

**NORTHPARKES MINES PURCHASE ORDER GENERAL CONDITIONS
FOR THE
HIRE OF PLANT AND EQUIPMENT**

TABLE OF CONTENTS

<p>1. Definitions and interpretation</p> <p>1.1 Definitions</p> <p>1.2 Interpretation</p> <p>1.3 Joint Venture</p> <p>2. Evidence of Contract and precedence of documents</p> <p>2.1 Contract</p> <p>2.2 Precedence of Contract documents</p> <p>2.3 Entire agreement</p> <p>2.4 Amendment to be in writing</p> <p>3. Owner's representations</p> <p>4. Performance by Owner</p> <p>4.1 Performance of Equipment Supply</p> <p>4.2 Equipment Hire</p> <p>4.3 Time is of the essence</p> <p>5. Owner's warranties</p> <p>5.1 Owner's warranties</p> <p>5.2 Asbestos and other prohibited substances</p> <p>5.3 Owner indemnity</p> <p>5.4 Survival of Clause</p> <p>6. Equipment fit-for-purpose requirements</p> <p>6.1 Owner's equipment fit for purpose obligations</p> <p>6.2 Changes in FFP requirements</p> <p>6.3 Modification of equipment</p> <p>6.4 Costs of modifications</p> <p>7. Rectification of defects</p> <p>8. Term</p> <p>9. Representatives</p> <p>9.1 Performance</p> <p>9.2 Company Representative</p> <p>9.3 Owner Representative</p> <p>10. Delivery, title and risk</p> <p>10.1 Delivery and Return</p> <p>10.2 Title</p> <p>10.3 Risk</p> <p>11. Contract Price</p> <p>11.1 Contract Price</p> <p>11.2 Contract Price to be inclusive</p> <p>11.3 Greenhouse gas emissions</p> <p>12. Taxes</p> <p>12.1 Taxes (including Indirect Transaction Taxes)</p> <p>12.2 Withholding Taxes</p>	<p>12.3 Customs Duties and Excise Duties</p> <p>12.4 Survival of Clause</p> <p>12.5 US or Global contracts only</p> <p>13. Payments to Owner</p> <p>13.1 Method of payment</p> <p>13.2 Tax Invoices</p> <p>13.3 Payment of Tax Invoices</p> <p>13.4 Disputed Tax Invoices</p> <p>13.5 Errors or exceptions in invoicing</p> <p>13.6 Security of Payment</p> <p>14. PPSA</p> <p>14.1 Meaning of terms</p> <p>14.2 Further assurance</p> <p>14.3 PPSA exclusions</p> <p>14.4 Permitted disclosure</p> <p>14.5 Survival of obligation</p> <p>15. Deduction from payments</p> <p>15.1 Deductions</p> <p>15.2 Deductions and withholdings required by law</p> <p>15.3 Notification of withholding or deductions</p> <p>15.4 Clause to survive termination</p> <p>16. Alternative Equipment Hire</p> <p>16.1 Alternative Equipment Hire</p> <p>16.2 Owner responsible for incremental costs</p> <p>17. Preservation of existing third party supply arrangements</p> <p>18. No minimum purchase or exclusivity</p> <p>18.1 No minimum purchase</p> <p>18.2 No exclusivity</p> <p>19. Owner Personnel, Facilities and equipment</p> <p>19.1 Owner Personnel</p> <p>19.2 Engagement of Personnel</p> <p>19.3 Company may object to Personnel</p> <p>19.4 Owner responsibilities</p> <p>19.5 Company Facilities</p> <p>19.6 Improper or defective items</p> <p>20. Packing, despatch and transport</p> <p>20.1 Owner responsible</p> <p>20.2 Where Company to arrange transport</p> <p>20.3 Preparation for transport</p> <p>20.4 Notification of despatch dates</p> <p>21. Inspection</p> <p>22. Health, safety and environment</p>
--	--

- 22.1 Application of Clause
- 22.2 Owner acknowledgment
- 22.3 Compliance with health, safety and environmental laws, policies and standards
- 22.4 Health, Safety and Environmental Management Plan(s)
- 22.5 Induction Courses
- 22.6 Owner to remain liable
- 22.7 Removal from Site
- 22.8 Right of Company to audit Owner performance
- 22.9 Action by Owner
- 23. Compliance with Company policies**
- 24. Laws**
 - 24.1 Compliance with laws
 - 24.2 Consequences of breach
- 25. Co-operation with third parties**
 - 25.1 No interference
 - 25.2 No compensation
- 26. Force Majeure**
 - 26.1 Notice of Force Majeure
 - 26.2 Force Majeure Notice
 - 26.3 Obligation to remedy and mitigate
- 27. Insurances**
 - 27.1 Owner Insurances
 - 27.2 General and Product Liability Insurance
 - 27.3 Workers' Compensation and Employer's Liability Insurances
 - 27.4 Owner's Equipment
 - 27.5 Goods in transit
 - 27.6 Motor Vehicle/Automobile Third Party Liability Insurance
 - 27.7 Marine Insurance
 - 27.8 Aviation Insurance
 - 27.9 Insurance terms
 - 27.10 Notification under Owner's policy
 - 27.11 Sub-contractors' insurance
 - 27.12 Insurance claims and payments of insurance excess
 - 27.13 Survival of Clause
- 28. Indemnities**
 - 28.1 Acknowledgement
 - 28.2 Indemnity
 - 28.3 Exclusions
 - 28.4 Indemnity continuing
 - 28.5 No requirement for expense before enforcing indemnity
- 29. Consequential Loss**
 - 29.1 Consequential Loss
 - 29.2 Exclusions from Consequential Loss
- 30. No fault termination**
 - 30.1 Termination for convenience
 - 30.2 Owner compensation
- 31. Material default and insolvency**
 - 31.1 Owner Default Notice
 - 31.2 Termination for Material Default
 - 31.3 Owner insolvency or bankruptcy
 - 31.4 Cost of completing the Equipment Hire
- 32. Termination generally**
 - 32.1 Obligations upon receipt of termination Notice
 - 32.2 Obligations upon termination
 - 32.3 Termination general
- 33. Dispute Resolution**
 - 33.1 Dispute
 - 33.2 Dispute Representatives to seek resolution
 - 33.3 Performance of obligations during Dispute
 - 33.4 Urgent interlocutory relief
- 34. Confidentiality**
 - 34.1 Obligation of confidentiality
 - 34.2 Exceptions
 - 34.3 Breach of consent
 - 34.4 Indemnity
 - 34.5 Additional obligations
 - 34.6 Return of Confidential Information
 - 34.7 Permitted disclosure
 - 34.8 Survival of Clause
- 35. Public announcements**
- 36. Third party Intellectual Property Rights**
 - 36.1 Third party Intellectual Property Rights
 - 36.2 Owner Indemnity
 - 36.3 Exclusions
 - 36.4 Procurement of Intellectual Property Rights
 - 36.5 Procedure where Intellectual Property Rights cannot be procured
 - 36.6 Moral rights
- 37. Notices**
 - 37.1 Form of Notices
 - 37.2 Notices deemed given
 - 37.3 Service of documents
- 38. Conflict of interest**
 - 38.1 Warranty
 - 38.2 Conflicts of interest
 - 38.3 Indemnity
 - 38.4 Exclusions
- 39. Modern Slavery**
 - 39.1 Modern Slavery warranties
 - 39.2 Modern Slavery reporting and audit
 - 39.3 Action by the Owner
 - 39.4 Notice
 - 39.5 Termination
 - 39.6 Indemnity
 - 39.7 Confidentiality
 - 39.8 Survival of Clause
- 40. Illegal Information Brokering**
 - 40.1 Prohibition
 - 40.2 Notification
- 41. Compliance with Code of Conduct Policy and Core Contractor compliance training**

- 41.1 Northparkes Code of Conduct Policy
- 41.2 Core Contractor compliance training
- 42. Indigenous/Community relations**
- 43. Costs**
 - 43.1 Each Party to bear its own costs
 - 43.2 Stamp duty
- 44. Status of Owner**
 - 44.1 Independent contractor
 - 44.2 Partnership and joint venture suppliers
- 45. Sub-contracting**
 - 45.1 Consent required
 - 45.2 Obligations survive assignment or sub-contract
 - 45.3 Status of Sub-contractor
- 46. Personal Data Protection**
 - 46.1 Personal Data
 - 46.2 Warranty
 - 46.3 Data protection
 - 46.4 Individual complaints
 - 46.5 Owner indemnity
 - 46.6 Survival of Clause
- 47. Waiver**
- 48. Further assurances**
- 49. Severability**
 - 49.1 Severability
 - 49.2 Negotiation in good faith
- 50. Governing law**
- 51. Assignment**

1. Definitions and interpretation

1.1 Definitions

In these General Conditions and the Contract, the following terms have the meanings set out below:

Alternative Equipment Hire is defined in Clause 16.1.

Business Day means a day on which banks are open for business in the place in respect of which an obligation is to be performed or, in respect of Clause 37, the place to which a Notice is sent.

Change in Policies and Standards means a change:

- (a) in the Policies and Standards which are in existence as at the commencement of the Term;
- (b) which takes effect after the commencement of the Term;
- (c) which results in terms and conditions of the applicable Policies and Standards being materially more onerous on the Owner than those previously contained in the Policies and Standards,

but does not include any change in the Policies and Standards which was caused or contributed to by any act or omission of the Owner or its Personnel.

Claim means any action, suit, proceeding or demand of any kind (including by or against any or all of the Company or the Company's Personnel, by or against any or all of the Owner, the Owner's Personnel or any third party).

Company is defined in the Purchase Order.

Company Competencies is defined in Clause 22.5(b).

Company Completion Costs is defined in Clause 31.4.

Company Default is defined in Clause **Error! Reference source not found.**

Company Default Notice is defined in Clause **Error! Reference source not found.**

Company Induction Courses is defined in Clause 22.5(a).

Company Representative is, initially, the representative of the Company named in the Purchase Order, or otherwise as notified by the Company from time to time, and includes:

- (a) such other person as the Company may, in writing, substitute for that representative; or
- (b) any person authorised by that representative to perform any of that representative's powers, duties, discretions or authorities.

Company's Personal Data means the Personal Data that the Company transfers to the Owner from time to time in connection with the Contract.

Confidential Information means the Contract, and any information (in whatever form) or Documentation of a confidential nature (or which the Owner or its Personnel ought reasonably to know to be confidential) which relates to the business, affairs or activities of the Company

(including in relation to the Equipment Hire) and which:

- (a) is disclosed to the Owner or its Personnel by or on behalf of the Company;
- (b) is generated by the Owner or its Personnel in performing the Equipment Hire; or
- (c) otherwise comes to the knowledge of the Owner or its Personnel.

Consequential Loss means the following losses, regardless of whether such losses arise in contract (including under the Contract), in tort (including in negligence), under statute, in equity, by way of indemnity or otherwise:

- (a) loss of profit or anticipated profit;
- (b) loss of revenue or anticipated revenue;
- (c) loss of business opportunity or contract;
- (d) loss of or damage to goodwill, reputation, future reputation or publicity; or
- (e) cost of obtaining new financing or maintaining existing financing (including interest payments).

Contract is defined in Clause 2.1.

Contract Price is defined in Clause 11.1.

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

Customs Duties means any tax or tariff imposed, claimed, levied or assessed by, or payable to, any Government Agency in relation to the import or export of goods.

Deducted Amount is defined in Clause 15.2.

Default Notice is defined in Clause 31.1.

Delivery Point means the place identified in the Purchase Order for delivery of the Equipment at the commencement of the Equipment Hire (or, if not so defined, means the Site).

Dispute is defined in Clause 33.1.

Dispute Notice is defined in Clause 33.1.

Dispute Representative is defined in Clause 33.2(a).

Documentation includes plans, designs, Drawings, calculations, engineering information, data, specifications, sketches, notes, samples, reports, maps, accounts, operating manuals, training materials and any other material specified in the Contract (and whether embodied in tangible or electronic form).

Drawings means the drawings (if any) referred to in the Contract and any modifications of such drawings notified to the Owner by the Company Representative and includes such other drawings as may from time to time be supplied to the Owner by the Company Representative for the purposes of the Contract and any Owner Drawings.

Dry Hire means the hire of the Equipment without an Operator.

Encumbrance means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or (2) of the PPSA, or any agreement to create any of them or allow them to exist.

Equipment means the plant, materials, equipment, parts or other items the subject of the Equipment Hire as identified in Schedule A (Equipment Hire).

Equipment FFP Requirements means and includes the Company's requirements applicable to the use and maintenance of equipment as set out in the Company's HSE Policies and Standards (including its Safety Management System, Electrical Engineering Control Plan (EECP) and Mechanical Engineering Control Plan (MECP)) and associated risk assessments, procedures, and checklists relating to various types of equipment, including:

- (a) vehicles and mobile equipment;
- (b) equipment for use underground;
- (c) lighting plants, generators, and mobile electrical equipment;
- (d) hand tools;
- (e) welding machines; and
- (f) tyres and rims,

as at the commencement of the Term and as otherwise notified to the Owner from time to time.

Equipment Hire means the provision of Equipment on a Dry Hire or Wet Hire basis in accordance with the Contract, and where provided on a Wet Hire basis, references to "Equipment Hire" shall include the provision of Operator(s) of the Equipment.

Excise Duties means any tax imposed, claimed, levied or assessed by, or payable to, any Government Agency in relation to the supply, production or manufacture of goods.

Facilities means any accommodation, sustenance, transportation, medical or toilet facilities.

Force Majeure means an event or cause which is beyond the control of the Party claiming force majeure, not able to be overcome by the exercise of reasonable care, proper precautions and the consideration of reasonable alternatives with the intention of avoiding the effects of the force majeure by that Party, and which could not have been reasonably foreseen, and includes (subject to satisfying the requirements of the foregoing):

- (a) an act of God (other than adverse weather);
- (b) cyclones, fire, flood;
- (c) acts of war, acts of public enemies, terrorist acts, riots or civil commotions;
- (d) pandemics, epidemics; or
- (e) sanctions, acts of governments and authorities.

Government Agency means any government or governmental, semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

HSE Management Plan(s) is defined in Clause 22.4(a).

HSE Policies and Standards is defined in Clause 22.3(a).

Illegal Information Brokering means the practice by which certain parties approach contractors, sub-contractors, vendors and other suppliers, and offer confidential information or illicit influence in order to obtain business through corruption of competitive bidding processes.

Indemnified Parties is defined in Clause 28.2(a).

Indirect Transaction Taxes means any value added tax, goods and services tax or similar tax including, without limit, sales, use or consumption taxes, imposed, claimed, levied or assessed by, or payable to, any Government Agency, but does not include any related penalty, fine or interest thereon.

Input Tax Credit means any entitlement to a credit for, or offset against, reduction in or refund of, Indirect Transaction Taxes, in relation to any acquisition or the receipt of any supply.

Insolvent, where reference is made to when a person becomes Insolvent, means if it:

- (a) being a company:
 - (i) stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts or is otherwise unable to pay its debts when they fall due;
 - (ii) is (or states that it is) an insolvent under an administration or insolvency within the meaning of the Corporations Act;
 - (iii) is in liquidation or provisional liquidation;
 - (iv) is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to the Contract);
 - (v) must be presumed by a court to be insolvent by reason of section 459C(2)(b) or section 585 of the Corporations Act;
 - (vi) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);
 - (vii) has an administrator appointed over all or any of its assets or undertaking, or any step preliminary to the appointment of an administrator is taken;
 - (viii) has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to all or any of its assets or undertaking; or
 - (ix) has an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to a court made or other steps taken against or in respect of it (other than frivolous or vexatious applications, proceedings, notices or steps) for its winding up or dissolution or for it to enter into an arrangement, compromise or composition with or assignment for the benefit of its creditors, or class of them or any of them; or
- (b) being an individual, commits an act of bankruptcy or makes a compromise or composition with or assignment of his property in favour of creditors.

Intellectual Property Rights means all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all

copyright and similar rights which may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registerable), rights in relation to registered or unregistered trademarks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers.

Joint Venture means an unincorporated joint venture, if any, on behalf of which the Company is a Party to the Contract as agent.

Joint Venturers means, in respect of a Joint Venture, the participants in that Joint Venture.

Liabilities means damages, Claims, losses, liabilities, costs and expenses of any kind, and including any legal costs awarded against or incurred by the Company.

Materials is defined in Clause 36.6(a)(i).

Modern Slavery means any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking, and other slavery-like exploitation as prohibited under all applicable anti-slavery and human trafficking laws from time to time in force including but not limited to the *Modern Slavery Act 2018* (Cth) and the *Criminal Code Act 1995* (Cth), sch 1, divisions 270 and 271. For the avoidance of doubt, Modern Slavery includes any conditions or practices similar to those prohibited under those laws, statutes, regulations and codes.

Notice is defined in Clause 37.1.

Notifiable Data Breach occurs when there is either:

- (a) any loss of Personal Data; or
- (b) any unauthorised access to or disclosure of Personal Data;

and a reasonable person would believe that the loss or unauthorised disclosure is likely to cause serious harm to the individual to whom that Personal Data relates.

Operator means an individual who is provided by or on behalf of the Owner as part of a Wet Hire to operate the Equipment during the Term.

Owner means the Party (as identified in the Purchase Order) responsible for providing the Equipment Hire..

Owner Drawings means any and all drawings prepared by the Owner or any of its Sub-contractors in connection with the Contract including drawings relating to any Equipment provided under the Contract.

Owner Insurances is defined in Clause 27.1.

Owner Representative is the representative of the Owner named in the Purchase Order.

Party means a party to the Contract.

Payment Act means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

Personal Data means information relating to identifiable individuals and includes (but is not limited to) all information relating to individuals that is protected by privacy laws or data protection laws in the country where:

- (a) the individuals are located; or
- (b) the data relating to those individuals is processed,

and includes 'personal information' as that term is defined in the Privacy Act.

Personnel means:

- (a) in relation to the Owner, an Operator or any of the Owner's employees, Sub-contractors (including Sub-contractors' Personnel), agents or representatives involved either directly or indirectly in the performance of the Equipment Hire;
- (b) in relation to the Company, any of its past or present officers, employees, agents (including, for the purposes of Clause 27, the entity entering into the Contract for and on behalf of Joint Venturers (if applicable) and that entity's past or present officers, employees, agents or representatives) or representatives; and
- (c) in relation to a Sub-contractor, any of its employees, agents or representatives involved either directly or indirectly in the performance of the Equipment Hire.

Policies and Standards means any policies, procedures, protocols, training modules, work instructions, guidance notes, forms, templates, manuals or specifications of the Company notified or made available to the Owner by the Company or referred to in the Contract including the HSE Policies and Standards.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Privacy Act means the *Privacy Act 1988* (Cth).

Purchase Order means an individual purchase order issued by the Company to the Owner in respect of the provision of the Equipment Hire which shall be subject to the terms of the Contract.

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

Return Point means the place identified in the Purchase Order for delivery of the Equipment at the completion of the Equipment Hire (or, if not so defined, means the Delivery Point).

Site means the Company's premises identified in the Purchase Order.

Specifications means the specifications for the Equipment Hire and any modification of those specifications as directed by the Company Representative in accordance with the Contract.

Sub-contractor means any person engaged by the Owner in accordance with Clause 45 to perform all or any part of the Equipment Hire on behalf of the Owner.

Supply Chain means all steps and processes involved in the provision of the Equipment Hire to the Company, commencing with the sourcing of the Equipment and finishing with the use of the Equipment by the Company.

Tax or Taxes means, unless the contrary intention is expressed, any and all taxes, including, without limitation, Indirect Transaction Taxes, excise, stamp, documentary, customs, import/export, payroll, personal, property, real property, interest equalisation, business, occupation, turnover,

income, corporation, capital, profits, gains, gross receipts taxes or duties, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed by any Government Agency or otherwise payable.

Tax Invoice or Invoice means an invoice or other document, including without limitation a credit note or debit note, in a form that is valid under the applicable law of the jurisdiction in which a liability to pay Indirect Transaction Taxes is imposed, claimed, levied or assessed, which must be held by a person for that person to be able to claim Input Tax Credits.

Tender means the Owner's offer or counter-offer in writing to perform the Equipment Hire whether described as a "tender" or "proposal" or otherwise.

Term is defined in Clause 8.

Wet Hire means the hire of the Equipment with an Operator.

Wilful Misconduct means any act or omission which was deliberate and wrongful, including any deliberate or purposeful breach of an express term of this Contract, with reckless disregard or wanton indifference as to the likely consequences.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) The meaning of general words is not limited by specific examples introduced by **including** or **for example**.
- (e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (f) A reference to a person or a Party includes a reference to that person's or Party's executors, administrators, successors, substitutes (including persons taking by way of novation), assigns (in the case of a person) and permitted assigns (in the case of a Party).
- (g) A reference to a Clause or Appendix is a reference to a clause of, or appendix to, these General Conditions.
- (h) A reference to a Schedule is a reference to a schedule to the Contract.
- (i) A reference to an Act or legislation, or to a provision of an Act or legislation, includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to *use* in the context of dealing with Intellectual Property Rights includes using, exploiting, copying, adapting, creating derivative works, developing, modifying, disclosing and communicating.

- (k) A reference to conduct includes, without limitation, an act, omission, statement or undertaking, whether or not in writing.
- (l) Where it is provided that the Owner will perform any act or provide any thing at its cost, this means the Owner will not be entitled to any additional compensation for such act or thing and the cost will be deemed to be included in the Contract Price.

1.3 Joint Venture

If the Purchase Order specifies that the Company enters into, and is a party to, the Contract for and on behalf of Joint Venturers under a Joint Venture, then the following paragraphs apply:

- (a) The Company is a party to the Contract as agent severally for each of the Joint Venturers in their respective percentage interests in the Joint Venture.
- (b) The Parties acknowledge and agree that:
 - (i) the obligations and liabilities of the Joint Venturers to the Owner are several only (and will not be, nor be construed to be, either joint or joint and several), in accordance with the Joint Venturer's respective percentage interest from time to time in the Joint Venture;
 - (ii) the percentage interests of the Joint Venturers, and the identity and number of Joint Venturers, may change from time to time and the Company may at any time without the consent of the Owner assign its rights and obligations under the Contract to an incoming agent or manager on behalf of the Joint Venturers;
 - (iii) the rights and remedies in and under the Contract may be exercised by the Company for and on behalf of the Joint Venturers;
 - (iv) the benefit of the respective duties and obligations of the Owner under the Contract are deemed to enure to each of the Joint Venturers, and the Company is severally authorised to enforce those duties and obligations on the Joint Venturers' behalf;
 - (v) all Notices to be given or made pursuant to the Contract relating to the Joint Venture may be given or made (as the case requires) by the Company on behalf of the Joint Venturers or any one or more of them;
 - (vi) in dealing with the Joint Venturers, for all purposes under or in connection with the Contract (including, for the avoidance of doubt, any Purchase Order), the Owner must deal only with the Company; and
 - (vii) the Company will not be liable for the failure of the Joint Venturers (or any one or more of them) to perform its or their obligations under the Contract.

2. Evidence of Contract and precedence of documents

2.1 Contract

The **Contract** consists of the following documents:

- (a) the Purchase Order;
- (b) these General Conditions; and

any other document which is attached to, or incorporated by reference in, the Purchase Order or these General Conditions.

2.2 Precedence of Contract documents

If there is any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in Clause 2.1.

2.3 Entire agreement

- (a) The Contract contains the entire agreement between the Company and the Owner with respect to its subject matter and supersedes all prior written agreements between the Parties in this regard.
- (b) No terms or conditions submitted by either party that are in addition to, different from or inconsistent with those contained in the Contract including, without limitation, the Owner's printed terms and conditions, and any terms and conditions contained in any Owner's quotation, invoice, order acknowledgment, confirmation, acceptance, bill of lading or other instrument, shall be binding upon either Party unless specifically and expressly agreed to in a writing signed by duly authorised representatives of both Parties.
- (c) Where the Equipment or other items supplied under the Contract are accompanied by the Owner's documentation, acceptance of the Equipment (or other items) or documentation by the Company is limited to an acknowledgement of receipt or delivery of the Equipment or other items so supplied and not of the Owner's documentation.

2.4 Amendment to be in writing

No amendment or variation of the Contract is valid or binding on a Party unless made in writing and signed by the Owner and the Company.

3. Owner's representations

The Owner represents to the Company that, as at the commencement of the Term:

- (a) it has the corporate power to enter into, and to perform all of its obligations under, the Contract;
- (b) it is qualified and has the necessary experience, skill and resources to perform the Equipment Hire;
- (c) it is properly licensed, equipped, organised and financed to perform all its obligations under the Contract and that there are no contracts in existence that would affect the Owner's ability to perform its obligations

under the Contract in a timely and satisfactory manner;

- (d) the Contract has been validly entered into by the Owner and constitutes valid and binding obligations of the Owner enforceable according to its terms; and
- (e) the entry into the Contract and the performance of the Equipment Hire do not and will not result in the breach of:
 - (i) the terms of, or constitute a default under, any agreement or undertaking (whether verbal or written) or any instrument to which the Owner may be affected or bound; or
 - (ii) any order, writ, rule, regulation, injunction or decree of any court or Government Agency or any legislation applicable to the Owner by which the Owner may be bound.

4. Performance by Owner

4.1 Performance of Equipment Supply

The Owner must perform the Equipment Hire in accordance with the terms of the Contract and in consideration of the payment of the Contract Price by the Company.

4.2 Equipment Hire

Upon receipt of a Purchase Order from the Company, the Owner must provide the Equipment and (if applicable) the Operator in accordance with the requirements of the Contract.

4.3 Time is of the essence

Time is of the essence in the performance of the Owner's obligations under the Contract.

5. Owner's warranties

5.1 Owner's warranties

In addition to the warranties contained elsewhere in the Contract, including without limitation in Clauses 36.1, 38.1, **Error! Reference source not found.**, 39.1, 40.1 and 46.2, the Owner warrants that:

- (a) all of the Equipment Hire will be performed in a professional manner consistent with industry and/or professional best practice and provided in an efficient manner in accordance with all applicable legislation and laws or regulations;
- (b) the Equipment will:
 - (i) be of a high standard and in accordance with the Company's Specifications (where those Specifications are made known to the Owner) or in the absence of such Specifications, in accordance with any applicable standards set by the Standards Association of Australia;
 - (ii) be in safe working condition and comply with all legislation which is applicable to such Equipment;

- (iii) be free from defects in design, materials and workmanship;
 - (iv) be suitable for the relevant purpose of that Equipment and the purpose of the Equipment Hire; and
 - (v) be Equipment in respect of which the Owner has legal possession to (whether by ownership) and is entitled to pass that possession to the Company;
- (c) (if applicable) the Equipment will be operated by a suitably qualified and competent Operator, to the satisfaction of the Company and the Owner and the Operator will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of comparable work.
- (d) all information and materials forming part of the Tender (if any) are true and correct in every respect and are not misleading or deceptive and the Owner has not withheld from the Company any information concerning the Owner, its experience or expertise or the Equipment which might reasonably be supposed to be material to the Company in determining whether or not to engage the Owner to perform the Equipment Hire or the price at which or the terms on which the Company would be prepared to engage the Owner to perform the Equipment Hire.

5.2 Asbestos and other prohibited substances

Without in any way limiting the operation of Clause 24 or any other Clause of these General Conditions, the Owner warrants that:

- (a) all Equipment supplied to the Company and all material used for packing and shipping the Equipment (including, without limitation, temporary or replacement fittings such as transport gaskets, packaging and strapping or protective materials) will be free from asbestos and any materials containing asbestos and will be free from any other substance which is prohibited under any applicable legislation, laws or Government Agency requirements; and
- (b) the Owner has applied and will at all times continue to apply due diligence and surveillance in its design, material specification, material selection and manufacture and in respect of its suppliers and Sub-contractors to ensure asbestos or any material containing asbestos and any other prohibited substance has not been incorporated into the Equipment or any material used for packing and shipping the Equipment.

5.3 Owner indemnity

Without limiting Clause 28, and to the extent permitted by law, the Owner indemnifies the Company and its Personnel and must keep them indemnified in respect of all Liabilities incurred by or awarded against the Company or its Personnel relating to any breach by the Owner of the warranties contained in Clause 5.2 and any applicable legislation, regulations, laws and/or Government Agency requirements. This indemnity

includes (but is not limited to) any legal costs awarded against and/or incurred by the Company and its Personnel on a full indemnity basis.

5.4 Survival of Clause

Clauses 5.2, 5.3 and this Clause 5.4 will survive the termination or expiry of the Contract.

6. Equipment fit-for-purpose requirements

6.1 Owner's equipment fit for purpose obligations

Unless otherwise stated in the Purchase Order or the Company's HSE Policies and Standards or unless otherwise agreed by the Company Representative, the Owner must ensure, at its own cost, that all equipment provided for the provision of the Equipment Hire, including the Equipment and any other equipment used in the provision of the Equipment Hire, is:

- (a) in the case of the Equipment, compliant with the Equipment FFP Requirements prior to delivery to the Delivery Point;
- (b) inspected, assessed, and certified by the Company Representative (or their nominated delegate) as compliant with the Equipment FFP Requirements:
 - (i) prior to use at the Site; and
 - (ii) at such other times reasonably required by the Company; and
- (c) inspected by the Company Representative (or their nominated delegate) as compliant with the Equipment FFP Requirements each calendar quarter during the Term; and
- (d) modified in accordance with any reasonable requirements of the Company Representative arising from its inspection, assessment and/or certification of the equipment pursuant to sub-clause (b) or (c) above,

and the Owner will be required to provide the Company Representative with all Documentation (including Owner Drawings) and to do all further acts and things which are reasonably necessary to ensure that the Equipment, including any modifications, comply with the Equipment FFP Requirements.

6.2 Changes in FFP requirements

The Company may change or modify the Equipment FFP Requirements at any time during the Term by giving Notice of such changes to the Owner.

6.3 Modification of equipment

If any equipment provided or used by the Owner in the performance of the Equipment Hire does not satisfy the Equipment FFP Requirements because the Company has made changes to the Equipment FFP Requirements after the date of delivery of the Equipment to the Delivery Point) then the Company may:

- (a) direct the Owner to comply with such changes to the Equipment FFP Requirements (including by carrying out any modifications to the relevant equipment) within a reasonable time; or

- (b) carry out such modifications to the Equipment itself,

in order for the equipment to be made compliant with the Equipment FFP Requirements.

6.4 Costs of modifications

- (a) Where the changes to the Equipment FFP Requirements are related to or made necessary due to:
- (i) any default, act or omission, wilful misconduct or negligence of the Owner or the Owner's Personnel (including the Operator (if any));
 - (ii) any incident on Site involving the Owner, the Owner's equipment, or the Owner's Personnel;
 - (iii) any direction or recommendation of a Government Agency; or
 - (iv) the Owner providing an item of equipment which is comparable to an item of equipment previously certified and modified (as applicable) for use at the Site and which is available to perform the Equipment Hire,

the Owner is responsible for all costs associated with the modifications required to be made to the equipment to comply with the amended Equipment FFP Requirements and any costs and expenses incurred by the Company in modifying the equipment to so comply will be recoverable from the Owner as a debt due and immediately payable on demand.

- (b) Where the changes to the Equipment FFP Requirements are made necessary for any other reason and where the Company directs the Owner to comply with such changes, the Company will reimburse the Owner for the actual, direct and unavoidable costs reasonably and necessarily incurred to modify the equipment in order to comply with the changes to the Equipment FFP Requirements provided that the Owner has taken all reasonable steps to minimise the costs incurred and provides the Company upon request with copies of its relevant documentation in order to verify the amounts claimed.

7. Rectification of defects

- (a) Upon receipt of a Notice from the Company Representative of any defect in any Equipment during the Term, the affected items or parts must be repaired or replaced as appropriate by the Owner at no cost to the Company prior to the expiration of the time specified in the Notice.
- (b) If the Owner fails to make the necessary repair or replacement within the period specified in the Notice from the Company, the Company may perform or cause to be performed such repair or replacement at the Owner's risk and cost and any costs and expenses incurred by the Company will be recoverable from the Owner as a debt due and immediately payable on demand and the Owner will be required to provide the

Company with all Documentation (including Owner Drawings) and to do all further acts and things which are reasonably necessary for the Company to perform or cause to be performed any repair or replacement of the affected items, parts or Equipment.

8. Term

The Contract will commence on the earlier of:

- (a) the date of acceptance of the Purchase Order by the Owner; or
- (b) the date the Owner commences to perform the Equipment Hire,

unless the Purchase Order is withdrawn by the Company, and will remain in force, unless terminated earlier in accordance with the Contract, until the completion by the Owner of all of its obligations under the Contract (**Term**).

9. Representatives

9.1 Performance

The Equipment Hire must be performed by the Owner in accordance with the Contract and in accordance with any directions of the Company Representative pursuant to the provisions of the Contract.

9.2 Company Representative

- (a) The Company Representative is responsible for giving directions for and on behalf of the Company as provided in the Contract.
- (b) Directions given to the Owner by any person other than the Company Representative will not bind the Company unless ratified by the Company Representative.

9.3 Owner Representative

- (a) The Owner Representative is responsible for liaising with the Company Representative in relation to any of the matters referred to in Clause 9.2, and the Owner Representative will have full power to legally bind the Owner in respect of all matters arising out of the Contract.
- (b) Any direction which the Company Representative gives to an Owner Representative is deemed to have been given to the Owner for and on behalf of the Company and the Owner must comply with that direction accordingly. Any communication given, or document signed, by an Owner Representative is deemed to have been given or signed by the Owner and will bind the Owner. Matters within the knowledge of an Owner Representative are deemed to be within the knowledge of the Owner.
- (c) Either Party may from time to time revoke the appointment of its representative and appoint another person as its representative and that Party must give Notice of such revocation and appointment to the other Party.

10. Delivery, title and risk

10.1 Delivery and Return

- (a) The Owner must deliver the Equipment to the Delivery Point on or before the Delivery Date.
- (b) The Company must return the Equipment to the Return Point on or before the expiry of the Term or where the Contract is terminated early under Clauses 30.1 31.2 or 31.3, within a reasonable time after the earlier termination of the Contract.

10.2 Title

- (a) The Company acknowledges that nothing in the Contract passes title in the Equipment to the Company.
- (b) The Company must not do anything or permit anything to be done to adversely affect the Owner's interest as owner or lessee of the Equipment.

10.3 Risk

Risk in the Equipment will remain with the Owner at all times.

11. Contract Price

11.1 Contract Price

The **Contract Price** means the aggregate amount payable (excluding any Indirect Transaction Taxes payable in accordance with Clause 12) by the Company to the Owner in relation to the Equipment Hire.

11.2 Contract Price to be inclusive

- (a) All expenses incurred by the Owner in relation to the provision of the Equipment Hire, including, without limitation, travel expenses, subsistence expenses, and expenses incurred in modifying any equipment to comply with the Company's FFP Requirements, will be deemed to be included in the Contract Price and the Contract Price includes any applicable Taxes.
- (b) The Owner must separately disclose to the Company details of any Customs Duties included in the Contract Price.
- (c) Section 152(1)(a) of the *Customs Act 1901* (Cth) does not apply to the Contract.

11.3 Greenhouse gas emissions

Notwithstanding any other provision of this Contract, the Owner is not entitled to be reimbursed by the Company for any amount that the Owner pays or is liable to pay as a result of the Owner, or a Related Body Corporate of the Owner, being required by a law to surrender tradeable permits or to pay a Tax as a consequence of:

- (a) the emission of greenhouse gases in the course of performing the Equipment Hire under the Contract; or
- (b) performing the Equipment Hire.

12. Taxes

12.1 Taxes (including Indirect Transaction Taxes)

- (a) All amounts payable under or in connection with this Contract, (including any amount by way of reimbursement, indemnity, damages or otherwise) are:
 - (i) inclusive of Taxes; but
 - (ii) exclusive of Indirect Transaction Taxes, unless expressed otherwise.
- (b) If Indirect Transaction Taxes are payable on a supply, transfer or sale (**supply**) made under or in connection with this Contract, and if the party making that supply (**supplier**) is liable, under the applicable law, to pay, or collect and remit, the Indirect Transaction Taxes to the appropriate Government Agency, the party receiving that supply (**recipient**) shall pay to the supplier an additional amount equal to the Indirect Transaction Taxes payable by the supplier in respect of the supply. The recipient must pay the additional amount to the supplier on the date when the Contract Price (or part thereof) is provided to the supplier (subject to a Tax Invoice being received prior to payment date). This sub-Clause does not apply to the extent that the consideration for the supply is expressed to be inclusive of Indirect Transaction Taxes.
- (c) The supplier shall ensure that each invoice it presents to the recipient in respect of any Indirect Transaction Taxes is a Tax Invoice. If the supplier fails to provide the recipient with a Tax Invoice within the time period required by applicable law of that jurisdiction, the recipient may withhold payment of the amount payable on account of Indirect Transaction Taxes, either pursuant to sub-Clause (b) or as part of the consideration where that consideration is expressed to be inclusive of Indirect Transaction Taxes, until such time as a Tax Invoice is received.
- (d) Any reference in:
 - (i) this Contract to a cost, expense or other liability (**Cost**) incurred by a party; or
 - (ii) the calculation of consideration or of any indemnity, reimbursement or similar amount to a Cost,
 must exclude the amount of any Input Tax Credit entitlement of that party in relation to that Cost.
- (e) Each Party will take all reasonable steps to cooperate with and provide all necessary assistance to the other Party to ensure so far as possible that the Taxes treatment is accepted by the relevant Government Agency, including the provision of invoices, proof of payment, proof of source and/or origination and other documentation for this purpose.

12.2 Withholding Taxes

- (a) If a party (**payer**) is required by any applicable law to make a deduction or withholding from a payment to the other party (**payee**) for or on account of any Taxes, the payer is entitled to make that deduction or withholding unless the

payee provides the payer with valid documentation (received prior to the date when the payment is to be made) showing to the satisfaction of the payer that an exemption applies. If the payer is required by law to deduct or withhold, then the payer shall use its best endeavours to furnish the payee with all receipts, proof of payment and other relevant documentation for all deductions and withholding Taxes so paid to the relevant Government Agency. For the avoidance of doubt, the payer will not be liable to pay any amount to the payee on account of an amount deducted or withheld in accordance with this Clause 12.

- (b) Where a payment is made without a deduction or withholding for or on account of Taxes and such a deduction or withholding was required by any applicable law, the payee shall reimburse the payer for, or otherwise pay to the payer, the amount that should have been withheld or deducted within 14 days of receiving an official receipt (or certified copy) or other documentation evidencing the amount that was required to have been withheld or deducted.

12.3 Customs Duties and Excise Duties

- (a) Where the recipient elects to acquire goods and the supplier is the importer of record, the supplier will:
- (i) be responsible for, and remit payment of all Customs Duties assessed by or payable to any Government Agency as well as any other foreign shipping charges; and
 - (ii) use its best endeavours to ensure that any goods are imported free of Customs Duties including, without limit, through the use of applicable bilateral free trade agreements (or the equivalent).
- (b) The supplier will, at the recipient's request, provide the recipient with all information and documentation necessary for the recipient to make or assess the supplier's entitlement to make, in accordance with any applicable laws, applications or certifications for:
- (i) a drawback, refund, rebate, remission or other reduction of Customs Duties or Excise Duties; and
 - (ii) Customs Duties or Excise Duties concessions, including, without limit, exemptions, reductions, duty-free access and preferential rates of duty available under bilateral free trade agreements (or the equivalent).
- (c) The supplier must make any application or certification requested by the recipient in a form that is satisfactory to the recipient. Where any such application or certification is successful, the supplier will pass on to the recipient the full economic benefit of the exemption, reduction, concession, drawback, refund, rebate or remission of Customs Duty or Excise Duty, as appropriate, by way of a reduction in the Contract Price. This Clause applies regardless of the shipping, insurance or freight terms used.

12.4 Survival of Clause

This Clause 12 will continue to apply after expiration or termination of this Contract.

12.5 US or Global contracts only

- (a) If, in respect of a Tax audit or a levied Tax assessment, the appropriate Government Agency seeks payment of Indirect Transaction Taxes from the supplier for which the supplier seeks reimbursement from the recipient, then, unless the supplier notifies the recipient in writing of the Indirect Transaction Taxes payable at least 30 days prior to the expiration date of the right to appeal the imposition thereof, any reimbursement by the recipient will be at its sole discretion.
- (b) If the recipient deems that any Indirect Transaction Taxes paid to the supplier under Clause 12.1(b) have been inappropriately levied or that an exemption applies, the recipient may, by written Notice to the supplier, require the supplier to contest such Indirect Transaction Taxes at the recipient's sole expense and subject to its direction and control.
- (c) The supplier shall do all things reasonably necessary to ensure that the recipient remains eligible for any exemption, credit, set-off, deduction or similar amount to which the recipient is entitled as a purchaser or recipient of any supply under any applicable laws, whether the Indirect Transaction Taxes are paid by the supplier or directly by the recipient. If an exemption to payment of Indirect Transaction Taxes applies, the recipient shall provide the supplier with a valid tax exemption certificate or equivalent documentation required by any applicable laws in the jurisdiction where the supply takes place.

13. Payments to Owner

13.1 Method of payment

- (a) Unless otherwise provided in the Contract, all payments required to be made to the Owner by the Company pursuant to the Contract in relation to the performance of the Equipment Hire must be made in the currency specified in Schedule B (Prices) by electronic funds transfer into the Owner's nominated bank account.
- (b) If the Contract provides that any of the amounts referred to in Clause 13.1(a) are to be paid to the Owner:
 - (i) outside Australia;
 - (ii) other than in Australian currency; or
 - (iii) in a manner subject to control by any Government Agency,

payment is conditional upon the Company obtaining the necessary authorities and consents to the making of that payment.
- (c) Payments made by the Company are on account only and are not:
 - (i) evidence of the value of the Equipment Hire or that the Equipment Hire has

been satisfactorily carried out in accordance with the Contract;

- (ii) an admission of liability on the part of the Company; or
- (iii) approval by the Company of the Owner's performance or compliance with the Contract.

13.2 Tax Invoices

- (a) The Owner must, unless otherwise agreed with the Company, render a Tax Invoice to the Company in relation to the provision of the Equipment Hire at the end of each month during the period in which the Equipment Hire is provided and calculated by reference to the prices, fees or other amounts specified in Schedule B (Prices).
- (b) Tax Invoices must be in a form acceptable to the Company and must contain the following information:
 - (i) a brief description of the Equipment Hire provided in the period covered by the Tax Invoice; and
 - (ii) any further verification or documentation in relation to the Tax Invoice as is reasonably required by the Company.

13.3 Payment of Tax Invoices

- (a) Subject to Clauses 13.4, 15, 27.9(e) and 31.2, the Company must pay to the Owner the amount shown on the Tax Invoice in accordance with the Payment Terms (or, if none are specified, within 45 days following the end of the month in which the Tax Invoice is received by the Company).
- (b) If an amount is payable by the Owner to the Company, the Owner must pay that amount within 45 days of receipt of a written demand from the Company.

13.4 Disputed Tax Invoices

If the Company disputes any amount shown on a Tax Invoice, it must notify the Owner within 21 days of receipt of the Tax Invoice and must pay any amounts not in dispute in accordance with Clause 13.3, provided that the payment by the Company of any amount the subject of a disputed Tax Invoice is not to be considered as an acceptance of the amount in dispute or of the Company's liability to make that payment.

13.5 Errors or exceptions in invoicing

Without limiting Clause 13.3, if the Owner discovers or is advised of any errors or exceptions relating to its invoicing for the Equipment Hire, the Owner and the Company will jointly review the nature of the errors or exceptions, and the Owner must, if appropriate, take prompt corrective action and adjust the relevant Tax Invoice and/or refund overpayments.

13.6 Security of Payment

- (a) This Clause 13.6 only applies where, and to the extent that, the Payment Act is applicable to any part of the Equipment Hire.

- (b) Nothing in the Contract will affect, restrict or limit the Owner's right to:
 - (i) refer for adjudication any dispute falling within section 17 of the Payment Act; and
 - (ii) suspend the Equipment Hire under section 27 of the Payment Act.

- (c) Notwithstanding anything else in the Contract, the Owner must:
 - (i) promptly give the Company a copy of any notice the Owner receives from a subcontractor under section 27 of the Payment Act; and
 - (ii) ensure that each subcontractor promptly gives the Company a copy of any notice that the subcontractor receives from another person under section 27 of the Payment Act.

- (d) If the Company becomes aware that a subcontractor is entitled to suspend work (which forms part of the Equipment Hire) under section 27 of the Payment Act, the Company may (in its absolute discretion) pay the subcontractor such money that is, or may be, owing to the secondary subcontractor for work forming part of the Equipment Hire and any amount paid by the Company is recoverable from the Owner as a debt due and immediately payable to the Company.

- (e) For the purposes of this Clause 13.6:
 - (i) work refers to work which the Owner is, or may be, required to execute or provide under the Contract and includes goods, materials, plant, equipment, design and other services and temporary works; and
 - (ii) a reference to a subcontractor refers to any person engaged by the Owner, its subcontractors or any other person to carry out work which forms part of the Equipment Hire.

14. PPSA

14.1 Meaning of terms

In this Clause 14, "security interest", "secured party", "perfected", "personal property", "possession" and "control" have the meanings given to them in the PPSA.

14.2 Further assurance

Whenever a Party requests that the other Party does anything reasonably necessary to ensure this Contract and any security interest granted under it is fully effective, enforceable and perfected with the priority to which they are entitled under the PPSA, that Party will promptly do so at its own cost. This may include:

- (a) doing anything to make, procure or obtain any consent, authorisation, registration or approval in respect of anything, or to facilitate it;
- (b) creating or executing (or procuring the creation or execution of) any document,

including any form, notice, consent or agreement; and

- (c) delivering documents or evidence of title or otherwise giving possession or control with respect to any personal property or other asset.

14.3 PPSA exclusions

- (a) To the extent this Contract or the transactions contemplated by it create a security interest under the PPSA, the parties contract out of each provision of the PPSA which section 115 permits, other than sections 96, 117, 118, 120, 123, 126, 128, 129, 134(1) and 135.
- (b) Nothing in this clause or the provisions of the PPSA set out in Clause 14.3(a) above shall derogate from the terms of this Contract.
- (c) Each party waives its right to receive:
 - (i) each notice which sections 144 or 157 of the PPSA permits it to waive and, to the extent capable of being waived, notice under any other provision of the PPSA; and
 - (ii) anything from the secured party under section 275 of the PPSA and each Party agrees not to make any request of the secured party of the other Party under that section.

14.4 Permitted disclosure

Despite Clause 34, a Party may disclose confidential information:

- (a) for the purposes of enforcing this Contract, in a proceeding arising out of or connected with this Contract or to the extent that disclosure is regarded by a Party as necessary to protect its interests under this Contract;
- (b) as required by any Government Agency or any procedure for discovery in any proceedings;
- (c) as required under law (except that this Clause 14.4(c) does not require or allow a Party to disclose any information of the kind referred to in section 275(1) of the PPSA); or
- (d) to its legal advisers and consultants.

14.5 Survival of obligation

This Clause 14 survives the expiry or termination of this Contract.

15. Deduction from payments

15.1 Deductions

The Company may:

- (a) deduct from any moneys due or becoming due to the Owner pursuant to Clause 13.3 the following amounts (plus any Indirect Transaction Taxes in respect of such deductions payable in accordance with Clause 12):
 - (i) all debts and moneys due from the Owner or its Personnel to the Company;

- (ii) all Liabilities which the Company may have paid, suffered or incurred and which or for which the Owner or its Personnel is or are liable to bear, pay or reimburse to the Company (including pursuant to any indemnity contained in the Contract); and

- (iii) the cost of remedying or rectifying any defective or damaged Equipment; or

- (b) without prejudice to the Company's rights pursuant to any other provision of the Contract, if the Owner fails to perform any of its obligations under the Contract, without notice withhold payment of all or part of any amount payable to the Owner under the Contract, until the matter has been remedied.

15.2 Deductions and withholdings required by law

- (a) If the Company is required by law to withhold or deduct any amount (**Deducted Amount**) from an amount payable under the Contract, the Deducted Amount will be treated as having been paid to the Owner when it is withheld or deducted and the Company will not be liable to pay any amount on account of the Deducted Amount to the Owner.
- (b) If the Company fails to withhold or deduct a Deducted Amount, the Company may:
 - (i) give Notice to the Owner demanding payment of an amount equal to the Deducted Amount and the Owner will pay that amount to the Company within 30 days of receiving the Notice;
 - (ii) deduct an amount equal to the Deducted Amount from any amounts payable by the Company to the Owner and the amount so deducted will be treated as having been paid to the Owner when it is deducted and the Company will not be liable to pay any amount on account of the Deducted Amount to the Owner; or
 - (iii) recover an amount equal to the Deducted Amount by a combination of a demand under Clause 15.2(b)(i) and deducting an amount under Clause 15.2(b)(ii),

and in each case where the failure to withhold or deduct the Deducted Amount arises as a result of any act, omission or oversight of the Owner, the Deducted Amount will include any fines, penalties or interest payable by the Company in respect of the Deducted Amount.

15.3 Notification of withholding or deductions

The Company must notify the Owner of the details of any amounts withheld or deducted pursuant to Clauses 15.1 or 15.2.

15.4 Clause to survive termination

This Clause 15 will survive the termination or expiry of the Contract.

16. Alternative Equipment Hire

16.1 Alternative Equipment Hire

If, in the Company's reasonable opinion, the Owner:

- (a) fails to proceed with all or any part of the Equipment Hire, with due expedition and without delay; or
- (b) fails to perform all or any part of the Equipment Hire in accordance with the Contract,

for any reason (including Force Majeure), the Company may, in its sole and absolute discretion, take the affected part of the Equipment Hire out of the hands of the Owner and engage a third party to complete such part of the Equipment Hire (**Alternative Equipment Hire**).

16.2 Owner responsible for incremental costs

- (a) If the Company exercises its rights under Clause 16.1 to take the affected part of the Equipment Hire out of the hands of the Owner and engages a third party to complete an Alternative Equipment Hire, the Company is entitled to recover from the Owner any loss, damage, cost or expense suffered or incurred by the Company, or which the Company reasonably considers it will suffer or incur, in completing the Alternative Equipment Hire that are greater than the amount which would have been paid to the Owner if the Alternative Equipment Hire had been completed by the Owner (**Alternative Equipment Hire Costs**) except where the reason for the inability to perform all or part of the Equipment Hire was:
 - (i) due to the Owner being subject to Force Majeure; or
 - (ii) as a direct result of an act or omission of the Company.
- (b) The Company must use reasonable endeavours in exercising its rights under Clause 16.1 to take the affected part of the Equipment Hire out of the hands of the Owner and engage a third party to complete the Alternative Equipment Hire at the minimum cost reasonably available.
- (c) The Company may assess the Alternative Equipment Hire Costs that it considers it will incur. Such costs will be a debt due and immediately payable by the Owner to the Company upon receipt by the Owner of a written demand from the Company for such costs.

17. Preservation of existing third party supply arrangements

The Owner acknowledges that:

- (a) supply arrangements exist between the Company and third party suppliers as at the date of the Purchase Order; and
- (b) the Company has no obligation to the Owner to seek to alter, modify or terminate any of the supply arrangements referred to in Clause 17(a).

18. No minimum purchase or exclusivity

18.1 No minimum purchase

Nothing in the Contract obliges the Company to request or acquire any minimum level of Equipment Hire from the Owner.

18.2 No exclusivity

The Contract is not evidence of, nor does it create, an exclusive relationship between the Company and the Owner in respect of the Equipment Hire (or any aspect of it).

19. Owner Personnel, Facilities and equipment

19.1 Owner Personnel

The Owner is required to supply all Personnel necessary for the proper performance of the Equipment Hire. Such Personnel must be appropriately qualified, competent and skilled to perform the relevant part of the Equipment Hire in respect of which they are engaged.

19.2 Engagement of Personnel

The Owner must ensure that all Personnel of the Owner engaged to provide any part of the Equipment Hire comply with Clauses 34, 35, 36, **Error! Reference source not found.**, 39 and 41 with respect to confidentiality, public announcements, third party Intellectual Property Rights, business standards, modern slavery and compliance with the Code of Conduct Policy.

19.3 Company may object to Personnel

The Company Representative may object to any of the Owner's Personnel who, in the reasonable opinion of the Company Representative, is lacking in appropriate skills or qualifications, engages in misconduct or is incompetent or negligent. The Owner must remove such Personnel upon receipt from the Company Representative of Notice requiring it to do so and must not re-employ that person in connection with the Equipment Hire without the prior written consent of the Company Representative. In addition, the Owner must at its cost replace such removed Personnel with suitably qualified, competent and skilled Personnel approved by the Company.

19.4 Owner responsibilities

The Owner is responsible for:

- (a) the transportation of its Personnel to and from the Site and will provide for the movement of its Personnel on the Site at all times and all vehicles and drivers used for this purpose must be properly licensed and all vehicles must comply with the requirements of any applicable road safety and traffic laws, legislation and regulations;
- (b) the supply of all labour, supervision, tools, equipment, materials, power, water, safety equipment and other requirements necessary for the Owner to provide the Equipment Hire in accordance with the Contract; and
- (c) the health and safety of its Personnel.

19.5 Company Facilities

- (a) Subject to Clauses 19.4 and Clause 19.5(b), to the extent that the Company has relevant Facilities in place which are available, those Facilities will be available for use by the Owner or any of its Personnel in relation to the provision of the Equipment Hire. The Owner is responsible for the provision of any Facilities which are required for the provision of the Equipment Hire to the extent that they are not already in existence and available (as determined by the Company).
- (b) The Owner is required to inform the Company Representative at least 7 days in advance of its requirements in relation to the use of the Company's Facilities. The terms of use of any of the Company's Facilities will be at the Company's discretion.
- (c) The Owner must ensure that at all times the Site and any Facilities used are left in a clean, orderly and safe condition and fit for immediate use.

19.6 Improper or defective items

- (a) All of the Owner's equipment must comply with the requirements of this Contract, the Company's policies and procedures including in relation to fitness for purpose (a copy of which has been provided to the Owner), all relevant laws, applicable codes of practice, standards, and industry guidelines and be properly licensed or certified.
- (b) The Company Representative may inspect any of the Owner's equipment, materials, plant, machinery or implements and may:
 - (i) object to and have removed from the Site any improper or defective materials, plant, machinery, equipment or implements;
 - (ii) reject any item of the Owner's equipment which it considers in its absolute discretion to be unsuitable for the purpose for which the Owner proposes to use it; and
 - (iii) request the addition of such items as in the opinion of the Company Representative are necessary for the due completion and fulfilment of the Contract.
- (c) If the Owner fails to comply with any such objection or request made by the Company Representative within 7 days of receiving Notice of that objection or request, then the Company may add to or remove such materials, plant, machinery, equipment or implements as it sees fit at the cost of the Owner (the cost of such action so taken by the Company being recoverable from the Owner as a debt due and immediately payable upon receipt of a written demand from the Company for such costs).

20. Packing, despatch and transport

20.1 Owner responsible

The Owner is responsible, at its cost, for packing and transporting the Equipment to the Delivery Point.

20.2 Where Company to arrange transport

If, pursuant to the terms of the Contract, the Company is obliged to arrange transport of all or some of the Equipment (including where transport is required between the Delivery Point, Site and/or Return Point), then the Owner must notify the Company Representative of the details of that Equipment ready for despatch in sufficient time to enable transport to be arranged.

20.3 Preparation for transport

The Owner must pack and protect all Equipment ready for despatch in accordance with the Company's freight preparation policy (which can be provided upon request). The Owner must provide and fit all lifting and handling devices required for lifting and handling the Equipment in transit.

20.4 Notification of despatch dates

The Owner must notify the Company Representative promptly of the date of despatch of each item and the estimated date of arrival at the Delivery Point.

21. Inspection

The Company Representative has the right to inspect any of the Equipment at any time to determine whether the Equipment is in accordance with the Contract and is to the standard provided for in the Contract.

22. Health, safety and environment

22.1 Application of Clause

This Clause 22 applies to the extent the Owner or any of its Personnel (including an Operator) are required to be on, or near the vicinity of, the Site for the purposes of the Equipment Hire.

22.2 Owner acknowledgment

The Owner acknowledges that there is a direct relationship between the Owner's health, safety and environmental performance and the success of the Company's business.

22.3 Compliance with health, safety and environmental laws, policies and standards

The Owner agrees to comply, and to ensure that its Personnel comply, with:

- (a) without limiting Clause 23, the Company's health, safety and environmental policies and associated standards a copy of which has been provided or made available to the Owner (***HSE Policies and Standards***);
- (b) without limiting Clause 24, all relevant health, safety and environmental legislation and laws in force from time to time; and

- (c) the health, safety and environmental conditions contained in this Clause 22.

22.4 Health, Safety and Environmental Management Plan(s)

- (a) The Owner must on request by the Company submit proposed health, safety and environmental management plans (**HSE Management Plan(s)**) consistent and in accordance with the HSE Policies and Standards, and to provide the HSE Management Plan(s) to the Company for review.
- (b) The Company Representative will review the proposed HSE Management Plan(s) and provide the Owner with any request for amendments.
- (c) The Owner and its Personnel may not commence performance of the Equipment Hire on-Site unless and until the HSE Management Plan(s) and any requested amendments have been approved by the Company Representative.
- (d) The Company Representative may at any time direct the Owner to amend the approved HSE Management Plan(s) to adequately reflect any amendments to the HSE Policies and Standards.
- (e) The Owner must keep a copy of the approved HSE Management Plan(s) at its on-Site office or work area at all times during the Term.

22.5 Induction Courses

- (a) Each of the Owner's Personnel must attend all appropriate and relevant induction courses required by the Company (**Company Induction Courses**).
- (b) Where, pursuant to the operating rules for specific areas of the Company or the Site, any of the Owner's Personnel are required to have specific skills for the performance of the Equipment Hire (**Company Competencies**), the induction and training requirements in relation to those Company Competencies must:
- (i) be included in the HSE Management Plan(s);
 - (ii) to the extent they are not set out in the Specifications, be confirmed with the Company Representative; and
 - (iii) be undertaken by the relevant Personnel prior to the commencement of any work on, or near the vicinity of, the Site.
- (c) Unless otherwise agreed:
- (i) the Company will arrange and pay for the Company Induction Courses and will be responsible for the costs of Owner Personnel attending the Company Induction Courses; and
 - (ii) the Owner will arrange and pay for all training courses in respect of Company Competencies and will be responsible for the costs of Owner Personnel attending such training courses.

- (d) Any person visiting the Owner on Site to meet Personnel working on the Site, and who is not performing any type of manual work, will also be required to attend the relevant Company Induction Courses. However, this requirement will not apply if the visitor is accompanied at all times whilst on Site by a person who has attended all relevant Company Induction Courses, and has all required Company Competencies in relation to access to the Site.

22.6 Owner to remain liable

Nothing in this Clause 22 (including the approval of the HSE Management Plan(s) by the Company) limits or removes any obligation or duty imposed on the Owner or any of its Personnel (whether under the Contract or otherwise) to secure or have regard to the health and safety of any of its Personnel.

22.7 Removal from Site

Notwithstanding any other term of the Contract, in the event of any breach of this Clause 22, the Company may:

- (a) require the Owner, Owner's Personnel and/or any other person to leave the Site immediately; and
- (b) require the Owner and/or any of its Personnel to remove any material or substance that the Owner brought to the Site (including any mixture of materials or substances containing such material or substance that the Owner brought to the Site) from the Site,

and the Owner must, at its own cost, ensure such request is immediately complied with and take all possible action to ensure the protection and safety of all works, personnel and the environment.

22.8 Right of Company to audit Owner performance

The Owner must provide the Company with such documentation and access to the Owner's Personnel as the Company reasonably requests in order to verify, monitor and audit the Owner's compliance with:

- (a) the HSE Management Plan(s) and the health, safety and environmental conditions and obligations set out in this Clause 22; and
- (b) the Police and Standards; and
- (c) the other requirements of the Contract.

22.9 Action by Owner

Without limiting any other rights or remedies available to the Company as a result of the Owner's non-compliance with any of the conditions, policies and standards referred to in Clause 22.8, if deficiencies are identified by an audit undertaken under Clause 22.8, the Owner must take prompt corrective action and notify the Company of such action.

23. Compliance with Company policies

- (a) During the Term, the Owner must, and must ensure that its Personnel, comply with the Policies and Standards of the Company, as reasonably required and notified by the

Company from time to time by notice to the Owner in writing.

- (b) Where there is a Change in Policies and Standards during the Term:
- (i) the Owner must give a written notice to the Company Representative within 5 Business Days after the Change in Policies and Standards containing:
 - (A) details of the Change in Policies and Standards; and
 - (B) an estimate of the Owner's increased or decreased costs of complying with the Change in Policies and Standards including sufficient information to support the estimate; and
 - (ii) if a notice is given by the Owner which complies with Clause 23(b)(i), then within 5 Business Days after the notice being given, the Company Representative may:
 - (A) direct the Owner to disregard the Change in Policies and Standards; or
 - (B) direct the Owner to comply with the Change in Policies and Standards and the Owner will be entitled to a reasonable adjustment to the Contract Price to reflect the Owner's increased or decreased costs to comply with the Change in Policies and Standards, and
- (c) If there is a change in the Policies and Standards which does not constitute a Change in Policies and Standards, the Owner must comply with the change and will not be entitled to make, and the Company will not be liable upon, any Claim arising out of or in any way in connection with such change.

24. Laws

24.1 Compliance with laws

During the Term, the Owner must:

- (a) comply with all applicable legislation, laws and Government Agency requirements relating to its obligations under the Contract and ensure that each of its Personnel does the same; and
- (b) in relation to the provision of the Equipment Hire, at its cost:
 - (i) obtain all necessary notices, licences, permits and authorities;
 - (ii) give all necessary notices;
 - (iii) pay all necessary fees, deposits and Taxes,

and, if requested by the Company, must provide evidence of the matters referred to in this Clause 24.1(b).

24.2 Consequences of breach

Notwithstanding any other Clause of these General Conditions or any other term of the Contract, in the

event of any breach of Clause 23 or this Clause 24 by the Owner, the Company may:

- (a) require the Owner, the Owner's Personnel, and/or any other person to leave the Site immediately; and
- (b) require the Owner and/or any of its Personnel to remove any material, equipment or substance that the Owner brought to the Site (including any mixture of materials or substances containing such material or substance that the Owner brought to the Site) from the Site,

and the Owner must, at its cost, ensure such request is immediately complied with and take all possible action to ensure the safety of all Personnel and the environment.

25. Co-operation with third parties

25.1 No interference

The Owner must not impede or interfere with the work of any other suppliers or their personnel (whether employed or engaged by the Company or not) on-Site during the Term.

25.2 No compensation

The Owner is not entitled to any increase in the Contract Price, damages, costs or any other financial or other compensation as a result of any interference on-Site from other suppliers, contractors or their personnel.

26. Force Majeure

26.1 Notice of Force Majeure

A Party will not be liable for any delay or failure to perform any of its obligations under the Contract (other than an obligation to pay money) due to Force Majeure if as soon as possible after the beginning of the Force Majeure affecting the ability of the Party to perform any of its obligations under the Contract, it gives a Notice to the other Party that complies with Clause 26.2.

26.2 Force Majeure Notice

A Notice given under Clause 26.1 must:

- (a) specify the obligations the Party cannot perform;
- (b) fully describe the Force Majeure;
- (c) estimate the time during which the Force Majeure will continue; and
- (d) specify the measures proposed to be adopted to remedy or abate the Force Majeure.

26.3 Obligation to remedy and mitigate

The Party that is prevented from carrying out its obligations under the Contract as a result of Force Majeure must:

- (a) remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible; and

- (b) take all action reasonably practicable to mitigate any Liabilities suffered by the other Party as a result of its failure to carry out its obligations under the Contract.

27. Insurances

27.1 Owner Insurances

Unless otherwise provided in the Purchase Order, the Owner is required, at its cost, to effect and maintain throughout the Term and any additional period specified in the Contract, each of the insurances described in Clauses 27.2, 27.3, 27.4, 27.5, 27.6, 27.7 and 27.8 (**Owner Insurances**) in relation to risks or occurrences arising, or which may arise, out of the performance of the Contract.

27.2 General and Product Liability Insurance

- (a) Insurance covering all Liabilities in respect of any injury to, or death of, any person not being a person who at the time of the occurrence is engaged in or upon the service of the insured under a contract of service or apprenticeship, or any loss, damage or destruction to property not belonging to nor in the care, custody or control of the insured, however caused. Such insurance must provide cover to an amount of not less than A\$20,000,000 for each and every claim.
- (b) The insurance outlined in Clause 27.2(a) must waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract.

27.3 Workers' Compensation and Employer's Liability Insurances

Workers' compensation and employers' liability insurances covering all Liabilities, whether arising under statute, common law or civil law, in relation to the death of, or injury to, any employee of the Owner or any person deemed to be an employee of the Owner.

27.4 Owner's Equipment

The Owner must maintain insurance covering all loss and damage to the Equipment, for its replacement value. The insurance must, unless prohibited by law, waive all express or implied rights of subrogation against the Company and its Personnel.

27.5 Goods in transit

If the performance of the Contract requires the Owner to transport goods, materials, supplies, equipment or other items to or from the Site, unless otherwise advised by the Company in writing, the Owner will maintain insurance covering loss of or damage to the goods, materials, supplies, equipment or other items during transit, regardless of whether the Company has paid for those goods, materials, supplies, equipment or other items. Such insurance must note the Company as a party insured under the policy.

27.6 Motor Vehicle/Automobile Third Party Liability Insurance

- (a) If the performance of the Contract requires the Owner or its Personnel to use or provide for use motor vehicles, the Owner must maintain or require the owners of such motor vehicles to maintain third party liability insurance covering all Liabilities in respect of any injury to, or death of, any person or any loss, damage or destruction to any property arising from the use of such motor vehicles.
- (b) The insurance outlined in Clause 27.6(a) must, unless prohibited by law, waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract

27.7 Marine Insurance

- (a) If the performance of the Contract requires or involves the use of watercraft, the Owner must maintain or require the owners of such watercraft to maintain:
- (i) marine hull and machinery insurance, including collision liability, on all watercraft so used, with a limit of cover not less than the market value of the watercraft; and
 - (ii) protection and indemnity insurance including coverage for injuries or death of masters, mates and crews.

Such insurance must provide cover to an amount of not less than A\$20,000,000 for each and every claim.

- (b) The insurance outlined in Clause 27.7(a) must, unless prohibited by law, be endorsed to:
- (i) insure the Company and its Personnel for their respective rights and interests arising out of the performance of the Contract;
 - (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
 - (iii) waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract; and
 - (iv) include a clause that provides that a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

27.8 Aviation Insurance

- (a) If the performance of the Contract requires or involves the use of aircraft (including helicopters), the Owner must maintain or require owners of such aircraft to maintain:
- (i) aircraft hull insurance, on all aircraft so used, with a limit of cover not less than the market value of the aircraft; and
 - (ii) liability insurance including coverage for injuries or death of crew,

passengers and any other person, and in respect of loss of or damage to cargo.

Such insurance must provide cover to an amount of not less than A\$10,000,000 for each and every claim.

- (b) The insurance outlined in Clause 27.8(a) must, unless prohibited by law, be endorsed to:
- (i) insure the Company and its Personnel for their respective rights and interests arising out of the performance of the Contract;
 - (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
 - (iii) waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract; and
 - (iv) include a clause that provides that a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

27.9 Insurance terms

- (a) If the Owner Insurances are subject to the application of any self-insured retention, excess or deductible, the amount of the self-insured retention, excess or deductible must be declared to the Company.
- (b) The Owner Insurances must be underwritten by a reputable insurer with a security rating from A.M. Best of not less than "A" and on terms and conditions consistent with prudent risk management practice.
- (c) No provision contained in this Clause 27 will limit the Owner's liability in relation to the indemnities in the Contract.
- (d) Before performing any of the Equipment Hire, and each time the policies are renewed or varied, the Owner must provide the Company with an insurance certificate of currency or such other evidence as the Company may reasonably require that the Owner and its Sub-contractors are insured in accordance with the Contract.
- (e) In the event that the Owner fails to, or fails to ensure that its Sub-contractors, effect or keep in force any of the insurances required pursuant to the Contract, the Company may do one or more of the following:
 - (i) effect and maintain such insurances and deduct the costs of such insurances from any moneys due to the Owner;
 - (ii) refuse the Owner and its Personnel access to all or any part of the Site; and/or
 - (iii) treat the failure to insure as a material default under the Contract.

- (f) All Owner Insurances must not be varied to the detriment of the Company or its Personnel, cancelled or allowed to lapse unless the Owner has received a written consent from the Company.

27.10 Notification under Owner's policy

If the Owner becomes aware of an event which may give rise to a claim involving the Company under any policy of insurance effected by the Owner as required by this Clause 27, the Owner must notify the Company and must ensure that the Company is kept fully informed of subsequent action or developments concerning the claim.

27.11 Sub-contractors' insurance

The Owner must ensure that its Sub-contractors have the benefit of or effect and maintain insurances equivalent to the Owner Insurances required to be effected by the Owner.

27.12 Insurance claims and payments of insurance excess

- (a) The Owner will be responsible for the payment of any excess or deductible relating to the insurances effected by the Owner and the Owner will not be entitled to recover from the Company any excess or deductible so paid by the Owner.
- (b) The Owner will be responsible for the payment of any excess or deductible relating to the insurances effected by the Owner where the Company makes a claim under such policy, to the extent that the Company determines that the Owner or any of its Personnel were responsible for the loss or damage the subject of the claim.

27.13 Survival of Clause

This Clause 27 will survive the expiry or earlier termination of the Contract.

28. Indemnities

28.1 Acknowledgement

The Owner acknowledges that if it enters on to the Site, it does so at the Owner's own risk. The Owner must ensure that its Personnel are also aware that they enter onto the Site at their own risk.

28.2 Indemnity

- (a) Subject to Clause 28.3, the Owner will indemnify (and will keep indemnified) the Company, and its Personnel (**Indemnified Parties**) from and against all Liabilities that any Indemnified Party suffers, sustains or incurs, arising out of or in connection with any one or more of the following:
 - (i) the breach by the Owner or its Personnel of any of the Owner's obligations (including any warranty) under the Contract;
 - (ii) any negligent act or omission, fraud or Wilful Misconduct by the Owner or its Personnel arising out of the performance of the Contract; or

- (iii) any claim made against the Company by any of the Owner's Personnel in respect of relevant legislation concerning income tax, workers' compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal.
- (b) The Company is entitled to recover from the Owner an amount due to its Personnel under the indemnity in Clause 28.2(a) on behalf of its Personnel and will hold any amount recovered, and the benefit of the indemnity in Clause 28.2(a) to which its Personnel is entitled, as trustee for and on behalf of its Personnel.
- (c) For the avoidance of doubt, the indemnity set out in this Clause 28.2 includes (but is not limited to) any legal costs awarded against and/or incurred by the Indemnified Parties on a full indemnity basis.

28.3 Exclusions

The Owner will not be liable under Clause 28.2 to the extent that the Liability was caused, or contributed to, by the Company's or its Personnel's negligent acts or omissions or Wilful Misconduct.

28.4 Indemnity continuing

Each indemnity in the Contract is a continuing obligation separate and independent from the Owner's other obligations and survives termination or expiry of the Contract.

28.5 No requirement for expense before enforcing indemnity

It is not necessary for the Company or its Personnel to incur expense or make payment before enforcing a right of indemnity conferred by the Contract.

29. Consequential Loss

29.1 Consequential Loss

Notwithstanding any other provision of the Contract but subject to Clause 29.2 and to the extent permitted by law, neither Party is liable to the other Party for the other Party's Consequential Loss.

29.2 Exclusions from Consequential Loss

Clause 29.1 does not limit or exclude the Owner's liability in respect of:

- (a) any personal injury or death of any person or any loss or damage to third party property (other than the property of the Company);
- (b) its indemnity obligations under Clauses 34.4, 36.2, 38.3, 39.6 and 46.5;
- (c) a breach of Clause 34 by the Owner;
- (d) its obligations to rectify or remedy a defect or any damage caused by a defect;
- (e) fraud, Wilful Misconduct or illegal acts of the Owner or its Personnel;
- (f) the Owner's abandoning all or a substantial part of the Equipment Hire (to the extent that

it evidences an intention of a party not to be bound by the Contract);

- (g) any amount recoverable under an insurance policy required to be effected and maintained under the Contract; or
- (h) any amount which would have been recoverable under an insurance policy required to be effected and maintained under the Contract but for:
 - (i) the Owner failing to take out and maintain the insurances required by the Contract;
 - (ii) the Owner vitiating or prejudicing any insurance policy;
 - (iii) the Owner failing to make a claim under an insurance policy; or
 - (iv) the exclusion of liability for Consequential Loss in Clause 29.1.

30. No fault termination

30.1 Termination for convenience

- (a) The Company may, at any time in its absolute discretion, terminate the Contract or any part of it for any reason by giving the Owner not less than 30 days' Notice of its intention to do so.
- (b) If for any reason a purported termination or action by the Company under Clause 31.2 or Clause 31.3 is ineffective, the purported termination is not a breach or repudiation of the Contract and the Contract is deemed to have been terminated under Clause 30.1(a).

30.2 Owner compensation

- (a) Following termination of the Contract by the Company pursuant to this Clause 30, the Owner's sole entitlement is to be paid the:
 - (i) value of the Equipment Hire delivered prior to the termination date that the Company has not already paid for;
 - (ii) the reasonable and unavoidable fixed costs, if any, necessarily and properly incurred by the Owner solely as a result of the Contract in terminating or otherwise dealing with any subcontracts entered into prior to the date of termination but only if the Owner takes all reasonable steps to minimise these costs; and
 - (iii) the Owner's reasonable out-of-pocket expenses which it has incurred solely as a result of the Contract and which it is unable to otherwise recover or mitigate, in:
 - (A) removing the Equipment from the Site; and
 - (B) transporting Owner Personnel back to their place of engagement.
- (b) For the purposes of Clause 30.2(a), the Owner must provide the Company with such copies of its documentation including records, books and (subject to confidentiality

restrictions) contracts as the Company may require in order to verify the amounts claimed by the Owner.

31. Material default and insolvency

31.1 Owner Default Notice

- (a) If a Party breaches a material term of the Contract, the non-defaulting Party may serve a Notice of default (**Default Notice**) on that Party containing the information specified in Clause 31.1(b).
- (b) A Default Notice must:
 - (i) state that it is a Notice under this Cause 31.1;
 - (ii) specify the relevant breach;
 - (iii) if the breach is capable of being remedied, state that the breach must be remedied within a specified period of not less than 10 Business Days after service of the Default Notice or state that the breach is incapable of remedy.

31.2 Termination for Material Default

If the breach is not remedied within the period specified in the Default Notice or is incapable of remedy, then the non-defaulting Party may by further Notice do one or more of the following:

- (a) if the non-defaulting Party is the Company, it may elect wholly or partly to suspend payment under the Contract until the breach has been remedied by the Owner;
- (b) if the non-defaulting Party is the Owner, suspend performance of all or any part of the Equipment Hire until such time as the Company's default is remedied;
- (c) take such action as the non-defaulting Party deems reasonably necessary to cure the breach (the cost of such action so taken by the non-defaulting Party being recoverable as a debt due and immediately payable by the other Party upon receipt of a written demand from the non-defaulting Party for such costs); or
- (d) terminate the Contract or any part of it with effect from a specified date.

31.3 Owner insolvency or bankruptcy

If the Owner becomes Insolvent, then the Company may either:

- (a) terminate the Contract with immediate effect by Notice to the Owner or any other person in whom the Contract has been vested; or
- (b) give the person in whom the Contract has been vested, the option to perform the Equipment Hire in accordance with the Contract, subject to that person providing a guarantee on terms satisfactory to the Company up to the value (as certified by the Company Representative) of the Equipment Hire remaining to be performed pursuant to the Contract.

31.4 Cost of completing the Equipment Hire

- (a) If the Contract is terminated by the Company pursuant to Clauses 31.2(d) or 31.3(a), the Company is entitled to recover from the Owner any loss, damage, cost or expense suffered or incurred by the Company in completing the Equipment Hire that are greater than the amount which would have been paid to the Owner if the Equipment Hire had been completed by the Owner (**Company Completion Costs**).
- (b) Following termination by the Company pursuant to Clauses 31.2(d) or 31.3(a), the Company may assess the Company Completion Costs that it considers it will incur. Such costs will be a debt due and immediately payable by the Owner to the Company upon receipt by the Owner of a written demand from the Company for such costs.

32. Termination generally

32.1 Obligations upon receipt of termination Notice

Upon receipt or issue of a termination Notice pursuant to Clauses 30.1 or 31.2(d), the Parties must:

- (a) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of the Equipment;
- (b) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination; and
- (c) take any other action reasonably required by the other Party in relation to the termination.

32.2 Obligations upon termination

- (a) Subject to Clause 32.2(b), if the Contract is terminated pursuant to Clauses 30.1, or 31.2(d), then immediately upon the issue of the termination Notice or on the date of termination specified in the termination Notice, whichever is later, the Owner must:
 - (i) cease performance of the Equipment Hire except for any work the Company may specify in the Notice of termination for the sole purpose of protecting the Equipment;
 - (ii) provide the Company with a detailed report in such form as the Company may reasonably require in relation to the Equipment Hire performed up to and including the date of termination as set out in the termination Notice;
 - (iii) return to the Company any items issued to the Owner by the Company during the Term;
 - (iv) offer the Company first right of refusal to purchase any of the Owner's equipment used for the purposes of the Contract to be purchased by the Company at its depreciated value or such other value as agreed by the Parties;
 - (v) if required by the Company, assign, novate or transfer any subcontract for

- the performance of the Equipment Hire from the Owner to the Company or its nominee on terms reasonably required by the Company or as otherwise agreed by the Parties;
- (vi) collect, receive and remove the Equipment from the Return Point (where the Company has made the Equipment available at the Return Point as is applicable in the circumstances) and, in any case, remove all equipment and Owner's Personnel from the Site;
 - (vii) remove from the Site any wreckage, rubbish and debris of any kind as directed by the Company, and leave the whole of the Site which was within the Owner's control, use or possession in a clean and safe condition; and
 - (viii) take any other action relating to the termination of the Contract as the Company may reasonably require.
- (b) If the Contract is terminated by the Owner as a result of the material default of the Company, the Owner's obligations pursuant to Clause 32.2(a) will be subject to the Company first paying the Owner any amounts owing which are the subject of the Company's material default of the Contract.
 - (c) Following termination of the Contract by the Owner pursuant to Clause 31.2(d), the Owner's sole entitlement is to be paid:
 - (i) the value of the Equipment Hire performed prior to the termination date that the Company has not already paid for;
 - (ii) the reasonable and unavoidable fixed costs, if any, necessarily and properly incurred by the Owner solely as a result of the Contract in terminating or otherwise dealing with any subcontracts entered into prior to the date of termination but only if the Owner takes all reasonable steps to minimise these costs;
 - (iii) the Owner's reasonable out-of-pocket expenses which the Owner has incurred solely as a result of the Contract and which it is unable to otherwise recover or mitigate, in:
 - (A) removing the Owner's plant and equipment from the Site; and
 - (B) transporting Owner Personnel back to their place of engagement; and
 - (iv) the Owner's reasonable and direct costs of producing the report referred to in Clause 32.2(a)(ii).
 - (d) For the purposes of Clause 32.2(c), the Owner must provide the Company with copies of its documentation including records, books and (subject to confidentiality restrictions) contracts as the Company may reasonably require in order to verify the amounts claimed by the Owner.

32.3 Termination general

- (a) If the Contract is terminated pursuant to Clauses 31.2(d):
 - (i) no action taken by the non-defaulting Party will prejudice the existence of any of its rights and remedies under the Contract which the non-defaulting Party may have as a result of the relevant breach; and
 - (ii) except where expressly provided otherwise, rights of the non-defaulting Party will be the same as they would have been at law had the other Party repudiated the Contract and the non-defaulting Party had elected to treat the Contract as at an end and recover damages.
- (b) If the Contract is terminated pursuant to Clauses 30.1 or 31.2(d), then the Company may complete the Equipment Hire itself or by engaging a third party.
- (c) If the Company repudiates the Contract and the Owner accepts that repudiation, thereby terminating the Contract, the Owner is entitled to damages but is not entitled to any other compensation in the nature of restitution or damages calculated on a quantum meruit.

33. Dispute Resolution

33.1 Dispute

In the event of any dispute, question or difference of opinion between the Company and the Owner arising out of or under the Contract (**Dispute**), a Party may give to the other Party a Notice (**Dispute Notice**) specifying the Dispute and requiring its resolution under this Clause 33.

33.2 Dispute Representatives to seek resolution

- (a) If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party must nominate one representative from its senior management to resolve the Dispute (each, a **Dispute Representative**).
- (b) If the Dispute is not resolved within 30 days of the Dispute being referred to the respective Dispute Representatives, then either Party may commence legal proceedings in an appropriate court to resolve the matter.

33.3 Performance of obligations during Dispute

During the existence of any Dispute, the Parties must continue to perform all of their obligations under the Contract without prejudice to their position in respect of such Dispute, unless the Parties otherwise agree.

33.4 Urgent interlocutory relief

Nothing in this Clause 33 prevents a Party from seeking any urgent interlocutory relief which may be required in relation to the Contract.

34. Confidentiality

34.1 Obligation of confidentiality

The Owner undertakes and agrees:

- (a) to hold in strict confidence all Confidential Information and not to disclose or permit or cause the Confidential Information to be disclosed to any person other than any of its Personnel who require the Confidential Information for the purposes of providing the Equipment Hire; and
- (b) not to make use of the Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from the Confidential Information), except and solely to the extent necessary for the performance of the Equipment Hire,

unless the Owner has obtained the prior written consent of the Company to do so (which consent may be withheld by the Company in its absolute discretion or given on such terms as it sees fit).

34.2 Exceptions

Clause 34.1 does not apply to:

- (a) information after it becomes generally available to the public other than as a result of the breach of this Clause 34 or any other obligations of confidence imposed on the Owner; or
- (b) the disclosure of information in order to comply with any applicable law or legally binding order of any court, Government Agency or recognised stock exchange, provided that prior to such disclosure the Owner gives Notice to the Company with full particulars of the proposed disclosure and limits the disclosure to the maximum extent possible.

34.3 Breach of consent

The breach of any of the conditions contained in a consent granted by the Company pursuant to Clause 34.1 will be deemed to be a breach of the Contract.

34.4 Indemnity

- (a) Without limiting Clause 28, the Owner indemnifies the Company and its Personnel, and must keep them indemnified, in respect of any Liabilities incurred or sustained by them resulting from a breach of this Clause 34 by the Owner or its Personnel, except to the extent that the Liability was caused, or contributed to, by the Company's or its Personnel's negligent acts or omissions or Wilful Misconduct.
- (b) The Company is entitled to recover from the Owner an amount due to its Personnel under the indemnity in Clause 34.4(a) on behalf of such person or entity and will hold any amount recovered, and the benefit of the indemnity in Clause 34.4(a) to which that person or entity is entitled, as trustee for and on behalf of that person or entity.

34.5 Additional obligations

The obligations in this Clause 34 are in addition to and do not diminish the obligations of the Owner in respect of secret and confidential information at common law or under any statute or trade or professional custom or use.

34.6 Return of Confidential Information

If requested by the Company, whether prior to or after the expiry or earlier termination of the Contract, the Owner must promptly deliver to the Company all Confidential Information in the custody, possession or control of the Owner or any of its Personnel.

34.7 Permitted disclosure

Despite Clause 34.1 above, a Party may disclose Confidential Information:

- (a) for the purposes of enforcing this Contract, in a proceeding arising out of or in connection with this Contract or to the extent that disclosure is regarded by a Party as necessary to protect its interests under this Contract;
- (b) as required by any Government Agency or any procedure for discovery in any proceedings;
- (c) as required under law (except that this Clause does not require or allow a Party to disclose any information of the kind referred to in section 275(1) of the PPSA); or
- (d) to its legal advisers and consultants.

34.8 Survival of Clause

This Clause 34 will survive the termination or expiry of the Contract.

35. Public announcements

Except as required by any applicable law or regulatory requirement or as otherwise permitted by the Contract, the Owner may not make any public announcements or disclosures as to the Contract, or otherwise in relation to the subject matter of the Contract, without the prior written consent of the Company. In this regard, no media release or public announcement will be made in relation to the existence of the Contract without the Company's written approval and should such approval be given, then the wording of such release and the manner of publication must first be approved in writing by the Company.

36. Third party Intellectual Property Rights

36.1 Third party Intellectual Property Rights

The Owner warrants that to the extent that it uses or proposes to use the Intellectual Property Rights of any third party in the provision of the Equipment Hire, or to the extent the Company will use or might propose to use the Intellectual Property Rights of any third party in the use and enjoyment of the Equipment Hire:

- (a) it has obtained, or will obtain at no further cost to the Company, from the relevant third party all necessary licences and consents to use,

or assignments of, such Intellectual Property Rights; and

- (b) that it will not breach any of the licences or assignments referred to in Clause 36.1(a).

36.2 Owner Indemnity

- (a) Without limiting Clause 28, the Owner indemnifies the Company and its Personnel, and must keep the Company and its Personnel indemnified in respect of any Liabilities incurred or sustained by the Company or its Personnel resulting from any actual or alleged infringement of any Intellectual Property Rights of any third party arising out of or in connection with or caused by:
 - (i) the performance of the Equipment Hire by the Owner;
 - (ii) the performance or operations of any other plant, machinery, tools, equipment, process, work, material, matter, thing or method used or supplied by the Owner; or
 - (iii) the use and enjoyment of the Equipment Hire by the Company or its Personnel.
- (b) The Owner must notify the Company immediately if the Owner becomes aware of a Claim being threatened or made against the Company or its Personnel in relation to any of the matters covered by the indemnity in Clause 36.2(a).
- (c) The Company may require the Owner to conduct any litigation that may arise from a Claim referred to in Clause 36.2(b) and all negotiations for settlement of that Claim. However, the Owner must not make any settlement or consent to any judgment, order or verdict against the Company or its Personnel without the Company's prior written consent.
- (d) For the avoidance of doubt, the indemnity set out in this Clause 36.2 includes any legal costs awarded against and/or incurred by the Company or its Personnel on a full indemnity basis.

36.3 Exclusions

The Owner will not be liable under Clause 36.2 to the extent that the Liability was caused, or contributed to, by the Company's or its Personnel's negligent acts or omissions or Wilful Misconduct.

36.4 Procurement of Intellectual Property Rights

If the Company or its Personnel are prevented from (as the case requires) operating or using the Equipment or any part of the Equipment as a result of any Claim in relation to an infringement of Intellectual Property Rights, the Owner must (at its cost) take all reasonable steps to procure for the Company and its Personnel the right to (as the case requires) operate or use the Equipment or the relevant part of the Equipment for the purpose for which it was intended.

36.5 Procedure where Intellectual Property Rights cannot be procured

If the Owner cannot procure the rights referred to in Clause 36.3 within a reasonable time (but not exceeding 60 days unless the Company Representative otherwise agrees), it must notify the Company Representative accordingly and the Company Representative may direct the Owner to immediately (at the Owner's cost):

- (a) alter the Equipment or the relevant part of the Equipment to avoid infringement or violation of the Intellectual Property Rights or any of them;
- (b) replace the Equipment affected or the relevant part of the Equipment with work or Equipment which do not infringe or violate the Intellectual Property Rights; or
- (c) remove the Equipment and reimburse the Company any compensation and other moneys already paid to the Owner and pay to the Company any costs or other expenses that may have been paid or incurred by the Company in connection with the removed Equipment.

36.6 Moral rights

- (a) To the extent required for the Company to receive the benefit of the Equipment Hire and the Owner's obligations under the Contract, the Owner must (at its cost) procure from each of the Owner's Personnel and any third parties engaged in the provision of the Equipment Hire an irrevocable and unconditional consent, in favour of the Owner (for the benefit of the Owner and its customers, including the Company), which is legally enforceable by the Company, for the Company to:
 - (i) reproduce, transmit, communicate, adapt or publish any materials prepared for or provided to the Company in connection with the Equipment Hire (together the **Materials**) or any adaptation of them (or any part of the Materials or any such adaptation) anywhere in the world, in whatever form the Company thinks fit (including the making of any distortions, additions or alterations to the Materials or any adaptation thereof (or any part of the Materials or any such adaptation) as so reproduced, transmitted, communicated, adapted or published;
 - (ii) reproduce, transmit, communicate, adapt or publish the Materials or any adaptation of them (or any part of the Materials or any such adaptation) anywhere in the world without making any identification of the employee/contractor/third party in relation to such reproduction, transmission, communication, adaptation or publication; and
 - (iii) do anything in relation to the Materials that (but for these consents) would otherwise infringe any moral rights or similar rights of the employee/contractor/third party anywhere in the world.

- (b) Where the Company reasonably believes that the Owner has not complied with its obligations set out in this Clause 36.6, it may require the Owner to procure that each of the Personnel of the Owner or any third parties engaged in the provision of the Equipment Hire do all such other things and execute all such documents as reasonably requested by the Company in order to confirm or give effect to any of the matters stated in this Clause 36.6.

37. Notices

37.1 Form of Notices

Any notice, demand, consent or other communication (**Notice**) given or made pursuant to the Contract must:

- (a) be in writing and on the letterhead of the Party giving notice;
- (b) be marked to the attention of the representative of the Party to whom the Notice is addressed as provided for in the Purchase Order or pursuant to Clause 9;
- (c) where given by the Company, be signed or authorised by either the Company Representative, a director or company secretary of the Company, or a duly authorised representative of the Company;
- (d) where given by the Owner, be signed or authorised by either the Owner Representative, a director or company secretary of the Owner, or a duly authorised representative of the Owner; and
- (e) be delivered by prepaid post, by hand, by email, or by facsimile to the Party to whom the Notice is addressed at its address shown in the Purchase Order or such other address as that Party may have notified to the other Party in writing.

37.2 Notices deemed given

A Notice will be taken to be duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of delivery by post, 3 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country);
- (c) in the case of email, at the time the email is received by the recipient; or
- (d) in the case of facsimile, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of the recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day or the Notice is received or deemed to be received later than 4.00pm (local time), it will be taken to have been duly given or made at the commencement of business on the next Business Day.

37.3 Service of documents

- (a) If a Notice, Claim or document under the Payment Act is required to be served on the Company, then it must be served at the Site address shown in the Purchase Order or such other address notified to the Owner between the hours of 8.00am and 4.00pm (local time). Any Notice, Claim or document under the Payment Act which is served on a day that is not a Business Day or is served later than 4.00pm (local time) it will be taken to have been duly served on the next Business Day.
- (b) If any Notice, Claim or document under the Payment Act is served on the Company in 'hard copy', the Owner must also provide the Notice, Claim or document in a readily accessible electronic format at the time of service or on the day of service.

38. Conflict of interest

38.1 Warranty

The Owner warrants that as at the date of the Contract it has not carried on business, entered into any financial arrangements or undertaken any obligation which would in any way interfere or conflict with the performance of the Equipment Hire by the Owner and its Personnel under the Contract.

38.2 Conflicts of interest

The Owner must ensure that neither it nor any of its Personnel carry on business, enter into any financial arrangements or undertake any obligation which would in any way interfere or conflict with the performance of the Equipment Hire by the Owner and its Personnel under the Contract, without the prior written consent of the Company.

38.3 Indemnity

Without limiting Clause 28, the Owner indemnifies the Company and its Personnel and must keep the Company and its Personnel indemnified in respect of any Liabilities incurred or sustained by the Company or its Personnel as a result of or in connection with any breach by the Owner of the warranties contained in Clause 38.1 or the undertakings contained in Clause 38.2, including an indemnity for any legal costs awarded against and/or incurred by the Company or its Personnel on a full indemnity basis.

38.4 Exclusions

The Owner will not be liable under Clause 38.3 to the extent that the Liability was caused, or contributed to, by the Company's or its Personnel's negligent acts or omissions or Wilful Misconduct.

39. Modern Slavery

39.1 Modern Slavery warranties

- (a) The Owner represents, warrants and undertakes:
 - (i) that the Owner is committed to sustainable business practices and that no Owner Personnel, Related Body Corporate, affiliate, or any entity that performs the Equipment Hire for or on

behalf of the Owner engages in Modern Slavery;

- (ii) to comply with all statutory requirements including, without limitation, such requirements relating to the Owner's or the Owner Personnel's business and operations or the business or operations of its Related Bodies Corporate, affiliates or any of their Personnel and, to the extent applicable, its or their respective Supply Chains;
 - (iii) to develop and maintain policies and procedures to avoid engaging in Modern Slavery;
 - (iv) to notify the Company promptly upon becoming aware of any incident, complaint or allegation that the Owner, the Owner's Personnel or any of their Related Bodies Corporate, affiliates or any of their Personnel or any entity in its or their Supply Chain has engaged in Modern Slavery; and
 - (v) that it has not (and is not likely to be) subject to any adverse finding, enforcement action or any legal claim by or through any person or a Government Authority connected to Modern Slavery.
- (b) The Owner must have and maintain throughout the Term of this Contract its own policies and procedures that are intended to ensure compliance with the warranties, representations and undertakings contained in this Clause 39.
 - (c) The Owner must not engage in any activity, practice or conduct that would constitute Modern Slavery.

39.2 Modern Slavery reporting and audit

- (a) The Owner acknowledges that the Company has corporate reporting requirements with regard to Modern Slavery and shall provide to the Company a written report or completed survey, upon request and at the Owner's own expense, addressing the Owner's Modern Slavery compliance measures (which may, for example, include Supply Chain due diligence, Supply Chain mapping, risk assessments, complaints, investigations and remediation measures).
- (b) In addition to the rights set out in Clauses 22.8, the Owner and its Personnel must permit the Company to have access to the Owner's premises, any of their documentation and data (including documents stored in electronic form) and to interview the Owner's Personnel in connection with the Contract, as necessary for the Company's Personnel to verify, monitor and audit the Owner's compliance with this Clause 39 and its performance of the Contract.
- (c) The Company may make and retain copies of the Owner's documentation and data for the purposes of the Company's own Modern Slavery compliance and reporting requirements.

39.3 Action by the Owner

Without limiting any other rights or remedies available to the Company as a result of the Owner's non-compliance with any of the conditions, policies and standards referred to in Clause 39.1, if deficiencies are identified by an audit undertaken under Clause 39.2, the Owner must at its own cost take prompt corrective action and notify the Company of such action and undertake all remediation activities required by the Company.

39.4 Notice

- (a) The Owner must immediately notify the Company in writing if:
 - (i) it becomes aware or suspects that any of the representations, warranties, undertakings or obligations in Clause 39.1 are incorrect;
 - (ii) the Owner, its Related Bodies Corporate, affiliates or any of its or their Personnel or an entity that performs work for and on behalf of the Owner breaches any of the representations, warranties, undertakings or obligations in Clause 39.1; and/or
 - (iii) it becomes aware that a breach of any of the representations, warranties, undertakings or obligations in Clause 39.1 may have occurred.
- (b) Notification under this Clause 39.4 will be sufficient if and only if:
 - (i) the notification sets out adequate particulars of the breach or suspected breach; and
 - (ii) the notification sets out what steps the Owner is taking to investigate the breach or potential breach.

39.5 Termination

Notwithstanding Clause 39.4, if the Owner breaches any part of clause 39.1 or the Company reasonably suspects such a breach has occurred, without prejudice to any other remedy which the Company may have, the Company may regard that breach as a breach by the Owner which is incapable of remedy for the purposes of its rights under Clause 31.

39.6 Indemnity

To the extent permitted by law, the Owner indemnifies the Company and its Personnel and must keep the Company and its Personnel indemnified in respect of any Liabilities incurred or sustained by the Company or its Personnel arising out of or in connection with a breach of any representation, warranty, undertaking or obligation in this Clause 39, except to the extent that the Liability was caused, or contributed to, by the Company's or its Personnel's negligent acts or omissions or Wilful Misconduct.

39.7 Confidentiality

The Company may disclose any information (including any Confidential Information provided by the Owner to the Company) concerning the identity, business, operations and activities of the Owner to any Government Agency in connection with

enquiries made by a Government Agency to the Company concerning the Owner.

Company's relevant authorised Personnel, classroom based training.

39.8 Survival of Clause

This Clause 39 survives the expiry or termination of the Contract.

40. Illegal Information Brokering

40.1 Prohibition

The Owner recognises that the practice of Illegal Information Brokering or any other corruption of the Contract award process is not permitted by the Company and the Owner represents and warrants that it has not and will not utilise Illegal Information Brokering in connection with the Contract.

40.2 Notification

- (a) The Owner must immediately notify the Company Representative if any person approaches the Owner for the purpose of Illegal Information Brokering concerning the Contract or any other related business interest of the Company.
- (b) After receiving a Notice under Clause 40.2(a):
 - (i) such Notice and any related information provided by the Owner will be treated by the Company with the utmost discretion; and
 - (ii) the Company will handle the Contract with extra security measures, as appropriate, in order to prevent any contractor, sub-contractor or other supplier from gaining any unfair advantage subsequent to such Notice.

41. Compliance with Code of Conduct Policy and Core Contractor compliance training

41.1 Northparkes Code of Conduct Policy

In performing the Equipment Hire, the Owner must, and must ensure that its Personnel:

- (a) comply or otherwise act in a manner consistent with the Company's code of business conduct policy (**Code of Conduct Policy**);
- (b) report all actual, alleged or suspected non-compliances with the Code of Conduct Policy to the Company or through the Company's reporting system; and
- (c) cooperate promptly and fully with the Company in any investigation of an alleged or suspected breach of the Code of Conduct Policy.

41.2 Core Contractor compliance training

The Company may identify the Owner and/or certain of its Personnel as "Core Contractors". The Owner must ensure that any such Core Contractors undertake the mandatory compliance risk reduction training modules identified by the Company from time to time within the timeframe specified. Such training modules can be accessed through the Company's business system and delivered as computer based training, or with the approval of the

42. Indigenous/Community relations

The Owner recognises that the Company has a foundation for indigenous people and in the performance of the Contract, the Owner undertakes to endeavour to identify and encourage opportunities which benefit indigenous people and local communities wherever possible.

43. Costs

43.1 Each Party to bear its own costs

Each Party must bear its own costs arising out of:

- (a) the negotiation, preparation and execution of the Contract; and
- (b) except as expressly provided otherwise in the Contract, any transaction contemplated by the Contract.

43.2 Stamp duty

All stamp duty which may be payable in any relevant jurisdiction on or in connection with the Contract, any Purchase Order or other document related to the Contract will be borne by the Owner.

44. Status of Owner

44.1 Independent contractor

At all times during the Term, and in the provision of the Equipment Hire, the Owner is an independent contractor and will not act as, or be or be regarded as, an agent or employee of the Company, and the Owner and its Personnel will not be entitled to any benefits which would ordinarily accrue to any employee of the Company by virtue of their status as an employee.

44.2 Partnership and joint venture suppliers

Where the Owner comprises more than one person they will be bound jointly and severally and by executing the Contract accept joint and several liability for any loss or damage that may be suffered or occasioned and any sum that may be or may become payable to the Company under the Contract.

45. Sub-contracting

45.1 Consent required

The Owner is not permitted to sub-contract all or any part of the Contract without the prior written consent of the Company, such consent not to be unreasonably withheld or delayed subject to the Owner:

- (a) ensuring that each Sub-contractor is engaged under a written agreement consistent with the Contract; and
- (b) providing the Company on request with copies of all subcontracts within 5 Business Days of a request from the Company.

45.2 Obligations survive assignment or sub-contract

The Owner acknowledges that no permitted sub-contract in any way relieves the Owner from the performance of any of its obligations under the Contract.

45.3 Status of Sub-contractor

As between the Owner and the Company, the Sub-contractor will be considered the agent and employee of the Owner. For the purposes of the Contract, the acts and omissions of each Sub-contractor and its Personnel will be deemed to be the acts and omissions of the Owner.

46. Personal Data Protection

46.1 Personal Data

Each Party agrees to comply with its obligations under all applicable laws relating to privacy and protection of Personal Data in respect of Personal Data obtained by or disclosed to them pursuant to this Contract.

46.2 Warranty

Each Party warrants to the other Party that it has complied with, and will continue to comply with, all applicable laws in its processing of Personal Data (including its collection, use, disclosure, storage and handling of Personal Data) pursuant to this Contract.

46.3 Data protection

In addition to its obligations under Clauses 46.1 and 46.2, the Owner agrees to:

- (a) only collect, use, disclose or process the Company's Personal Data for the performance of its obligations under the Contract, and as directed by the Company;
- (b) not disclose the Company's Personal Data to any other person (including the data subject) without the Company's prior written request or consent, unless the disclosure is required by applicable laws;
- (c) immediately notify the Company that the disclosure of the Company's Personal Data is or may be required by applicable laws;
- (d) put into place and maintain appropriate technical, physical and organisational measures to protect against unauthorised access, loss, destruction, misuse, modification, disclosure or damage to the Company's Personal Data;
- (e) take all necessary steps to ensure that its collection, use, disclosure and handling of the Company's Personal Data will be fair and lawful and, for this purpose, the Owner may reasonably enquire of the Company as to the manner in which the Company collected the Company's Personal Data;
- (f) if requested by the Company to do so, execute EU model contracts for the transfer of Personal Data:
 - (i) with the Company; or

- (ii) with any or all of the Owners' Related Bodies Corporate or Subcontractors; and
- (g) immediately notify the Company and any relevant Government Agency of any Notifiable Data Breach.

46.4 Individual complaints

- (a) If an individual complains to the Company that the Owner (or any of the Owner's Personnel) has, in the performance of the Contract, handled his or her Company's Personal Data inappropriately, the Company must promptly give the Owner sufficient details about the complaint to enable the Owner to take steps to address the subject of the complaint promptly. The Owner must provide a written response to the Company about how it has addressed the complaint as soon as possible, and in any event, no later than seven (7) days after the complaint is notified to the Owner. The response must identify the steps that the Owner has taken to address the complaint and if relevant, to minimise any further misuse.
- (b) If an individual complains to the Owner that the Owner (or any of its Personnel) has, in the performance of the Contract, handled his or her Company's Personal Data inappropriately, the Owner must:
 - (i) promptly inform the Company of the complaint;
 - (ii) provide the Company with the Company's Personal Data that is the subject of the complaint; and
 - (iii) provide a Notice to the Company about how the Owner has addressed the complaint, and what steps the Owner has taken to minimise the risk of further complaints.

46.5 Owner indemnity

Without limiting Clause 28 the Owner indemnifies the Company and must keep the Company indemnified from and against any and all Liabilities arising out of or in connection with the Owner's actual or alleged breach of its obligations under the Privacy Act or this Clause 46, except to the extent that the Liability was caused, or contributed to, by the Company's or its Personnel's negligent acts or omissions or Wilful Misconduct.

46.6 Survival of Clause

- (a) The Owner must, on termination of this Contract, return, destroy, store or dispose of the Company's Personal Data as directed by the Company.
- (b) This Clause 46 will survive the termination or expiry of this Contract.

47. Waiver

- (a) A failure to exercise, or any delay in exercising any right, power or remedy by a Party does not operate as a waiver of that right, power or remedy.

- (b) A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

48. Further assurances

Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of the Contract and the transactions contemplated by it.

49. Severability

49.1 Severability

Any provision of the Contract which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of the Contract nor does it affect the validity or enforceability of that provision in any other jurisdiction.

49.2 Negotiation in good faith

Where a provision is prohibited or unenforceable, the Parties must negotiate in good faith to replace the invalid provision with a provision which is in accordance with the applicable law and which must be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to the Contract.

50. Governing law

The Contract is governed by the laws of New South Wales. Each Party submits to the non-exclusive jurisdiction of the Courts exercising jurisdiction there in connection with matters concerning the Contract.

51. Assignment

- (a) The Owner is not permitted to assign all or any part of the Contract without the prior written consent of the Company, such consent being at the Company's absolute discretion and on whatever terms and conditions the Company thinks appropriate, including requiring the proposed assignee to be bound by any or all of the provisions of the Contract.
- (b) The Company is not permitted to assign the Contract to the detriment of the Owner without the Owner's prior written consent.