



## **MINTEK CRANES**

### **CRANE LICENSE AGREEMENT**

#### **RECITALS**

- A. The Licensor owns or holds the legal right to license the crane equipment described herein ("Equipment").
- B. The Licensee wishes to hire the Equipment from The Licensor, in accordance the terms of this Agreement.
- C. The Licensor agrees to hire the Equipment out to The Licensee, in accordance with the terms of this Agreement.
- D. The parties wish to formally document their arrangement.

#### **1. DEFINITIONS**

**"Commencement"** means the date when either:

- (1) You take possession of the Equipment;
- (2) the date we make the Equipment available for collection by You, in accordance with the booking or prior agreement made with You; and
- (3) if You request delivery and collection of the Equipment, the time We deliver the Equipment to the address You provide to Us in the Hire Schedule,

whichever occurs first.

**"You / Your"** means The Licensee and any person or entity that enters into a Hire Agreement with Us for the hiring of Equipment, as named in the Hire Schedule and includes the person, firm, organisation, partnership, corporation or trust hiring from Us.

**"Equipment"** means any of Our equipment provided to The Licensee, as set out in the Hire Schedule.

**"Agreement"** means the terms and conditions of hire set out in this Agreement, together with:

- (1) any credit application You completed and submitted to Us;
- (2) any guarantee, indemnity and charge You completed and submitted to Us;
- (3) each Hire Schedule provided to You by Us, whether signed or not by The Licensee; and
- (4) any special terms specific to the type of equipment You have hired attached to Your Hire Schedule.

**"Hire Charge"** means the amounts shown on the Hire Schedule payable by The Licensee to hire the Equipment.

**"Hire Period"** means from Commencement until the end of the period shown on the Hire Schedule.

**"Hire Schedule"** means the document set out in Annexure A hereto, which includes particulars of the Equipment and the Hire Period and such other information as We may reasonably require.

**“Mintek / We / Us / Our”** means The Licensor.

## **2. OUR OBLIGATIONS**

We will:

- (1) Allow The Licensee to take and use the Equipment for the Hire Period;
- (2) Provide the Equipment to The Licensee clean and in good working order and condition;
- (3) Prior to the release of the Equipment, conduct an inspection of the Equipment jointly with The Licensee and prepare an “Equipment Condition Report” (where The Licensee is not present during the completion of the Equipment Condition Report, it will be deemed to have accepted the condition as stated in the Equipment Condition Report prepared by Us);
- (4) Jointly conduct an “Off Hire Report” with The Licensee when the Equipment is returned to Us (where The Licensee is not present during the completion of the Off Hire Report, it will be deemed to have accepted the condition as stated in the Off Hire Report prepared by Us);
- (5) Collect the Equipment from The Licensee if collection is specified in the Hire Schedule within 7 days of being requested to do so by The Licensee.

We may in Our absolute discretion decline to hire the Equipment to The Licensee or cancel the Hire Agreement at any time if We have reasonable grounds to do so. If We exercise our rights under this clause, The Licensee shall still be liable to pay the Hire Charge.

Any electrical Equipment provided by Us will be tested and tagged before it is hired to The Licensee. The Licensee is liable at its costs for arranging the re-testing and re-tagging of the Equipment in accordance with the manufacturer’s instructions or law that may be required during the Hire Period.

## **3. HIRE PERIOD**

- (1) The Hire Period may only be extended if The Licensee requests it and if The Licensor agrees. The Licensor may issue and require The Licensee to sign an amended Hire Schedule for any extension of the Hire Period. The Licensor may in its absolute discretion refuse any request for an extension of the Hire Period.
- (2) The Hire Period includes weekends and public holidays.
- (3) The Licensor may apply minimum Hire Periods for certain items of Equipment. If The Licensee returns the Equipment prior to the expiration of the minimum Hire Period, The Licensee is still liable to pay all Hire Charges in respect of the minimum Hire Period

## **4. ADDITIONAL USAGE CHARGES**

- (1) The Hire Charge is calculated on the basis of a maximum usage of 8 hours per day for daily hire and maximum usage of 40 hours per week for weekly hire. Additional usage charges in excess of the maximum daily usage or weekly usage will be charged as follows:
  - (a) Daily Rate – excess usage over 8 hours per day will be charged at the daily Hire Charge rate divided by 8 and multiplied by the excess usage hours. The excess usage hours will be rounded up to the nearest hour;
  - (b) Weekly Rate – excess usage over 40 hours averaged across a 5 day period will be charged at the weekly Hire Rate divided by 40 and multiplied by the excess usage hours. The excess usage hours will be rounded up to the nearest hour for part of an hour;(the ‘Additional Usage Charges’)
- (2) The Additional Usage Charges are payable within 48 hours of The Licensor issuing a Tax Invoice for the Additional Usage Charges

## **5. OBLIGATIONS OF THE LICENSEE**

- (1) The Licensee must:
  - (a) Deliver the Equipment to The Licensor when it is due back at its expense or grant The Licensor access to collect its Equipment on the due date for collection if collection is specified in the Hire Schedule;
  - (b) Return the Equipment to The Licensor clean and in good working order and condition consistent with the condition at Commencement (if You do not properly clean the Equipment we will charge you a cleaning fee in accordance with Clause 7) and with a full tank of fuel and where applicable fully charged batteries;
  - (c) Decontaminate the Equipment where it has been contaminated by a hazardous substance;
  - (d) Satisfy itself at Commencement that the Equipment is suitable for its purposes;
  - (e) Operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instructions whether supplied by The Licensor or posted on the Equipment or posted on The Licensor Website and wear suitable clothing and protective Equipment when operating the Equipment;
  - (f) At all times during the Hire Period store the Equipment safely and securely and protected from theft, seizure, loss or damage; and
  - (g) Pay any fines, penalties, infringement notices or similar notices issued as a result of The Licensee's use and operation of the Equipment;
  - (h) Pay for the replacement and or repair costs for any damage caused to tyres, tubes and or tracks of the Equipment;
  - (i) Pay for any consumables, fuel or trade materials we supply to you;
  - (j) Pay any damage caused to the Equipment by water and or corrosive and or harmful substances including caustic, acid, cyanide and or asbestos including where applicable the professional costs of decontaminating the Equipment; and
  - (k) Not move the Equipment to a location not specified in the Hire Schedule without our prior express consent in writing.
- (2) The Licensee will indemnify The Licensor and keep The Licensor indemnified from all injury and or loss or damage caused or contributed to by The Licensee to persons and or property in connection with the use, operation, transport and or storage of the Equipment and have adequate insurance to cover all liabilities incurred as a result of the use of the Equipment including claims made by a third party.
- (3) The Licensee will be liable for the full repair and or replacement costs of the Equipment:
  - (a) that is lost, stolen, mysteriously disappears, wrongfully converted or seized;
  - (b) that is damaged due to failure to lubricate or carry out regular servicing of the Equipment which The Licensee is required to undertake under this Hire Agreement;
  - (c) lost and or damaged during Transport except where The Licensor is required to transport the Equipment;
  - (d) damaged due to The Licensee's negligent use, abuse or misuse of the Equipment including overloading of the Equipment; and
  - (e) contaminated by a hazardous substance that is not capable of being decontaminated.
- (4) Each indemnity in this Hire Agreement is a continuing obligation, separate and

independent from the other obligations of the parties and survives termination, completion and expiration of this Hire Agreement.

- (5) The Licensee must ensure that:
- (a) any person collecting or taking delivery of Equipment on behalf of The Licensee is authorised by The Licensee to do so and The Licensee will not allege that any such person was not authorized to do so;
  - (b) all Equipment loaded in or on The Licensee's vehicle is safely secured, and will indemnify The Licenser in respect of any injury and or damage caused by items falling from any vehicle or trailer operated by or on behalf of The Licensee;
  - (c) ensure that all persons using, operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current certificate of competency and or are fully licensed if required by law to do so and do not operate the Equipment under the influence of alcohol or illegal drugs;
  - (d) where it is agreed that The Licenser will deliver or pick up the Equipment be at the agreed destination at least 30 minutes before the agreed time of delivery or collection of the Equipment;
  - (e) it has undertaken a thorough inspection of the Equipment prior to collection or delivery;
  - (f) the Equipment is only used for its designed purpose and for no other purpose and is not misused or abused; and
  - (g) any notices, warnings, load, compliance or any other notice affixed to the Equipment is not removed, damaged, obliterated or covered.
- (6) The Licensee must:
- (a) conduct a thorough hazard and risk assessment before using the Equipment and comply with all Occupational Health and Safety laws relating to the Equipment and its operation including obtaining any permit required to operate the Equipment;
  - (b) complete any pre-operation checklist of the Equipment in accordance with any operating manual, legal requirements and good industry practice and when requested provide The Licenser of evidence of compliance with this obligation;
  - (c) operate the Equipment within safe operating guidelines and limits in accordance with all legal requirements;
  - (d) keep and store the Equipment in a safe and secure location at all times in order to protect it from theft and or vandalism (The Licensee will be liable for any theft or vandalism of the Equipment);
  - (e) not remove fuel or oil tank caps, bund plugs or seals from the Equipment and ensure that they are in place when The Licensee returns the Equipment;
  - (f) promptly report and provide full details to The Licenser of any accident or injury occurring or damage to the Equipment, persons or property; and
  - (g) not use the Equipment for any illegal purpose.
- (7) If You collect or receive the Equipment (whichever is applicable) and find that it is broken, damaged, faulty and or defective, You must notify Us in writing within 24 hours after You collect or receive the Equipment. If You do not notify Us within this period We are entitled to assume that the Equipment You collected or received was in good working order and condition at the time of collection or delivery.

- (8) You warrant that the particulars provided in the Hire Schedule are true and correct in every respect, are not misleading in any way, without limitation by omission, and undertake to advise The Licensor promptly of any changes to the particulars provided.

## **6. THE LICENSEE MUST NOT**

The Licensee must not:

- (1) Tamper with, alter, modify, damage or repair the Equipment except where there is an express obligation to service and maintain the Equipment in accordance with this Hire Agreement;
- (2) Lose, licence, sub-Agreement or part with possession of the Equipment;
- (3) Rely upon any representation relating to the Equipment or its operation other than those contained in this Hire Agreement;
- (4) Exceed the recommended or legal load and capacity limits of the Equipment;
- (5) Use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
- (6) deface, remove, vary or erase any identifying marks, number, or notice on the Equipment;
- (7) continue to use the Equipment if there is a defect or fault discovered with the Equipment or damage caused to the Equipment;
- (8) permit or allow any inexperienced or unlicensed operators to use the Equipment; and
- (9) allow the equipment to be contaminated with any hazardous substances (including asbestos) and must advise us of any risk of hazardous substance contamination as soon as it becomes apparent.

## **7. PAYMENTS BY THE LICENSEE TO THE LICENSOR**

- (1) On or before Commencement (or as otherwise specifically agreed with The Licensor), The Licensee will pay the Hire Charge and any consumables We supply to You.
- (2) Immediately on request by The Licensor, The Licensee will pay:
  - (a) the new list price of any Equipment which is for whatever reason not returned to The Licensor or damaged so as to make its repair uneconomical;
  - (b) all costs incurred in cleaning the Equipment if not returned in a clean and tidy state;
  - (c) the full cost of repairing any damage to the Equipment caused whilst in The Licensee's possession;
  - (d) stamp duties, GST any other taxes or duties payable in respect of this Hire Agreement or arising from The Licensee's use of the Equipment;
  - (e) all reasonable costs incurred by The Licensor in delivering and recovering possession of the Equipment unless agreed otherwise in the Hire Schedule;
  - (f) a late payment fee calculated daily at 2% per month on all amounts owing by The Licensee not paid on time;
  - (g) any expenses and legal costs (including commission payable to a commercial agent) incurred by The Licensor in enforcing this Hire Agreement due to The Licensees breach or default;
  - (h) the Hire Charge calculated on a daily basis multiplied by 1.5 times for each and every day the Equipment is not returned to The Licensor after the due date for return set out in the Hire Schedule (except where The Licensor has agreed to an extension of the Hire Period in writing) including where The Licensee fails and or refuses to have the Equipment ready for collection by The Licensor;

- (i) the Hire Charge calculated on a daily basis for each and every day the Equipment is not able to be hired out by The Licensor due to The Licensee failing to return the Equipment in good working order and condition, in a clean and tidy state or where a defect or fault has been caused by The Licensee's abuse or misuse of the Equipment or where The Licensee has failed to comply with its service and maintenance obligations;
  - (j) the amount calculated in accordance with clause 7(5) where applicable;
  - (k) all costs incurred in repairing and replacing Equipment and accessories such as tyres that have been lost or damaged by The Licensee;
  - (l) any insurance excess that The Licensor may incur due to and or connected with loss and damage caused by The Licensee to the Equipment;
  - (m) all costs incurred in refuelling Equipment that has not been returned with a full tank of fuel including the recharging of batteries that are not charged; and
  - (n) any reasonable costs incurred by The Licensor where The Licensee is not at the agreed delivery or collection destination on time and The Licensor is required to wait for The Licensee to arrive; and
  - (o) any cost and expenses incurred by The Licensor as a result of The Licensees breach of this Hire Agreement.
- (3) Without limiting the ability of The Licensor to recover all amounts owing to it, The Licensee authorises The Licensor to charge any amounts owing by The Licensee to any credit card or account details which are provided to The Licensor.
- (4) The Licensor will not refund any Hire Charge to The Licensee if The Licensee elects to return the Equipment prior to the end of the Hire Period, regardless of any reason.
- (5) If The Licensee shall cancel the Hire Agreement within the following period prior the proposed Commencement date The Licensee agrees to pay The Licensor the Hire Charge amount calculated as follows:
- (a) If cancelled less than 1 month before the proposed Commencement date 100% of the Hire Charge;
  - (b) If cancelled less than 3 months but more than 1 month before the proposed Commencement date 75% of the Hire Charge;
  - (c) If cancelled less than 6 months but more than 3 months before the proposed Commencement date 50% of the Hire Charge; and
  - (d) if cancelled more than 6 months before the Commencement date 25% of the Hire Charge. The Licensee acknowledges and agrees that the above amounts are a fair estimate of the loss suffered by The Licensor in reserving the Equipment for use by The Licensee to the exclusion of other potential Licensees of The Licensor.
- (6) In the event The Licensee has not paid any monies when due The Licensor may at their discretion suspend work and or retrieve its Equipment from The Licensee. If The Licensor exercises any of its rights under this clause The Licensee will still be liable for the full Hire Charge and The Licensor shall not be liable under any circumstances for any loss, consequential or otherwise, sustained by The Licensee.

## 8. PPS LAW

- (1) This clause applies to the extent that this Hire Agreement provides for a 'security interest' for the purposes of the *Personal Property Securities Act 2009* (Cth) ("PPS Law"). References to PPS Law in this agreement include references to amended, replacement and successor provisions or legislation.
- (2) If The Licensor does not have at Commencement a PPS Law registration ensuring a

perfected first priority security interest in the Equipment, the Hire Period (including any extension of the Hire Period or the aggregate of consecutive Hire Periods during which The Licensee has substantially uninterrupted possession) may not despite anything else in this document or any Hire Schedule be longer than:

- (a) 90 days in the case of Equipment which may or must be described by serial number in a PPS Law registration; or
  - (b) a year in any other case.
- (3) The Lessor may register its security interest in the Equipment. The Licensee must do anything (such as obtaining consents and signing documents) which The Lessor requires for the purposes of:
- (a) ensuring that The Lessor's security interest is enforceable, perfected and otherwise effective under the PPS Law;
  - (b) enabling The Lessor to gain first priority (or any other priority agreed to by The Lessor in writing) for its security interest; and
  - (c) enabling The Lessor to exercise rights in connection with the security interest.
- (4) The rights of The Lessor under this document are in addition to and not in substitution for The Lessor's rights under other law (including the PPS Law) and The Lessor may choose whether to exercise rights under other law, as it sees fit. To avoid any doubt about it The Lessor security interest will attach to proceeds.
- (5) To the extent that Chapter 4 of PPSA applies to any security interest under this agreement, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of this agreement in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires The Lessor to give a notice to The Licensee); 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 Lessor to give a notice to The Licensee); 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 (re- instatement of security agreement).
- (6) The following provisions of the PPS Law; section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); confer rights on The Lessor. Licensee agrees that in addition to those rights, The Lessor shall, if there is default by Licensee, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this Hire Agreement and The Licensee agrees that The Lessor may do so in any manner it sees fit including (in respect of dealing an disposal) by private or public sale, Agreement or license.
- (7) The Licensee waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.
- (8) The Lessor and The Licensee agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Licensee must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to The Lessor the benefit of section 275(6)(a) and The Lessor shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this sub-clause.
- (9) Licensee must not dispose or purport to dispose of, create or purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the Equipment other than

with the express written consent of The Licensor.

- (10) Licensee must not Agreement, hire, bail or give possession, or sub-hire the Equipment to anyone else unless The Licensor (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to The Licensor and must be expressed to be subject to the rights of The Licensor under this agreement. Licensee may not vary a sub-hire without the prior written consent of The Licensor (which may be withheld in its absolute discretion).
- (11) Licensee must ensure that The Licensor is provided at all times with up to date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment.
- (12) Licensee must take all steps including registration under PPS Law as may be required to:
  - (a) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
  - (b) enabling The Licensee to gain (subject always to the rights of The Licensor) first priority (or any other priority agreed to by The Licensor in writing) for the security interest; and
  - (c) enabling The Licensor and The Licensee to exercise their respective rights in connection with the security interest.
- (13) To assure performance of its obligations under this agreement, The Licensee hereby gives The Licensor an irrevocable power of attorney to do anything The Licensor reasonably considers The Licensee should do under this agreement. The Licensor may recover from Licensee the cost of doing anything under this clause 8, including registration fees.

## **9. EXCLUSION OF WARRANTIES AND LIABILITIES**

- (1) Where the Australian Consumer Law applies, The Licensee has the benefit of guarantees in relation to the hire of the Equipment which cannot be excluded.
- (2) Where the Australian Consumer Law shall apply and the goods are not of a kind ordinarily acquired for personal domestic or household use or consumption The Licensor's liability in respect of any guarantee is limited to either the replacement of the Equipment for the Hire Period or refund of the Hire Charge at its discretion.
- (3) To the extent that the Australian Consumer Law (or any other law which cannot be excluded) does not apply The Licensor makes no representations and gives no warranties other than those set out in this Hire Agreement, and will not be liable to The Licensee for any damages, costs or other liabilities whatsoever (including for consequential loss, indirect or special loss and damage, loss of business) in relation to or connection with the hiring of the Equipment by The Licensee.

## **10. BREACH OF HIRE CONTRACT BY LICENSEE**

- (1) If The Licensee breaches any clause of this Hire Agreement, or becomes bankrupt, insolvent or ceases business then The Licensor shall be entitled to:
  - (a) terminate this Hire Agreement; and or
  - (b) sue for recovery of all monies owing by The Licensee; and or
  - (c) repossess the Equipment. You irrevocably acknowledge and agree that upon receiving written notice from Us that You expressly consent to Us entering Your premises and or property where the Equipment is located for the purpose of recovering Our Equipment and where necessary consent to us using reasonable force to retrieve Our Equipment.
- (2) The Licensee indemnifies The Licensor and shall keep The Licensor indemnified in



respect of any damages, costs or loss incurred resulting from a breach by The Licensee of any provision of this Hire Agreement

## **11. MAINTENANCE AND SERVICE OBLIGATIONS**

The Licensee must at its own expense:

- (1) keep the Equipment clean and tidy;
- (2) refuel the Equipment and check all fluids, oil, water, battery levels, and waste tanks;
- (3) keep the Equipment properly lubricated and undertake regular maintenance of the Equipment in accordance with the manufacturers specifications and requirements;
- (4) keep the radiator, engine and tyres filled to proper levels in accordance with the manufacturers specifications and requirements; and
- (5) check all hoses (hydraulic, fuel and water) and conduct general tightening of any loose nuts, bolts, belts and or fittings.

## **12. BREAKDOWN AND MALFUNCTION**

- (1) If the Equipment breaks down or malfunctions, whether intermittent or not, or is damaged so as to cause risk to persons or property or further damage to the Equipment with continued operation The Licensee must:
  - (a) immediately STOP using the Equipment (any damage caused to the Equipment by its continued operation and use will be the responsibility of The Licensee and its expense to repair and or replace the Equipment);
  - (b) properly secure the Equipment to prevent continuing use of the Equipment including placing an 'Out of Service or Order' notice on the Equipment;
  - (c) immediately inform The Licensor verbally of the problem with the Equipment with confirmation in writing (email acceptable) as soon as practicable afterwards including the time, date, hours of operation and fault observed with the Equipment;
  - (d) not repair or attempt to repair the Equipment without our prior written consent; and
  - (e) give The Licensor access to the Equipment to conduct any inspection, test, and or repairs required during normal business hours.
- (2) Upon receiving notice from you in accordance with clause 12(1)(c) we will take all reasonable steps to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by you. Under no circumstances will The Licensor be liable to The Licensee for any loss, damage, loss of profit, wasted costs, loss of business, business disruption, consequential losses or additional costs and or charges incurred by The Licensee due to the Equipment breaking down or not being available for use during any part of the Hire Period whether in contract, negligence or upon any other basis even if The Licensor was advised of the possibility of the loss or damage.
- (3) Except where the Equipment has broken down or been damaged due to The Licensee's failure to comply with the terms of this Hire Agreement we will not impose the Hire Charge for the portion of the Hire Period that the Equipment was broken down or unsafe or charge you for any costs associated with the repair or replacement of the Equipment.

## **13. OPERATOR PROVIDED (WET HIRE)**

If when hiring the Equipment The Licensee request The Licensor to provide an operator for the Equipment and The Licensor agrees to do so then the following conditions will apply:

- (1) The Licensee will ensure the site is safe for the use and operation of the Equipment, conduct a site induction with the operator which induction will include identifying potential risk and hazards at the site and explanation of the emergency procedures to the operator (any site induction required will be at the costs of The Licensee;

- (2) The Licensee will at its cost provide a qualified and licensed Dogman and traffic control person where required by law or where it is required for the safe use and operation of the Equipment (unless The Licensee has previously agreed in writing that they will use The Licensors operating staff instead);
- (3) the operator and Equipment will be under the supervision and control of The Licensee and The Lensor shall not be liable for any acts or omissions of the operator whether caused by the operator's negligence where the operator is acting under the direction and control of The Licensee;
- (4) The Licensee shall provide the operator with any information reasonably requested by the operator such as weight loads;
- (5) The Licensee shall sign any forms reasonably requested by The Lensor and or the operator, including work dockets, to confirm satisfactory completion of the terms of hire by The Lensor and or the operator;
- (6) the operator may refuse any direction given by The Licensee where in the reasonable opinion of the operator it is unsafe to following the direction, the direction may put the operator, persons and or property at unnecessary risk of injury or damage or where the direction may cause damage to the Equipment; and
- (7) The Licensee must have a current and valid insurance and worker's compensation policy that covers death and or injury to the operator.

#### **14. INSURANCE**

The Licensee must effect and have in place an insurance policy to cover against:

- (1) damage to the Equipment for its full replacement value (rollover of the Equipment will be deemed a complete write off of the Equipment);
- (2) loss and theft of the Equipment;
- (3) injury or death to persons and damage to property resulting from the use and operation of the Equipment;
- (4) public liability insurance for an amount not less than \$20 Million dollars;
- (5) workers' compensation insurance covering any person using and operating the Equipment.

Where the Equipment is to be operated over or near a body of water, The Licensee may incur increased insurance costs.

#### **15. SEVERABILITY**

If any part of this Hire Agreement becomes void or unenforceable for any reason then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts

#### **16. AMENDMENTS, NO WAIVER OF RIGHTS & ALTERATION**

- (1) The Lensor may change these terms and conditions from time to time by The Lensor giving notice of the amendment to The Licensee. Notice to The Licensee will be deemed given when The Lensor does any of the following:
  - (a) sends notice of the amendment to The Licensee at any address, including email address, supplied by The Licensee;
  - (b) publishes the amended terms on its website; or
  - (c) displays the amended terms at premises from which The Lensor conducts hire operations.
- (2) No delay or omission by a party to exercise any right, power or remedy available to that

party as a result of a continuing breach or default under the Hire Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of that party's right to take action or make a claim in respect of a continuing breach or default. No course of prior dealing between the parties shall be interpreted to adversely affect Our rights under this Hire Agreement.

- (3) No variation, alteration or amendment may be made by The Licensee to any part of this Hire Agreement including these terms and conditions unless expressly accepted in writing by Us prior

## **17. GST**

- (1) The amount of the Hire Charge in this Hire Agreement and all other fees, charges and expenses referred to in this Hire Agreement and the Hire Schedule are exclusive of Goods and Services Tax (GST) unless otherwise stated.
- (2) Where any Hire Charge, fees, charges and expenses is provided by The Licensor to The Licensee and is subject to GST, GST of 10% (or such other amount as may be required by the Australian Taxation legislation) shall be added and charged to The Licensee

## **18. DISPUTES**

- (1) The Licensee must immediately check all Hire Charges, and any disputes in relation to those Hire Charges must be communicated to The Licensor in writing within 7 days of receiving the Hire Charge tax invoice being issued. In the event that no communication, dispute or query is received from The Licensee within this 7 days' period, the Hire Charges are deemed to be accepted by The Licensee.
- (2) If a dispute arises relating to this Hire Agreement, the hiring or use of the Equipment (except in regard to payments due to The Licensor), the parties agree to negotiate to settle the dispute with the assistance of the Hire and Rental Industry Association of Australia before litigation.

## **19. PRIVACY**

The Licensor will comply with the Australian Privacy Principles in all dealings with Licensees. A copy of The Licensor Privacy Statement is available upon request or by visiting our website.

## **20. FORCE MAJEURE**

- (1) Subject to clause 20(2) neither party will be responsible for any delays in delivery or collection due to causes beyond their control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, orders or regulations of governments, fires, floods or strikes.
- (2) Nothing in clause 20(1) will limit or exclude Your responsibility and liability under the Hire Agreement for Equipment that is lost, stolen or damaged during the Hire Period.

## **21. GOVERNING LAW**

This Contract is governed by the law of the state of Queensland, and the parties submit to the jurisdiction of the courts of that Stat.

## **22. GUARANTEE AND INDEMNITY**

In consideration of the Licensor agreeing to enter into this Deed, the Guarantor:

- (a) guarantees to the Licensor that the Licensee will duly and punctually pay any amounts under this Agreement;
- (b) guarantees to the Licensor that the Licensee will duly and punctually observe and perform all of the obligations under this Agreement;

- (c) undertakes to the Licenser that with the Licensee they will be jointly and severally liable to the Licenser for the payment of any money and the due and punctual observance and performance of the Licensee's obligations under this Agreement.

The Guarantor's liability will not be discharged or reduced by:

- (a) the Licenser granting any time, concession or indulgence to the Licensee under this Agreement;
- (b) the Licenser entering into any composition or scheme of arrangement with the Licensee;
- (c) the Licenser waving any breach or default by the Licensee as lessee under this Agreement;
- (d) the Licenser's failure to enforce the terms of this Agreement against the Licensee;
- (e) any payment by the Licensee that is avoided or set aside under any statute relating to insolvency or under any other statute.

The Guarantor, as a separate legal obligation, indemnifies the Licenser and will the Licenser indemnified against any loss it may suffer as a result of any breach of this Agreement by the Licensee. The loss will include any money that would have been payable by the Licensee under this Agreement had this Agreement been fully enforceable against the Licensee.

- 23.** The terms of this guarantee and indemnity are immediately enforceable against the Guarantor in respect of the obligations of the Licensee under this Agreement and enforcement is not dependant on the Licenser first exercising any and all legal remedies under this Agreement.