



**EARTHMOVING
AND PLANT HIRE**

HIRE AGREEMENT

Between

EMJC EARTHMOVING & PLANT HIRE

and

Sherona Pty Ltd ATF The EMJC Unit Trust trading as

EMJC Earthmoving & Plant Hire

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GENERAL TERMS & CONDITIONS OF HIRE

1. DEFINITIONS

1.1 In this Agreement:

- a. **"Agreement"** means these General Terms and Conditions of Dry Hire and any schedules or annexures to this Agreement;
- b. **"Additional Charges"** means the Additional Charges specified in item 4 of the Schedule payable by the Hirer where the Equipment is used for more than the Specified Hours;
- c. **"Commencement Date"** means the date that the Hirer takes possession of the Equipment;
- d. **"Completion Date"** means the date of delivery of the Equipment to EMJC;
- e. **"Deposit"** means the deposit specified in item 2 of the Schedule (if any);
- f. **"Dry Hire"** means the lease of the Equipment to the Hirer without an operator or labour provided by EMJC;
- g. **"EMJC"** means the persons, company, partnership or trust trading as E.M.J.C Earthmoving and Plant Hire;
- h. **"Equipment"** means the equipment described in item 2 of the Schedule;
- i. **"Guarantor"** means the person or persons specified in item 10 of the Schedule;
- j. **"Hire Fee"** means the hire fee specified in the Schedule at Item 3 and includes any rate or fees applicable for the provision of an Operator where this Agreement is a Wet Hire or as otherwise agreed by the parties;
- k. **"Hirer"** means a person, firm, organisation or corporation hiring Equipment from EMJC specified in item 1 of the Schedule and includes any officer, employee or agent of the Hirer who signs this or any other document purportedly on the Hirer's behalf who shall be taken by EMJC as having full authority to sign on the Hirer's behalf.
- l. **"Hire Period"** means the hire period specified in item 6 of the Schedule and includes any period of time commencing on the Commencement Date and extending until the Completion Date;
- m. **"Location"** means the place specified in item 6 of the Schedule or such other place agreed in writing by the parties from time to time that the Equipment may be used or, as the context requires, the premises or address at which the Hirer and EMJC have agreed in writing from time to time that the Equipment will be kept, used or stored (as the case may be);
- n. **"Major Repairs"** means any of the items of repairs specified in item 8 of the Schedule and which may include other items of repair as agreed in writing between the parties from time to time;

- o. **"Operating Instructions"** means any operating instructions or manual provided to the Hirer with respect to the Equipment;
- p. **"Operator"** means an operator of the Equipment provided by EMJC;
- q. **"Servicing Period"** means the accumulated hours or kms which require a service as per the equipment manufacturers recommended service period interval;
- r. **"Specified Hours"** means the Specified Hours specified in item 5 of the Schedule; and
- s. **"Wet Hire"** means where the Equipment is hired with an Operator

2. GRANT AND HIRE PERIOD

2.1 Grant

EMJC agrees to lease the Equipment to the Hirer on a Dry Hire basis.

2.2 Hire Period

- a. The Hirer shall lease the Equipment for the Hire Period.
- b. EMJC may, in its discretion, agree to extend the Hire Period, should this occur then either a new Hire Agreement will be signed, or conditions will remain the same as the original Hire Agreement.

3. HIRE FEE AND PAYMENT

3.1 Hire Fee and Deposit

- a. The Hirer shall pay the Hire Fee and Additional Charges in accordance with this Agreement during the Hire Period.
- b. Where required, the Hirer must pay the Deposit on or before the Commencement Date. EMJC reserves the right not to provide the Equipment to the Hirer if the Hirer fails to pay the Deposit in full.

3.2 Payment

- a. The Hire Fee and Additional Charges shall be payable strictly in accordance with following terms:
- b. For Hirer with approved credit accounts the Hire Fee and Additional Charges (if applicable) are payable within 30 days of the date of each invoice provided to the Hirer by EMJC without set off or deduction which will be provided on a monthly basis;
- c. For Hirer with no credit account or accounts which exceed their approved credit limits, the Hirer must pay 1 months rent in advance and remain one month in advance at all times;
- d. For Hirer with no credit account and in the case of hire periods less than one month, the Hirer must pay an amount in advance as nominated by the EMJC and remain in advance at all times;
- e. the Hirer must pay the Hire Fee and Additional Charges by direct electronic payment to a bank account nominated by EMJC or such other method of payment as agreed between the parties; and

- f. if the Hirer does not pay any amount payable in accordance with this Agreement by the due date, EMJC reserves the right to charge the Hirer an amount equal to 8% interest compounded daily on any amounts that remain due and payable until the date of payment of those amounts in full.

3.3 Hirer's other payments

3.4 Unless otherwise agreed by the parties in writing, the Hirer must pay all repair, service and operating expenses in respect of the Equipment including (without limitation) the cost of fuel and lubricant, the cost of replacement parts and accessories and the costs of complying with any requirements referred to in clause 7.

4. WET HIRE

4.1 In the event of Wet Hire of the Equipment:

- a. the Operator shall operate the Equipment in accordance with the Hirer's lawful direction and instructions. EMJC shall not be liable for any actions of the Operator or any direct or indirect loss or damage suffered or incurred either directly or indirectly by the Hirer or the Hirer's officers, employees, contractors or agents in connection with the operation of the Equipment by the Operator; and
- b. the Hirer shall provide amenities and first aid services to EMJC's Operator of the Equipment in compliance with all relevant Health & Safety legislation;
- c. subject to any applicable workplace, safety or other relevant laws, the fees applicable for the hire of an Operator shall be based on signed timesheets but will be no less than a minimum working day of ten (10) hours per day, allowing a thirty (30) minute unpaid lunch break. Additional charges shall apply if the Equipment is used in addition to these hours or on a weekend or public holiday, at EMJC's discretion;
- d. it is the Hirer's responsibility to ensure that any required safety courses, medicals and inductions are attended or completed by the Operator of the Equipment and the Hirer agrees and acknowledges that any time taken to attend or complete such course shall be charged as per the normal Hire Fee rates;
- e. EMJC and the Operator shall not be required to comply with any direction or instruction from the Hirer if it is unsafe, unlawful or unreasonable to do so.



5. DELIVERY & INSTALLATION

5.1 Delivery

- a. Unless otherwise agreed, transportation costs to and from the Location, including the supply of additional labour, equipment, materials and transportation expenses and other requirements are at the cost of the Hirer;
- b. Unless otherwise specified, the Hirer is responsible for the supply of all necessary craneage, labour and other handling equipment to offload, assemble, erect, dismantle and load the Equipment at the Location or any other location.

5.2 Prior Inspection

- a. The Hirer agrees as between the Hirer and EMJC that the Hirer, on taking delivery of the Equipment, will accept the Equipment on an "as is" basis with all faults and defects (if any) and that the General Condition Report provided by EMJC shall be conclusive evidence of the state of the Equipment;
- b. The Equipment will be deemed to having been accepted as suitable for the Hirer's requirements unless the Hirer has provided EMJC with written notification to the contrary within 36 hours of the delivery or collection of the Equipment. The failure to provide such notice will irrevocably constitute acceptance of the Equipment by the Hirer for all purposes of this Agreement and will bind the Hirer absolutely that the Equipment has been fully and unconditionally accepted by the Hirer for the purposes of this Agreement;
- c. The Hirer acknowledges that EMJC may acquire or will acquire the Equipment for the sole purpose of this Agreement. Accordingly, if the Hirer fails to accept the Equipment in accordance with this clause 5, the Hirer will pay EMJC as and by way of liquidated damages the sums the Hirer would have been liable to pay under this Agreement had the Hirer accepted the Equipment and then immediately returned them to EMJC.

5.3 Installation

- a. If applicable, EMJC will notify the Hirer prior to the Commencement Date as to whether the Equipment is to be installed mobilised or de-mobilised by EMJC or the Hirer;
- b. If installation, mobilisation, demobilisation or delivery is to be undertaken by EMJC, any associated charges may apply at EMJC's discretion.

6. TITLE TO EQUIPMENT

- 6.1 The Hirer acknowledges that in all circumstances EMJC retains title to the Equipment (even if the Hirer goes into liquidation or becomes bankrupt during the Hire Period) and the Equipment is not deemed to be a fixture.

7. HIRER'S OBLIGATIONS

7.1 Service and Maintenance

- a. Subject to this clause 7, the Hirer must unless otherwise specified as the responsibility of EMJC in the Schedule at its own expense, at every Servicing Period ensure that the Equipment is serviced, maintained and repaired in accordance with all manufacturer's recommendations and specifications, Operating Instructions and guidelines or other reasonable directions of EMJC given from time to time and otherwise ensure that the Equipment is in proper working order and condition and in good substantial repair. Full copies of all service sheets and evidence of such servicing must be provided to EMJC by email or such other method notified by EMJC from time to time;
- b. unless otherwise specified as being the responsibility of EMJC in the Schedule, undertake Major Repairs (at the Hirer's sole cost) of the Equipment at every Servicing Period or when required, which shall include (but shall not be limited to) checking and, if required, repairing or adjusting, including any damage to the equipment;
- c. complete the manufacturer's oil sampling analysis at every oil change period on all components in the Equipment and provide SOS sampling record to EMJC by email or such other method notified by EMJC from time to time;
- d. supply and apply all fuel, oil, lubricants, water, grease G.E.T. and other consumables necessary for the operation, service and maintenance of the Equipment;
- e. promptly replace all parts which may from time to time become worn out, lost, stolen, compulsorily acquired, destroyed, seized, confiscated, damaged beyond repair or permanently rendered unfit for use by damage or obsolescence. All replacement parts will be the property of EMJC;
- f. keep the Equipment clean; and
- g. repair and replace all tyre and track wear to the condition as per the time of on hire;
- h. do, repair or undertake any other thing as indicated in the Schedule including keeping and replacing all satisfactory and condition fluid levels, electrical wiring, electrical switches, lights, leaks, vee belts, tyre/undercarriage wear, ground engaging tools (GET) and bucket/tray;

7.2 Failure to Service

Where the Hirer fails to service or maintain the Equipment in accordance with clause 7.1, EMJC shall be entitled to increase the Hirer Fee by 100% until such time as the Equipment is serviced in accordance with clause 7.1

7.3 EMJC Servicing

- a. EMJC reserves the right to take possession of the Equipment in the instance that the Hirer fails to comply with any conditions in clause 7.1 or if EMJC wishes to implement its own servicing or undertake major repairs to the Equipment and the Hirer must promptly provide the Equipment to EMJC (or its agents or subcontractors) for such purpose.
- b. Any costs which are the responsibility of the Hirer as per this agreement which are incurred by EMJC by exercising their rights under Clause 7.3 a) will be charged to the hirer at retail rates to reinstate the equipment to a satisfactory level inline with how the equipment would be if the hirer adhered to the agreement.

7.4 Indemnity

- a. The Hirer shall indemnify EMJC for any loss or damage caused either directly or indirectly to the Equipment in connection with or arising from:
- b. the Hirer's failure to comply with clauses 7.1 and 7.5;
- c. the misuse of the Equipment or use of the Equipment contrary to the obligations of the Hirer under this Agreement;
- d. operation of the Equipment not in accordance with the Operating Instructions; or
- e. Damage or wear to the Equipment in accordance with clause 7.5.

7.5 Notice of Damage

Except in the case where this Agreement is a Wet Hire and any damage is caused to the Equipment by reason of the negligence of the operator of the Equipment, the Hirer must provide written notice as soon as practicable to EMJC in the event that there is any significant or serious damage or disrepair to the Equipment (including any corrosion or damage to the Equipment caused by salt water) or the operation of the Equipment. Where the Equipment is damaged, EMJC reserves the right to:

- a. provide notice to the Hirer requiring the Hirer to immediately repair or service the Equipment;
- b. take possession of the Equipment, at the Hirer's cost; or
- c. have the Equipment repaired by EMJC at the Hirer's cost.
- d. for the avoidance of doubt, the Hirer shall be liable for all costs and expenses directly or indirectly relating to the repair of the Equipment where it is damaged for any reason while on hire to the Hirer.



7.6 General Obligations

The Hirer must:

- a. use the Equipment in a skillful and proper manner and only for the purposes and within the capacity for which the Equipment was designed;
- b. accept full responsibility and liability for the safe keeping of the Equipment and indemnify EMJC for all loss, theft or damage of the Equipment however caused and, without limiting the generality of the foregoing, whether or not such loss, theft or damage is attributable to any abandonment of any Equipment, negligence, failure or omission of the Hirer;
- c. ensure that any person using the Equipment operates the Equipment safely and in accordance with the Operating Instructions and all relevant statutes, regulations, by laws and requirements of any authority that apply to the Equipment;
- d. ensure that the Equipment is stored safely and securely and is protected from theft, seizure or damage;
- e. comply in all respects with all applicable laws, regulations, requirements and rules reasonably necessary for the safe and lawful operation of the Equipment, including the obtaining of any required permits or authorisations required for the use of the Equipment;
- f. not in any way part with possession of the whole or part of the Equipment, nor sell, assign, mortgage, pledge, sub lease, lend, grant a 'security interest' in or otherwise deal with the whole or part of the Equipment without the express written consent of EMJC;
- g. inform EMJC immediately if any items or part of the Equipment are stolen, lost, destroyed or damaged; and
- h. not remove or cover up any plates or other marks that EMJC may affix or cause to be affixed to the Equipment to indicate that the Equipment is the property of EMJC.

7.7 Records

The Hirer must keep complete records with respect to the obligations of the Hirer specified in this clause 7 and provide such records to EMJC on demand.

8. BREAKDOWN

8.1 Where the Equipment becomes unusable or unsafe to use, the Hirer must:

- a. immediately stop using the Equipment;
- b. take all necessary steps to prevent injury to the Hirer or any other persons or property as a result of the condition of the Equipment;
- c. take all necessary steps to prevent any further damage to the Equipment; and
- d. not repair or attempt to repair the Equipment without EMJC's prior written approval.
- e. Where this Agreement is a Wet Hire and the Equipment becomes unusable or unsafe to operate, EMJC reserves the right to immediately stop using the Equipment and take reasonable steps to re-engage the Equipment as soon as practical.

9. EMJC'S OBLIGATIONS

9.1 EMJC shall:

- a. ensure that the Equipment, if required, remains licensed and registered during the Hire Period; and
- b. ensure that the insurances specified in clause 10 are effected and maintained during the Hire Period.

10. INSURANCE

10.1 EMJC's insurance

- a. Unless otherwise specified in the Schedule, EMJC will effect and maintain in the name of EMJC the following insurances:
 - b. Third party risks: insurance against all third party risks including liability for damage or injury of any kind to any property or person and also against other risks to the full extent required by law by a policy inuring for the benefit of EMJC;
 - c. Public risk: public risk insurance relating to the Equipment for an indemnity (including damage to property of any person) of not less than \$20,000,000.00;
 - d. Motor vehicle insurance and/or plant and equipment insurance as required by EMJC;
 - e. Transit insurance: if required as specified in the Schedule at the required limit specified in the Schedule; and
 - f. any other insurance EMJC requires the Hirer to take out and maintain or required by law for the Hirer to take out and maintain.

10.2 The Hirer's Insurance

The Hirer must, at the Hirer's cost, take out and maintain:

- a. full comprehensive motor vehicle insurance (at its sole cost) covering loss, theft, damage or destruction of the Equipment for an amount not less than the new replacement value of the Equipment; and
- b. any other insurance that EMJC requires the Hirer to take out,
- c. and ensure that EMJC is listed as an interested party (as owner of the vehicle) on such policies. The Hirer must provide all certificates of currency for such insurances on demand.

10.3 Hirer's Reimbursement

The Hirer must reimburse EMJC for the costs and expenses with respect to the same insurances specified in clause 10 on demand.

11. TERMINATION

11.1 Termination by EMJC

Notwithstanding any other condition of this Agreement, and without prejudice to any other remedies EMJC may have against the Hirer, EMJC may terminate this Agreement at any time without notice in the following cases:

- a. where the Hirer is subject to any winding up petition or order, appointment or receiver, official management, assignment, arrangement, or compromise for the benefit of creditors, an act of bankruptcy or any action taken or threatened to be taken to place the Hirer in bankruptcy, a

judgment which is unsatisfied or partly unsatisfied, a sequestration order, a writ or execution or where the Hirer ceases to carry on business;

- b. where the Hirer breaches this Agreement and the Hirer has failed to remedy that breach within 7 days of written notice being provided to the Hirer, such notice specifying the breach and requiring rectification of the breach;
- c. where the Hirer fails to pay any amount payable to EMJC under this agreement within 7 days of the date that those monies become due and payable;
- d. the Hirer is convicted of a serious offence;
- e. any judgment or process is entered against the Hirer and is not satisfied forthwith;
- f. the Equipment is abandoned, condemned, seized or appropriated by any lawful authority or person and not released within 7 days; or
- g. by way of 30 days' written notice of termination of this Agreement to the Hirer.

11.2 Costs & Expenses

The Hirer must, on demand, reimburse EMJC for all costs, charges, expenses, fees, disbursements (including all legal costs on an indemnity basis) paid or incurred by EMJC as a result of or incidental to:

- a. any breach, default or repudiation of this Agreement by the Hirer; and
- b. the exercise or attempted exercise of any right, power, privilege, authority or remedy of EMJC under or by virtue of this Agreement, including all amounts incurred in preparation and service of a notice under this Agreement and in repossessing the Equipment from the Hirer under the terms of this Agreement and in enforcing this Agreement generally.

11.3 Return of Equipment

- a. Upon the expiration or termination of this Agreement pursuant to this Agreement, the Hirer must, subject to any alternative arrangements agreed in writing between the parties, immediately deliver the Equipment to EMJC at the Hirer's expense and in the same condition as the Equipment was originally delivered to the Hirer.
- b. If the Equipment is not returned to EMJC within a period of time as notified to the Hirer by EMJC, EMJC shall be entitled to take possession of the Equipment without notice for which purpose the Hirer hereby authorises EMJC, its servants and agents to enter upon any land or premises of the Hirer or under its control upon which the Equipment is situated at the time of termination to search such premises and to remove the Equipment there from.



12. INDEMNITIES

12.1 Indemnity

Without limiting any other indemnity given by the Hirer under this Agreement, the Hirer shall indemnify EMJC and EMJC’s directors, agents, servants, sub-agents, subcontractors and employees against all liability, loss, claims, actions, suits, demands, costs, expenses, including all legal costs and expenses, in any way arising out of or in connection with any or all of the following:

- a. the use of the Equipment by the Hirer whether caused by the negligence of the Hirer, its servants or agents or by negligence of any other person whomsoever or arising out of the condition of the Equipment or the use to which it is put;
- b. the repair and maintenance, storage or possession of the Equipment;
- c. any breach of this Agreement;
- d. the delivery, selection, purchase, acceptance or rejection, ownership, repair or operation of the Equipment and by whomsoever used or operated (other than EMJC); or
- e. the seizure, distress, execution or other legal process, confiscation or forfeiture of the Equipment.

12.2 Survival of indemnities

The indemnities specified in clause 12.1 and any other indemnities provided in this Agreement will continue in full force and effect notwithstanding the termination or expiration of this Agreement.

13. LIABILITIES, WARRANTIES, REPRESENTATIONS AND CONDITIONS

13.1 Exclusion of Liabilities, Warranties and Conditions

To the extent that the Commonwealth, State and Territorial laws permit:

- a. all express and implied conditions, terms, warranties and representations which are not expressly contained in this Agreement are hereby excluded;
- b. any warranty, condition, description or representation, whether express or implied, as to the description, state, quality, merchantability or fitness of the Equipment for the purpose for which it is hired is hereby excluded; and
- c. EMJC shall not be responsible or liable to the Hirer, whether on grounds of breach of contract, contractual duty or negligence, for any loss or damage that the Hirer may directly or indirectly sustain or suffer arising from or in connection with:
 - i. any defects in or miscalculation, breakdown or failure of performance of the Equipment, and the Hirer hereby exonerates and releases EMJC from all claims and demands in respect thereof; or
 - ii. the termination of this Agreement by EMJC.

13.2 Hirer’s Wand Representations

The Hirer warrants and represents that:

- a. the Hirer has full power and authority to execute this Agreement and to perform and observe all of its terms and provisions;
- b. this Agreement has been duly executed by the Hirer and is a legal and binding agreement of the Hirer enforceable against it in accordance with the terms of this Agreement;
- c. the Hirer has disclosed to EMJC all facts, circumstances and other information of which the Hirer knows or should reasonably know relating to the hire of the Equipment and which are material to, or may have an effect on, EMJC;
- d. the Hirer holds all licences, permits and authorities required to operate the Equipment; and
- e. the hire of the Equipment will not breach any law or requirement or direction of any authority.

14. PSA

14.1 For the purposes of this clause 14, “PPSA” means the Personal Property Securities Act 2009 and the Personal Property Securities Regulations 2010, as amended from time to time.

14.2 If the Equipment may be subject to the PPSA, then EMJC may effect and maintain registration of a ‘security interest’ (as that term is defined in the PPSA) in the Equipment and the proceeds arising in respect of any dealing in the Equipment. The Hirer must do any thing (such as obtaining consents and signing documents) which EMJC requires for the purpose of:

- a. creating and registering EMJC’s security interest including (but not limited to) providing details of any item of collateral sufficient to complete registration of the security interest in accordance with the PPSA;
- b. ensuring that EMJC’s security interest is and remains enforceable, perfected and otherwise effective under the PPSA;
- c. enabling EMJC to gain first priority (or any other priority agreed to by EMJC in writing) for its security interest; or
- d. enabling EMJC to exercise its rights in connection with the security interest or the PPSA.

14.3 EMJC’s rights under this Agreement are in addition to and not in substitution of EMJC’s rights under any other law (including the PPSA) and EMJC may choose whether to exercise rights under this Agreement and/or under such other law, in its discretion. For the avoidance of doubt, any security interest that EMJC may have in the Equipment will attach to ‘proceeds’ in accordance with the PPSA.

14.4 To the extent that Chapter 4 of the PPSA applies to any security interest under this Agreement, the following provisions of the PPSA are “contracted out” of in accordance with section 115 of the PPSA and shall not apply: sections 95, 96, 121(4), 125, 130, 129(2), 129(3), 132(3) (d), 132(4), 135, 142 and 142.

14.5 In addition to any rights conferred upon EMJC under the PPSA, the Hirer agrees and acknowledges that in addition to those rights EMJC shall, if the Hirer is in default of this Agreement, have the right to seize, purchase, take possession or apparent possession of, retain, deal with or dispose of any goods (including the Equipment) not only under those provisions under the PPSA but also as additional and independent rights under this Agreement. The Hirer agrees that EMJC may exercise any of its rights under this clause 13.5 in any way it deems fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

14.6 Pursuant to section 157(3) of the PPSA, the Hirer waives its rights to receive a verification statement in relation to registration events in respect of commercial property pursuant to section 157(1) of the PPSA.

14.7 EMJC and the Hirer agree not to disclose information of the kind that can be requested under section 257(1) of the PPSA.

14.8 The Hirer must not dispose or purport to dispose of, or create or purport to create or permit to be created any ‘security interest’ in the Equipment without the express written consent of EMJC.

- a. The Hirer must not lease, hire, sub hire, bail, lend or part with possession of the Equipment (Sub-hire) without the express written consent of EMJC, which may be provided or withheld in its absolute discretion. In the instance that EMJC consents to a Sub-hire in writing, the Sub-hire must be in writing and in a form acceptable to EMJC and must be expressed to be subject to the rights of EMJC under this Agreement. The Hirer must not vary the Sub-hire arrangement or terms without EMJC’s consent in writing.
- b. The Hirer must ensure that the Hirer is provided at all times (and where the Hirer requests) 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.

14.9 The Hirer must take all steps, including registration under the PPSA, 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 PPSA;
- b. enable the Hirer to gain (subject always to the rights of EMJC) first priority (or any other priority agreed by EMJC in writing) for the security interest; and/or
- c. enable EMJC and the Hirer to exercise their respect rights in connection with the security interest.



14.10 To assure the Hirer's performance of its obligations under this clause 14 and this Agreement, the Hirer hereby gives to EMJC an irrevocable power of attorney to do anything EMJC considers the Hirer should do under this Agreement. EMJC may recover from the Hirer the cost of doing anything under this clause 14, including registration fees.

15. GUARANTEE

15.1 In consideration of the hire of the Equipment to the Hirer, the Guarantor:

- a. unconditionally and irrevocably guarantees and continues to guarantee to EMJC that the Hirer will:
 - i. pay the Hirer Fees and Additional Charges and all other amounts to be paid under this Agreement in accordance with the terms of this Agreement; and
 - ii. comply with all the other terms of this Agreement on its part to be complied with; and
- b. as separate undertakings:
 - i. agrees to indemnify and keep indemnified EMJC against any liability, loss, claims, actions, suits, demands, costs, expenses, including all legal costs and expenses, suffered or incurred by EMJC arising from or in connection with any breach of this Agreement; and
 - ii. as principal debtor, agrees to pay to EMJC on demand an amount equal to any liability, loss, claims, actions, suits, demands, costs, expenses referred to in the preceding paragraph (b)(i).

15.2 The guarantee and indemnity specified in clause 15.1 continues in force until the Hirer complies with all of its obligations under this Agreement.

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

16. GOODS AND SERVICES TAX

16.1 In this clause the expressions "adjustment note", "consideration", "GST", "input tax credit", "supply", "tax invoice", "recipient" and "taxable supply" have the meaning given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.

16.2 Unless otherwise stated, all amounts payable or any consideration to be provided under this Agreement are exclusive of GST.

16.3 Notwithstanding any other provision in this Agreement, if GST is imposed on any supply made under the Agreement, the supplier may in addition to the consideration, recover an amount equal to the consideration multiplied by the current GST rate. Payment of the additional amount will be made at the same time as payment for the taxable supply subject to the supplier delivering a valid tax invoice to the recipient at or before the time of payment.

- a. If a variation in the rate of any GST is associated with the abolition or reduction of any tax, duty, excise or statutory charge which directly or indirectly affects the costs of a supplier in respect of any supply made under the Agreement, the consideration payable for the supply will be varied so that the supplier's net financial position in respect of the supply remains the same.
- b. Any contract entered into by a party to the Agreement with a third party which involves supplies being made, the cost of which will affect the cost of any supplies made under or in connection with this Agreement, must include a clause in equivalent terms to this clause of the Agreement.

16.4 If this Agreement requires a party to reimburse or indemnify the other party for any expense, loss or outgoings, including the Reimbursable Expenses ("expense"), the amount required to be paid by the first party will be the sum of:

- a. the amount of the expense net of input tax credits (if any) to which the other party is entitled in respect of the expense ("net amount"); and
- b. if the other party's recovery from the first party is a taxable supply, any GST payable in respect of that supply.

16.5 If a GST inclusive price is charged or varied, the recipient can withhold payment of the GST until the supplier provides a valid tax invoice or adjustment note as appropriate.

17. SPECIAL CONDITIONS

Any special conditions specified in item 9 of the Schedule or otherwise as agreed between the parties in writing from time to time form part of this Agreement. In the event of any inconsistency between the special conditions and the provisions in this Agreement, the special conditions shall prevail.

18. SEVERABILITY

In the event of any part of this Agreement becoming void or unenforceable, whether due to the provision of any statute or otherwise, then that part shall be severed from this Agreement, to the intent that all parts that shall not be or become void or unenforceable shall remain in full force and effect and be unaffected by any such severance.

19. COUNTERPARTS

19.1 This Agreement may be executed in any number of counterparts, all of which (taken together) constitute one instrument. A party may execute this Agreement by signing any counterpart.

19.2 A party who has executed a counterpart of this Agreement may exchange that counterpart with another party by faxing it or otherwise providing a copy to that other party.

20. ENTIRE AGREEMENT

This Agreement together with a completed Application For Credit Account and Agreement (where applicable) form the entire agreement between the parties and no regard shall be had to any other dealings. Any terms and conditions that may have been attached or embodied in any other document, tender, offer, quote, purchase order or included in correspondence are deemed to have been withdrawn in favour of these agreements. For the avoidance of doubt, should there be any inconsistencies between the Hire Agreement and the Application for Credit Account and Agreement, the order of precedence shall be:

1. The "Hire Agreement"
2. The "Application for Credit Account and Agreement".

21. GOVERNING LAW AND JURISDICTION

This Agreement is governed by the laws of Western Australia and the Commonwealth of Australia and each party irrevocably submits to the non-exclusive jurisdiction of the Courts of Western Australia.

22. VARIATION

EMJC may at any time vary this Agreement by providing the Hirer with not less than 14 days' written notice of its intention to do so. Any other variation of this Agreement must be agreed to in writing by EMJC and the Hirer.



SCHEDULE

ITEM 1: The Hirer

SOLE TRADER / PARTNERSHIP (Business is not incorporated and does not have an ACN)

Registered Trading Name:

ABN:

Personal details for all registered proprietor's of the trading name (if more than three please attach details)

1. Full Name: Home Ph: Date of Birth:

Residential Address Postcode:

2. Full Name: Home Ph: Date of Birth:

Residential Address Postcode:

3. Full Name: Home Ph: Date of Birth:

Residential Address Postcode:

COMPANY / INCORPORATED ASSOCIATION

Type: Pty Ltd (Proprietary Limited) Ltd (Limited – Public Company)

Registered Trading Name:

ACN: ABN:

Date of incorporation:

Note: If a personal / director guarantee is required, these should be included with this form and must be signed by all directors of the company.

TRUST

Registered Trust Name:

Trust Type: Trustee:

Trustee Address: Postcode:

ITEM 2: Equipment

1. Make/Model:

YOM: Serial #: VIN:

2. Make/Model:

YOM: Serial #: VIN:

3. Make/Model:

YOM: Serial #: VIN:

4. Make/Model:

YOM: Serial #: VIN:

ITEM 3: Hire Fee

(Rates exclude GST)

ITEM 4: Additional Charges (excluding GST) per hour over and above the Usage Allowance.

ITEM 5: Specified Hours minimum to be charged per month or part thereof

ITEM 6: Hire Period Start Date: End Date: Total Days:

ITEM 7: Location specify location where Equipment will be used

ITEM 8: Major Repairs

ITEM 9: Special Conditions

ITEM 10: Hirer’s Insurance Obligations Under Agreement (Clause 10)

Party Responsible

Type of Insurance	Required Limit	EMJC	Hirer
Public liability insurance	\$20,000,000	<input type="checkbox"/>	<input type="checkbox"/>
Worker’s compensation insurance	\$50,000,000 <i>or as per state legislation</i>	<input type="checkbox"/>	<input type="checkbox"/>
Motor vehicle insurance	<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>
Plant and Equipment insurance	<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>
Transit insurance	<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>

ITEM 11: Service, Maintenance and General Obligations Under Agreement (Clause 7)

Party Responsible

Item	EMJC	Hirer
Minor Servicing (clause 7)	<input type="checkbox"/>	<input type="checkbox"/>
Major Repairs (clause 7)	<input type="checkbox"/>	<input type="checkbox"/>
Running Sheets (clause 7)	<input type="checkbox"/>	<input type="checkbox"/>
Oil sampling and change (clause 7)	<input type="checkbox"/>	<input type="checkbox"/>
Consumables (clause 7)	<input type="checkbox"/>	<input type="checkbox"/>
Replacement of parts (clause 7)	<input type="checkbox"/>	<input type="checkbox"/>
Cleaning of Equipment (clause 7)	<input type="checkbox"/>	<input type="checkbox"/>
Tyre and track wear (clause 7)	<input type="checkbox"/>	<input type="checkbox"/>

ITEM 12: Execution

By signing this Hire Schedule, the Hirer agrees and acknowledges that:

- (a) it has received our Agreement; and
- (b) it agrees to be bound by the Agreement.

Date of Agreement:

Signed for and on behalf of **EMJC** by its authorised representative in the presence of:

Authorised Representative:
Name *Signature*

Witness:
Name *Signature*

Witness Address:

Signed for and on behalf of **The Hirer** by its authorised representative in the presence of:

Authorised Representative:
Name *Signature*

Witness:
Name *Signature*

Witness Address:

ITEM 12: Guarantors

Signed by the Guarantor/s in the presence of:

Guarantor 1: *Name* *Signature*

..... *Guarantor 1 Address*

Guarantor 2: *Name* *Signature*

..... *Guarantor 2 Address*

Guarantor 3: *Name* *Signature*

..... *Guarantor 3 Address*

Witness: *Name* *Signature*

..... *Witness Address*

