranty given for the benefit of Munganya being or becoming incorrect, untrue or misleading;
  - (b) any breach by the Hirer of a material term of this Contract;
  - (c) the loss or theft of the Equipment during the Hire Period howsoever caused;
  - (d) any failure of the Hirer to make a payment when due;
  - (e) any failure of a payment to be received by Munganya (including, but not limited to, by reason of cyber crime, social engineering, or hacking);
  - (f) any inability of Munganya to access the site to mobilise or demobilise the Equipment;
  - (g) any data collected by the Equipment being tampered, corrupted or deleted;
  - (h) any damage of the Equipment whatsoever or howsoever caused during the period of hire of the Equipment by the Hirer;
  - (i) the Hirer's failure to comply with its obligations in clause 15 (Personal Property Securities Act); and
  - (j) the exercise or attempted exercise by Munganya of any right under this Contract, including under clause 18 (Termination).

### **18. TERMINATION**

#### **Termination by Munganya**

- 18.1 Without prejudice to any other remedies Munganya may have, Munganya may terminate this Contract (or terminate the Hire Period):
  - (a) in accordance with clauses 7.2, 8.2 or 11.1;
  - (b) by notice at any time, if:
    - (i) the Hirer is in breach of any material term (including each payment obligation) of this Contract and, if the breach is capable of remedy, fails to remedy it to Munganya' reasonable satisfaction within 10 business days of receiving notice of the breach;
    - (ii) the Hirer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or has a receiver, manager, liquidator or similar person appointed over it or any of its assets.
  - (c) if the Schedule does not include a Hire End Date, by 30 days' notice to the Hirer.

#### **Costs and expenses**

- 18.2 The Hirer must, on demand, reimburse Munganya for all costs, charges, expenses, fees, disbursements (including all legal costs on an

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indemnity basis) paid or incurred by Munganya as a result of or incidental to:

(a) any breach, default or repudiation of this Contract by the Hirer; and

(b) the exercise or attempted exercise of any right by Munganya under this Contract, including all amounts incurred in preparation and service of notices, in repossessing the Equipment from the Hirer and in enforcing this Contract generally.

**18.3 Return of Equipment**  
 Upon the expiry of the Hire Period or termination this Contract for any reason, the Hirer must, unless otherwise agreed in writing between the parties, promptly deliver the Equipment to Munganya at the Equipment Return Location:

- (i) at the Hirer's expense;
- (ii) in the same condition as the Equipment was originally delivered to the Hirer (save for any reasonable wear and tear); and
- (iii) with a full tank of fuel.

(b) If the Hirer fails to return the Equipment as required in this Contract, the Hirer grants permission to Munganya or its agents to enter any Site, land, or premises owned, occupied, or used by the Hirer, or where the Equipment is reasonably believed to be located, for the purpose of taking possession of the Equipment. Munganya will make reasonable efforts to avoid causing damage when repossessing the Equipment, but Munganya shall not be liable for any damage occasioned to the Site or premises that is reasonably incidental to the repossession process.

**18.4 Termination by Hirer**  
 (a) If the Schedule does not include a Hire End Date, then the Hirer may terminate the contract by giving Munganya 30 days' notice.

(b) If Munganya is in breach of a material obligation under this Contract, and, if the breach is capable of remedy, fails to remedy it to the Hirer's reasonable satisfaction within 10 business days of receiving notice of the breach, the Hirer may terminate the Contract by giving notice to Munganya

**18.5** Munganya is not liable to the Hirer for any Loss whatsoever, whether direct or indirect, suffered by the Hirer as a result of Munganya exercising its termination rights under this clause 18.

**19. CHARGE**  
 19.1 Despite anything to the contrary contained herein or any other rights which Munganya may have howsoever, the Hirer and each of the Guarantors charges their right title and interest in all of their current and future property (real and personal) to secure the performance of the Hirer's obligations under this agreement, and each consent to Munganya registering a caveat on any real property.

**20. GUARANTEE**

20.1 In consideration of the hire of the Equipment, each Guarantor:

(a) unconditionally and irrevocably guarantees to Munganya that the Hirer will:

- (i) pay all amounts payable by the Hirer to Munganya (under this Contract or otherwise) as they fall due;
- (ii) fully and punctually perform all of its obligations in this Contract; and

(b) as separate undertakings:

- (i) indemnifies and holds harmless Munganya against any liability, Loss, claims, actions, suits, demands, costs, expenses, including all legal costs and expenses, suffered or incurred by Munganya arising from or in connection with any breach of this Contract by the Hirer or a Guarantor; and
- (ii) as principal debtor, agrees to pay to Munganya on demand an amount equal to any liability, loss, claim, action, suit, demand, cost, expense referred to in the preceding paragraph (b)(i).

20.2 The guarantee and indemnity specified in clause 20.1 continues in force until the Hirer fully performs its obligations under this Contract.

20.3 The Guarantor agrees to pay to Munganya on demand Munganya' costs and expenses, including legal costs, relating to any action taken under this guarantee and indemnity.

**21. GOODS AND SERVICES TAX**  
 Any expressions used in this clause, and which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), have the same meaning in this clause.

21.1 Unless otherwise expressly stated, all amounts payable under this Contract are exclusive of GST.

21.2 If GST is imposed on any supply made under or in accordance with this Contract, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this Contract.

21.3

**22. CREDIT REPORTING**  
 The Hirer consents to Munganya:

- (a) obtaining any credit reports it requires from applicable credit reporting agencies;
- (b) providing information to a credit reporting agency for the purpose of obtaining such credit reports.

22.2 Munganya is not liable for any Loss suffered by the Hirer in connection with Munganya' dealings with credit reporting agencies under this clause 22.

**23. CONSEQUENTIAL LOSS**  
 Notwithstanding any other provision of this Contract, neither party shall be liable to the other party for any Consequential Loss suffered by that

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other party arising out of or in connection with this Contract.

23.2 For the purposes of this clause, "Consequential Loss" means:

- (a) any loss of production, loss of revenue, loss of profit, loss of actual or anticipated savings, loss of business opportunity, loss of goodwill, loss of reputation, or loss of interest or financing costs; and
- (b) any other special, indirect, or punitive loss or damages, regardless of whether that loss was in the contemplation of the parties at the time of entering into this Contract.

23.3 Clause 23.1 does apply to, and the term Consequential Loss does not include:

- (a) any party's liability to pay an amount under an express indemnity provision in this Contract;
- (b) any party's liability for fraud, wilful misconduct, or gross negligence; nor
- (c) any liquidated damages payable under this Contract.

**24. GENERAL**

24.1 The failure by Munganya to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Munganya' right to subsequently enforce that provision.

24.2 If any provision of these terms and conditions is invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

24.3 This Contract is governed by the laws of Western Australia and are subject to the exclusive jurisdiction of the courts of Western Australia.

24.4 Any notice to be given under this Contract must be given in writing and to the address for each party set out in the Schedule.

24.5 All payments to be made under this Contract must be made without set-off counterclaim or deduction.

24.6 Munganya may license or sub-contract all or any part of its rights without the Hirer's consent.

24.7 Any special conditions stated in the Schedule apply to this Contract and in the event of any inconsistency with the terms of this Contract, the special conditions shall prevail to the extent of the inconsistency.

24.8 This Contract is the entire agreement between the parties in respect of its subject matter and supersedes all prior and contemporaneous understandings and agreements relating to its subject matter.

24.9 This Contract may be executed in any number of counterparts and all those counterparts taken together will constitute one instrument.

24.10 Munganya will comply with and use personal information as set out in its privacy policy available on its website and the National Privacy Principles in all dealings with the Hirer's and each Guarantor's information