



HIRE AGREEMENT TERMS AND CONDITIONS

These Hire Agreement Terms and Conditions (“the Agreement”) govern the hire of Equipment by Avid Hire Pty Ltd (ABN 66 168 567 191) (“Avid Hire”) to the Hirer. If the Hirer wishes to hire Equipment, Avid Hire will require the Hirer to sign a Schedule. The Schedule will list the Equipment hired, applicable hire charges, hire term and such other information and provisions as Avid Hire requires. This Agreement provides for the terms of each such hire. Each Schedule shall not constitute a separate agreement but shall be read together with and form part of this Agreement incorporating all the provisions of this Agreement. The Agreement shall include the following Terms and Conditions.

1 Equipment Hire

- 1.1 Avid Hire hires the Equipment to the Hirer on the terms set out in this Agreement and in the Schedule.
- 1.2 If provided in the Schedule (but not otherwise), the Hirer may sub-hire the Equipment to the persons nominated.
- 1.3 Avid Hire may use Global Positioning System tracking (GPS Device) to enable the geographical location of the Equipment to be tracked or located. By hiring Equipment the Hirer consents to Avid Hire using a GPS Device on the Equipment during the Term and collecting and using information from the GPS Device wherever necessary.

2 Delivery

- 2.1 The Term commences:
 - 2.1.1 If Avid Hire is responsible for delivery, from the date the Equipment is delivered to the Hirer.
 - 2.1.2 If the Hirer is responsible for collection, from the date the Equipment leaves Avid Hire’s yard or 7 days after Avid Hire gives written notice that the Equipment is ready for collection, whichever is the earlier.
- 2.2 The party nominated in the Schedule will be responsible for delivery or collection of the Equipment at the commencement of the Term and delivery or collection of the Equipment at the end of the Term.
- 2.3 If Avid Hire is responsible for delivery and collection of the Equipment:
 - 2.3.1 The Hirer must pay Avid Hire the delivery and collection charges detailed in the Schedule;
 - 2.3.2 The address at which Avid Hire must deliver and collect the Equipment is detailed in the Schedule. If Avid Hire is required to deliver the Equipment to and/or collect the Equipment from another address, Avid Hire may charge a reasonable additional sum.

3 Servicing, Maintenance and Repairs

- 3.1 The party nominated in the Schedule will be responsible for servicing and maintenance of the Equipment.
- 3.2 If Avid Hire is responsible for servicing and maintenance, the Hirer will be liable for any remote travel expenses which may be incurred in carrying out any servicing and maintenance of the Equipment.
- 3.3 The Equipment must be serviced in accordance with the manufacturer’s specifications.
- 3.4 Notwithstanding clause 3.2, the Hirer must at its cost:
 - 3.4.1 carry out daily maintenance of the Equipment;
 - 3.4.2 replace any worn, lost or damaged parts;
 - 3.4.3 be responsible for fuel and lubrication and ensure fuel meets the manufacturer's specifications;
 - 3.4.4 replace any flat or damaged tyres and ensure tyres are rotated as per the manufacturer's specifications;
 - 3.4.5 otherwise maintain the Equipment in good order and repair;
 - 3.4.6 ensure all Equipment is regularly cleaned including build-up on the underside of the Equipment;
 - 3.4.7 ensure regular maintenance of components where Equipment is being used in high salinity environments. Avid Hire will not be liable for premature maintenance of components in these environments;
 - 3.4.8 present the Equipment in clean and undamaged condition and in good order and repair (normal wear and tear excepted) at the end of the Term.

4 Payment

- 4.1 The Hire Charge set out in the Schedule will be payable from the Hirer to the Avid Hire from the commencement of the Term and monthly thereafter (unless otherwise agreed in writing).
- 4.2 The Hirer acknowledges that where the Hire Charge is calculated based on the hours of usage of the Equipment that in no case shall the Hire Charge be less than the amount that would be payable for the Minimum Usage.
- 4.3 Avid Hire will progressively invoice for the Hire Charge (and any other charges that become payable under this Agreement) nominating the date for payment on the invoice.
- 4.4 All invoices issued by Avid Hire will be payable in full without any right of set off or abatement.
- 4.5 If payment is not made on the due date Avid Hire reserves the right to charge interest at a rate of 8% per annum.
- 4.6 In addition to the Hire Charge, the Hirer agrees that it will be required to pay:
- 4.6.1 if the Equipment is not returned in clean and good working order, charges for the cleaning and repair of the Equipment;
 - 4.6.2 the cost of repair or replacement for any damaged or missing tools, parts or accessories supplied with the Equipment;
 - 4.6.3 any levies, fines, penalties or other government charges arising out of the Hirer's use of the Equipment;
 - 4.6.4 if the Hirer requests operational guidance on the use of the Equipment and Avid Hire staff are available to provide this, the cost for the provision of those services at rates agreed by Avid Hire;
 - 4.6.5 for any fuel not returned to the original starting level as at the commencement of hire;
 - 4.6.6 for any removal of the Hirer's markings or signage;
 - 4.6.7 an administration fee of 10% on any direct cost (excluding GST) incurred by Avid Hire pursuant to this clause.
- 4.7 Unless otherwise agreed in writing, the Hirer must pay the Hire Charge until the Equipment is returned to Avid Hire or until the end of the Hire Term in a condition which complies with these Terms and Conditions, whichever is the later. If the Equipment is returned to Avid Hire in a condition which does not comply with these Terms and Conditions, liability for the Hire Charge will continue until Avid Hire (using all reasonable endeavours) repairs the damage and puts the Equipment into a condition which complies with these Terms and Conditions.
- 4.8 If provided for in the Schedule, the Hirer must give notice to Avid Hire as soon as the Hirer wishes to invoke a period of Stand Down and receive approval from Avid Hire before the Stand Down Rate becomes effective.
- 4.9 If the Hirer gives Avid Hire notice referred to in clause 4.8 then the Equipment shall be on Stand Down at the rate nominated in the Schedule until further notice is given by the Hirer to Avid Hire notifying that the Equipment is On-Hire. The Hirer must not use the Equipment whilst it is on Stand Down. If the Hirer uses the Equipment whilst it is subject to Stand Down, the full Hire Charge shall apply for the entire period of the claimed Stand Down.

5 Ownership of the Equipment

- 5.1 The Equipment will at all times remain the property of Avid Hire.
- 5.2 The Hirer will have no right, title or interest in or to the Equipment save the right to possession and (if permitted) to sub-hire of the Equipment on the terms and conditions of this Agreement.
- 5.3 The Hirer must not allow the Equipment to become subject to any security interest or lien to any third party.
- 5.4 The Hirer must not allow the Equipment to be confiscated, seized or taken out of its possession or control under any execution or legal process, but if that occurs the Hirer must:
- 5.4.1 notify Avid Hire immediately;
 - 5.4.2 at its cost take all steps necessary to have the Equipment released back to it or Avid Hire;
 - 5.4.3 indemnify Avid Hire on demand against all losses, costs, charges, damages and expenses incurred as a result.
- 5.5 If the Hirer is at any time the subject of an Insolvency Event, the Equipment must be immediately returned to Avid Hire. The Hirer irrevocably grants to Avid Hire:
- 5.5.1 the right to enter upon any property upon which the Equipment is kept to retake possession; and
 - 5.5.2 a power of attorney to execute such documents and take such action as is necessary to exercise those rights.
- 5.6 If the Hirer sub-hires the Equipment to any third party (if permitted to do so under this Agreement), the sub-hire agreement must contain terms that if the third party is at any time the subject of an Insolvency Event, the Equipment must be immediately returned to the Hirer and that the third party irrevocably grants to the Hirer:
- 5.6.1 the right to enter upon any site upon which the Equipment is kept to retake such possession;
 - 5.6.2 a power of attorney to execute such documents and take such action as is necessary to exercise those rights.

5.7 The Hirer must at all times during the Term make the Equipment available for inspection and make all necessary arrangements including as to access to property to allow Avid Hire to inspect the Equipment.

6 PPSA

6.1 Avid Hire may register any actual, impending or likely security interest in the Equipment under the Personal Property Securities Act 2009 (Cth) ("PPSA"). Avid Hire may register the security interest as a purchase money security interest.

6.2 The Hirer must:

6.2.1 not do anything which interferes with a security interest of Avid Hire;

6.2.2 assist Avid Hire in registering, perfecting, enforcing or otherwise dealing with a security interest of Avid Hire's or any of Avid Hire's other rights; and

6.2.3 comply with Avid Hire's instructions as to the treatment of any Equipment provided under this Agreement (including procuring access to third party property).

6.3 The Hirer hereby appoints Avid Hire as its attorney to sign in the Hirer's name all documents which Avid Hire reasonably considers necessary to enforce or protect its rights and powers under this Agreement and under the PPSA.

6.4 To the extent permitted by law, the Hirer agrees to waive each provision which a hirer is permitted to waive under sections 115(1) and 115(7) of the PPSA.

6.5 To the extent permitted by law, the Hirer agrees that the following sections of the PPSA will not apply:

6.5.1 section 142 (Redemption of collateral); and

6.5.2 section 143 (Reinstatement of security agreement).

6.6 The Hirer waives its rights under section 157 of the PPSA to receive a notice of verification statement.

6.7 If the Hirer sub-hires the Equipment (if permitted to do so under this Agreement) it must:

6.7.1 ensure that Avid Hire's security interest or any rights with respect to the Equipment or its use do not vest in any other party upon an external administrator being appointed;

6.7.2 ensure that it retains the right to immediately retake possession upon any event of default occurring including any Insolvency Event;

6.7.3 take all steps available under the PPSA to:

(a) ensure that any security interest arising under the sub-hire is enforceable, perfected and otherwise effective;

(b) give the Hirer first priority (subject to the ownership rights of Avid Hire);

(c) enable Avid Hire to exercise its rights in connection with the security interest.

7 Loss or Damage to the Equipment

7.1 The risk of loss, theft, damage or destruction of the Equipment will pass to the Hirer on commencement of the Term and will remain at the risk of the Hirer until the Equipment is back in the possession of Avid Hire. If the Equipment is lost, stolen, damaged or destroyed during this period, the Hirer will be liable to Avid Hire for any costs incurred by Avid Hire in repairing or replacing the Equipment, the Hire Charge until the Equipment is repaired or replaced and all other costs incurred by Avid Hire as a consequence of such event.

7.2 If the Equipment breaks down or becomes unsafe to use during the Term the Hirer must immediately notify Avid Hire and comply strictly with Avid Hire's directions. The Hirer must cease using the Equipment and take all necessary steps to prevent the Equipment from sustaining further damage.

7.3 If the breakdown or the Equipment becoming unsafe is not caused or contributed to by any act or default on the part of the Hirer, Avid Hire must at its election:

7.3.1 promptly repair the Equipment, in which case the Hire Charge will not be payable for the period from the date of notice to the date the Equipment is repaired; or

7.3.2 supply replacement Equipment; or

7.3.3 terminate the Hire, in which case the Hire Charge is only payable to the date of the notice and Avid Hire must collect the Equipment at its cost.

8 Use of the Equipment

8.1 The Hirer (or any sub-hirer) must:

8.1.1 examine the Equipment immediately upon taking possession. Unless the Hirer notifies Avid Hire of any defect in the Equipment within 7 days of taking possession, the Equipment is deemed to be undamaged and fit for purpose;

- 8.1.2 take such steps (including compliance with all safety and usage instructions) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
 - 8.1.3 where fitted, ensure the operator is familiar with the Diesel Particulate Diffuser (DPD) operation sequence before using the Equipment;
 - 8.1.4 ensure operators do not excessively idle the Equipment in which case Avid Hire will not be liable for damage to engines due to excessive idle periods;
 - 8.1.5 not tamper with or interfere with the operation of any GPS Device in which case the Hirer will be liable for any costs associated in repairing and/or reconnecting the GPS Device;
 - 8.1.6 ensure that at all times the Equipment remains identifiable as being Avid Hire's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;
 - 8.1.7 not alter the Equipment or erase any markings on the Equipment;
 - 8.1.8 not remove any existing component(s) from the Equipment without the prior written consent of Avid Hire unless the component(s) is/are replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved/advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Equipment shall vest in Avid Hire immediately upon installation;
 - 8.1.9 keep Avid Hire fully informed of all material matters relating to the Equipment;
 - 8.1.10 not use the Equipment for any unlawful purpose;
 - 8.1.11 not do or permit to be done anything which could invalidate the insurances referred to in this Agreement.
- 8.2 The Hirer warrants that, in selecting the Equipment, the Hirer has not relied on the skill and judgment of Avid Hire or on any representations made by or on behalf of Avid Hire and the Hirer agrees that the Equipment complies with its description in the Schedule, is in good working order and fit for the Hirer's purpose.

9 Operation of the Equipment

- 9.1 The Hirer must comply with all work, health and safety requirements and operations and in particular must:
- 9.1.1 operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
 - 9.1.2 ensure that persons operating the Equipment hold a valid driver's licence for the class of equipment hired and are suitably trained on its safe and proper use, qualified to use the Equipment and, where necessary, hold a current licence to perform high risk work;
 - 9.1.3 wear suitable protective clothing and Equipment when operating the Equipment as required or recommended by the manufacturer;
 - 9.1.4 conduct a job safety analysis prior to using the Equipment;
 - 9.1.5 ensure that no persons operating the Equipment are under the influence of drugs or alcohol;
 - 9.1.6 ensure that no persons carry illegal, prohibited or dangerous substances in or on the Equipment;
 - 9.1.7 display all safety signs and instructions (as required by law) and ensure that all instructions and signs are observed by operators of the Equipment.

10 Insurance

- 10.1 From the commencement of the Term until Avid Hire retakes possession, the Hirer must at its own cost obtain and maintain the following insurances:
- 10.1.1 insurance of the Equipment to a value not less than its full replacement value as nominated in the Schedule comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as Avid Hire may from time to time nominate in writing;
 - 10.1.2 insurance for such amounts as a prudent owner or operator of the Equipment would insure for, or such amount as Avid Hire may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Equipment; and
 - 10.1.3 insurance against such other or further risks relating to the Equipment as may be required by law, together with such other insurance as Avid Hire may from time to time consider reasonably necessary and advise to the Hirer;
- or such insurances as may be nominated in the Schedule.
- 10.2 All insurance policies procured by the Hirer shall be endorsed to provide Avid Hire with at least 20 business days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall name Avid Hire on

the policies as a loss payee in relation to any claim relating to the Equipment. The Hirer will be responsible for paying any deductibles due on any claims under such insurance policies.

10.3 The Hirer shall give immediate written notice to Avid Hire in the event of any loss, accident or damage to the Equipment.

10.4 The Hirer must in all cases supply relevant certificates of currency to Avid Hire before being allowed to take possession of hire Equipment.

11 Indemnity and Release

11.1 The Hirer will indemnify Avid Hire against all Claims which may be made against Avid Hire in respect of or arising directly or indirectly by or arising directly or indirectly out of the use of the Equipment, which indemnity shall extend to and include all costs and expenses incurred by Avid Hire in investigating and/or defending any such Claims.

11.2 Avid Hire will not be liable for:

11.2.1 any death or injury arising from or as a result of any occurrence arising directly or indirectly out of the use of the Equipment;

11.2.2 any damage to property of the Hirer or any property whatsoever arising directly or indirectly as a result of delivery, collection or use of the Equipment, whether or not such damage results from or is caused by Avid Hire at the time of delivery or collection of the Equipment;

11.2.3 any loss or damage, including consequential loss, arising from delay in delivery, or failure to deliver Equipment due to circumstances beyond the control of Avid Hire;

11.2.4 any expenses, costs or disbursements incurred in recovering outstanding debts, including debt collection and solicitor's fees, which shall be payable by the Hirer and added to the outstanding debt amount for collection.

12 Termination

12.1 Avid Hire may, without prejudice to any other right or remedy which may be available to it, terminate this Agreement immediately by written notice to the Hirer if:

12.1.1 the Hirer defaults in any of its payment obligations;

12.1.2 the Hirer commits a material breach of this Agreement which breach is irremediable, or which breach (if remediable) is not remedied within 14 days after the service of written notice from Avid Hire requiring it to do so;

12.1.3 the Hirer (or any sub-hirer) is subject to an Insolvency Event; or

12.1.4 the Hirer does anything, or permits any act to be done, whereby Avid Hire's rights to the Equipment are prejudiced.

12.2 This Agreement shall automatically terminate if the Equipment has been stolen or damaged beyond repair.

12.3 Upon termination of this Agreement, however caused:

12.3.1 Avid Hire may, by its authorised representatives, retake possession of the Equipment and for this purpose may enter any site at which the Equipment is located; and

12.3.2 without prejudice to any other rights or remedies of Avid Hire, the Hirer must pay to Avid Hire on demand:

(a) all Hire Charges and other sums due but unpaid at the date of such demand together with any interest accrued;

(b) any costs and expenses incurred by Avid Hire in recovering the Equipment and/or in collecting any sums due under this Agreement (including any storage, insurance, repair, transport, legal and remarketing costs).

12.4 Upon termination of this Agreement pursuant to clause 12.1, or any other repudiation of this Agreement by the Hirer which is accepted by Avid Hire, the Hirer must pay to Avid Hire on demand a sum equal to the whole of the Hire Charges that would (but for the termination) have been payable if the Agreement had continued from the date of such demand to the end of the Term.

12.5 Termination of this Agreement shall be without prejudice to the rights and obligations of the parties accrued up to the date of termination.

13 Liability

13.1 Nothing in this Agreement shall exclude or in any way limit:

13.1.1 either party's liability for death or personal injury caused by its own negligence; or

13.1.2 either party's liability for fraud or fraudulent misrepresentation.

13.2 To the extent permitted by law, liability for breach of any guarantees, warranties and conditions, other than as specified in this Agreement, is hereby excluded.

13.3 Where liability cannot be excluded by law, Avid Hire's liability is limited (at Avid Hire's election) to the replacement of the Equipment, the supply of equivalent Equipment, the repair of the Equipment or payment of the cost of repairing the Equipment or of obtaining equivalent Equipment. Avid Hire will not be liable for any indirect or consequential damages, loss of profit, loss of bargain, loss of business liability to any third party or any pecuniary amount arising under any cause of action.

13.4 Under this clause 13, Avid Hire's maximum aggregate liability for any Claims relating to this Agreement arising under any cause of action including negligence is limited to the amount equal to the Hire Charge and any other amounts paid by the Hirer to Avid Hire.

14 Hirer's Warranties and Acknowledgement

14.1 The Hirer warrants that the Hirer's details as provided to Avid Hire are correct in every respect and are not misleading in any way including, without limitation, by omission.

14.2 The Hirer warrants and acknowledges that the Hirer has satisfied itself as to the description and condition of the Equipment and its fitness for the purpose for which the Hirer will use it.

15 Force majeure

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, and in such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for one month, the party not affected may terminate this Agreement by giving 5 business days' written notice to the other party.

16 Assignment

Neither party shall, without the prior written consent of the other party (such consent not to be unreasonably withheld), assign, transfer, mortgage, charge, or deal in any manner with this Agreement or any of its rights and obligations under this Agreement, or purport to do any of the same.

17 Tax and Government Charges

The Hirer will be liable for stamp duty, GST, and all other applicable taxes, duties, levies, penalties and any other government charges imposed in or on this Agreement or in respect to the hire period. If the Hirer wishes to claim exemption from duty or tax, the Hirer must furnish appropriate exemption certificates to Avid Hire.

18 Privacy

18.1 Avid Hire agrees to comply with the National Privacy Principles and any modification of those.

18.2 Avid Hire may collect personal information about the Hirer including contact details, identification, credit and other financial details. The Hirer hereby:

18.2.1 consents to Avid Hire providing any of their personal information as defined in the Privacy Act 1988 (or any similar applicable legislation) and any credit related information to a credit provider or credit reporting agency;

18.2.2 consents to Avid Hire obtaining and retaining credit reports and/or any other personal information about them from a credit reporting agency or other credit provider; and

18.2.3 agrees that Avid Hire may use their personal information for the purpose of assessing the Hirer's creditworthiness, the continuation of any credit arrangements and in relation to collection of any monies payable by the Hirer to Avid Hire.

18.3 Avid Hire agrees that the Hirer may request access to any personal information relating to the Hirer held by Avid Hire.

19 General

Entire Agreement

19.1 This document contains everything that the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party (or a director, officer, agent or employee of that party) before this document was executed.

Further Cooperation

19.2 Each party must do anything (including executing a document) another party reasonably requires in writing to give full effect to this Agreement. In the event the Hirer does not sign the Schedule/s for whatever reason and it takes delivery of the

Equipment and commences work, it is agreed that the Terms and Conditions of this Agreement will have deemed to be in effect between Avid Hire and the Hirer.

Governing Law and Jurisdiction

19.3 This document is governed by the Law of the State of Western Australia. The parties submit to the non-exclusive jurisdiction of its courts. The parties will not object to the exercise of jurisdiction by those courts on any basis.

20 Interpretation

20.1 In this Agreement unless the context otherwise requires:

Agreement means this Agreement including these Terms and Conditions, the Schedule and any other variation to this Agreement agreed to in writing by the Hirer and Avid Hire.

Avid Hire means Avid Hire Pty Ltd ABN 66 168 567 191 and includes its officers, employees, agents and contractors.

Claim includes any claim, proceeding, cause of action, demand or suit arising:

- (a) under, or in any way in connection with, this Agreement; or
- (b) otherwise at law or in equity.

Equipment means any kind of Equipment including vehicles, trucks, vans, utilities, buses, prime movers and trailers, and includes tools, parts and accessories for any of the foregoing.

Hire Charge means the charges payable for the Equipment as agreed between the Hirer and Avid Hire as set out in the Schedule.

Hirer means the Hirer specified in the Schedule and includes its officers, employees, agents and contractors.

Insolvency Event means any of the following:

- (a) an order is made for the winding up or bankruptcy and such order is not set aside within 10 business days of the date of the order;
- (b) a receiver, receiver and manager, administrator, liquidator or controller is appointed to, or the holder of any encumbrance takes possession of, the whole or any part of the undertaking or property of a party and such appointment or possession is not set aside within 10 business days of the date of appointment or possession (as the case may be);
- (c) a party enters into any arrangement or composition with creditors generally or any class of creditor; or
- (d) a party is placed under administration under Part 5.3A of the Corporations Act and that administration is not terminated within 10 business days of the date that the party was placed under administration.

Insured Value means the insured value for the Equipment specified in the Schedule.

Minimum Usage means the number of hours that the Hirer must pay for at the rate in a particular period as specified in the Schedule (regardless of whether or not the Hirer actually uses the Equipment for those hours).

Schedule means at the time of a specific Equipment Hire, a hire schedule Avid Hire and the Hirer shall complete and sign which Schedule specifies the agreed upon Equipment, Hire Charge and Term, Responsibility and Charges for Delivery/Collection, Responsibility for Service and Maintenance, Insurances Hirer is to Take Out, any Sub-Hire and any Special Conditions.

Special Conditions means any additional terms and conditions agreed to by the Hirer and Avid Hire as specified in the Schedule.

Term means the term of hire specified in a Schedule.

20.2 Words importing the singular include the plural and vice versa.

20.3 The clause headings in this Agreement are for reference purposes only and do not in any way influence or affect the meaning of this Agreement.

20.4 The word "includes" in any form is not a word of limitation.