



1. GENERAL AND DEFINITIONS

1.1 GENERAL

- (a) The Company wishes to acquire, and the Supplier agrees to provide, the Hire Equipment (on a dry hire basis) in accordance with the Purchase Order and these terms and conditions (**Terms and Conditions**), which together constitute the contract (**Contract**).
- (b) In the event of any inconsistency, conflict, ambiguity or discrepancy between any terms set out in the Purchase Order and these Terms and Conditions, the terms set out in the Purchase Order will take precedence.
- (c) The Supplier acknowledges that these Terms and Conditions may be updated between orders by the Company providing the Supplier with access to the updated Terms and Conditions. The Supplier will be deemed to have agreed to the updated Terms and Conditions by accepting (or acting on) a subsequent Purchase Order.
- (d) The acceptance of a Purchase Order (by execution or email confirmation) or performance of the Supplier's Obligations under a Purchase Order will constitute acceptance by the Supplier of these Terms and Conditions.
- (e) Any terms and conditions provided by a Supplier are of no force or effect.

1.2 DEFINITIONS

In the Contract, the following terms shall have the following meanings unless the context requires otherwise:

Affected Party means any Party which is prevented by a Force Majeure Event from carrying out its obligations under the Contract.

Applicable Policies means any policies, standards, procedures, industry codes and guidelines adopted by the Company, in relation to the Site, the Company and/or its contractors and suppliers, from time to time.

Approval means any government or governmental, semi-governmental, administrative, municipal, fiscal or judicial body, department or commission, authority, tribunal, agency or similar body having power in certain matters of a public nature.

Authority means an authorisation, consent, registration, licence, permit or other authorisation granted by an Authority.

Background IP means Intellectual Property owned or licensed by a Party as at the date of this Contract or subsequently acquired or created independently of, but during the Hire Period of this Contract.

Business Day means a day on which trading banks are open for business in Broken Hill, New South Wales excluding Saturday, Sunday and designated public holidays.

Claim means any claim, action, suit, demand, proceeding, notice, litigation, investigation or judgment and any actual or alleged entitlement or right howsoever arising, whether present, unascertained, immediate, future or contingent and whether based in contract, arising at common law, in equity or under any Law.

Commencement Date means the date of the Purchase Order, unless an alternative date is specified in the Purchase Order.

Company means the business entity stated on the Purchase Order.

Company Group means all of the Related Bodies Corporate of Broken Hill Mines Limited (ABN 74 652 352 228).

Confidential Information means all information and materials disclosed, provided or otherwise made accessible to the Supplier or any of its Related Bodies Corporate, directly or indirectly, in connection with the Contract, the Supplier's Obligations under the Contract or the Project, whether before or after the



Commencement Date (including in connection with any tender process) and including the Contract (and the existence of the Contract), policies, services, processes, procedures, methods, formulations, facilities, products, plans, affairs, transactions, organisations and business connections of the Company and its Related Bodies Corporate, but excludes information that the Supplier can prove:

- (a) was in the public domain at the date the Company made it available to the Supplier;
- (b) subsequent to the date the Company made it available to the Supplier, became part of the public domain otherwise than as a result of disclosure by the Supplier or the Supplier's Personnel or other person directly or indirectly in breach of the Contract or any other obligation of confidentiality;
- (c) or was in the Supplier's possession at the time of disclosure by the Company to the Supplier or its Personnel and was not otherwise acquired from the Company directly or indirectly.

Consequential Loss means:

- (a) any indirect, consequential or special damages or losses that do not arise naturally from a breach of contract; or
- (b) loss of profit, loss of contract, loss of revenue, loss of goodwill, loss of business opportunities, cost of capital and damage to reputation.

Contract has the meaning given in Clause 1.1.

Corporations Act means the *Corporations Act 2001* (Cth).

Damage means loss, theft, damage, destruction or defacement but does not include Fair Wear and Tear.

Damaged Hire Equipment means Hire Equipment which suffers Damage after delivery to the Company at the Delivery Point.

Deliverables means reports, drawings, designs, models, calculations, software, specifications, schedules, data and other documents prepared and supplied by the Supplier specifically for the Company under the Contract.

Delivery Date means that the date on which the Supplier undertakes to deliver the Hire Equipment, as set out in the Purchase Order or as otherwise notified by the Company to the Supplier.

Delivery Point means the delivery point or delivery points specified in the Purchase Order, or as otherwise agreed by the Parties.

Delivery Terms means any delivery instructions specified in the Purchase Order, or any other reasonable delivery terms notified to the Supplier by the Company from time to time.

Dry Hire means the supply of Hire Equipment without an operator.

Encumbrance means any of;

- (a) security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust, power, title retention, or flawed deposit arrangement;
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off;
- (c) right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive covenant, lease or licence to use or occupy;
- (d) security interest under the PPSA;
- (e) right of pre-emption, right of first or last refusal;
- (f) caveat, writ, plaint or warrant;
- (g) compensation right or other right to payment; and
- (h) third party right or interest or any right arising as a consequence of the enforcement of a judgment, or any agreement to create any of them or allow them to exist.



Existing Intellectual Property means any Intellectual Property Rights or industry rights (whether legal or equitable) in a party's procedures, processes, systems, know-how and methodologies which are pre-existing prior to the date of this Contract or developed and come in existence other than in connection with the performance of the Hire Equipment and which are made available to the other party for the purposes of Contract.

Fair Wear and Tear means deterioration in the Hire Equipment resulting from normal use in accordance with the original equipment manufacturer's (**OEM**) specifications, recommendations and guidelines, and excludes:

- (a) wear of wear materials;
- (b) damage caused by the Company's misuse of Equipment (whether negligent or otherwise), or its failure to fulfil maintenance or repair responsibilities under this Contract; or
- (c) damage caused by a third party unrelated to the Supplier or by any event beyond the Supplier's reasonable control.

Force Majeure Event has the meaning given in clause 10.1.

Good Operating Practices means the practices, methods and acts used by a supplier who exercises that degree of diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced suppliers who provide Hire Equipment in similar conditions as contemplated under the Contract.

Government Agency includes any federal, state, territory or local government, or any ministry, department, court, commission, board, agency, instrumentality, political subdivision or similar entity.

Government Authorisations means all approvals, consents, authorisations, permits, clearances, licences or other requirements that are required by or from any Government Agency for the Supplier to perform its obligations under the Contract.

GST means the tax payable on Taxable Supplies under the GST Law.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax, and includes any subordinated legislation in respect of those acts.

Hire Equipment means the materials, equipment, supplies or other items supplied or hired by the Supplier to the Company under this Contract, as specified on the Purchase Order.

Hire End Date means the end date of the Contract as specified on the Purchase Order.

Hire Start Date means the start date of the Contract as specified on the Purchase Order.

Hire Period means the period of time that the Company requires the Hire Equipment to be on Site, as specified on the Purchase Order.

Insolvency Event means, in relation to any Party, that any of the following events or circumstances has occurred:

- (a) the Party is, or states that it is, insolvent (as defined in the Corporations Act) or commits an act of bankruptcy or is declared insolvent;
- (b) proceedings are commenced to appoint a liquidator or provisional liquidator to the affected Party and such proceedings are not dismissed within 60 days;
- (c) the Party is dissolved;
- (d) any of the events mentioned in section 459C(2) of the Corporations Act occurs in respect of the Party;
- (e) any Controller (as defined in the Corporations Act) is appointed in respect any material part of the affected Party's assets; or
- (f) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.



Intellectual Property means intangible property arising from Intellectual Property Rights.

Intellectual Property Rights means all beneficial and legal ownership and intellectual and industrial protection rights throughout the world, both present and future, including rights in respect of or in connection with any copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents), trademarks, service marks and designs (whether or not now existing and whether or not registered or registrable) and includes any right to apply for the registration of such rights and all renewals and extensions.

Law is:

- (a) Commonwealth and State legislation including regulations, by laws or other subordinate legislation including the Work Health and Safety Act 2011, Work Health and Safety (Mines and Petroleum) Act 2013, Radiation Control Act 1990, Explosives Act 2003 and Work Health and Safety Regulation 2011, Work Health and Safety (Mines and Petroleum) Regulation 2014, and the Explosives Regulations 2013 and all orders and directions made under these Acts and Regulations and any amendments to these Acts and regulations in force in the State of New South Wales;
- (b) Authority Approvals; and
- (c) guidelines of the Commonwealth, State and local governments and Authorities with which the Supplier is required to comply.

Liability means liability, loss, damage, cost, Claim, charge, diminution in value action, statutory or equitable compensation, demand, expense or proceeding or loss of any nature and of any kind whatsoever whether present or future, actual, contingent or prospective and whether known or unknown, and howsoever arising including under any Law or Government Authorisation.

Major Repairs means repairs necessitated by Fair Wear and Tear which are related to the Major Components.

Minor Repairs necessitated by Fair Wear and Tear, which are not Major Repairs.

Major Components means any parts or components not listed in the documents provided by the Supplier, as stated in clause 3.1 (viii).

Minor Maintenance Items means any parts or components listed in the documents provided by the Supplier, as stated in clause 3.1 (viii).

Misconduct means a breach of this Contract or other intentional act, either of which demonstrates reckless disregard for the personal safety or the property of third parties or of the other party to this Agreement, or for the likely consequences of such action.

Modern Slavery has the meaning given to that term in the *Modern Slavery Act 2018* (Cth).

Moral Rights means rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed and rights of a similar nature conferred by law that exist, or may come to exist, anywhere in the world.

Off Hire Equipment Condition Report has the meaning given in clause 5 (d).

On Hire Equipment Condition Report has the meaning given in clause 3.1 (vi).

Parties means the Company and the Supplier.

Personnel means the directors, officers, employees, suppliers, contractors and agents of the Supplier or Company or their respective Related Bodies Corporate (as the context requires).

PPSA means the *Personal Property Securities Act 2009* (Cth) and any regulations made pursuant to it.

Preventative Maintenance and Servicing has the meaning given in clause 6 (d).

Purchase Order means a document issued by the Company outlining the Supplier's Obligations in accordance with these Terms and Conditions.



Purchase Order Number means the number assigned to the Purchase Order by the Company.

Rates of Hire means the fees payable by the Company for the hire of the Hire Equipment as specified in the Contract and calculated in accordance with the rates supplied by the Supplier.

Related Body Corporate has the meaning given in the Corporations Act.

Restricted Territory means any country or other territory subject to a general export, import, financial or investment embargo under applicable Sanctions Laws.

Sanctions Laws mean any economic, sectoral, financial or economic sanctions laws, statutes, regulations, embargoes, trade, import, and export controls adopted, administered, enacted or enforced by, as may be applicable, any Governmental Agency.

Sanctions Restricted Person means any person or entity that is:

- (a) listed in any Sanctions Laws related list of designated persons maintained by any Governmental Agency or otherwise targeted under any economic Sanctions Law;
- (b) organised, domiciled, or resident in a country, state or territory which is the subject or target of any country-wide Sanctions Laws; or
- (c) directly or indirectly owned or controlled by, or acting on behalf of, any person or entity listed in the above paragraphs (a) and (b).

Security Interest means any assignment by way of security, mortgage, charge (whether fixed or floating), hypothecation, deposit arrangement, pledge, trust, lien, encumbrance, preference, priority or other security interest or preferential arrangement of any kind or nature whatsoever and includes any other "Security Interest" as defined in the PPSA.

Site means the site of a Project or any other site of the Company stated in the Purchase Order.

Site Induction means questionnaires and teachings given to a visitor or contractor in order to bring knowledge of Company's safety procedures to a level compliant with legislative and Company requirements.

Site Safety Requirements means the health and safety requirements at or associated with any Site as are imposed or required by any authorised person that is related to health and safety.

Sub-contractor means any person engaged by the Supplier to perform all or any portion of the supply of Hire Equipment under this Contract on behalf of the Supplier who is not an employee of the Supplier.

Specifications means the specifications and other requirements of the Hire Equipment as provided in the Purchase Order.

Supplier has the meaning given in the Purchase Order.

Supplier's Obligations means the provision of Hire Equipment, or both (as applicable) in accordance with the Contract and any other obligations of the Supplier under the Contract.

Tax Invoice has the meaning as described in clause 9.2 (a).

Taxable Supply has the meaning given in the GST Law.

Taxes includes all taxes, fees, levies, duties and charges imposed or assessed in respect of the Hire Equipment under the Contract by all local, state or national government authorities including income tax (including withholding for prescribed payments or group tax), payroll tax, statutory superannuation contributions and workers' compensation payments and contributions, sales tax, customs duty, excise tax, and stamp duty but does not include GST.

Third Party Claim means any Claim in respect of:

- (a) loss or destruction of, or injury or damage to, or loss or use of any real or personal property of any person who is not a Party; or
- (b) any personal injury or death of a person who is not a Party arising out of or caused by the supply or non-supply of the Supplier's Obligations by the Supplier.



1.3 INTERPRETATION

In this Contract unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Contract;
- (b) the singular includes the plural and vice versa;
- (c) words importing a gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Contract have a corresponding meaning;
- (e) the word 'person' includes a company, an unincorporated association, a Government Agency, or a partnership and vice versa;
- (f) reference to a Party includes its successors and permitted assigns;
- (g) an agreement, representation or warranty by two or more persons binds them jointly and severally;
- (h) a reference to anything (including but not limited to any right) includes a part of that thing;
- (i) a reference to a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law judgement, rule of law or equity or a rule of an applicable stock exchange and is a reference to that law as amended, consolidated or replaced;
- (j) a reference to a clause, Party, annexure, exhibit, schedule or attachment is a reference to a clause, Party, annexure, exhibit, schedule and attachment to this Contract and a reference to this Contract includes any annexure, exhibit, schedule and attachment to it,
- (k) a reference to an obligation includes a liability and a duty and a reference to performance includes observance;
- (l) a reference to a day is reference to a calendar day;
- (m) 'including' is to be read as including but not limited to;
- (n) a reference to \$AUD or dollar is to Australian currency; and
- (o) a reference to time is to local time in Broken Hill, New South Wales.

2. SUPPLIER'S OBLIGATIONS

The Company appoints the Supplier by the issue of a Purchase Order, and the Supplier accepts the appointment, to supply the Hire Equipment to the Company on a non-exclusive basis during the Hire Period and on the terms and conditions of the Contract.

3. HIRE OF HIRE EQUIPMENT

- (a) The Supplier must provide the Hire Equipment for hire (on a Dry Hire basis) to the Company in accordance with:
 - (i) the terms and conditions of this Contract;
 - (ii) all applicable Laws; and
 - (iii) the Rates of Hire stated in the Purchase Order.
- (b) The Supplier warrants on the Hire Start Date and, unless specified differently in this Contract or the context requires otherwise, at all times during the Hire Period that the Hire Equipment:
 - (i) is lawfully owned and/or controlled by the Supplier, and is not subject to any Encumbrance;
 - (ii) is appropriate for and suitable for the Site if used in accordance with the Manufacturer's instructions, recommendations and specifications;
 - (iii) is fit for purpose when used in accordance with the manufacturer's instructions, recommendations and specifications;
 - (iv) shall conform to all applicable Laws, and is licensed where required;
 - (v) shall conform to their description any specification and all other requirements of this Agreement;



- (vi) does not infringe the Intellectual Property Rights of any person;
 - (vii) will comply with any original manufacturer requirements and specifications;
 - (viii) will be safe if used in accordance with good industry practice and the manufacturer's recommendations and comply with all Laws and legislative requirements, including in respect of registration; and
 - (ix) does not have any Damage or defect and shall be of good quality and in good working condition on delivery to the Delivery Point.
- (c) The Supplier agrees that the Company may affix signs or cause to be affixed to the Hire Equipment.

3.1 Documentation required prior to despatch of Hire Equipment

- (a) Prior to each piece of Hire Equipment (being supplied on a Dry Hire basis), being despatched by the Supplier, the Supplier must provide the Company with a copy of the following documents:
- (i) if applicable to the Hire Equipment stated in the Purchase Order:
 - (A) a copy of an audit signed by a certified inspector confirming the Hire Equipment has been audited and complies with Mining Design Guidelines NSW Resources Regulator June 1992 ('MDG 15'); and
 - (B) written confirmation the Hire Equipment complies with the Company's Site requirements.
 - (ii) a risk assessment of the risk of injury or harm to a person resulting from each identified hazard; and any available information about how the risk or hazard may be reduced;
 - (iii) a copy of safe operating instructions;
 - (iv) a pre-start inspection checklist specifically adapted to the needs of the particular piece of Hire Equipment;
 - (v) maintenance records, including a record of the latest service of the Hire Equipment and any Hire Equipment fault information;
 - (vi) an On Hire Equipment Condition Report for the Company's report approval, such report to include:
 - (A) a genuine indication of the state of the Hire Equipment, including major componentry and sub-components including utilisation hours;
 - (B) confirmation that the Hire Equipment is in a clean and serviceable condition, any known faults and a list of attachments, accessories, spares, tools and supporting documentation;
 - (C) the Hire Equipment's history (including operating hours and major component change outs);
 - (D) the recommended maintenance and servicing schedules for the Hire Equipment as stated by the Original Equipment Manufacturer (OEM); and
 - (E) all manuals and written instructions applicable to all Hire Equipment, including all manuals, logbooks, maintenance records, registrations and permits;
 - (vii) if required to be registered under any applicable Laws, a copy of the current registration certificate for that piece of Hire Equipment (ie classified plant); and
 - (viii) a list of Minor Maintenance Items.

3.2 Company inspection of Hire Equipment

- (a) Prior to the Hire Equipment leaving the Supplier's yard, the Company may elect (at its own cost) to examine the Hire Equipment and associated documentation required under clause 3.1 of this Contract.
- (b) No inspection conducted by the Company prior to installation affects the Supplier's warranties or other obligations under this Contract and the Supplier must promptly make good any defects which arise from the Hire Equipment not complying with the requirements of this Contract.

**4. HIRE PERIOD**

Subject to any earlier termination provided for under this Contract, the Hire Period commences on the Hire Start Date and continues for the period stated in the Purchase Order (unless otherwise agreed by the Parties).

5. DELIVERY, COLLECTION AND RETURN OF HIRE EQUIPMENT

- (a) The Party stated on the Purchase Order must deliver and pay for the Hire Equipment to be delivered to the Delivery Point by the Delivery Date and retrieve the Hire Equipment from the Delivery Point at the end of the Hire Period.
- (b) The Company must not modify or deface the Hire Equipment, signage excepted.
- (c) The Company will not relocate the Hire Equipment from the Site without prior consent from the Supplier, except to the extent required for any off-site repairs or maintenance.
- (d) At the completion of the Hire Period the Company and Supplier must inspect the Hire Equipment. The Supplier must prepare an Off Hire Equipment Condition Report and provide it to the Company for its review. Such report must include back charges that may include:
 - (i) all equipment damage that requires rectification;
 - (ii) any missing items that require replacement;
 - (iii) any worn or defective parts worn beyond the OEM's reusability guidelines; and
 - (iv) a reasonable cleaning charge if the Hire Equipment is not returned in a clean condition commensurate with the condition of the Hire Equipment at the commencement of the Hire Period.

6. OPERATION AND MAINTENANCE OF HIRE EQUIPMENT

- (a) The Company agrees to:
 - (i) operate, maintain and store the Hire Equipment (supplied on a Dry Hire basis), in accordance with any reasonable instruction provided by the Supplier, and with due care and diligence, in accordance with good industry practice and safety;
 - (ii) use the Hire Equipment only for its intended use and in accordance with any manufacturer's instructions and recommendations;
 - (iii) return the Hire Equipment to the Supplier reasonably clean of soil or other foreign matter; and
 - (iv) not to modify, or permit any modification of, the plant without the prior written consent of the Supplier.
- (b) The Company must allow the Supplier reasonable access (with no less than 48 hours prior written notice) to the Hire Equipment during the Hire Period for the purposes of conducting inspections, maintenance or repairs.
- (c) The Company is responsible for the daily checks of batteries, oil and water levels, belts and tyres, and ensuring the Hire Equipment is serviced and maintained in good working condition.
- (d) The Company must:
 - (i) complete scheduled Preventative Maintenance and Servicing to the Hire Equipment during the Hire Period;
 - (ii) maintain the Hire Equipment in accordance with the OEM's preventative maintenance schedules; and
 - (iii) send copies of the completed service sheets to other party on a monthly basis, within 14 days of completion,provided that the Supplier must supply all manuals and written instructions.
- (e) During the Hire Period, the:



- (i) Company is responsible for carrying out and the costs for any Minor Repairs and repairs of any Damage to the Minor Maintenance Items as listed in the information provided by the Supplier, as stated in clause 3.1 (vi), and
- (ii) Supplier is responsible for carrying out and the costs associated with Major Repairs, except were the Company caused the damage or failure.

7. LOSS, DAMAGE OR BREAKDOWN OF HIRE EQUIPMENT

- (a) If there is a breakdown or failure of the Hire Equipment (supplied on a Dry Hire basis), the Company shall remedy the breakdown or failure if the breakdown or failure is a Minor Maintenance Item or Minor Repair. If the breakdown or failure is a Major Repair the Company will notify the Supplier, and the Supplier shall at no charge supply parts and labour to remedy the Major Repair. If the Major Repair is due to the fault of the Company, the Supplier shall charge the Company the cost of the parts and labour.
- (b) If the Company notifies the Supplier that any of the Hire Equipment is defective, due to a Major Repair being required, then without limiting any other provision in the Agreement, the Supplier:
 - (i) in accordance with this clause 7 must either repair the Hire Equipment as soon as practicable, or replace the Hire Equipment (unless the Hire Equipment is inoperable as a result of the act or omission of the Company, its employees, contractors or agents), with another of equal quality and specification within 48 hours; and
 - (ii) will cease charging the Rate of Hire for the Hire Equipment, until the Hire Equipment is fully serviceable, or has been replaced with Hire Equipment that is fit for the intended purpose of manufacture, unless the Hire Equipment was damaged by the Company including by the Company's failure to maintain the Hire Equipment as required by this Contract.

8. CONDITIONS OF SITE ACCESS

- (a) The provisions of this clause 8 apply if and to the extent only that the Supplier or its Personnel are on the Site, including for the purposes of maintenance, inspections and delivering or collecting the Hire Equipment. The Company may refuse access to any person in the discretion of the Company.
- (b) The Supplier:
 - (i) enters the Site at its own risk (and must ensure its Personnel know they enter the Site at their own risk) except in respect of any breach of workplace health and safety duty applicable to the Company in respect of the Site;
 - (ii) is not entitled to exclusive possession of the Site;
 - (iii) may only access the areas allocated by the Company as necessary, in the opinion of the Company; and
 - (iv) must follow the directions of the Company's Personnel and cooperate with the Company's other contractors and workmen and give them any information or data reasonably necessary or expedient to ensure proper performance of their respective work.
- (c) The Supplier must ensure that its Personnel who visit Site are aware of and comply with:
 - (i) a requirement of zero BAC (blood alcohol concentration) limit and minimum drug level concentrations at the Site; and
 - (ii) Company's random and "for cause" drug and alcohol testing program.
- (d) The Company may inspect the contents of any vehicle entering, leaving or within the Site at any time.
- (e) It is a condition of entry to Site that the Supplier's Personnel comply with the Company's policies and procedures, including the Company's Site Induction, Site Safety Requirements and any other reasonable training as the Company may require from time to time. The Company may deny



- access to the Site to any person who fails to complete the Site Induction to the satisfaction of the Company in its sole discretion.
- (f) The Supplier must ensure that all Personnel sign all of the Company's documentation in relation to the Company's Site Entry Clearance protocols prior to entering the Site.
 - (g) The Supplier must not, and must ensure that its Personnel do not, without the prior approval of the Company:
 - (i) start fires on or in the vicinity or any work area or Site;
 - (ii) drive vehicles off roads or designated access routes;
 - (iii) dispose of solid or liquid waste other than in areas prescribed for that purpose by the Company; or
 - (iv) bring firearms onto the Site.
 - (h) The Supplier must, where practicable, immediately report to the Company any incident or accident which causes or has the potential to cause:
 - (i) damage to the environment or pollution; and
 - (ii) injury to persons, plant or equipment at the Site, and
 - (iii) must without limiting the above, immediately notify the Company of any health, environmental or safety incident and must make available to the Company all relevant records, documents and personnel as the Company may request to allow the Company to carry out a full investigation of any such incident.
 - (i) The Company may from time to time impose restrictions on access to any Site and limitations on possession of parts of the Site in its sole discretion.
 - (j) A reference in this clause 8 to an obligation on the Supplier includes an obligation on the Supplier to ensure compliance with those obligations by its Personnel (and their employees, agents or contractors) that enter or are at the Site.

9. PRICE

9.1 Rates of Hire

Subject to this Contract, in consideration for the supply and, where relevant, maintenance of the Hire Equipment, the Company shall pay the Supplier the Rates of Hire. Unless expressly stated otherwise, the Rates of Hire shall be fixed for the Hire Period and shall not be subject to rise and fall.

9.2 Invoice and Payment

- (a) The Supplier must, within 10 Business Days from the end of a month during which the Hire Equipment was provided, provide the Company with a Tax Invoice to support the payment of the Rates of Hire and any other costs acceptable to Company and must contain the following information:
 - (i) the Purchase Order number;
 - (ii) a description of the Hire Equipment supplied, including the location of the Site on which the Hire Equipment was provided;
 - (iii) a calculation of the amount payable by the Company, with reference to the Rates of Hire;
 - (iv) if the Supplier is claiming payment of any expenses, the Supplier shall provide copies of all receipts and other documents evidencing those expenses;
 - (v) any further information stipulated in any applicable GST legislation, or by the Company, so that the Company will receive the benefit of any input tax credits in relation to the supply of the Hire Equipment; and
 - (vi) such other information as may be required by Company.
- (b) Subject to clauses 9.2 (c) and 9.3, payment will be made by the Company within 30 days from the end of the month in which the invoice was issued.
- (c) The Company may set off against, or deduct from, any moneys due to the Supplier any sum which the Company asserts is due by the Supplier to the Company, whether liquidated or unliquidated.
- (d) Unless otherwise agreed, all payments to be made pursuant to this Contract shall be made by deposit to a bank account in Australia nominated in writing by the intended recipient of the payment.

**9.3 Dispute**

If the Company disputes any amount shown on an invoice, it must notify the Supplier within 21 days of receipt of the invoice and must pay any amounts not in dispute in accordance with clause (b), provided that the payment by the Company of any amount the subject of a disputed invoice is not to be considered as an acceptance of the amount in dispute or of the Company's liability to make that payment.

10 FORCE MAJEURE**10.1 Meaning of Force Majeure Event**

- (a) A Force Majeure Event means any event or circumstance, or combination of events and circumstances that:
 - (i) are not within the reasonable control of the Affected Party;
 - (ii) could not reasonably have been prevented, mitigated or avoided by the exercise of due diligence or good engineering and operating practice; and
 - (iii) cause or result in failure or delay in the performance by the Affected Party of any of its obligations under this Agreement.
- (b) Subject to meeting the qualifications in clause 10.1 (a), a Force Majeure Event includes the following:
 - (i) acts of God, lightning strikes, earthquakes, floods, droughts, storms, tempests, mud slides, washaways, explosions, cyclones, tidal waves, landslides, adverse weather conditions, fires and any natural disaster;
 - (ii) acts of war (declared or undeclared), acts of public enemies, riots, malicious damage, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic and pandemic;
 - (iii) acts or omissions (whether legislative, executive or administrative) of any Government Agency;
 - (iv) inability to obtain or delay in obtaining any necessary Authorisation after making due application; and
 - (v) strikes, lockouts or other labour difficulties other than a strike, lockout or labour difficulty which is specific to the party claiming Force Majeure.

10.2 No liability for inability to perform resulting from Force Majeure Event

If, due to a Force Majeure Event, a Party is unable to perform an obligation under this Contract on time and as required, then that obligation is suspended for so long as the Affected Party's ability to perform it is affected by that Force Majeure Event provided that a suspension for a Force Majeure Event will not extend the Hire Period.

10.3 Notification of Force Majeure Event

- (a) An Affected Party must as soon as reasonably practicable notify the other party of:
 - (i) the occurrence and details of any Force Majeure Event;
 - (ii) the estimated delay in performance resulting from the Force Majeure Event; and
 - (iii) where possible, the proposed method of remedying or abating the Force Majeure Event.
- (b) An Affected Party must promptly notify the other party of any changes in or cessation of the occurrence or effects of Force Majeure.

10.4 Reasonable diligence to overcome

An Affected Party must use all reasonable diligence to overcome the effect of the event of Force Majeure as quickly as possible.

10.5 Termination due to an event of Force Majeure

- (a) If an event of Force Majeure continues for a period of 30 days, the Company may give the Supplier a notice of termination with immediate effect.
- (b) After termination under clause 10.5 (a) the Company will pay to the Supplier all amounts due and payable by the Company to the Supplier for the hire of the Hire Equipment provided under this Contract prior to the date of termination.

**11. INSURANCE****11.1 INSURANCE – SUPPLIER**

- (a) Before commencing the hire and until the expiration of the Supplier's obligations under this Contract the Supplier must effect and maintain the insurances in this clause, ensuring that all of the terms and conditions of the said insurances are complied with and pay all premiums, calls and deductibles when due.
- (b) The Supplier must, before the commencement of the Supplier's Obligations, and at other times reasonably requested by the Company, give to the Company a certificate of currency for each insurance policy.
- (c) The effecting and keeping in force of insurances required by the Contract do not in any way limit the responsibilities, obligations and liabilities of the Supplier under any other provisions of the Contract.
- (d) The Supplier must ensure that its sub-suppliers maintain insurance similar to the insurances required to be maintained by the Supplier under this Contract.

11.2 PUBLIC AND PRODUCTS LIABILITY

The Supplier must maintain Public and Products Liability insurance covering legal liability to pay compensation for bodily injury, death, illness or disease to any person and physical loss, destruction or damage to real or personal property (including resultant loss of use), arising directly or indirectly from the Supplier's Obligations. Such policy must:

- (a) include a policy limit of \$20,000,000 for any one occurrence (in the aggregate with respect to Products Liability);
- (b) include Products Liability coverage for the manufacture, supply, sale, or distribution of products associated with the Supplier's Obligations;
- (c) include a principal's indemnity extension indemnifying the Company, their Related Bodies Corporate and their respective employees;
- (d) provide a waiver of subrogation in favour of the Company, their Related Bodies Corporate and their respective employees;
- (e) include a cross-liability clause which confirms insurers accept the term "Insured" as applying to each of the parties constituting the Insured as if a separate policy of insurance had been issued to each of them (subject always to the overall limit of liability not being increased) and that a failure by any Insured party to observe and fulfil the terms and conditions of the policy will not prejudice the rights of any other Insured party to claim under the policy;
- (g) extend to cover liability in respect of third-party physical property damage or personal injury arising from the use of unregistered plant and equipment; and
- (g) provide cover for underground activities if applicable.

11.3 PLANT AND EQUIPMENT

If the Supplier enters and works on a Site, the Supplier must maintain insurance in respect of all plant, equipment and other property owned, operated or controlled by the Supplier or its employees, sub-suppliers or agents or for which the Supplier is responsible which the Supplier brings to or uses on Site including transit risk or at other places where the Supplier's Obligations are performed, for the market value of the plant and equipment, such policy must:

- (a) include legal liability coverage for road registered plant and equipment to a limit of \$30,000,000 for any one occurrence and unlimited as to the number of occurrences any one period of insurance;
- (b) include a principal's indemnity extension indemnifying the Company, their Related Bodies Corporate and their respective employees;



- (c) provide a waiver of subrogation in favour of the Company, their Related Bodies Corporate and their respective employees;
- (d) include a cross-liability clause which confirms insurers accept the term “Insured” as applying to each of the parties constituting the Insured as if a separate policy of insurance had been issued to each of them (subject always to the overall limit of liability not being increased) and that a failure by any Insured party to observe and fulfil the terms and conditions of the policy will not prejudice the rights of any other Insured party to claim under the policy; and
- (e) where applicable extend to cover plant and equipment while underground.

11.4 WORKERS COMPENSATION

Where Suppliers enter and work on the Company’s sites, the Supplier must maintain Workers compensation insurance covering liability arising out of death of or injury to persons employed (or deemed to be employed) by the Supplier in connection with the Supplier’s Obligations or the Project (including liability under any applicable workers compensation legislation and at common law), such policy must:

- (a) comply with all statutory requirements including providing compulsory statutory workers compensation benefits;
- (b) provide common law liability to a limit of \$50,000,000 in relation to any one occurrence and unlimited as to the number of occurrences including cover for industrial disease common law;
- (c) include a Principal’s Indemnity extension including a waiver of subrogation for both Workers Compensation Act Benefits and common law, in favour of the Company, their Related Entities and their respective employees; and
- (e) extend to include employees underground if applicable.

11.5 MOTOR VEHICLE

If the Supplier enters, works and drives on a Site, the Supplier must maintain Comprehensive motor vehicle insurance in respect of all vehicles owned, operated, leased, hired, or controlled by the Supplier or any of its Personnel, registered or required to be registered in accordance with any Law which are used (or to be used) on any road at any time in connection with the Supplier’s Obligations. Such policy must:

- (a) provide cover for damage to all vehicles for not less than their market value;
- (b) include coverage for liability in respect of third party property damage or personal injury to a minimum limit of \$30,000,000 for each event;
- (c) include a principal’s indemnity extension indemnifying the Company, their Related Bodies Corporate and their respective employees;
- (d) provide a waiver of subrogation in favour of the Company, their Related Bodies Corporate and their respective employees;
- (e) include a cross-liability clause which confirms insurers accept the term “Insured” as applying to each of the parties constituting the Insured as if a separate policy of insurance had been issued to each of them (subject always to the overall limit of liability not being increased) and that a failure by any Insured party to observe and fulfil the terms and conditions of the policy will not prejudice the rights of any other Insured party to claim under the policy;
- (f) where applicable, extend to cover motor vehicles while underground; and
- (g) include bodily injury gap coverage arising from the use of registered motor vehicles not otherwise covered by compulsory third party insurance.

11.6 SUPPLIER PROPERTY/EQUIPMENT

If the Supplier brings its own equipment to Site for the purposes of meeting the Supplier’s Obligations, the Supplier is required to maintain insurance covering all loss and damage to all the Supplier’s equipment and property for which the Supplier or its employees, sub-suppliers or agents are responsible, for an amount of not less than market value (unless otherwise insured to the satisfaction of the Company).

**11.7 TRANSIT**

Where the Hire Equipment is being delivered under this Contract by the Supplier, the Supplier must maintain transit insurance covering the Hire Equipment with a sum insured of not less than the replacement value of the Hire Equipment, with the insurance being maintained up until the time the Hire Equipment is accepted by the Company at the Delivery Point.

11.8 Insurance – Company

Before commencing the hire of the Hire Equipment and until the expiration of the Company's obligations under this Contract, the Company must take out and maintain the following insurances and provide certificates of currency to the Supplier as evidence that such policies are in place:

- (a) Public and Products Liability Insurance
To cover the liability of the Company to third parties for loss or damage of property and the death or injury of any person excluding employees.
The insurance must:
 - (i) be in the amount of not less than \$20 million; and
 - (ii) name the Supplier as an additional insured.
- (b) Plant and equipment
To cover loss and damage to the Supplier's plant for the market value of the plant and equipment.

11.9 Insurance requirements

- (a) General provisions as to insurance to be effected by the Supplier:
 - (i) The Supplier must, before the commencement of the Hire Period, and prior to the insurance expiry and renewal, and at other times reasonably requested by the Company, and as a precondition to further payment, give to the Company a certificate of currency for each insurance policy of the Supplier's Insurances. Any confirmation or acceptance of a certificate of currency provided by the Company does not confirm the insurance suitability for the Supplier;
 - (ii) The Supplier must not knowingly permit or suffer to be done any act, matter or thing whereby any insurance required to be effected under this clause 11 may be vitiated or rendered void or voidable;
 - (iii) The Supplier must ensure that every Sub-contractor engaged by the Supplier maintains insurance in the same manner as the Supplier is required under this clause 11 to the extent reasonably practicable to do so;
 - (iv) The effecting and keeping in force of insurances as required by this Contract shall not in any way limit the responsibilities, obligations and liabilities of the Supplier under any other provisions of this Contract; and
 - (v) The Supplier must notify the Company of any occurrence that may give rise to a claim with respect to this Contract under a policy required by this clause 11 and keep the Company informed of any subsequent development concerning the claim to the extent legally permissible and practicable to do so.

12. TERMINATION**12.1 Termination by Company**

The Company may terminate this Contract or cancel the Purchase Order by giving no less than 5 Business Days' written notice to the Supplier if:

- (a) the Supplier is in breach of any of its obligations under this Contract or Purchase Order and has failed to rectify the breach within the period stated in a written request to do so by the Company (which period must be no less than 10 Business Days); or
- (b) an Insolvency Event occurs in respect of the Supplier.

12.2 Termination by Supplier

The Supplier may terminate this Contract, by giving no less than 5 Business Days' written notice to the Company if:



- (a) the Company has failed to pay an invoice that is due (and not in dispute) by no later than 7 days after the due date for payment under this Contract and has failed to rectify the breach within the period stated in a written request to do so by the Supplier (which period must be no less than 10 Business Days); or
- (b) an Insolvency Event occurs in respect of the Company.

12.3 Termination for convenience by Company

In addition to the rights of the Company as provided for elsewhere in this Contract, the Company may, at any time and at its sole and absolute discretion, cancel the Purchase Order and terminate this Contract in whole or in part by giving the Supplier not less than 30 days' written notice.

12.4 Consequence of termination

- (a) Upon termination or expiry of this Contract:
 - (i) the Supplier must demobilise any Hire Equipment from Site as soon as is reasonably practicable (at its cost unless otherwise expressly stated in the Purchase Order); and
 - (ii) the Parties will be released from their requirement to perform any further obligations under this Contract, except those expressed to survive termination.
- (b) In the event of termination of this Contract by either Party, the Company must pay the Supplier:
 - (i) any amount due and payable by the Company to the Supplier for the hire of the Hire Equipment up until the date of termination; and
 - (ii) any costs of demobilisation of the Hire Equipment that the Company is obligated to pay under the Purchase Order.
- (c) Upon payment by the Company to the Supplier of the amount determined in accordance with clause 12.4 (b), the Company shall have no further Liability to the Supplier under or in connection with the hire of the Hire Equipment or this Contract and the Supplier releases the Company from and against any and all Claims for damages, loss, expenses and costs (including loss of any anticipated profits) which the Supplier may otherwise have had on account of the termination of this Contract.

13. INDEMNITY AND LIMITATION OF LIABILITY

- (a) Subject to clause 13(b), the Supplier is liable for and must indemnify and hold harmless the Company, its Related Bodies Corporate and its and their Personnel (**Indemnified Parties**) from and against any Liability in respect of:
 - (i) the performance, non-performance or breach by the Supplier or its Personnel of any of the Supplier's Obligations;
 - (ii) any negligent act or omission of the Supplier or its Personnel arising out of or in any way connected to their performance or non-performance of the Contract;
 - (iii) any Third Party Claim;
 - (iv) the entry onto and presence on the Site, by the Supplier and its Personnel (if applicable);
 - (v) the illness, injury or death of any of the Supplier's Personnel; and
 - (vi) any damage to property of the Company caused by an act or omission of the Supplier;
 - (vii) any infringement by the Supplier of Intellectual Property Rights of any person,provided that the Supplier is not liable under this indemnity to the extent that such Liability arises from a negligent act or omission of the Indemnified Parties.
- (b) To the maximum extent permitted by Law, neither Party will be liable to the other Party for any Consequential Loss unless cover is provided for under a contract of insurance required to be taken out under the Contract.



14. INTELLECTUAL PROPERTY

14.1 Company's Intellectual Property

- (a) The Supplier must not, for any purposes other than the provision of the Hire Equipment, use, copy or reproduce or permit others to use, copy or reproduce any manuals, standard drawings, computer programs and other information supplied to the Supplier in relation to the Contract.
- (b) The Supplier must not infringe or interfere with the Intellectual Property Rights of the Company or any third party.

14.2 Other Intellectual Property

- (a) All Existing IP remains the property of the Party which owned the Existing IP on the date of this Contract.
- (b) Subject to this clause 14.2 (a), the Supplier grants to the Company a royalty free, non-exclusive, non-transferable, non-sublicensable (except to a Related Body Corporate) perpetual licence to any Existing IP associated with any Hire Equipment for the limited purposes of using and maintaining the Hire Equipment of performing its rights or obligations under this Contract or as strictly necessary in accordance with this Contract.

14.3 Restrictions on License

- (a) Without limiting this clause 14.3, the Company must not use (or allow anyone else, including a service provider), to use any Supplier Existing IP to:
 - (i) work on the Hire Equipment (or any other Supplier's products) (including to perform maintenance); and
 - (ii) create a document (including a maintenance schedule or a repair manual).
- (b) The Company may use documents that the Supplier provides with the Hire Equipment to use the Hire Equipment or to perform maintenance or repair work on the Hire Equipment (other than work that a document states must only be performed by the Supplier's authorised personnel) **(Permitted Work)**. The Company may authorise third parties to use standard product manuals, or standard maintenance manuals, provided with the Hire Equipment to assist the Company to perform Permitted Work on the Hire Equipment. The Supplier will not unreasonably withhold its consent to the Company authorising a third party to use other documents solely to assist the Company to perform Permitted Work on the Hire Equipment.

14.4 Warranty and indemnity

To the extent directly caused by the Supplier, the Supplier indemnifies the Company against any loss, cost, damage or expense incurred by the Company as a consequence of a breach by the Supplier of this clause 14.4.

15. DISPUTE RESOLUTION

15.1 Notice of Dispute

- (a) Subject to clause 15.4, if a dispute between the Supplier and the Company arises out of or in connection with this Contract (**Dispute**) then, subject to clause 15.2, a party may give the other party a notice (**Notice of Dispute**) specifying the Dispute and requiring its resolution.
- (b) During the existence of any Dispute, the parties must continue to perform all of their obligations under this Contract without prejudice to their position in respect of such Dispute.

15.2 Time of Notice

The Supplier must not submit a Notice of Dispute in respect of a Claim for any extra costs, loss or damage unless the claim has previously been submitted to and determined in writing by the Company. Where a Claim has been submitted to the Company and has not been determined by the Company within 28 days then the Claim will be deemed to have been rejected by the Company at the end of that time and a Notice of Dispute may be given.



15.3 Escalation

- (a) If the Dispute remains unresolved twenty-one (21) days after receipt of the Notice of Dispute, the Supplier must meet with the Company to resolve the Dispute.
- (b) If the Dispute is not resolved within thirty (30) days after receipt of the Notice of Dispute, then either party may commence legal proceedings in an appropriate court to resolve the matter.

15.4 Urgent interlocutory relief

Nothing in this clause prevents a party from seeking urgent interlocutory relief.

15.5 Continued performance

Notwithstanding the existence of any Dispute or that a Dispute resolution process is ongoing, the Parties must continue to perform their obligations under the Contract.

16. GOODS AND SERVICES TAX

16.1 Price GST exclusive

Unless otherwise expressly stated in this Agreement, the Hire Rates and any Remuneration is shown exclusive of GST.

16.2 GST on supply of Hire Equipment

If GST is imposed in relation to the supply of any Hire Equipment under a Purchase Order issued by one Party to another, the Party receiving the Supply (**Recipient**) must pay the amount imposed to the Party providing the Supply (**Provider**) at the same time as the Party is required to pay the Provider for the Supply in question, provided that the Provider issues a valid tax invoice to the Recipient:

- (a) within 7 days after the occurrence of the event that causes the GST liability of the Provider on any taxable Supply to the Recipient to be attributed to a particular tax period (and the Recipient is not required to make any payment for GST until the Recipient has received a valid tax invoice from the Supplier); or
- (b) in the case of the hire of the Hire Equipment by the Supplier, in accordance with the Tax Invoice requirements stated in clause 9.

16.3 Adjustment event

If there is an Adjustment Event in relation to a supply that results in the amount of GST on a supply being different from the amount in respect of GST recovered by the Supplier, the Supplier:

- (c) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount recovered; and
- (d) must refund to the recipient the amount by which the amount recovered exceeds the amount of GST on the supply.

16.3 General

Words used in this clause 16 which have a defined meaning in the GST Law have the same meaning as in the GST Law unless the context otherwise indicates.

17. RECORDS

The Supplier must:

- (a) maintain a true, correct and complete set of records, books and accounts, relating to the costs and expenses for which the Supplier seeks compensation or reimbursement prepared in accordance with generally accepted accounting principles and accounting standards in Australia; and
- (b) make these available at no cost to the Company for audit, inspection, and copying by the Company or its designated representative during the term of the Contract and for a period of two (2) years after the end of the Contract or longer period required by Law.



18. ASSIGNMENT

- (a) Subject to paragraph (b) below, neither Party shall, without the prior written consent of the other Party, assign, mortgage, transfer or charge any or all of its rights or obligations under or pursuant to the Contract.
- (b) The Company may assign or transfer its rights or obligation under the Contract to any Related Body Corporate without the prior written consent of Supplier provided that it gives the Supplier notice of such assignment. Supplier shall enter into any documentation reasonably required by the Company to give effect to such assignment or transfer.

19. CONFIDENTIALITY

19.1 Supplier to maintain confidentiality

The Supplier must not, and must ensure that its Personnel do not, unless the Company has first agreed in writing:

- (a) disclose to anyone else, or
 - (b) use for a purpose other than the provision of Hire Equipment,
- any of the Confidential Information or the details of this Contract, except to the extent permitted by clause 19.4 or required by Law.

19.2 Permitted copies

The Supplier may make copies of written or computer stored materials incorporating Confidential Information only if those copies are necessary for the purpose of providing the Hire Equipment and must:

- (a) return to the Company all Confidential Information (including any copies made by it); and
- (b) permanently delete any Confidential Information stored by it in a computer or electronic retrieval system so that it is incapable of retrieval,

within seven days after the earlier of:

- (c) a receipt of a request from the Company to do so; or
- (d) the termination or expiry of this Contract;

and must, if requested by the Company, provide a certificate to the Company that these obligations have been complied with.

19.3 Supplier obligations

The Supplier must notify the Company immediately if it becomes aware of, or suspects, any disclosure, use or copying of Confidential Information that is not authorised by this Contract and must take all steps reasonably required by the Company to stop that unauthorised disclosure, use or copying.

19.4 Disclosure to Personnel

The Supplier must restrict disclosure of the Confidential Information to its Personnel who need to know it in order to provide the Hire Equipment and will, on reasonable request by the Company, ensure those Personnel execute confidentiality agreements similar in effect to this Clause.

19.5 Media

- (a) The Supplier may not advertise or issue any information, publication, document or article for publication or media releases or other publicity relating to the Hire Equipment or the Project, the Site or this Contract without the prior written approval of the Company, except that the Supplier may disclose such information and other matters:
 - (i) to its shareholders, directors, officers, employees, contractors or Suppliers, and to any Government Agency, who have a specific need to have access to such information and other matters; or
 - (ii) as required by Law or any listing rules applying to it (or any of its Related Bodies Corporate).
- (b) The Supplier must not and must ensure that its employees and its subcontractors and their respective employees do not, take any photographs or video recording of any part of the Site or the Project, without the prior written approval of the Company.



20. NOTICES

20.1 FORM OF NOTICE

- (a) Unless expressly stated otherwise in the Contract, any notice, certificate, consent, approval, waiver or other communication in connection with the Contract (**Notice**) must be in writing or given by electronic transmission, signed by the sender (if an individual) or an authorised officer of the sender.
- (b) Each Party may change its address details from time to time by giving notice to the other Party in accordance with clause 20.1(a).

20.2 WHEN NOTICES ARE TAKEN TO HAVE BEEN GIVEN AND RECEIVED

- (a) A Notice is regarded as given and received:
 - (i) if delivered by hand, when delivered to the address set out in the Purchase Order;
 - (ii) if sent by pre-paid post, on the 3rd day following the date of postage; and
 - (iii) if sent by e-mail, when a delivery confirmation report or receipt is received by the sender which records the time that the e-mail was delivered to the addressee's e-mail address (unless the sender receives a delivery failure notification indicating that the e-mail has not been delivered to the addressee).
- (b) A Notice delivered or received other than on a Business Day or after 5.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day. A Notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am.

21. PPSA SECURITY REGISTRATION AND ENFORCEMENT

- (a) If a Security Interest arises pursuant to this Contract, the party granting such interest consents to the other parties effecting a registration of the relevant Security Interest on the PPSA Register (in any manner it considers appropriate) and agrees to provide all assistance reasonably required to facilitate this.
- (b) The parties agree that sections 95 (to the extent it requires the Supplier to give the Company a notice), section 118 (relationship with land laws, to the extent it requires the Supplier to give the Company a notice), 121(4), 125, 128, 129, 130 (to the extent it requires the Supplier to give the Company a notice), 132(3)(d), 132(4), and 134(1), 135 (retention of collateral), 142 and 143 of the PPSA do not apply to the enforcement of any Security Interest provided pursuant to this Contract.
- (c) To the extent permitted by section 275 of the PPSA, the parties agree to keep all information of the kind mentioned in section 275(1) of the PPSA confidential and to not disclose that information to any other person, except where disclosure is otherwise permitted or authorised under this Contract.
- (d) Notwithstanding anything in this Contract, notices or documents required or permitted to be given pursuant to this Contract for the purposes of the PPSA must be given in accordance with the PPSA.
- (e) The Supplier must discharge any Security Interest upon the termination of this Contract and payment of all outstanding amounts.

22. GENERAL

22.1 GOVERNING LAW

The Contract shall be governed by the laws of New South Wales. Each Party submits to the non-exclusive jurisdiction of courts of New South Wales and any courts entitled to hear appeals from those courts.

**22.2 ENTIRE AGREEMENT**

The Contract constitutes the entire agreement between the two Parties in relation to the subject matter and supersedes all prior negotiations, conditions, representations, proposals, understandings and agreements whether written or oral which are excluded and negated save and except for such conditions or representations that cannot be excluded by virtue of the *Competition and Consumer Act 2010* (Cth) or any applicable Law.

22.3 VARIATIONS

No modification or alteration of the terms of the Purchase Order shall be binding unless made in writing dated subsequent to the Hire Start Date and duly signed by the Parties.

22.4 SURVIVAL

- (a) Clauses 11,13,14,15,17,19,20 and 22.4 shall survive termination or expiry of the Contract.
- (b) Any other term which by its nature is intended to survive termination or expiry of the Contract or expressed to survive termination or expiry of the Contract, survives termination or expiry of the Contract.

22.5 SEVERABILITY

Any provision of the Contract that is invalid or unenforceable in any relevant jurisdiction will be deemed to be severed from the Contract, without affecting the validity or enforceability of the remaining provisions of the Contract or affecting the validity or enforceability of that provision in any other jurisdiction.

22.6 WAIVER

A Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the Party giving the waiver.

22.7 RELATIONSHIP OF THE PARTIES

- (a) The Parties acknowledge and agree that the relationship between Company and Supplier is that of principal and independent contractor.
- (b) Nothing in the Contract will be deemed to constitute Supplier nor any of its Personnel as an employee, partner, agent or representative of Company and Supplier nor any of its Personnel will have no authority to incur and will not incur any obligation on the part of Company, except with, and to the extent of, the prior written authority of Company.

22.8 COSTS AND EXPENSES

- (a) Subject to clause 22.8 (b), each Party must pay its own costs and expenses in respect of the negotiation, preparation, execution and delivery of the Contract.
- (b) The Supplier shall be responsible for and must from time to time as required by law pay all compulsory superannuation, payroll tax, income tax and any other government levies and charges incurred in connection with providing the Hire Equipment, and indemnifies and will keep indemnified the Company from and against all losses, liabilities, damages, Claims, proceedings, demands, costs and expenses however arising that the Company or its servants, agents or Suppliers suffer, sustain or incur by reason of the Supplier's breach of any part of this clause 22.8.

21.9 CONTRA PROFERENTEM

In the interpretation of this Contract, no rule of construction applies to the disadvantage of one party on the basis that it put forward this Contract or any part of it.



21.10 PARTIES' RIGHTS AND REMEDIES NOT AFFECTED

The rights, powers and remedies provided in this Contract are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this Contract.

23. CIVIL LIABILITY ACT

To the extent permitted by law, Part 1F of the Civil Liability Act 2002 (WA) is excluded from the Contract.

24. BUSINESS CONDUCT

24.1 ANTI-CORRUPTION

The Supplier represents, warrants and agrees that:

- (a) It has received and read a copy of the Company's Anti-Bribery and Corruption Policy available at [www. https://brokenhillmines.com/about-us/corporate-policies](https://brokenhillmines.com/about-us/corporate-policies) and will comply with that policy;
- (b) it will at all times comply with all applicable laws relating to anti-bribery and improper payments including but not limited to the *Criminal Code Act 1995* (Cth) (Australia), the *Foreign Corrupt Practices Act 1977* (United States), and the *Bribery Act 2010* (United Kingdom) (**Relevant Requirements**);
- (c) it will have and maintain in place throughout the term of this Contract its own policies and procedures to ensure compliance with the Relevant Requirements, and enforce them where appropriate;
- (d) it will keep accurate books and records in connection with the provision of the Hire Equipment to the Company, maintain such records for at least three years after the termination of this Contract, and make such records available to the Company upon request;
- (e) it will procure, and be responsible for, the observance and performance of the Relevant Requirements by all persons providing Hire Equipment in connection with this Contract on behalf of the Supplier or under its supervision or control.

The Supplier must provide prompt written notice to the Company if:

- (a) it received any request or demand for any undue financial or other advantage in connection with the performance of this Contract; or
- (b) it becomes aware or reasonably suspects that any of the representations, warranties or undertakings in this clause 24.1 have been breached.

Without limiting any other rights of the Company at law or under this Contract, if the Company determines that the Supplier has breached its obligations under this clause 24.1;

- (h) the Company may immediately defer the performance of any relevant obligation under this Contract, or terminate this Contract, in whole or in part, by notice to the Supplier; and
- (i) any claims for payment by the Supplier in relation to the subject matter of the breach shall be automatically terminated and cancelled.

24.2 MODERN SLAVERY

The Supplier represents and warrants that:

- (a) it has made all reasonable investigations into its labour practices, and those of its suppliers, to ensure that there is no Modern Slavery used in its business or by any of its suppliers;
- (b) it has put in place all necessary processes, procedures, investigations and compliance systems to ensure that the warranties made in this clause will continue to be the case at all times;



- (c) there is no Modern Slavery used in its business or by any of its suppliers; and
- (d) it has taken, and will take in the future, all necessary actions and investigations to validate the warranties made in this clause.

On request by the Company, the Supplier will use all reasonable endeavours to assist the Company meet its obligations with respect to any applicable Modern Slavery legislation, which includes, but is not limited to, the provision any information and assistance required to identify, evaluate, implement and report on any matter contemplated by this clause, in respect of anything used, produced or created in connection with the performance of the Supplier's obligations under this Contract.

24.3 COMPLIANCE WITH LAWS INCLUDING SANCTIONS LAWS

- (a) The Supplier represents and warrants that it shall at all times comply, and require its Personnel to comply with, all applicable Laws including, without limitation, Sanctions Laws.
- (b) The Supplier represents and warrants that neither it nor its Related Bodies Corporate, officers or directors is:
 - (i) a Sanctions Restricted Person or is in any way affiliated with a Sanctions Restricted Person;
 - (ii) has violated or is violating any Sanctions Laws; or
 - (iii) shall directly or indirectly transfer to, or otherwise make available funds to or through, any Sanctions Restricted Person or any Restricted Territory, to the extent that such actions may cause such party to be in breach of any applicable Law, including Sanctions Laws.
- (c) The Supplier further represents and warrants that:
 - (i) it is not, directly or indirectly, owned fifty percent (50%) or more by (whether individually or collectively), controlled by, or operating for or on behalf of, any Sanctions Restricted Person, and
 - (ii) the transactions it will carry out with the other will not involve in any way, directly or indirectly, Sanctioned Restricted Persons and/or products subject to any Sanctions Law.