

STANDARD CONDITIONS OF HIRE

1. DEFINITIONS AND INTERPRETATION

1.1. Defined terms have the following meanings:

Agreement means these standard conditions of hire, the Rental Agreement Schedule and any annexed maintenance schedules as the context requires.

Default Rate means the Westpac Indicator Rate as published in the Australian Financial Review Newspaper from time to time.

Equipment means the equipment described in the Rental Agreement Schedule.

Event of Default means any of the events specified in Clause 5.1.

Hirer means the person or persons, corporation, partnership, trust or other legal entity hiring the Equipment from the Owner and identified as the Hirer in the Rental Agreement Schedule.

Immediately Available Funds means cash, bank cheque or telegraphic or other electronic means of transfer of cleared funds into a bank account nominated in advance by the Owner.

Insurable Value means the value identified in the Rental Agreement Schedule as the value in respect of which the Hirer must maintain a policy of insurance for the Equipment while in the Hirer's possession or control.

Loss means Loss means any damage, loss, liability, cost, charge, expense, penalty, outgoing or payment and includes legal costs and expenses on a indemnity basis.

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

PPSR means Personal Property Securities Register.

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

Renter Protection means an amount paid by the Hirer to reduce the Hirer's financial liability in respect of the loss or damage to the Equipment, such amount being identified in the Rental Agreement Schedule.

Rental Rate means the hourly, daily, weekly monthly rate of hire to be paid by the Hirer to the Owner as specified in the Rental Agreement Schedule.

Rental Term means the period of hire set out in the Rental Agreement Schedule which commences from the time that the Hirer takes possession of the Equipment until the Hirer returns the Equipment to the Owner.

Security Agreement means the security agreement under the PPSA created between the Hirer and the Owner by these standard conditions of hire.

Security Interest has the meaning given to it by the PPSA.

1.2. Where there is more than one Hirer then a reference to the Hirer herein includes all Hirers jointly and severally.

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

2. TERM OF AGREEMENT

This Agreement commences on the date when the Hirer takes possession of the Equipment and continues for the Rental Term unless terminated earlier in accordance with the terms of this Agreement.

3. HIRER'S WARRANTIES

The Hirer warrants that:

(a) for the purposes of entering into this Agreement or selecting the Equipment, it has not relied upon any

representations made by or on behalf of the Owner, other than those representations set out in this Agreement;

- (b) it has satisfied itself prior to entering into this Agreement that the Equipment is suitable for its purposes;
- (c) the Equipment will at all times be operated by a qualified and licenced operator in accordance with the manufacturer's operation and maintenance manual ;
- (d) the Hirer will operate the Equipment safely, strictly in accordance with all laws, only for its intended use, and in accordance with any manufacturer's instructions (whether supplied by the Owner or posted on the Equipment);
- (e) it will conduct a thorough hazard and risk assessment prior to operating the Equipment and comply with all workplace health and safety laws relating to the Equipment and its operation;
- (f) it has power to enter into and perform its obligations under this Agreement; and
- (g) its obligations under this Agreement are valid and binding and are enforceable against it in accordance with these terms.

4. HIRER'S OBLIGATIONS

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

- (a) not to damage the Equipment and to keep the Equipment in good order and repair at the Hirer's cost in accordance with the manufacturer's maintenance schedule annexed to the Rental Agreement Schedule;
- (b) to be responsible for the maintenance and repair of all tyres and replacement of tyres where necessary (fair wear and tear excepted) at the cost of the Hirer unless otherwise provided in the maintenance schedule;
- (c) to advise the Owner of any malfunctioning of the Equipment as soon as practically possible and to cease operating the Equipment as soon as it becomes aware of any malfunction;
- (d) not to alter or make any addition to the Equipment without the prior written consent of the Owner;
- (e) where the Hirer undertakes repair of the Equipment resulting in the replacement of existing parts of the Equipment, to use only replacement parts recommended by the Owner, and such parts will become the property of the Owner; and
- (f) not to fit any accessories to the Equipment without the consent of the Owner and where consent is given, such accessories will form and be part of the Equipment.

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

- (a) to pay the Owner the Rental Rate in Immediately Available Funds within the time period specified in the Rental Agreement Schedule;
- (b) if so requested by the Owner, to pay to the Owner interest calculated at the Default Rate on late payment of the Rental Rate;;
- (c) to repay to the Owner on demand any expenses the Owner may incur by reason of the Owner repossessing or attempting to repossess of the Equipment;
- (d) to repay to the Owner on demand any costs or monies that the Owner incurs or pays to make good any failure by the Hirer to comply with its obligations and any costs or monies incurred or expended by the Owner in the protection of the Equipment.

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

- (a) any Loss arising out of the destruction of, or loss or damage to, the Equipment during the Rental Term;

- (b) all taxes and duties payable in respect of this Agreement or any receipts or payments under this Agreement;
- (c) any Loss suffered or incurred by the Owner in connection with the Hirer's breach of this Agreement; and
- (d) any claim made by a third party (including any employee, contractor, supplier or customer of the Hirer) in respect of any property damage or personal injury suffered or caused (whether directly or indirectly) by the Hirer's use, transport, storage, maintenance or repair of the Equipment.

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

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

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

- (a) to only use the Equipment for the nature of the work for which the Equipment is designed;
- (b) that the Equipment will only be operated by properly licensed and skilled operators and serviced by qualified personnel at all times;
- (c) to ensure that the Equipment is stored safely and securely when not in use; and
- (d) not to use the Equipment to carry or move any illegal, prohibited or dangerous substance.

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

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

4.7. **(Return of the Equipment)** The Hirer agrees:

- (a) at the expiration of the Rental Term or upon earlier termination of this Agreement, to deliver the Equipment to the Owner at the nearest office of the Owner's business; and
- (b) to be responsible for the transportation of the Equipment to and from the Owner.

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

- (a) apart from the repair of any major component failure covered by the manufacturer's warranty, the Hirer will be responsible to repair and maintain the Equipment during the Rental Term;
- (b) to undertake the maintenance set out in the manufacturer's maintenance schedule annexed to the Rental Agreement Schedule, and where the Hirer fails

- to undertake such maintenance and such failure breaches the manufacturer's warranty, to indemnify the Owner for the costs incurred by the Owner to undertake all repairs of the Equipment;
- (c) the obligation to pay the Rental Rate will continue notwithstanding any breakdown or failure of the Equipment; and
- (d) the Owner will not be liable to the Hirer for indirect or consequential losses (including but not limited to loss of revenue, profit, production, good will or reputation) in any circumstances.

5. TITLE AND RISK IN THE EQUIPMENT

- 5.1. The risk of loss and damage to the Equipment passes to the Hirer upon the Equipment being loaded onto transport at the Owner's premises, and does not pass back to the Owner until the Equipment is unloaded from transport at the Owner's premises.
- 5.2. In the event the Equipment is lost, damaged or destroyed, the Hirer is not released from its obligations under this Agreement until the Owner is paid all amounts due to it under this Agreement.
- 5.3. The Owner retains title in the Equipment at all times and the Hirer does not obtain any proprietary interest in the Equipment by entering into this Agreement.

6. EVENT OF DEFAULT

- 6.1. There is an Event of Default by the Hirer where, during the Rental Term on time or at all:
 - (a) the Hirer does not pay the Rental Rate as required by this Agreement;
 - (b) the Hirer fails to rectify within seven days a breach or breaches of this Agreement after written notice of the breach is served by the Owner;
 - (c) in respect of a company, the Hirer by resolution resolves to wind up the company or by application seeks an order that the company be wound up or placed in administration;
 - (d) in respect of a trust, the winding up of the trust or removal of the trustee for any reason;
 - (e) in respect of an individual, the Hirer is declared or applies for bankruptcy, enters into a debt agreement or enters into personal insolvency agreement;
 - (f) any execution or other process of any court or authority is issued against the Hirer or the Hirer's assets;
 - (g) a receiver, receiver and manager, administrator, controller of liquidator is appointed to the Hirer;
 - (h) the Hirer ceases or threatens to cease to carry on its business;
 - (i) any insurance renewal or insurance proposal made by the Hirer in respect of the Equipment is declined;
 - (j) any insurance policy in respect of the Equipment ; is cancelled; and/or
 - (k) the Hirer commits an act of insolvency (as defined in the Corporations Act 2001 (Cth)).
- 6.2. Where there is an Event of Default, the Owner may by notice in writing served on the Hirer, do one or more of the following:
 - (a) terminate this Agreement;
 - (b) repossess the Equipment;
 - (c) enforce performance of this Agreement;
 - (d) recover damages for breach of this Agreement.
- 6.3. The Owner may take any or all of the actions set forth in paragraph 6.2 notwithstanding that the Owner may have waived any previous default or defaults by the Hirer.

7. RIGHTS ON TERMINATION

- 7.1. At the expiration of the Rental Term or where the Owner exercises its right of termination pursuant to clause 6, the Hirer will at its own expense immediately return the Equipment to the nearest office of the Owner's business.
- 7.2. The Owner will be entitled to recover from the Hirer without demand:
 - (a) any payment of the Rental Rate or other monies becoming payable to the Owner under this Agreement; and
 - (b) the cost of any cleaning, renovation or repairs performed by the Owner to return the Equipment to good order and repair, fair wear and tear excepted.
- 7.3. The Hirer acknowledges that the Owner will not be required to mitigate its loss by sale of the Equipment or account to the Hirer for any proceeds of sale in the event the Equipment is sold by the Owner.

8. REPOSSESSION OF EQUIPMENT

- 8.1. Where the Owner exercises its right to repossess the Equipment pursuant to clause 6.2, the Hirer's obligation to pay the Rental Rate will continue for the full Rental Term until termination of this Agreement by the Owner or the re-hiring of the Equipment.
- 8.2. Where the Owner exercises its right to repossess the Equipment pursuant to this Agreement or the common law, the Hirer authorises the Owner to enter upon the property of the Hirer for the purposes of repossessing the Equipment and if necessary, to sever the Equipment from the land and to do such things as are necessary or incidental in that regard. The Hirer indemnifies the Owner against any and all actions, claims, suits or demands for damage from such entry, severance or removal of the Equipment.
- 8.3. The Owner may recover from the Hirer as a debt due and owing without demand:
 - (a) all costs incurred by the Owner in repossessing the Equipment (including legal costs);
 - (b) any storage fees paid in respect of the Equipment;
 - (c) any transportation costs in respect of the repossession of the Equipment; and
 - (d) any costs of cleaning, renovation, repair or maintenance of the Equipment to return the Equipment to good order and repair, fair wear and tear excepted.

9. HOLDING OVER

- 9.1. Upon expiration of this Agreement, the parties may agree to continue to hire the Equipment upon the same terms and conditions, except that:
 - (a) this Agreement will be deemed an agreement for hire from month to month;
 - (b) the Owner may demand the possession of the Equipment at any time; and
 - (c) the Hirer may return possession of the Equipment at any time provided that the Hirer will pay for the full month's hire.

10. WARRANTIES

- 10.1. The Hirer will have the benefit of any manufacturer's warranty with respect to the Equipment during the Rental Term

- 10.2. Other than the warranty referred to in 10.1 above, all warranties with respect to the Equipment are excluded to the full extent permissible by law.
- 10.3. In circumstances where the law does not permit the Owner to exclude or limit its liability under this Agreement, then the liability of the Owner for any breach of condition, warranty or damages or loss suffered will be limited to (at the Owner's discretion):
 - (a) the resupply of the Equipment;
 - (b) the supply of equivalent machinery; or
 - (c) the repair of the Equipment.
- 10.4. The Hirer acknowledges that neither the Owner, nor any person acting on the Owner's behalf, has made any representation or made any promise or undertaking in relation to the quality of the Equipment, its fitness for purpose, or the use of the Equipment.

11. RENTER PROTECTION

- 11.1. Renter Protection must be paid by the Hirer where the full new replacement cost of the Equipment as determined by the Owner exceeds \$200.00 unless the Owner waives this requirement in writing.
- 11.2. Where the Hirer has paid Renter Protection then subject to this clause the Hirer's liability for loss or damage to the Equipment caused by fire, storm, earthquake, collision, accident or theft is limited to \$200.00 or 10% of the repair cost of the Equipment (if repaired) or 10% of the full new replacement cost of the Equipment (if replaced) whichever is the greater.
- 11.3. The Hirer's liability will not be limited in accordance with the preceding clauses if in the Owner's reasonable opinion, the loss or damage to the Equipment arises from or is caused by:
 - (a) an Event of Default;
 - (b) the negligent acts or omissions of the Hirer or its employees or agents.
 - (c) the improper use of the Equipment;
 - (d) transporting, loading or unloading;
 - (e) lack of lubrication or other normal maintenance of the Equipment;
 - (f) overloading exceeding the rated capacity, failing to maintain the Equipment, misuse, abuse or improper servicing of the Equipment;
 - (g) artificial or electrical current or exposure to any corrosive substance or environment; or
 - (h) use or location of the Equipment in or over the water, on bridges, vessels or structures of any kind.
- 11.4. Where the Equipment is stolen, the Hirer must report such theft to the police and provide the Owner with written evidence verifying that report.

12. NOTICES

- 12.1. Any notice to be given may be given by:
 - (a) posting the notice to the address of the parties specified in this Agreement and will be deemed received three days after posting by ordinary prepaid post; or
 - (b) emailing the notice to the address of the parties specified in this Agreement and will be deemed received at the time notified on the transmitter's computer terminal that the email has been received by the other party's computer.

13. JURISDICTION

- 13.1. This Agreement is governed by and construed in accordance with the law of Queensland and the

parties submit to the non-exclusive jurisdiction of the courts of Queensland.

14. SEVERABILITY

- 14.1. If any provision of this Agreement is held to be invalid, unenforceable or illegal for any reason, this Agreement will remain otherwise in full force apart from such provisions which shall be deemed deleted.

15. GOODS AND SERVICES TAX

- 15.1. Unless expressly included, the consideration for any supply under or in connection with this Agreement does not include GST.
- 15.2. To the extent that any supply made under or in connection with this Agreement is a Taxable Supply (as defined in the defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)), the Hirer must pay, in addition to the consideration to be provided under this Agreement for that supply (unless it expressly includes GST), an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.

16. PPSA

- 16.1. This Agreement constitutes a Security Agreement.
- 16.2. The Hirer must not:
- (a) create any Security Interest over the Equipment;
 - (b) lease, hire, bail or give possession of the Equipment to another person;
 - (c) permit the Equipment to become an accession to or commingled with any other asset of the Hirer or any other person; or
 - (d) change its name without first giving the Owner 10 business days' notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.
- 16.3. The Hirer must do anything (such as obtaining consents and signing documents) which the Owner requires for the purposes of:
- (a) ensuring that the Owner's Security Interest in the Equipment is enforceable, perfected and otherwise effective under the PPSA;
 - (b) enabling the Owner to gain first priority (or any other priority agreed to by the Owner in writing) for its Security Interest in the Equipment; and
 - (c) enabling the Owner to exercise rights in connection with the Security Interest over the Equipment.
- 16.4. The Hirer hereby gives the Owner an irrevocable power of attorney to do anything the Owner considers the Hirer should do under this clause 16.
- 16.5. Neither the Owner nor the Hirer will disclose information of the kind mentioned in section 275(1) of the PPSA and the Hirer will not authorise, and will ensure that no other party authorises, the disclosure of such information. This clause does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.
- 16.6. To the extent that Chapter 4 of PPSA applies to any Security Interest under this Agreement, the following provisions of the PPSA do not apply and, for the purposes of section 115 of the PPSA are "contracted out" of under this Agreement: section 95 (notice of removal of accession to the extent it requires the

Owner to give a notice to the Hirer); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires the Owner to give a notice to the Hirer); section 129(2) and 129(3); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).

- 16.7. The Hirer waives its right to receive a verification statement under section 157 of the PPSA.
- 16.8. The Hirer agrees to pay all reasonable expenses including (including legal expenses on an indemnity basis) arising from the collection of overdue monies or registration, maintenance, enforcement or discharge of the Owner's Security Interest in the Equipment. Such costs and legal expenses may be recovered as a liquidated debt due and owing to the Owner.

17. OTHER PROVISIONS

- 17.1. Notwithstanding any other remedy available to the Owner under this Agreement or at law, if the Hirer fails to pay an amount owing to the Owner on the date due for payment, the Hirer is liable for interest at the Default Rate from the due date for payment until the date that payment is made.
- 17.2. If an amount claimed by the Owner is in dispute:
- (a) The amount not in dispute must be paid by the Hirer in accordance with this Agreement; and
 - (b) Any disputed amount that is ultimately determined to have been payable to the Owner must be paid by the Hirer with interest at the Default Rate from the original due date until the payment is made.
- 17.3. The Hirer agrees that the Owner may disclose information contained in this Agreement to Caterpillar Inc and its subsidiaries to assist with the recording of statistics relating to the rental of Caterpillar equipment in Queensland and the Northern Territory.