

Appendix 1

General terms and conditions

1 Interpretation

1.1 Defined Terms

In this Agreement, unless the context otherwise requires:

Agreement means these General Terms and Conditions, the Hire Schedule, the Credit Account Application Terms and Conditions and where applicable, any document attached or annexed to the General Terms and Conditions by Select.

Anti-Bribery and Anti-Corruption Legislation means any statute, law, code, regulation or similar instrument in connection with the prohibition of bribery and corruption applicable to the performance of this Agreement (including by virtue of the place of domicile or operations of the parties and their related bodies corporate), and includes the *Criminal Code Act 1995* (Cth), the *Crimes Act 1914* (Cth), the *Financial Management and Accountability Act 1997* (Cth), the *Commonwealth Authorities and Companies Act 1997* (Cth), the *Corporations Act 2001* (Cth) and the *Bribery Act 2010* (UK).

Associated Person means a person or entity that performs services for another, including as an employee, agent, contractor, representative or subsidiary of that other person or entity.

Consents means all permits, authorisations, approvals, licences or similar which are required from any statutory authority in connection with the Site and the Hirer's use of the Plant.

COR Laws means legislation relating to fatigue management, speed and mass, dimension and load restraint compliance requirements generally referred to as 'Chain of Responsibility' laws or 'Heavy Vehicle' laws.

COR Systems means policies, procedures, standards, training and systems designed to ensure, so far as is reasonably practicable, compliance with COR Laws.

Delivery Point means the location set out in the Hire Schedule.

Expected Off Hire Date means the date set out in the Hire Schedule, as extended under clause 2.2.

Facilitation Payment means a minor, often unofficial payment made to secure or expedite a routine government action by a government official or employee (but excludes a payment specifically authorised by the written domestic law of the country in which it is made).

Force Majeure Event means an event or circumstance or combination of events and circumstances which is beyond the reasonable control of the affected party and could not have been reasonably foreseen or otherwise prevented, avoided or overcome by the affected party exercising a standard of care and diligence consistent with that of a prudent and competent person in the affected party's position, and provided that the foregoing conditions are met, includes an act of God, war, civil disturbance, riot, lightning, cyclone, earthquake, fire, storm, flood, explosion, governmental action, labour dispute, lockout or, strike.

GST has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Hire Fee means:

- (a) where a lump sum is set out in the Hire Schedule, that lump sum; and
- (b) where a rate or rates are set out in the Hire Schedule, those rates for the duration of:
 - (i) the Hire Period; and
 - (ii) the period between the expiry of the Hire Period and the date of rectification of any damage/defect in the returned Plant and payment by the Hirer for the rectification of any defect or damage identified in accordance with clause 8.6.

Hire Period means the longer of:

- (a) period from the On Hire Date to the Off Hire Date (inclusive); and
- (b) the Minimum Hire Period.

Hire Schedule means the schedule which specifies the terms of the hire such as the Plant, Hire Fees and Hire Period.

Hirer means the customer hiring Plant from Select.

Laing O'Rourke ABAC Policy means the Laing O'Rourke Global Anti-Bribery and Corruption Policy available

here: <https://www.laingorourke.com/company/governance/code-of-conduct/>.

Minimum Hire Period means the period set out in the Hire Schedule.

Off Hire Date means the date of return of the Plant to the Return Point.

On Hire Date means the date described in the Hire Schedule.

Plant means the plant, machinery, vehicles or equipment described in the Hire Schedule to be hired by the Hirer from Select in accordance with this Agreement and includes all accessories and components.

Plant Documentation means all applicable check and inspection lists (daily and weekly) and log book data as required to be completed, and as is considered best practice or as required by Select's safety requirements or any manufacturer's documentation.

Plant Specification means the specification for the Plant to be supplied by Select as set out in Appendix 2 of the Hire Schedule.

PPSA means the *Personal Property Securities Act 2009* (Cth) and capitalised terms used in this Agreement which are defined in the PPSA have the meaning given in the PPSA.

Privacy Act means the Privacy Act 1988 (Cth).

Privacy Laws means the Privacy Act, the Australian Privacy Principles, the Privacy (Credit Reporting) Code and all other applicable requirements of law relating to the handling of personal information.

Prohibited Act means, in connection with this Agreement, any act which would breach any applicable Anti-Bribery and Anti-Corruption Legislation and any other legal prohibitions on money laundering, trade control and sanctions, and the like, and includes offering, giving or agreeing to give to any person, or soliciting, accepting or agreeing to accept from any person (either directly or indirectly) anything of value in

order to obtain, influence, induce or reward any improper advantage and Facilitation Payments.

Proportionate Liability Legislation means if the Site is located in:

- (a) Australian Capital Territory, the *Civil Law (Wrongs) Act 2002* (ACT) and the *Building Act 2004* (ACT);
- (b) New South Wales, Part 4 of the *Civil Liability Act 2002* (NSW);
- (c) Northern Territory, the *Proportionate Liability Act 2005* (NT);
- (d) Queensland, Chapter 2, Part 2 of the *Civil Liability Act 2003* (Qld);
- (e) South Australia, Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA);
- (f) Tasmania, Part 9A of the *Civil Liability Act 2002* (Tas) and the *Building Act 2000* (Tas);
- (g) Victoria, Part IVAA of the *Wrongs Act 1958* (Vic); or
- (h) Western Australia, Part 1F of the *Civil Liability Act 2002* (WA).

Public Official is any person holding a legislative, administrative or judicial office, including any person employed by or acting on behalf of a public agency, a government controlled enterprise, a public international organisation, political parties, party officials and candidates for office, and any other person who, by reason of domestic law in any jurisdiction relevant to the Agreement, would be considered or deemed to be a Public Official.

Relevant Collateral means collateral which is the subject of a Security Interest granted under this Agreement.

Return Point means the location set out in the Hire Schedule.

Security Interest has the meaning given to that term in the PPSA.

Select means Select Plant Australia Pty Ltd ABN 49 644 500 354.

Select Activities means the activities described in the Hire Schedule to be provided by Select to the Hirer in accordance with this Agreement.

Select Activities Fees means the fees for Select's provisions of the Select Activities as set out in the Hire Schedule.

Site means the site described in the Hire Schedule.

Statutory Certificates means the statutory certificates identified in the Hire Schedule.

Willful Misconduct means an act or failure to act by Select that was intended to cause, or was in reckless disregard, or with wanton indifference to, harmful consequences.

- 1.2 Unless the contrary intention appears, a reference in this Agreement to:
 - (a) the singular includes the plural and vice versa; and
 - (b) the words "include", "including", "for example" or "such as" when introducing an example, does not limit the meaning of the words to which the example relates.
- 1.3 These General Terms and Conditions ("Conditions"), the Credit Account Application Terms and Conditions (if applicable) ("Credit Terms") and the relevant Hire Schedule govern all Agreements for the hire of Plant and the supply of the Select Activities to the Hirer by Select and constitute the entire agreement between Select and the Hirer in respect of its subject matter. This clause does not exclude a party's liability for prior false, misleading or deceptive statements or misrepresentations, whether oral or written.
- 1.4 No modification or variation to the Conditions or Credit Terms, any additional terms or conditions or any terms inconsistent with the Conditions or Credit Terms will bind Select unless specifically agreed to in writing by Select.
- 1.5 The Conditions and Credit Terms apply to the exclusion of any terms or conditions contained in any written order, purchase order, hire schedule or confirmation later provided by the Hirer. The provision by the Hirer of any delivery instructions for the Plant or any part thereof or the acceptance by the Hirer of delivery of the Plant or any part thereof or any conduct by the Hirer in confirmation of the transaction after receipt by the Hirer of Select's acceptance will constitute unqualified acceptance by the Hirer of the Conditions and Credit Terms.

2 Hire of Plant

- 2.1 Select will make the Plant available at the Delivery Point on the On Hire Date.
- 2.2 Select may, but is not obliged to, agree to extend the Expected Off Hire Date, provided that the Hire Period does not exceed two years and the Hirer makes a request for such extension in writing to Select no later than 10 Business Days' prior to the Expected Off Hire Date.

3 Payment Terms

- 3.1 The Hirer must pay Select:
 - (a) the Hire Fee as consideration for Select's supply of the Plant; and
 - (b) the Select Activities Fees, if Select is required to provide any Select Activities in accordance with the Agreement.
- 3.2 The Hire Fee quoted is based on a weekly rate or a daily rate. If a daily rate has been provided this rate is chargeable for 7 days per week irrespective of the project working week. Unless specifically noted in the quotation, all Hire Fees are calculated on a maximum usage of 56 hours per week after which excess charges (based on a pro rata of rate) will be charged and payable by the Hirer. No allowance has been made in quoted Hire Fee for stand downs.
- 3.3 If the Hirer requests an extension of the Expected Off Hire Date under clause 2.2, Select may notify the Hirer in writing that the Hire Fee for the extended period will be changed, and the Hirer must by written notice to Select elect to proceed or not proceed with such extension.
- 3.4 Select may issue invoices periodically for the Hire Fee.
- 3.5 The Hirer must pay Select the Hire Fee without any right of set-off or deduction and within 30 days of the date of invoice or the due date specified in the invoice, if one is applicable.
- 3.6 If the Hirer requests any additional activities or variation to the Plant or the Select Activities (including modifications to the Plant, connections and/or commissioning, servicing, maintenance or repairs or the provision of spare parts, consumables or service kits), the Hirer will pay:
 - (a) labour at Select's standard hourly labour rates, including the time for performing the activities and travel to and from the Site;

- (b) the costs incurred by Select in procuring any materials required for the activities plus any other reasonable expensed incurred; and
 - (c) an amount equal to 15% of the costs referred to in paragraphs (a) and (b).
- 3.7** The Hirer may return the Plant to the Return Point before the Expected Off Hire Date, provided that it pays the Hire Fee for the Minimum Hire Period.
- 3.8** The Hire Fee shall be payable by Electronic Funds Transfer into Select's nominated bank account.
- 3.9** The Hirer must pay Select interest at the rate of four percent (4%) above the lending rate as published from time to time by the ANZ Bank, on all overdue amounts, compounding daily, plus any fees and charges incurred by Select in recovery of any outstanding debts.
- 3.10** Select may set off any monies owing to it by the Hirer against any amounts owing.
- 3.11** Any actions or allowance provided by Select at any time to extend the timing of any payments made to Select by the Hirer of outstanding amounts owed or claimed to be owed to Select by the Hirer will not constitute a waiver by Select of any terms set out in the Agreement.
- 3.12** The Hirer shall be responsible for all costs or expenses incurred by Select in recovering any outstanding claims or amounts claimed to be owed to Select, including all reasonable costs to debt agencies and all reasonable legal costs to debt agencies and all reasonable legal costs in recovery of the same.
- 3.13** If within 5 Business Days of written notice that an amount owing to Select is outstanding and the Hirer fails to pay Select for any amounts due, Select shall be immediately entitled to retake possession of the Plant in the possession or under the control of the Hirer. The Hirer authorises Select (and its employees, officers or contractors) to enter any of the Hirer's premises and any premises in which the Plant may be located, to recover the Plant. Select shall not be responsible or have any liability for any loss or damage arising from or in connection with any acts by Select in recovering its Plant.

4 Credit Terms

- 4.1** A credit facility may, in the sole and absolute discretion of Select, be made available to the Hirer upon completion of the Credit Account Application for Plant Hire form (“Credit Application”).
- 4.2** The Hirer is not entitled to any credit until Select accepts a Credit Application by written notice to the Hirer from Select.
- 4.3** Select may, acting in its sole and absolute discretion upon reasonable written notice to the Hirer, decline, suspend or withdraw the credit facility for any reason and the Hirer must pay all outstanding amounts owed or claimed to be so owed to Select within 5 Business Days of notice.
- 4.4** Select will not be liable for any losses, claims, costs or damage suffered by the Hirer in the event that credit is rescinded.
- 4.5** The Hirer must not charge to the credit facility amounts that exceed the credit limit provided to the Hirer, as advised by Select. In the event that a Hirer exceeds the credit limit provided by Select, Select is entitled to prompt repayment of any and all amounts charged to the credit facility in excess of the credit limit.

5 Security

- 5.1** Where noted as being required on the Hire Schedule, the Hirer must provide the security (in the amount set out in the Hire Schedule) to Select within 14 days of the date of this Agreement and prior to the delivery or collection of the Plant (as applicable).
- 5.2** If Select has a claim against the Hirer (including for breach of contract) or the Hirer fails to pay Select an amount due and payable under this Agreement (within the time provided under this Agreement), Select may have immediate recourse to the security without notice to the Hirer.
- 5.3** If Select has recourse to the security under clause 5.2, the Hirer must, upon notice from Select, replenish the security within 7 days of such notice.
- 5.4** Unless Select has an outstanding claim against the Hirer, Select will, 60 days after the expiration of the Hire Period, promptly release and return the security to the Hirer.

6 Obligations of the Hirer

- 6.1** Unless otherwise included as part of the Select Activities, the Hirer must:
- (a) transport the Plant from the Delivery Point to the Site (where not the same) and return the Plant to the Return Point by the Expected Off Hire Date;
 - (b) unload and load the Plant at the Delivery Point (and the Site where not the same as the Delivery Point) and the Return Point;
 - (c) erect, assemble, install and mobilise the Plant or otherwise convert the Plant to a state in which it is capable of being used;
 - (d) disassemble and uninstall the Plant or otherwise convert the Plant from a state in which it is capable of being used.
- 6.2** The Hirer must:
- (a) obtain and maintain any necessary Consents and ensure that the Plant complies with all applicable laws;
 - (b) be responsible for the protection of, and be liable for any damage to, any underground, surface or above ground services, utilities and infrastructure including but not limited to cables, ducts, water pipes, gas lines, pavements, bridges, tunnels and roadways, arising from the use of the Plant (including any transport) by the Hirer or its personnel.
 - (c) ensure that the Plant is properly used and operated as it was intended and designed to be used within the constraints, design, limitations and instructions of the manufacturer and in accordance with law (including law in respect of work health and safety) and with best industry practice;
 - (d) without limiting clause 6.2:

- (i) ensure that all ground conditions at the Site and access roads between the Delivery Point and the Site, between the Site and the Return Point and those access roads outside of the Site (including any public roads) are suitable for the Plant to operate on or be transported over, including providing appropriate support including timbers or equivalents in a suitable position for the Plant to be operated;
 - (ii) ensure that all persons involved in the operation, use, maintenance, transportation, erection, assembly, disassembly, installation and uninstallation (as applicable) of the Plant are suitably trained, qualified, experienced and competent persons with suitable personal protective equipment and are licensed in accordance with any legislative requirement and provide promptly on request by Select the particulars and documentary evidence of the qualification and licence of any such person and notwithstanding such requests from Select, the Hirer is responsible for verifying the competency of those persons at all times and Select does not assume any responsibility for verifying competency;
 - (iii) ensure that any persons operating the Plant are not under the influence of drugs or alcohol and that they are not carrying any illegal, prohibited or dangerous substances in or on the Plant;
 - (iv) if the Plant is lifting equipment, ensure adequate stability of the Plant under the imposed loading and at all times;
 - (v) provide all fuels, oils, greases, lubricants, consumables, electricity, water and other things necessary for the Plant use and maintenance; and
 - (vi) ensure that the Plant is registered with the relevant statutory authority once the Plant has been inspected and commissioned for safe use and provide Select with copy of all Statutory Certificates;
 - (vii) provide and display all safety signs and instructions (including as provided by law) and ensure that all instructions and signs are observed by the operators of the Plant;
- (e) notify Select promptly by telephone and confirm in writing within 24 hours thereafter of any incident involving the Plant that results in damage to property, equipment or any facility, or death or injury to any person, any breakdown, potential breakdown or the unsatisfactory working of any part of the Plant or the Plant being lost or stolen;
- (f) provide all information reasonably requested by Select in relation to an incident which the Hirer is required to notify Select of;
- (g) pay and provide all fuel, and return the Plant with a full tank of fuel, or accept charges for re-fuelling from Select, in accordance with Select's rates as set out below (which may change from time to time, as advised by Select):
- | | | |
|------------------|------------------|------------------|
| Diesel: | Petrol: | Two Stroke: |
| \$3.50 per litre | \$3.50 per litre | \$4.00 per litre |
- Select's rates for re-fuelling will be subject to an additional charge (plus 15% for overheads and margin) in the event that the terminal gate price of fuel (including but not limited to diesel, petrol and two-stroke) as identified by the Australian Institute of Petroleum exceeds \$1.50 per litre.
- (h) return the Plant with all ground engaging tools, buckets and blades etc as per commencement of the Hire Period, or accept charges for replacement.
- (i) carry out all testing and tagging of all Plant and accessories that becomes due during the course of the Hire, including replacing any fire extinguishers and like items that are used/discharged by the Hirer.
- (j) make the plant available for inspection by Select at any time with reasonable notice of Select's inspection date; and
- (k) notify Select within 24 hours of any defects and/or damage to the Plant discovered by the Hirer within 24 hours of collection or receipt of the Plant. Any failure to notify Select within this period will mean that Select is entitled to assume that the Plant is in good working order and condition and Select will not be responsible or liable for any defects and/or damage to the Plant.

- 6.3** If the Select Activities include erection, assembly, installation, disassembly and uninstalling of Plant, the Hirer must ensure:

- (a) a suitable area is available and cleared, cleaned and ready for unloading and loading of the Plant;
- (b) access to land, airspace, or any other property rights required have been obtained;
- (c) all necessary Consents have been obtained;
- (d) the foundations upon which the Plant is to be erected, assembled, installed, disassembled, uninstalled or used have been designed and certified by a suitable competent person as being able to support the Plant and the load borne by the Plant and the load of any vehicles or equipment necessary for disassembly; and
- (e) if requested by Select, that the Hirer provide reasonable evidence of compliance with this clause 6.3 including any evidence of Consents or certification.

- 6.4** The Hirer warrants that:

- (a) it has the knowledge, capability and understanding and has the required licences to apply, operate and use the Plant;
- (b) it has inspected the Plant and is satisfied that it is suitable for the purpose for which it is to be used;
- (c) acknowledges that Select does not warrant that the Plant is suitable for the particular purpose to which it is to be used by the Hirer, whether that purpose has been communicated to Select by the Hirer or not;

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- (d) it is responsible for providing a suitably qualified and experienced person to receive notifications related to the Plant's usage and performance;
- (e) it will be responsible for ensuring that the point of contact for usage and performance notifications is kept updated and any changes notified to Select promptly in writing; and
- (f) it must take immediate steps as required to ensure the use of the Plant is within the manufacturer's recommendations, instructions and directions.
- 6.5** The Hirer must not:
- (a) move or allow the Plant to be moved from the Site without the prior written consent of Select;
- (b) alter, modify, tamper with, damage or repair Plant (including any failsafe systems) without written consent from Select;
- (c) use the Plant off-shore, underground, over or above any water or marine situation, or in a mine without Select's express consent (and additional insurances that may be required by the Hirer);
- (d) remove, deface, cover up or obscure any Select name plate, mark, logo, sign or notice on the Plant without the prior written consent of Select;
- (e) paint the Plant colour other than the Select standard colour scheme or the colour that the Plant is painted on the On Hire Date without the prior written consent of Select;
- (f) attach or paint on any signage or logos (and like items);
- (g) make any representation to a third party that it is the owner of the Plant;
- (h) allow the Plant to be affixed to the Site as a fixture, or allow mix of any item comprising the Plant with any other good, material or chattel;
- (i) re-hire, sub-let, lend the Plant or otherwise allow any third party to use the Plant or any part of the Plant or assign, novate or otherwise transfer this Agreement without the prior written consent of Select; or
- (j) sell, mortgage, charge, pledge, part with possession of or otherwise deal with the Plant, including registering or allowing a Security Interest to be registered over the Plant or the rights under this Agreement.

7 Site Access and Conditions

- 7.1** The Hirer must allow Select access to the Site to the extent required for Select to comply with its obligations under this Agreement, including:
- (a) to the Delivery Point to enable Select to deliver the Plant on the On Hire Date; and
- (b) if applicable, to the relevant areas of the Site to enable Select to perform any Select Activities.
- 7.2** If the Hirer fails to provide access to Select in accordance with clause 7.1 to:
- (a) the Delivery Point, and does not promptly cure such failure; or
- (b) if applicable, to any relevant areas of the Site, and does not promptly cure such failure and in any case within 2 Business Days of written or verbal notice by Select,
- Select may terminate this Agreement upon reasonable written notice to the Hirer and the Hirer must pay Select [50%] of the Hire Fee and Select Activities Fees.
- 7.3** In performing the Select Activities, Select will comply with such reasonable safety and security arrangements applying to the Site as notified by the Hirer to Select, including any reasonable directions of the Hirer relating to safety.
- 7.4** The Hirer must notify Select prior to the commencement of any Select Activities if it requires any Site-based employees responsible for the performance of Select Activities to undertake an induction for the Site and Select will ensure that such employees undertake the induction at the Hirer's cost as set out in clause 11.5.
- 7.5** The Hirer warrants that:
- (a) it has knowledge (including knowledge of the conditions) of the Site, the access roads, the property or land where the Plant is to be delivered or collected (including any Delivery Point and Return Point, to the extent that transport or delivery does not form part of the Select Activities), loaded or unloaded, worked on, transported, used, erected or dismantled on; and
- (b) at all times, the condition of any such site, access road, property or land referred to in clause 7.5(a), will be suitable for the use of the Plant, including any transport and other activities undertaken by the Hirer under this Agreement

8 Select Activities

- 8.1** This clause will only apply if the Hire Schedule indicates that Select is required to provide Select Activities.
- 8.2** Select will perform the Select Activities:
- (a) in compliance with applicable legislative requirements; and
- (b) with due care and skills.
- 8.3** The Hirer acknowledges and agrees that:
- (a) any dates nominated by Select for the performance of Select Activities are estimates only;
- (b) Select will use its reasonable endeavours to meet the dates nominated for the performance of Select Activities; and
- (c) Select is not liable for any claims or losses arising from the late performance of the Select Activities.
- 8.4** So far as is reasonably practicable, Select will carry out the Select Activities at times which do not materially inconvenience the Hirer.
- 8.5** Without limiting clause 7.2, Select may impose additional charges on the Hirer for any costs incurred by Select during delivery or collection, if:
- (a) during delivery or collection of Plant, if:
- (i) the delivery/collection driver is delayed as a result of the Hirer not providing the delivery or collection driver suitable access to the Plant;
- (ii) delivery or collection is delayed in the event that sufficient ancillary equipment to load or unload the Plant was not provided or prepared;

- (iii) the delivery/collection driver is unable to contact the nominated site contact; or
- (iv) less than 48 hours' notice is provided to Select (or its representative) by the Hirer to schedule or amend collection times; or
- (b) at any time while Select is on Site to perform the Select Activities:
- (i) the Hirer delays Select's performance of the Select Activities; or
- (ii) less than 48 hours' notice is provided to Select (or its representative) by the Hirer to schedule or amend access times.

9 Condition of Plant and damage

- 9.1** During the Hire Period, the Hirer:
- (a) is liable for and must reimburse Select for all loss and damage to the Plant (including but not limited to its costs, with a margin of 15% on costs), with the exception of fair wear or tear (being the deterioration in the repair, working order and appearance of plant and equipment as a result of its normal operation in accordance to the manufacturers operating manual and under normal operating and environmental conditions). Fair wear and tear will be as determined by Select;
- (b) must make good all theft or loss of the Plant from whatever cause; and
- (c) keep the Site, the Plant Documentation and the Plant secure from theft, vandalism, trespass, sabotage and tampering.
- 9.2** Prior to the On Hire Date, Select will inspect the Plant and prepare a record of that inspection (**On Hire Inspection Report**). A copy of the On Hire Inspection Report will be provided to the Hirer.
- 9.3** Unless notification in writing to the contrary is received by Select from the Hirer within 72 hours from the On Hire Date, the Hirer will be deemed to accept the On Hire Inspection Report and the Plant will be deemed to be in good working order (save for any inherent fault or other fault not ascertainable by reasonable examination).
- 9.4** The Hirer must return the Plant in the same condition as shown the On Hire Inspection Report, except for fair wear and tear.
- 9.5** Within 7 days of the Off Hire Date, Select will inspect the Plant and prepare a record of that inspection (**Off Hire Inspection Report**). A copy of the Off Hire Inspection Report will be provided to the Hirer.
- If any damage to or defect in the Plant (other than fair wear and tear is evident from a comparison between the On Hire Inspection Report and the Off Hire Inspection Report, including any damage or defect arising from the Hirer's failure to operate and maintain the Plant in accordance with this Agreement, the cost of rectifying such damage or defect is recoverable from the Hirer as a debt due and payable by the Hirer to Select.
- 9.6** If any Plant hired by the Hirer has been damaged or is being assessed for damage and is unable to be hired out by Select, the Hirer must continue to pay Select the Hire Fee during this period.

10 Servicing, repair and maintenance

- 10.1** The Hirer must:
- (a) carry out all inspections and checks contemplated by and otherwise complete all "Pre-Start Inspection Checklists" for the Plant prescribed in any Plant Documentation (on a daily and weekly basis, as applicable) and carry out all other inspections and checks required by law or good industry practice;
- (b) notify Select of any safety or functional issues that have been highlighted during any inspection or check of the Plant in accordance with clause 11.1(a) and must fully cooperate and comply with Select's instructions and unless authorised by Select, must not use the Plant until any safety or functional issue has been rectified or resolved;
- (c) record the Plant's hour and kilometre service meter units in any Plant Documentation;
- (d) record any faults found with the Plant;
- (e) forward to Select documentation of such inspections, checks and records on a weekly basis or as requested by Select;
- (f) provide all fuel, and use oils, lubricants, consumables, spare parts and service kits which are original OEM parts or to OEM specifications; and
- (g) return any waste tanks or water carts cleaned and emptied of all contents.
- (h) ensure the Plant has not been in contact with any hazardous substances. In the event that it has, the Hirer must promptly notify Select and carry out all necessary de-contamination of the Plant at its own cost prior to Plant being able to be returned to Select, and Hire Fees will continue until a clearance report is provided and Plant is thereafter returned.
- 10.2** The Hirer must carry out replacement of tyres, ground engaging tools and other similar activities, as requested by Select. All repairs will be made in accordance with OEM specifications and requirements. Any wear and tear to ground engaging tools (including buckets, blades, rippers, teeth, moils and tracks), plus any excessive tyre use or flat tyres that Select is required to undertake as a result of the Hirer not complying with this clause will be chargeable to the Hirer.
- 10.3** Unless specifically excluded within the Hire Schedule or Special Conditions, Select will carry out all planned maintenance and servicing and all repairs that are required to any major components and/or major repairs that arise from any breakdown or defect or fault in the Plant. If such defect or fault arises from the Hirer's failure to operate and maintain the Plant in accordance with this Agreement then the costs incurred by Select (plus a margin of 15%) in rectifying such defect or fault is recoverable from the Hirer as a debt due and payable by the Hirer to Select.
- 10.4** Where Select carries out the maintenance, servicing or repair works to the Plant the Hirer must fully cooperate with Select to facilitate its performance of these activities including but not limited to:

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- (a) ensuring that the Plant is available and accessible during normal working hours; and
- (b) providing a reasonable and safe lay down area and facilities such as the provision of free access to power, water, drainage, waste disposal, hard stand, communications and welfare facilities, at a minimum.
- 10.5** Additional costs (including but not limited to travel and accommodation costs and expenses, and excess freight charges) may apply for attendance to the Plant on projects or sites that are over 100km from a Select depot. Any special project requirements (including but not limited to inductions, VOC, police clearance, access passes and suchlike) will be charged back to Hirer at cost plus a 15% margin.
- 10.6** The party responsible for the maintenance of the Plant will provide the other party with a copy of all maintenance records and log books for the Plant within a reasonable period of time after being requested in writing to do so.

11 Breakdown

- 11.1** Should the Plant suffer any major breakdown during the Hire Period, the Hirer must notify Select in accordance with clause 6.2(e), giving details of the apparent cause of failure.
- 11.2** Where such major breakdown occurs and is due to fair wear and tear or a defect or fault in the Plant, Select will undertake the repairs as soon as reasonably practicable.
- 11.3** Where the Site is in a remote or regional area, the Hirer will reimburse Select for all reasonable travel and accommodation costs (including for time whilst travelling).
- 11.4** Where the breakdown is as a result of fair wear and tear or a defect or fault in the Plant (not caused or contributed to by the Hirer), and where the Plant is not usable due to such major breakdown, the Hire Fee will cease from the time of notification by the Hirer until such time as the Plant, in the reasonable opinion of Select, is operational or is replaced by Select.
- 11.5** To the extent that Select is, or is likely to be, delayed or disrupted in carrying out any repairs or any Select Activities due to:
- any fact, event, matter or circumstance beyond Select's control which includes but is not limited to any changes in law; or
 - any act, breach or omission by the Hirer, its employees or contractors, then Select is entitled to a reasonable extension of time and will not be liable for any claim by the Hirer with respect to the delay or disruption.
- 11.6** If Select is unable to repair or replace the Plant, Select will be entitled to terminate this Agreement by giving reasonable written notice to the Hirer. If Select exercises its rights under this clause 11.5, the Hirer will have no claim as a consequence of the termination.

12 Liability and indemnity

- 12.1** The Hirer will be liable for and indemnifies Select from and against, any loss, cost, damage, expense, demand, claim, action, proceeding, penalty, liability or fine (including legal costs and expenses on an indemnity basis), including:
- personal injury to or death, injury or illness of any person;
 - loss of or damage to real or personal property (including to the Plant and other property of Select);
 - breach of any Legislative Requirement;
 - any wrongful, criminal, fraudulent act or omission or wilful misconduct of any kind by the Hirer or any of its personnel; and
 - any breach of this Agreement by or negligence of the Hirer, but the Hirer's liability to indemnify Select will be reduced proportionately to the extent caused or contributed to by any breach of this Agreement by Select, any negligence of Select or Wilful Misconduct of Select.
- 12.2** Notwithstanding any other provision of this Agreement to the contrary, the maximum aggregate liability of Select to the Hirer arising out of or in connection with the Agreement, the Plant or the Select Activities in contract, tort (including negligence), equity, statute, by way of indemnity or contribution, warranty or guarantee or otherwise at law:
- is limited to 10% of the aggregate amount of the Hire Fee and Select Activities Fees paid by the Hirer under this Agreement from time to time; and
 - does not include any liability whatsoever to the Hirer for loss of profits, loss of business, loss of revenue, loss of the use of the Plant or any other asset, facility or property, loss of contract, loss of goodwill, loss of production or productivity, cost of capital, loss of opportunity, loss of anticipated saving, increase in capital costs, liabilities of whatever nature to any third party including liquidated damages, increase in operating costs or any other financial or economic loss or indirect, special, incidental or consequential loss or damage of whatever nature arising out of or in connection with this Agreement, the Plant, the provision of an operator or the Select Activities.
- 12.3** To the maximum extent permitted by law, the operation of the Proportionate Liability Legislation is excluded in relation to rights, obligations and liabilities under this Agreement whether such rights obligations or liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at law. This clause shall be limited to jurisdictions in which the parties are entitled to contract out of the Proportionate Liability Legislation.

13 Title

- 13.1** The Hirer and Select acknowledge and agree that ownership of, and unencumbered title in, the Plant will at all times remain with Select.
- 13.2** Nothing contained in this Agreement will confer on the Hirer any property right or interest in the Plant.

14 PPSA

- 14.1** If Select determines that this Agreement or any transaction under it is or contains a Security Interest, Select may, at the Hirer's expense, register one or more financing statements in relation to any such Security Interest and the Hirer will do anything Select reasonably request to:
- enable Select to apply for any registration or give any notification in connection with that Security Interest; and
 - ensure that the Security Interest is enforceable, perfected and otherwise effective, and has the highest priority available in the circumstances.
- 14.2** The Hirer acknowledges that:
- the Hirer has no interest in the Plant of any kind other than as a bailee.
 - Select may determine that its rights and interest in Proceeds derived from the Plant constitute a Security Interest;
 - if it sells or otherwise disposes of the Plant, it does so as Select's fiduciary agent and the Proceeds of such sale or other disposal are also the property of Select and held by the Hirer on trust for Select; and
 - Select may determine that its rights and interest in the Security Deposit constitute a Security Interest.
- 14.3** For the purposes of section 157(3) of the PPSA, the Hirer irrevocably and unconditionally waives its right to receive any notice from Select in connection with the registration of a Security Interest arising under this Agreement.
- 14.4** The Hirer agrees to take such steps as Select reasonably requires to perfect or otherwise ensure the enforceability of any Security Interest granted to Select under this Agreement, including by:
- obtaining and giving consents;
 - producing and providing receipts;
 - attending to the signing of documents or procuring the signing of documents;
 - facilitating the registration of any Security Interest on the PPS Register in any form reasonably requested by Select;
 - facilitating the giving of notice to any person, including any person who also has, or appears to have, a Security Interest over Relevant Collateral; and
 - facilitating the exercise of Select's right in enforcing any Security Interest.
- 14.5** The Hirer agrees to ensure that:
- the Plant does not become a fixture to any land;
 - the Plant does not become an accession to other goods; and
 - it takes such steps (at the Hirer's expense) as Select reasonably requires to prevent or remedy the affixation of the Plant to any land or goods, including by procuring appropriate acknowledgements and consents from landlords, mortgagees and property owners and detaching, or procuring the detachment of, the Plant from any land or goods to which it becomes attached.
- 14.6** The Hirer warrants and undertakes that the Plant is not, and will not during the Hire Period be, Inventory of the Hirer.
- 14.7** The parties agree that Select need not comply with, and the Hirer may not exercise rights under, any provisions of Chapter 4 of the PPSA that may be contracted out of. This includes the following:
- to the extent section 115 of the PPSA allows, sections 95, 117, 118, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA will not apply to any Relevant Collateral; and
 - the Hirer agrees that after any default under clause 15, it will not:
 - redeem any Plant under section 142 of the PPSA; or
 - reinstate this Agreement under section 143 of the PPSA.
- 14.8** If the PPSA is amended after the date of this Agreement to permit the Hirer and Select to agree to not comply with or to exclude other provisions of the PPSA, Select may notify the Hirer that any of these provisions are excluded, or that Select need not comply with any of these provisions, as notified to the Hirer by Select. Upon such notice being given, clause 14.7 of this agreement will be taken to have been amended to state that any such additional provisions that are specified in such notice are excluded from application to this Agreement and do not need to be complied with by Select.
- 14.9** Without limitation to any other provision of this Agreement, and for the purposes of section 123(1) of the PPSA, the Hirer will be in breach of this Agreement if any person with a Security Interest in Relevant Collateral seizes or becomes entitled to seize that Relevant Collateral without the prior written consent of Select.
- 14.10** The Hirer agrees to pay or reimburse the reasonable costs and expenses of Select in connection with anything Select is required to do under this clause.

15 Insurance and Proportionate Liability Legislation

- 15.1** The Hirer must effect and maintain at all times during the Hire Period an all risks physical damage insurance of the Plant against theft or loss or damage of any kind (including theft or loss or damage during transit or transportation):
- for an amount not less than the full replacement value of the Plant, or as set out in the Hire Schedule (whichever is higher) for any single incident;
 - in the joint names of the Hirer and Select and covering the Hirer and Select against their respective rights and liabilities.
- 15.2** The Hirer must effect and maintain at all times during the Hire Period a public liability insurance against all third party risks (including liability for damage or injury of any kind to any property or person):
- for an amount of cover for any single incident not less than \$20,000,000 or the amount stated in the Hire Schedule (whichever is greater);
 - in the joint names of the Hirer and Select and covering the Hirer and Select against their respective rights and liabilities.
- 15.3** The Hirer undertakes and agrees, with respect to the insurance policies to be effected by the Hirer, to:

Terms and Conditions – Hire Out

Subject to “Special Conditions” amendments on Quotations issued by Select

- (a) deliver to Select evidence of the insurance effected in accordance with clause 15.1 and 15.2, including copies of policies or certificates of insurance prior to the On Hire Date and at any time a policy has expired and should be replaced;
- (b) not to do anything which may in any way invalidate or prejudice any insurance referred to in this Agreement or the interests of any of the parties; and
- (c) notify Select promptly in writing of any event which leads, or might lead, to a claim for compensation or a claim under any insurance policy effected pursuant to this Agreement.
- 15.4** The Hirer and Select acknowledge and agree that each party is entitled to receive payment of moneys under any insurance policy effected pursuant to this clause 15 according to its interest in the policy. Each party agrees to assist and co-operate with the other in making, pursuing and settling any claim made under the policies.

16 Default and Termination

- 16.1** Without prejudice to any other rights or remedies of Select, if the Hirer:
- (a) fails to observe, satisfy or perform any obligation, liability or other provision of this Agreement and such failure continues for a period of 7 days after a notice in has been given by the non-defaulting party to the defaulting party (or immediately in the case of any acts or omissions that put any persons or property at risk)
- (b) cancels or fails to effect any insurance policy required under this Agreement;
- (c) fails to comply with a written instruction of Select; or
- (d) commits an act of bankruptcy, becomes (or advises that it may become) insolvent, enters into a scheme of arrangement with its creditors, is placed in official management, has a receiver appointed, has an application to wind it up presented to the Supreme Court (including any application to which the Supplier alleges a bona fide dispute exists), has a liquidator or provisional liquidator appointed, or is deemed to be insolvent as defined in the Corporations Act 2001 (Cth),
- then Select may terminate this Agreement upon reasonable written notice having regard to the circumstances.
- 16.2** Without prejudice to any of Select's other rights under this Agreement, Select may at any time for its sole convenience, and for any reason, upon reasonable written notice having regard to the circumstances, terminate this Agreement, effective from the time stated in Select's notice.
- 16.3** Upon the termination of this Agreement, the Hirer must promptly deliver the Plant to the Return Point. Failure of the Hirer to comply with this clause 16.3, will entitle Select to retake possession of the Plant and recover all reasonable costs incurred as a debt due.

17 Force Majeure

- 17.1** If any party, by reason of any Force Majeure Event, is wholly or partially unable to perform its obligations (excluding any payment obligations) under this Agreement, that party must give to the other party, within 3 days of becoming aware of the Force Majeure Event, written notice of the Force Majeure Event with full particulars of the event, and upon giving such notice its obligations under this Agreement, to the extent that the party is wholly or partially unable to perform such obligations, will be suspended for so long as the Force Majeure Event renders the party unable to so perform its obligations.
- 17.2** The affected party must take all reasonable steps to mitigate the effects of the Force Majeure Event and facilitate the continued performance of this Agreement.
- 17.3** If, after the date which is 10 days after the commencement of the relevant Force Majeure Event, such Force Majeure Event is continuing or its consequence remains such that the affected party has been or is unable to comply with a material part of its obligations under this Agreement, then either party may terminate this Agreement by giving 14 days' written notice to the other party and clause 16.3 will apply.

18 Dispute Resolution

- 18.1** The Hirer or Select may, at any time where a dispute exists between the parties in connection with this Agreement, give a dispute notice to the other party describing the nature of the dispute and nominating a representative who is authorised to negotiate and settle the dispute on its behalf.
- 18.2** The other party must, upon receipt of a dispute notice pursuant to clause 18.1, nominate by notice in writing to the party giving the dispute notice, its representative who is authorised to negotiate and settle the dispute on its behalf.
- 18.3** The parties' representatives must negotiate with a view to resolving the dispute or agreeing a method of resolving the dispute within 30 days after the receipt of the dispute notice.
- 18.4** No party is permitted to commence legal proceedings in respect of a dispute unless the provisions of this clause 18 have been complied with or the party seeks urgent interlocutory relief.

19 Confidentiality

- 19.1** Select and the Hirer each agree not to disclose:
- (a) information about the terms of this Agreement;
- (b) information about the obligations secured by any Security Interest under this Agreement or the terms of payment or performance in respect of any obligation under this Agreement at any particular time;
- (c) without limitation to the above, any information of the kind described in section 275(1) of the PPSA, including a copy of this Agreement, the amount or the obligation secured by any Security Interest created by this Agreement, and the terms of such payment or performance or a list of

- personal property in relation to which any Security Interest created by this Agreement is granted; and
- (d) information relating to an incident which the Hirer is required to notify Select of in accordance with clause 6.2(e),
- except:
- (e) to its officers, employees, legal and other advisers and auditors;
- (f) with the consent of the non-disclosing party;
- (g) to the extent it is necessary for either party to disclose information to comply with any applicable law, the rules of any securities or stock exchange or an order of a court or tribunal, and the other party is given prior notice of the disclosure; or
- (h) with respect to section 275(1) of the PPSA, if section 275(7) of the PPSA applies in which case Select may disclose such information.

20 Privacy

- 20.1** The Hirer must comply with all Privacy Laws, whether or not it is an organisation bound by the Privacy Act.
- 20.2** The Hirer acknowledges and agrees that Select may collect personal information and credit information about the Hirer and its directors, officers, partners and guarantors (each a **Relevant Party**).
- 20.3** Select is subject to the Privacy Laws.
- 20.4** Select will collect, use and disclose personal information and credit information of the Hirer and its Relevant Parties.
- 20.5** Select has a privacy policy that may be located at www.laingorourke.com/media/gocdkqv0/privacy-policy.pdf which sets out how Select will deal with the information it collects and holds.
- 20.6** As set out in Select's privacy policy, Select is likely to provide the information contained within the Credit Application to a credit reporting body such as information that identifies the Relevant Party (for example, legal name, address, date of birth, driver's licence and contact details); trade reference details and information; payment defaults in relation to certain Select debts; and any serious credit infringements.
- 20.7** Select's website may be hosted, or some data may be stored, overseas. All personal information and credit information derived from Australia will still be treated in accordance with Select's Privacy Policy while being stored overseas.
- 20.8** The Hirer warrants to Select that it has obtained the consent of each of the Relevant Parties to the collection, use and disclosure of their personal information and credit information by Select in accordance with the privacy policy.

21 Chain of Responsibility Law

The Hirer:

- 21.1** acknowledges that it (or its personnel) is the primary duty holder (including as the operator, packer, loading manager, loader and unloader), under the COR Laws with responsibility for developing COR Systems applicable to the supply of the Plant and any plant operators including but not limited to ensuring that:
- (a) the Plant is appropriately maintained;
- (b) loads do not exceed vehicle mass or dimension limits;
- (c) the Plant is appropriately secured;
- (d) operators carrying freight containers have a valid Container Weight Declaration (as defined in the COR Laws); and
- (e) drivers do not exceed the speed limits, exceed regulated driving hours, fail to meet the minimum rest requirements or drive while impaired by fatigue;
- 21.2** must proactively provide reasonable assistance to Select to enable Select to satisfy its duties and responsibilities under COR Laws;
- 21.3** must obtain and maintain, and ensure that each of its personnel obtains and maintains all licenses, notices, accreditation, approvals and other legal requirements required to enable the applicable activity, function or task to be undertaken lawfully;
- 21.4** must undertake any audits or monitoring as requested by Select to demonstrate compliance with this clause; and
- 21.5** warrants that it is familiar with and has the capability and resources to comply with COR Laws and ensure that Select's related bodies corporate comply with all COR Laws.

22 Anti-Bribery and Anti-Corruption

- 22.1** Select is committed to operating in a manner consistent with the Laing O'Rourke ABAC Policy and the laws of the jurisdictions in which it operates, including Anti-Bribery and Anti-Corruption Legislation.
- 22.2** The Hirer must not, and must take reasonable steps to ensure that any of its Associated Persons do not, commit a Prohibited Act (the 'Anti-Corruption Obligations') and:
- (a) must implement adequate policies and procedures to ensure compliance with its Anti-Corruption Obligations, and must disclose those policies and procedures to Select upon request, or if the Hirer does not so implement these policies and procedures, agrees that it has received a copy of and understands the Laing O'Rourke ABAC Policy and will comply with the principles of the Laing O'Rourke ABAC Policy in all respects in connection with this Agreement as if it were its own policy; and
- (b) must use reasonable endeavours to require its Associated Persons to give an undertaking to and to implement adequate policies and procedures to ensure they will not commit a Prohibited Act and, if no such undertaking is forthcoming, will inform Select and seek alternative person(s) to perform those services.
- 22.3** The Hirer represents and warrants that except as otherwise disclosed in writing to Select, at the date of execution of this Agreement and during its term, no Public Official:
- (a) is or will become an Associated Person of the Hirer;

- (b) is or will become involved in the management of the Hirer, including being or becoming part of its board or other governing body;
- (c) holds or will hold a controlling or significant interest in the Hirer; or
- (d) is an immediate family member of a member of the board or other governing body or senior management of the Hirer.
- 22.4** The Hirer represents and warrants that it has not in the past 10 years been the subject of an investigation into its compliance with, been convicted of any offence in connection with or entered into any settlement in connection with any alleged breach of, any Anti-Bribery and Anti-Corruption Legislation.
- 22.5** The Hirer will promptly notify Select in writing if:
- (a) it becomes aware that any representations and warranties in clause 22.3 and clause 22.4 are false;
- (b) it breaches the Anti-Corruption Obligations;
- (c) any of its Associated Persons breaches the Anti-Corruption Obligations; or
- (d) it becomes aware of any breach, alleged breach or facts or circumstances which could reasonably be considered to constitute a breach of Anti-Bribery and Anti-Corruption Legislation by it or an Associated Person.
- 22.6** Notification under clause 22.5 must set out particulars of and ongoing steps the Hirer has taken and proposes to take to investigate and address the breach, alleged breach, facts or circumstances, investigation, conviction or settlement notified.
- 22.7** If the Hirer notifies under clause 22, or if Select reasonably believes that the Hirer or any of its Associated Persons may have breached the Anti-Corruption Obligations, the Hirer must, for up to three years after expiry of the Agreement:
- (a) respond promptly to Select's reasonable enquiries and cooperate with Select in connection with its investigation into compliance with this clause 22 by the Hirer or its Associated Persons; and
- (b) allow Select to access to its books, records and any other relevant documentation for the purpose of assessing or verifying compliance with this clause 22.
- 22.8** If the Hirer is in breach of clause 22 or if Select reasonably believes such a breach has occurred or is imminent then Select may promptly (without prejudice to any other rights it may have) terminate the Agreement upon reasonable written notice to the Hirer.
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- 23** **General**
- 23.1** A provision of this Agreement, or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound by it.
- 23.2** This Agreement is governed by the laws of the State or Territory in which the Site is located. The parties submit to the non-exclusive jurisdiction of the courts of that State or Territory.



Terms and Conditions – Hire Out **Subject to “Special Conditions” amendments on Quotations** **issued by Select**

Hire Schedule/Quote – TBA

**Special Conditions – To be confirmed subject to asset
category**