

1. HIRE AGREEMENT

- a. The legal agreement between You and Us (the **Hire Agreement**) is always comprised of: (a) this Master Hire Agreement (b) each Hire Schedule provided to You by Us (whether signed or not by You) and (c) the credit application or cash account application (whichever applies) that You partially or fully completed and submitted to Us.
- b. The Hire Agreement does not include any terms or conditions of Yours (including on any purchase order of Yours) unless We agree so in writing.
- c. You agree that the Hire Agreement applies each time We hire Equipment to You, even if You and We exchange only a Hire Schedule each time.
- d. By signing a Hire Schedule and/or taking possession of any Equipment You Agree to be bound by the Hire Agreement.

2. DEFINED TERMS USED IN THE HIRE AGREEMENT

- a. Various terms are defined in the Hire Agreement using **bold** text. Other defined terms are set out below.
- b. **Damage Waiver** means the amount described as such in the Hire Schedule.
- c. **Dispatch Address** means the address stated as such in the Hire Schedule.
- d. **Equipment** means the plant described in the Hire Schedule (including any parts, components and any accessories and attachments specified in the Hire Schedule or supplied with the Equipment when the Equipment was provided to You).
- e. **Hire Schedule** means the document provided by Us to You with "Hire Schedule" written on it and which outlines important information regarding the Equipment You hired.
- f. **Insurance Value** means the value stated as such in the Hire Schedule plus GST, or if no value is stated then the replacement value of the Equipment brand new from Our supplier at the Start Date.
- g. **Job Site** means the site at which You will use the Equipment as stated in the Hire Schedule.
- h. **Return Address** means the address stated as such in the Hire Schedule..
- i. **Us/Our/We** means Titan Plant Hire Pty Ltd ABN 16 095 884 441 of 7 Mandurah Road Kwinana Beach WA 6167.
- j. **You/Your** means the person, organisation, partnership, corporation, trust or other entity hiring Equipment from Us, as named in the Hire Schedule.
- k. **Your Workers** means and includes any of Your employees, agents, contractors and subcontractors and their employees, agents, contractors and subcontractors.

3. OUR HIRE COMMITMENT

- a. We agree to hire the Equipment to You for Your exclusive use during the Hire Period.
- b. We agree that the Equipment will be in good working order when We hire it to You.

4. HIRE PERIOD

- a. The **Hire Period** commences on the Start Date and is for an indefinite term unless the hire is ended earlier in the manner permitted in this Hire Agreement.
- b. The **Start Date** means the start date stated in the Hire Schedule.
- c. When You hire the Equipment You must indicate on the Hire Schedule the expected date on which You will return the Equipment to the Return Address (**Expected Return Date**).
- d. You must advise Us before the Expected Return Date if You wish to either return the Equipment before the Expected Return Date or keep possession of the Equipment after the Expected Return Date.
- e. If You wish to off-hire the Equipment You must contact Us in advance and advise the date from which the Equipment is no longer required. This date will be the **Off Hire Date**. We will then allocate to You a unique number verifying that Your off-hire request has been received and logged by Us (an **Off-Hire Number**). If You are responsible for demobilisation of the Equipment (as shown in the Hire Schedule), at the time of allocating an Off-Hire Number We will also agree a date by which You must return the Equipment to the Return Address or if We are responsible for demobilisation Equipment (as shown in the Hire Schedule) the date We will collect the Equipment from the Job Site (in either case, the **Agreed Return Date**). If You are responsible for demobilisation of the Equipment We will allow a reasonable period for transport of the Equipment from the Job Site to the

Return Address. If You exceed the Agreed Return Date, hire charges under clause 5 will apply at Our discretion.

- f. For some Equipment You cannot return the Equipment before the Expected Return Date (i.e. You cannot off-hire the Equipment). If this applies it will be stated in the Hire Schedule. Off-hiring is not permitted for cash accounts unless We agree otherwise.
- g. In very limited situations We may not be able to permit You to keep Equipment beyond the Expected Return Date (usually because We have agreed to hire the Equipment to someone else). If this applies it will be stated in the Hire Schedule and You must return the Equipment to the Return Address on the Expected Return Date (if You are responsible for demobilisation) or We will collect the Equipment from the Job Site (if We are responsible for demobilisation).
- h. Unless We agree otherwise the Hire Period includes weekends and public holidays.

5. CALCULATION OF HIRE CHARGES

- a. **Method of calculating:** We calculate hire charges for each item of Equipment on an hourly, daily, weekly or monthly basis. The method We will use is shown in the Hire Schedule. You agree to pay Us these hire charges at the rates and using the calculation method set out in the Hire Schedule, but always subject to this Master Hire Agreement.
- b. **Hourly hire charges:** If hourly hire charges apply You will be charged for the greater of the minimum hours that apply and the actual hours used, multiplied by the hourly and/or excess hourly rate (if applicable) as shown in the Hire Schedule.
- c. **Minimum Hours:** The minimum hours that will apply to the hire will be detailed in the Hire Schedule. Minimum hours will be prorated when the hire commences or ends part way through a calendar month, if a stand down is granted under this clause 5 or if a Breakdown occurs (see clause 15.e.)
- d. **Actual hours:** Actual hours used will be calculated using readings from the service meter unit on the Equipment taken when the hire commences and ends and at the end of each month if the Hire Period extends beyond the end of a month, subject always to clause 12.
- e. The actual hours Equipment is used by You during a calendar month cannot be applied against the minimum hours for prior or subsequent months. In other words, the minimum hours cannot be averaged or smoothed across a number of months. Charges for each month are to be calculated on a stand alone basis.
- f. **Daily hire charges:** If daily hire charges apply You will be charged the number of working days in the Hire Period multiplied by the daily rate shown in the Hire Schedule.
- g. **Weekly hire charges:** If weekly hire charges apply You will be charged the number of weeks and part thereof during the Hire Period multiplied by the weekly hire rate shown in the Hire Schedule.
- h. **Number of working days in a week or month:** The number of days in a week or calendar month will be based on a 7 day working week unless a 5 or 6 day working week is specified in the Hire Schedule.
- i. **Flat monthly rate:** We will charge a flat monthly rate if this is stipulated in the Hire Schedule. No regard will be had to the number of working hours or days in a month if a flat monthly rate is applicable.
- j. **Excess Rates:** We may stipulate in the Hire Schedule that the hourly, daily, weekly or flat monthly rates apply to a maximum amount of hours, days or usage. If We do so You must pay the excess rates shown in the Hire Schedule multiplied by the excess hours, days or usage if the maximum amount is exceeded.
- k. **Time taken to repair or replace Equipment:** You agree that You must pay hire charges under clause 5 for the period it takes to repair or replace Equipment that is damaged, lost or destroyed during the Hire Period (see clause 12).
- l. **Off Hires:** If We have given You an Off Hire Number under clause 4(e) We will not charge hire charges under clause 5 for periods after the Off Hire Date provided the Equipment is returned on the Agreed Return Date, but subject always to minimum charges under clause 5(c) above, prorated as necessary, and charges under clause 12. If You use the Equipment after the Off Hire Date the Off Hire Number will be cancelled and You must pay the full hire charges under this clause 5.
- m. If You have been allocated an Off-Hire Number and You are responsible for demobilisation but do not demobilise the Equipment to the Return Address by the Agreed Return Date We reserve the right to charge You hire charges under clause 5 from

the Off Hire Date to the date You return the Equipment to the Return Address.

- n. **Stand downs, rebates:** You are not entitled to any stand-down period, discount or rebate if You fail to use the Equipment for any part of the Hire Period unless We agree otherwise in writing. We may but are not obliged to grant You a stand-down rebate in respect of periods where You cannot use the Equipment due to causes beyond Your control, including adverse weather. Please contact Us in this regard.
- o. If You use Equipment during any period in respect of which a stand-down period, discount or rebate is granted by Us the stand-down period, discount or rebate may be cancelled at Our discretion.

6. TYRE, GROUND ENGAGING TOOL AND UNDERCARRIAGE WEAR CHARGES

- a. Before the Equipment leaves the Dispatch Address We will measure the amount of wear on the tyres, Ground Engaging Tools and Undercarriage. When the Equipment is returned to the Return Address We will make the measurements again.
- b. You are entitled to be present at the Dispatch Address and Return Address when those measurements are made. If You are not present You are deemed to agree with those measurements.
- c. After those measurements are made We will advise You of the amount of wear to tyres, Ground Engaging Tools and Undercarriage that occurred during the Hire Period.
- d. You agree to pay Us for each tyre, Undercarriage or Ground Engaging Tool the percentage increase in wear multiplied by the cost of a new tyre, Undercarriage or Ground Engaging Tool of the same type and quality.
- e. **Ground Engaging Tools** means any tool attached to Equipment that engages the ground, including cutting edges and ripper tynes on graders, cutting edge and bucket teeth on buckets on loaders, and scraper teeth on padfoot rollers.
- f. **Undercarriage** means grouser plates, chains, sprockets, idlers, pins, bushes and bearings on Equipment.

7. OTHER CHARGES

You agree to pay Us:

- a. all charges stated in the Hire Agreement;
- b. Our cost of all Service Kits, fuel, consumables and materials provided by Us to You;
- c. Our costs to refuel, service and clean the Equipment after You return the Equipment to Us;
- d. all charges, fines and penalties arising out of Your possession or use of the Equipment;
- e. Our costs of travel to and from the Job Site and all of Our labour and materials costs if We agree to complete servicing or repairs You are responsible for (as indicated on the Hire Schedule); and
- f. all GST, transfer duty, registration fees and other levies or fees payable by Us as a result of the Hire Agreement.

8. OUR PAYMENT TERMS

- a. You must pay to Us all charges and sums payable under this Hire Agreement

Cash Accounts

- i. in advance for all cash accounts; or

Credit Accounts

- ii. within
 - 30 days from the end of month in which the relevant invoice is issued; or
 - the payment period stated on the invoice; or
 - the payment period as stated in the Hire Schedule for credit accounts, whichever period is the lesser.

- b. If We have agreed to provide You with credit We will invoice You:

- i. for hire charges under clause 5, on a monthly basis or earlier if the Equipment is off-hired; and
- ii. for Service Kits, fuel, consumables and materials, on dispatch or supply of those items to You.

All Accounts

- c. Our invoices shall be deemed correct unless disputed in writing by You within 14 days of the date of the invoice.
- d. If You default in payment by the due date of any amount payable to Us then all money which would become payable by You to Us at a later date on any account, becomes immediately due and payable without the requirement of any

notice to You, and We may, without prejudice to any of Our other accrued or contingent rights:

- i. charge You interest on any sum due at the prevailing rate of 21% per annum for the period from the due date until the date of payment in full;
- ii. charge You for, and You must indemnify Us for, all costs and expenses (including without limitation indemnity legal costs) incurred by Us resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;
- iii. cease or suspend supply of any further hire, goods or services to You;
- iv. by written notice to You, terminate any uncompleted contract with You.

9. MOBILISATION AND DEMOBILISATION

- a. The Hire Schedule will state whether You or We are responsible for arranging mobilisation and demobilisation of the Equipment. **Mobilisation** includes loading at the Dispatch Address, transporting to the Job Site and unloading at the Job Site. **Demobilisation** includes loading at the Job Site, transporting to the Return Address and unloading at the Return Address.
- b. If the Hire Schedule states that We agree to arrange:
 - i. mobilisation We will transport the Equipment from the Dispatch Address to the Job Site and You must pay the mobilisation charges specified in the Hire Schedule; and
 - ii. demobilisation We will transport the Equipment from the Job Site to the Return Address and You must pay the demobilisation charges specified in the Hire Schedule.
- c. If the Hire Schedule states that You agree to arrange:
 - i. mobilisation You must transport the Equipment from the Dispatch Address to the Job Site and You must pay all costs of mobilisation; and
 - ii. demobilisation You must transport the Equipment from the Job Site to the Return Address and You must pay all costs of demobilisation.
- d. If the Hire Schedule states that We agree to arrange demobilisation You must ensure that the Equipment is available and in a condition suitable for immediate collection and transport by Us or Our freight provider from the Job Site on the Expected Return Date or Agreed Return Date, whichever is the earlier. This includes ensuring the Equipment is fuelled and batteries are charged as necessary to enable loading. You must also pay all penalties and waiting charges charged by Our freight provider if You do not comply with these obligations.

10. WHEN RISK IN THE EQUIPMENT PASSES

- a. If the Hire Schedule states that We are responsible for arranging:
 - i. mobilisation, risk in the Equipment passes to You when the Equipment has been unloaded at the Job Site; and
 - ii. demobilisation, risk in the Equipment passes to Us when loading of the Equipment commences at the Job Site.
- b. If the Hire Schedule states that You are responsible for arranging:
 - i. mobilisation, risk in the Equipment passes to You when loading of the Equipment commences at the Dispatch Address; and
 - ii. demobilisation, risk in the Equipment passes to Us when the Equipment has been unloaded at the Return Address.

11. USE, POSSESSION AND OPERATION OF THE EQUIPMENT

You agree to:

- a. keep the Equipment at the Job Site at all times other than when it is being transported from the Dispatch Address or to the Return Address;
- b. not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time. You may not cross hire the Equipment without Our prior written permission;
- c. use and store the Equipment safely and securely and protected from theft, loss or damage, including between the Off Hire Date (if one applies) and the earlier of (i) the date of return to the Dispatch Address or (ii) the date We will collect the Equipment from the Job Site if We are responsible for demobilisation;
- d. use the Equipment in compliance with all applicable laws;
- e. complete at Your cost all required testing and tagging during the Hire Period;
- f. ensure the Equipment is not contaminated with any hazardous substances;
- g. ensure the Equipment is not used in any underground mine;
- h. obtain all necessary approvals, permits and licenses relating to using the Equipment (other than vehicle registrations);

- i. only use the Equipment for a purpose for which it is designed to be used and in accordance with the manufacturer's instructions;
 - j. ensure that operators of the Equipment have the required training and qualifications for safe operation of the Equipment;
 - k. supply all required personal protection equipment for operators of the Equipment; and
 - l. not alter the Equipment or deface or obscure any identifying number or mark or safety instruction on the Equipment.
- 12. DAMAGE, LOSS, THEFT AND REPAIRS**
- a. **Inspections:** We will inspect the Equipment before it is mobilised from the Dispatch Address and when it is returned to the Return Address. We will provide a copy of Our inspection reports to You on request. You are entitled to be present at the Dispatch Address and Return Address when those inspections are made. If You are not present You are deemed to irrevocably agree with Our inspection reports.
 - b. You agree that the Equipment was hired to You in good working condition.
 - c. You agree to return the Equipment to Us clean and in the condition We hired it to You except for Fair Wear and Tear.
 - d. **Fair Wear and Tear** means wear and tear which would be normal for similar equipment operating on a one shift basis in a civil construction environment and includes superficial scratches and scuffing to bodywork and stone chipping to paintwork on front and lower areas of the Equipment. It does not include wear to parts of the Equipment which are sacrificial such as tyres, Undercarriage and Ground Engaging Tools, dents or other impact damage, damage to glass or instrumentation, damage from collision or abuse and damage to the drive system
 - e. **Your strict liability:** You agree that You are strictly liable for and must pay Us for all loss, theft, destruction or damage to or of the Equipment during the Hire Period as well as all associated loss or expenses suffered by Us, including damage or loss caused by third parties, accessories "going missing", Our lost hire fees, Our insurance excesses, Our legal costs (on a full indemnity basis) and Our costs of repairing or replacing the Equipment. A reduced amount may be payable if You elected to pay the Damage Waiver as stated on the Hire Schedule (see clause 12h below).
 - f. **What You must pay Us for damage and loss:** If the Equipment or any part of it is damaged, destroyed, stolen or lost during the Hire Period or during mobilisation (if You are responsible for mobilisation) or demobilisation (if You are responsible for demobilisation) You must pay to Us all of the following:
 - i. if You have not paid the Damage Waiver or the Damage Waiver is excluded under clause 12i, the lower of the Insurance Value of the Equipment or Our costs to repair the Equipment (including Our labour costs and costs to recover the Equipment) if the Equipment can be repaired (as determined by Us) and also insurance excesses We have to pay and Our legal costs (on a full indemnity basis);
 - ii. if You have paid the Damage Waiver and the Damage Waiver is not excluded under clause 12i, amounts payable as stated in clauses 12h.iii and 12i; and
 - iii. regardless of whether or not You have paid the Damage Waiver, hire charges for the entire period it takes to repair or replace Equipment that is damaged, lost, stolen or destroyed, calculated in accordance with clause 12g.
 - g. **Hire continues- calculating hire charges:** For the purposes of calculating Our hire charges under clause 5 and in particular for the purposes of clause 12f.iii, You agree that the Hire Period will end on the latest of the following dates:
 - i. if the Equipment is in good working order and does not need repair on the date it is returned to the Return Address, that date or the Off Hire Date, whichever applies (and subject to clause 4.e);
 - ii. if the Equipment requires repair on the date it is returned to the Return Address, the date that the Equipment is repaired and available for hiring out by Us from the Dispatch Address; or
 - iii. if the Equipment is lost, stolen, destroyed or incapable of repair, the date We receive a replacement for that Equipment at the Dispatch Address or, if We elect not to replace the Equipment, the date that We have received cash payment in full from You and/or Your insurers as required by this Hire Agreement.
 - h. **Damage Waiver:** If the Hire Schedule states that You elect to pay the Damage Waiver or You are deemed to have elected to do so then:
 - i. You must pay the Damage Waiver for the Hire Period;
 - ii. We will insure the Equipment against accidental loss, theft or damage (the **Equipment Insurance**); and
 - iii. subject to clause 12i, provided You have paid the Damage Waiver Your liability to Us for each single event of accidental loss or damage to or of the Equipment is the greater of:
 - A. \$2,000; or
 - B. if the Equipment can be repaired (as determined by Us), 10% of the cost to repair the Equipment; or
 - C. if the Equipment is lost, stolen, destroyed or incapable of repair (as determined by Us), 10% of the Insurance Value.
 - i. **Exclusions to Damage Waiver:** Your liability is not limited as described in clause 12h if any of the following apply:
 - i. if You have not paid the Damage Waiver;
 - ii. in relation to damage to or loss of tools, accessories, parts, grease guns, hoses, electrical cords, cables, gas cylinders, fire extinguishers, radios, beacons, batteries, air conditioners, light globes and other accessories, Ground Engaging Tools, Undercarriage, tyres, rims or glass;
 - iii. if We make a claim under the Equipment Insurance but the claim is rejected in part or in whole for reasons other than a default by Us;
 - iv. if the loss or damage to the Equipment arises from or is caused in whole or in part:
 - A. by a breach by You of this Hire Agreement, including a failure by You to properly maintain or service the Equipment as required by this Hire Agreement;
 - B. abuse or improper use of the Equipment by You including overloading the Equipment;
 - C. a wilful, reckless, negligent or unlawful act or omission by You;
 - D. during the loading, transportation or unloading of the Equipment;
 - E. electrical surges or an electrical current;
 - F. by collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object due to insufficient clearance;
 - G. by vandalism;
 - H. exposure of the Equipment to any corrosive or caustic substance or environment; or
 - I. by using or moving the Equipment in, on or over water or on bridges, vessels or structures of any kind; and
 - v. in relation to hire charges – the Damage Waiver does not affect that liability (see clause 12f.iii). In other words, hire charges are still payable in full pursuant to clauses 5 and 12f.iii even if You take the Damage Waiver.
 - j. **Claims:** You agree that We are entitled to but are not obliged to make a claim pursuant to Equipment Insurance.
 - k. **Carrying out of repairs:** You agree that no person may complete repairs to the Equipment unless We authorise that in writing or the repair falls within clauses 12l or 12m.
 - l. **Repairs to tyres, Undercarriage and GET:** You must immediately repair or replace at Your cost any tyre and any part of the Undercarriage or any Ground Engaging Tool that is damaged, lost, stolen or destroyed during the Hire Period. You must use a reputable repairer approved by Us.
 - m. **Minor Repairs:** You must pay the costs of all Minor Repairs required during the Hire Period unless the Hire Schedule states that Titan is responsible for Minor Repairs. **Minor Repairs** means any single fault in the Equipment that in Our opinion would cost \$2,000.00 or less to repair if repaired by a reputable third party repairer. Repairs to Ground Engaging Tools, Undercarriage or tyres are not within Minor Repairs.
 - n. **What You must do if damage or loss occurs:** If the Equipment is damaged or loss occurs during the Hire Period You must stop using the Equipment and immediately inform Us by telephone and in writing and You must also take all steps necessary to prevent further damage or loss to the Equipment. You must also take photographic evidence as We require and cooperate with Us and provide information as We require.
- 13. DAILY MAINTENANCE**
- You agree that unless the Hire Schedule states that Titan is responsible for daily inspection and servicing, You must complete at

Your cost proper daily inspections and maintenance of the Equipment, as recommended by the manufacturer, including completing the following on a daily basis:

- a. applying grease to all parts of the Equipment that take grease;
- b. general tightening of any loose nuts, bolts, belts or fittings;
- c. visually inspecting the Equipment for damage or wear; and
- d. checking and, if necessary, adding or replacing fuels, lubricants, fluids, water filters and air filters.

14. PERIODIC MAINTENANCE AND SERVICING

- a. You agree that unless the Hire Schedule states that Titan is responsible for PM Servicing and Service Kits, You must complete and pay all costs of PM Servicing. You must only use Service Kits supplied by Us or approved by Us.
- b. **PM Servicing** means periodical maintenance and servicing of the Equipment as We require, which will be generally in accordance with the manufacturer's instructions, but does not include daily maintenance required under clause 13.
- c. **Service Kits** means consumable or replaceable parts or materials that require regular replacement during the course of their usage as recommended by the manufacturer (including filters) but does not include fluids or lubricants.

15. BREAKDOWNS

- a. If the Equipment suffers a Breakdown You must stop using the Equipment and immediately inform Us by telephone and in writing.
- b. We will then either, at Our discretion:
 - i. dispatch a technician to the Job Site and endeavour to repair the Equipment as soon as is practicable; or
 - ii. send equipment that is the same as or similar to the Equipment to the Job Site and remove the Equipment from the Job Site at Our cost.
- c. If We dispatch a technician to the Job Site but We cannot repair the Equipment at the Job Site We may either, at Our discretion:
 - i. replace the Equipment with equipment similar to the Equipment or remove the Equipment to a place where it can be repaired and then return it to the Job Site; or
 - ii. elect by notice in writing to terminate the hire of the Equipment.
- d. We will pay Our costs for fixing Breakdowns.
- e. Provided You have complied with clause 15a, You will not have to pay hire charges under clause 5 for periods during which the Equipment is not available for use by You due to a Breakdown. We will prorate the minimum hourly charges to allow for Breakdowns.
- f. **Breakdown** means a material defect that results in an inability to operate the Equipment for the primary function intended by the manufacturer which is not caused by an act or omission by You in breach of this Hire Agreement. It does not include theft, destruction or damage to or of the Equipment by any person.

16. INSURANCE

- a. You must arrange and maintain at all times during the Hire Period the following insurances with a reputable insurer:
 - i. if You have declined to pay the Damage Waiver (as shown on the Hire Schedule), an insurance policy covering the Equipment to the Insurance Value plus GST for accidental loss, destruction and damage and other risks as We may require from time to time. The policy must note Us as owner and loss payee of the Equipment and You as hirer, and it must include a principal's indemnity extension in Our favour. If there is any shortfall between the amounts You must pay Us under the Hire Agreement and the funds We receive from Your insurance company You must pay the shortfall to Us;
 - ii. a policy of public liability insurance in Your name for at least twenty million dollars for any one event, and the policy must contain a principal's indemnity extension in Our favour along with a cross liability clause; and
 - iii. all insurances required by law, including workers compensation insurance with a principal's indemnity extension in Our favour.
- b. You must give Us a copy of the Equipment insurance referred to in clause 16a.i and a certificate of currency before the Equipment leaves Our Address. If You do not do so You are deemed to have agreed to pay the Damage Waiver unless We agree otherwise in writing.

- c. You must give Us a copy of the policies referred to in clause 16a.i -a.iii and certificates of currency if We request them.
- d. You must not do or omit to do anything which may prejudice any insurance over the Equipment, including Our insurances.
- e. You agree that We are entitled to receive all moneys payable to You under any insurance policy or by any other person in relation to any damage to or loss or destruction of the Equipment, and You appoint Us as Your attorney to recover and or compromise in Your and Our names any claim for any such damage, loss or destruction and to give releases and receipts for the same, and You irrevocably authorise and direct insurers to pay all such moneys directly to Us.

17. INDEMNITY AND RELEASE AND LIMIT ON LIABILITY

- a. You indemnify Us and Our directors, officers and employees (**Indemnified Persons**) from and against all Claims which may be brought against or suffered by an Indemnified Person arising out of or in relation to:
 - i. You using or possessing the Equipment;
 - ii. any act, neglect, default or omission of any operator of the Equipment during the Hire Period;
 - iii. Your breach of this Hire Agreement; or
 - iv. any accident, incident, damage or delay caused during the Hire Period involving the Equipment, including for loss of life or any loss, damage or injury suffered by any third party or operator of the Equipment.
- b. To the full extent permitted by law You release each Indemnified Person from all Claims You may have arising out of or in relation to any of the matters referred to in clauses 17a.i, a.ii, a.iii or a.iv.
- c. The release and indemnity in this clause 17 does not apply to the extent an Indemnified Person is guilty of fraudulent acts or omissions or a breach of this Hire Agreement.
- d. You agree that each Indemnified Person shall not under any circumstances be liable to You or any third party (including Your customers) in respect of any indirect, consequential or special losses (including loss of profit, loss of opportunity or payment of liquidated sums or damages under any other agreement).
- e. You agree that the maximum aggregate liability of the Indemnified Persons for all Claims under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including negligence), in equity, under statute, under an indemnity or on any other basis, is limited to the charges paid by You under this Hire Agreement.
- f. Each indemnity in this Hire Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Hire Agreement. It is not necessary for Us to incur expense or make any payment before enforcing a right of indemnity in this Hire Agreement
- g. **Claims** means actions, suits, proceedings, judgements, orders, claims, demands, costs, damages, losses and all liability whatsoever, including all legal costs on a solicitor and own client basis.

18. WARRANTIES

- a. To the maximum extent permitted by law, You warrant that You have satisfied Yourself as to the suitability, condition and fitness for purpose of the Equipment for the job You intend to use it for and that You have not entered into the Hire Agreement in reliance on any representations or inducements made by Us.
- b. We warrant that the Equipment will be in working order on the date the Equipment is hired to You.
- c. Other than as set out in clause 18a, to the maximum extent permitted by law the Equipment is provided without any warranties or guarantees of any kind, either express or implied, and any warranty which is implied by law or statute which can be excluded is excluded.

19. AUSTRALIAN CONSUMER LAW RIGHTS

- a. The Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth) provides consumer rights and remedies that may not be contracted out of, in part or wholly. Where those consumer rights and remedies apply to the hire of Equipment by Us to You and cannot be contracted out of, they apply and override any inconsistent provisions in this Hire Agreement but only to the extent of the inconsistency.
- b. Where You are entitled to a statutory right or term that We are not able to exclude but We are entitled to limit Your remedy for a breach of that right or term, then Our liability for breach of that right or term is limited to (at Our election):

- i. in the case of goods We supply, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or
- ii. in the case of services We supply, the supplying of the services again, or the payment of the cost of having the services supplied again.

20. TITLE TO EQUIPMENT

- a. You acknowledge that We own the Equipment and in all circumstances We retain title to the Equipment (even if You go into liquidation, receivership or administration or become bankrupt during the Hire Period).
- b. Your rights to use the Equipment are as a bailee only, and no circumstances will the Equipment be deemed a fixture.
- c. You must not offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Equipment in any way.
- d. You acknowledge that in some circumstances a person other than Us may be the legal owner of the Equipment (the **Owner**) and We may have entered into an agreement to use the Equipment with the Owner. The exercise of any rights by the Owner under that agreement will not constitute a breach or default under this Hire Agreement by Us.

21. ACCESS TO YOUR ADDRESS AND JOB SITE

You grant Us an irrevocable license to enter on any premises where We believe the Equipment is located:

- a. at all reasonable times and upon reasonable notice for the purpose of performing Our obligations under this Hire Agreement, for inspecting or testing the Equipment, for conducting incident investigations or audits or for serving any notice in relation to the Equipment; and
- b. at any time for the purpose of repossessing the Equipment if You are in breach of this Hire Agreement or if it has been terminated or has expired.

22. GRANT OF SECURITY INTEREST IN OUR FAVOUR

- a. As security for Your obligations and liabilities under this Hire Agreement, You hereby charge all of Your legal and equitable interest (present and future) of whatsoever nature in any and all real property and present and after acquired personal property.
- b. You agree to execute any documents and do all things necessary as required by Us to register the security granted in clause 22a. You also appoint each of Our directors to be Your attorney to execute and register such documents and instruments.

23. PPSA

- a. This Hire Agreement is a security agreement for the purposes of the PPSA.
- b. You consent to Us effecting and maintaining a registration on the register in any manner We consider appropriate in relation to any security interest granted in or constituted by this Hire Agreement:
 - i. in Your present and after acquired personal property and the proceeds arising in respect of any dealing in such property; and/or
 - ii. in the Equipment and the proceeds arising in respect of any dealing in the Equipment.
- c. You agree that We may at any time register a financing statement or financing change statement in respect of such a security interest (including any purchase money security interest). You waive the right to receive notice of a verification statement in relation to any registration by Us on the register of such a security interest.
- d. You agree to do anything and sign any documents and provide all assistance and information required by Us to:
 - i. facilitate the registration and maintenance by Us of any security interest on the register;
 - ii. acquire and maintain a perfected security interest under the PPSA in respect of Your present and after acquired personal property and/or the Equipment and the proceeds arising in respect of any dealing in such property;
 - iii. ensure that Our rights and Our security and priority position are not adversely affected by the PPSA.
- e. You agree to not register or permit to be registered a financing change statement in respect of a security interest granted in or constituted by this Hire Agreement (including in relation to the Equipment) without Our prior written consent.

- f. If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest granted in or constituted by this Hire Agreement and:
 - i. section 115(1) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and You will have no rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and
 - ii. section 115(7) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and You will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.

- g. You and We agree not to disclose information of the kind referred to in section 275(1) of the PPSA to any other person, to the extent permitted by the PPSA.

- h. **PPSA** means the Personal Property Securities Act 2009 and any other legislation and regulations in respect of it and the following words in this Agreement have the meanings given to them in the PPSA: financing change statement, financing statement, interested person, purchase money security interest, register, registration, security agreement, security interest and verification statement.

24. WHEN THIS AGREEMENT ENDS

- a. You or We may terminate this Hire Agreement immediately by giving notice to the other party, if:
 - i. the other party breaches any term of the Hire Agreement and fails to remedy the breach within 14 days of written notification of the breach; or
 - ii. that other party ceases to carry on business, becomes bankrupt or insolvent, executes a personal insolvency agreement or has an external controller appointed.
- b. These rights of termination are in addition to any other rights You or We have under the Hire Agreement or at law or in equity.

25. CONFIDENTIALITY

- a. Each party to this Hire Agreement agrees not to disclose or use for an improper purpose any confidential information received or obtained from the other party.
- b. Each party can disclose such confidential information if:
 - i. required by law, judicial proceedings, rules of a stock exchange or regulatory or governmental body; or
 - ii. the information is disclosed on a confidential basis to professional advisers or bankers; or
 - iii. the information is disclosed to a director, officer, employee or agent of the party; or
 - iv. the information is in the public domain otherwise than through the fault of the disclosing party.

26. DELAY/FORCE MAJEURE

- a. If a party is restricted or prevented from performing any of its obligations under this Hire Agreement due to act of God, industrial action, embargo, boycott, delay by carrier or freight company, flood, fire, war, civil unrest, decrees or orders or other Government intervention or any other cause or delay whatsoever outside the reasonable control of the party (the **Restricted Party**) but not including adverse weather, the Restricted Party may give notice of such cause to the other party and the time for performance of the Restricted Party's obligations (other than to pay money) shall be extended by the period the cause continues. If the cause continues for more than 60 days either party may terminate this Hire Agreement.
- b. Nothing in clause 26a will limit or exclude Your responsibility and liability under the Hire Agreement for safekeeping and maintaining the Equipment.

27. OTHER

- a. You agree that We shall not be responsible for and shall have no liability whatsoever for any property or articles claimed by You or any third party to have been left with, repossessed or returned with the Equipment.
- b. Neither party may assign or transfer any obligation under this Hire Agreement without the written consent of the other.
- c. If any provision or part provision of this Hire Agreement is invalid, unenforceable or illegal then it shall be deemed to not operate until it is valid, enforceable and legal.



MASTER HIRE AGREEMENT 2013

Head Office Perth: 7 Mandurah Road Kwinana Beach WA 6167 ABN: 16 095 884 441
Telephone: 08 9410 4700 | Fax 08 6314 1622 www.titanplanthire.com.au

- d. This Hire Agreement is governed by the law in force in Western Australia. You and We irrevocably submit to the jurisdiction of the courts of Western Australia with respect to any Claim relating in any way to this Hire Agreement.
- e. You agree that We may vary this Hire Agreement with 30 days prior written notice to You explaining the variation. If You believe such variations will prejudice Your rights You can terminate this Agreement within 14 days of such notice without penalty.
- f. Any omission by Us to enforce any of Our rights in this Hire Agreement shall not operate as a waiver by Us and will not prejudice Our rights to enforce any of the provisions.
- g. Any waiver of Our rights or Your obligations under this Hire Agreement (including those under this subclause) will only be effective if made in writing stating the clause of this agreement containing the rights or obligations being waived and signed by Us.
- h. This Hire Agreement is a claim for payment under the Construction Contracts Act 2004 (WA) and/or the Construction Contracts (Security of Payments) Act 2009 (NT).

If you have any queries or questions regarding the above please contact Cherie Madalena on (08) 9410 4700.

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