

## STANDARD CONDITIONS OF HIRE

### 1. DEFINITIONS AND INTERPRETATION

1.1. The following terms shall have the following meanings:

Date Out	means the date on which the Equipment is rented as specified in the Rental Agreement Schedule.
Collateral and/or Goods	means all goods and/or services and/or equipment supplied by the Owner to the Applicant, or ordered by the Applicant but not yet supplied, and includes goods described on any quotation, invoice, purchase order or any other document including any recommendations and advice and over which the Owner may intend to register a Security Interest
Default Rate	means the Westpac Indicator Rate as published in the Australian Financial Review Newspaper from time to time means the equipment described in the Rental Agreement.
Event of Default	means any of the events specified in Clause 5.1.
Event History	means an event where the Owner has issued a notice in respect of an Event of Default
Financing Statement	Has the meaning given to it by PPSA
Financing Change Statement	Has the meaning given to it by the PPSA
Hirer	means the person or persons, corporation, partnership, trust or other legal entity hiring the equipment from the Owner and identified as the Hirer in the Rental Agreement Schedule.
Renter Protection	means an amount paid by the Hirer to reduce the Hirer's financial liability in respect of the loss or damage to the Equipment; such amount being identified in the Rental Agreement Schedule.
Liquidated Sum	means an amount equivalent to the Rental Rate for 6 months but not exceeding \$200,000.
Insurable Value	means the value identified in the Rental Agreement Schedule as the insurance value in respect of which the Hirer must maintain a policy of insurance for not less than the insurable value.
Owner	means Hastings Deering (Australia) Ltd ABN 49 054 094 647 of Level 3, 973 Fairfield Road, Yeerongilly Brisbane in the State of Queensland.
PMSI	shall mean Purchase Money Security Interest and has the meaning given to it by the PPSA
PPSR	shall mean Personal Property Securities Register
PPSA	shall mean Personal Property Securities Act 2009 (as amended)
Security Agreement	shall mean the security agreement under the PPSA created between the applicant and HDAL by these terms and conditions
Security Interest	has the meaning given to it by the PPSA
Rental Rate	means the hourly, daily, weekly monthly payments to be made by the Hirer to the Owner as specified in the Rental Agreement.
Rental Term	means the period of hire set forth in the Rental Agreement.
The Agreement	means the standard terms, Rental Agreement and any annexed maintenance schedules as the context requires.

- Where there is more than one Hirer then a reference to the Hirer herein includes all Hirers jointly and severally.
- Words importing the singular include the plural and vice versa and each gender includes any other gender.
- Reference to a monetary currency shall mean Australian dollars unless otherwise specified.

### 2. PARTIES

- The Owner and the Hirer are the parties to this Agreement.
- Where the Hirer is a trustee of a trust then the Hirer agrees that it will not exercise in the Hirer's favour any right of indemnification, lien or charge which the Hirer may be entitled personally against or in respect of trust assets prior to the satisfaction of all liabilities created by this Agreement.
- If any trust assets come into the hands of the Hirer freed of their trust character by virtue of the exercise or purported exercise of any such right of indemnification, lien or charge, the Hirer will hold those assets on behalf of the Owner to the extent of any unsatisfied liability of the Hirer.

### 3. HIRER'S WARRANTIES

- The Hirer warrants and agrees that for the purposes of selecting the Equipment it has not relied upon any representations by the Owner other than those representations appearing in this Agreement.
- The Hirer warrants and agrees that the Caterpillar unit will be operated by a qualified/licenced operator in accordance with Caterpillar's Operation and Maintenance Manual (Located in cab)

### 4. HIRER'S OBLIGATIONS

- Maintenance:** The Hirer agrees:
  - At the Hirer's cost to keep the equipment in good order and repair in accordance with the manufacturer's maintenance schedule annexed to the Rental Agreement Schedule.
  - To be responsible for the maintenance and repair of all tyres and replacement of tyres where necessary (fair wear and tear excepted) at the cost of the Hirer unless otherwise provided in the maintenance schedule;
  - To advise the Owner of any malfunctioning of the Equipment as soon as practically possible;
  - Not to alter or make any addition to the Equipment without the previous consent in writing of the Owner;
  - Where the Hirer undertakes repair of the Equipment resulting in the replacement of existing parts of the Equipment, the Hirer shall use only recommended replacement parts and such parts shall become the property of the Owner;
- The Hirer shall not fit any accessories without the consent of the Owner and where consent is given, such accessories shall form and be part of the Equipment.
  - Payments:** The Hirer agrees:
    - To pay the Owner at the address specified by the Owner in the Rental Agreement Schedule;
    - The Owner may at its discretion charge penalty interest on late payment calculated at the Default Rate;
    - To pay the Liquidated Sum where the Hirer has an Event History;
    - To repay to the Owner any expenses the Owner may incur by reason of the Owner retaking or attempting to retake possession of the Equipment;
  - To repay to the Owner on demand any costs or monies which the Owner incurs or pays to make good any failure by the Hirer to comply with its obligations and any costs or monies incurred or expended by the Owner in the protection of the Equipment.
  - Indemnity:** The Hirer agrees:
    - To indemnify the Owner against any loss arising out of the destruction or loss or damage or the Hirer's use of the Equipment;
    - In the event the Equipment is lost, damaged or destroyed, the Hirer shall not be released from its obligations under this Agreement until the Owner is paid all amounts due to it under this Agreement.
  - To indemnify the Owner against all taxes and duties of any kind payable in respect of this Agreement or any receipts or payments under this Agreement;
  - To comply with all legislation whether Federal, State or Local relating to the Equipment and this Agreement;
  - To indemnify the Owner against any claim suffered or incurred by the Owner in connection with the Hirer's breach of this agreement.
  - Possession:** The Hirer agrees:
    - The Equipment shall remain in the possession and control of the Hirer at all times;
    - That this Rental Agreement shall not be assigned without the consent of the Owner first being obtained in writing;
    - To notify the Owner immediately in writing of any change in the Hirer's address and/or the address where the Equipment is housed;
    - That the Hirer is a bailee only of the Equipment and has no proprietary interest in the Equipment; and
    - The Equipment is a chattel and shall not be affixed to any land.
  - Use:** The Hirer agrees:
    - To only use the Equipment for the nature of the work for which the Equipment is designed;
    - That the Equipment shall only be operated by properly licensed and skilled operators and serviced by qualified personnel at all times.
  - Insurance:** The Hirer agrees:
    - To insure and keep the equipment insured with a reputable and solvent insurer in the names of the Owner and the Hirer for the Insurable Value against fire, accident, theft, damage and transport and such other risks as the Owner may require;
    - To pay promptly all premiums and stamp duty in respect of such policy of insurance and irrevocably authorizes the Owner to receive all insurance monies;
  - Not to do or permit or allow to be done anything which might or could prejudice any insurance of the Equipment;
  - To maintain policies of insurance for third party and public liability indemnity cover of not less than ten million dollars.
  - Return of the Equipment:** The Hirer agrees:
    - At the expiration of the Rental Term or upon earlier termination of this Agreement, to deliver up the Equipment to the Owner at the nearest office of the Owner's business;
    - To be responsible for the transportation of the Equipment to and from the Owner at all times.
  - Equipment Breakdown:** The Hirer agrees:
    - Apart from the repair of any major component failure covered by the manufacturer's warranty, the Hirer will be responsible to repair and maintain the equipment.
    - To undertake the maintenance set forth in the manufacturer's maintenance schedule annexed to the Rental Agreement and where the Hirer fails to undertake such maintenance and such failure breaches the manufacturer's warranty, then the Hirer shall be responsible to undertake all repairs of the Equipment;
    - The obligation to pay the rental rate shall continue notwithstanding any breakdown or failure of the Equipment.
  - Owner's Rights.**
    - The Owner, its employees servants and agents may enter any property where the Owner has reason to believe the Equipment may be located so that the Owner may inspect or test the Equipment or in circumstances set out herein retake possession of the Equipment.
  - The Hirer hereby irrevocably authorizes the Owner to use the name of the Hirer and to act on behalf of the Hirer in exercising any rights or instituting, carrying on or enforcing any legal proceedings which the Owner believes necessary to protect the rights of the Owner and the Equipment, and appoints the Owner or an authorised officer to be the Hirer's lawful attorney for such purposes.
  - The Hirer shall where required by the Owner register the Owner's interest in the Equipment

### 5. DEFAULT

- The Hirer is in default where during this Rental Agreement:
  - The Hirer does not pay the rental rate as required by this Agreement.
  - The Hirer fails to rectify within seven days a breach or breaches of this Agreement after written notice of the breach is served by the Owner.
- In respect of a company the Hirer by resolution resolves to wind up the company or by application seeks an order that the company be wound up or placed in administration.
  - Any execution or other process of any Court or authority is issued against the Hirer or the Hirer's assets.
  - A receiver, receiver manager, administrator, controller or liquidator is appointed to the Hirer.
  - The Hirer ceases or threatens to cease to carry on its business.
  - Any insurance renewal or insurance proposal made by the Hirer in respect of the Equipment is declined.
  - Any insurance policy in respect of the Equipment lapses or is cancelled.
  - The Hirer commits an act of insolvency.
  - The Owner may by notice in writing served on the Hirer:
    - Terminate this Agreement; and
    - Recover possession of the Equipment; and/or
    - Enforce performance of this Agreement; and/or
    - Recover damages for breach of this Agreement.
- The Owner may take any or all of the actions set forth in paragraph 6.2 hereof notwithstanding that the Owner may have waived any previous default or defaults by the Hirer.

### 6. RIGHTS ON TERMINATION

- At the expiration of the Rental Term or where the Owner exercises its right of termination pursuant to paragraph 6.2.1 hereof, the Hirer shall at its own expense forthwith return the Equipment to the nearest office of the Owner's business.
  - The Owner shall be entitled to recover from the Hirer without demand:
    - Any payment of the Rental Rate or other monies becoming payable to the Owner under this Agreement.
    - The liquidated sum where the Hirer has an Events History.
    - The cost of any renovations or repairs performed by the Owner to return the Equipment to good order and repair, fair wear and tear excepted.
- The Hirer acknowledges that the Owner shall not be required to mitigate its loss by sale of the Equipment or account to the Hirer for any proceeds of sale in the event the Equipment is sold by the Owner.

### 7. RE-POSSESSION OF EQUIPMENT

- Where the Owner exercises the right to re-possess the Equipment pursuant to paragraph 6.2.2 hereof, the Hirer's obligation to pay the Rental Rate shall continue for the full Rental Term until termination of this Agreement by the Owner or the re-hiring of the Equipment.

- Where the Owner exercises its right to re-take possession of the Equipment, the Hirer hereby authorizes the Owner to enter upon the property of the Hirer for the purposes of re-taking possession of the Equipment and if necessary, to sever the Equipment from the land and to do such things as are necessary or incidental in that regard and the Hirer hereby indemnifies the Owner against any and all actions, claims, suits or demands for damage from such entry, severance or removal of the Equipment.

- The Owner may recover from the Hirer as a debt due and owing without demand:
  - All costs incurred by the Owner in re-taking possession of the equipment;
  - Any storage fees paid in respect of the Equipment;
  - Any transportation costs in respect of the re-possession of the Equipment.
- Any costs of renovation, repair or maintenance of the Equipment to return the Equipment to good order and repair, fair wear and tear excepted.

### 8. ENFORCEMENT AND RECOVERY OF DAMAGES

- Where the Owner seeks the enforcement of this Agreement and/or damages for the breach of the Agreement, the declaration of the secretary for the time being of the Owner shall be prima facie evidence of the debt owed by the Hirer to the Owner.
- The Hirer's liability under this Agreement shall not merge in any judgment obtained by the Owner or any duly authorized employee in respect of any default by the Hirer under this Agreement.

### 9. HOLDING OVER

- Upon expiration of this Agreement the Hirer may continue the hiring of the Equipment upon the same terms and conditions as set out herein save and except that:
  - This Agreement will be deemed an Agreement for Hire from month to month.
  - The Owner may demand the possession of the Equipment at any time.
  - The Hirer may return possession of the Equipment at any time provided always that the Hirer shall pay for the full month's hire.

### 10. WARRANTIES

- The Hirer shall have the benefit of any manufacturer's warranty with respect to the Equipment during the rental term and provided the Hirer is not in default under this Agreement.
  - Other than the warranties referred to in 10.1 above, all warranties with respect to the Equipment are hereby negated.
  - The Owner shall not be liable for any loss, injury, expense or damage of any kind however arising with respect to the Equipment or use of the Equipment however in circumstances where the law does not permit the Owner to limit its liabilities then the liability of the Owner for any breach of warranty or damages or loss suffered shall be limited to the supply of equivalent machinery or the repair of the Equipment.

### 11. RENTER PROTECTION

- RENTER PROTECTION shall be paid by the Hirer where the full new replacement cost of the Equipment as determined by the Owner exceeds \$200.00 unless the Owner waives this requirement in writing.
  - Where the Hirer has paid Renter Protection then subject to this clause the hirer's liability for loss or damage to the Equipment caused by fire, storm, earthquake, collision, accident or theft is limited to \$200.00 or 10% of the repair cost of the Equipment (if repaired) or 10% of the full new replacement cost of the Equipment (if replaced) whichever is the greater.
  - The Hirer's liability will not be limited in accordance with the preceding clauses if in the Owner's reasonable opinion, the loss or damage to the Equipment arises from or is caused by:
    - Default in the terms of this Agreement;
    - The negligent acts or omissions of the Hirer or its employees or agents.
    - The improper use of the Equipment;
    - Transporting, loading or unloading;
    - Lack of lubrication or other normal maintenance of the Equipment;
    - Overloading exceeding the rated capacity, failing to maintain the Equipment, misuse, abuse or improper servicing of the Equipment;
    - Artificial electrical current or exposure to any corrosive substance or environment;
    - Use or location of the Equipment in or over the water, on bridges, vessels or structures of any kind.
  - Where the Equipment is stolen, the Hirer must report such theft to the police and provide the Hirer with written evidence verifying that report.

### 12. NOTICE

- Any notice to be given may be given by posting the notice to the address of the parties specified in this Agreement and shall be deemed received three days after posting by ordinary prepaid post.
  - Any notice to be given may be given by facsimile to the parties' facsimile address specified in this Agreement and shall be deemed received on the date and time after transmission shown on the transmission report produced by the facsimile machine for the party transmitting the facsimile.
  - Any notice to be given may be given by email to the address of the parties specified in this Agreement and shall be deemed received at the time notified on the transmitter's computer terminal that the email has been received by the other party's computer.

### 13. JURISDICTION

- Any action, suit or proceeding relating in any way to this Agreement may be instituted, heard and determined in a Court of competent jurisdiction in Queensland.
  - The parties hereby irrevocably submit to the non-exclusive jurisdiction of such Court for the purposes of any such action, suit or proceeding.
  - The parties hereby agree that the proper forum for any action, suit or proceeding relating in any way to this Agreement brought in a Court of competent jurisdiction of Queensland shall be:
    - A Court at Brisbane or;
    - At the election of the Owner the nearest Court house to the office of the Owner's Business to which the Equipment has been returned.

### 14. SEVERABILITY

- If any provision of this Agreement is held to be invalid, unenforceable or illegal for any reason, this Agreement shall remain otherwise in full force apart from such provisions which shall be deemed deleted.
- The parties agree that these terms, the Rental Agreement schedule and any maintenance schedule annexed thereto shall form and constitute the terms for rental of all Equipment.

### 15. GOODS AND SERVICES TAX

- If any tax on goods or services (including, without limitation any value added tax, consumption tax or other similar tax) ("GST") is imposed on any taxable supply (as that term is defined in the A New Tax System) Goods and Services Tax Act 1999 (Cth) or a replacement or subsequent similar law) under or in connection with this agreement, then the Owner may, by notice to the Hirer, elect to have the amounts payable or consideration to be provided by the Hirer for such taxable supply re-determined by the Owner, with effect from such date as the Owner may determine, so as to take into account the GST and in order to provide the Owner with the same rate of return as was originally obtained by the Owner on the Rental Payments payable by the Hirer prior to the imposition of the GST.
  - At the Hirer's request, the Owner shall promptly provide the Hirer with an invoice, in a form reasonably requested by the Hirer, to enable the Hirer to claim an input credit under any applicable Australian goods and services tax legislation for the supply of the goods and/or services under this Rental Agreement.

### 16. SECURITIES

- In order to ensure payment of all monies for which the Hirer may become liable to pay the Owner hereunder, the Hirer hereby charges as beneficial owner all of the Hirer's freehold and leasehold interest in land both in which the Hirer is now possessed and may hereafter acquire along with all of the Hirer's personal property both presently owned by the Hirer and that which the Hirer may hereafter acquire. The Hirer further agrees that immediately upon demand being made upon the Hirer by the Owner, the Hirer shall deliver to the Owner such bill of encumbrance in registrable form, or such other instrument, assignment or security or consent to Caveat as the Owner may require duly executed or consent to by the Hirer. In the event the Hirer should neglect of fail to deliver the requested instrument or security, the Hirer hereby appoints the Owner or an authorised officer thereof to be the Hirer's lawful attorney for the purpose of executing and registering such instruments. The Hirer authorises the attorney appointed pursuant to this clause to enter into conflict transactions within the meaning of the Powers of Attorney Act 1998 (as amended).

### 17. PERSONAL PROPERTY SECURITIES ACT 2009 (AS AMENDED) ("PPSA")

- This agreement constitutes a security agreement pursuant to the PPSA creates a security interest in all equipment previously supplied by the Owner to the Hirer and all equipment that will be supplied in the future by the Owner to the Hirer.
  - The Hirer agrees to pay all reasonable expenses including any costs, commissions, and legal expenses on an indemnity basis whatsoever arising from the collection of overdue monies or registration, maintenance, enforcement or discharge of a security interest and such other costs and expenses as the Owner may incur. Such costs, commissions and legal expenses may be recovered as a liquidated debt due and owing to the Owner.
  - The Hirer acknowledges that a Purchase Money Security Interest ("PMSI") is granted in priority to all other creditors by the Hirer in favour of the Owner in all goods that are supplied from time to time as security for the Hirer's obligations to the Owner.
  - The Hirer agrees that funds received by the Owner in respect to equipment supplied to the Hirer shall be applied firstly to any unsecured portion of the debt, secondly to any secured portion of the debt, thirdly to any secured non-PMSI liability then against any PMSI.
  - The Hirer hereby gives such permission as is necessary under the PPSA for the owner to take a security interest over any equipment acquired from the owner pursuant to these terms or other collateral described in the schedule.
  - The Hirer authorises the Owner to make any and all checks to satisfy themselves as to the accuracy of the information provided by all persons named in the Agreement. The Hirer further authorises the Owner to make any periodic checks that it sees fit to continue its assessment of the Applicant's credit position. The Hirer further authorise the disclosure of information by a secured party to the Owner under section 275(7)(c) of the PPSA in response to any request for information pursuant to section 275(1).
  - The Hirer agrees to do all such things and sign all such documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) as are necessary and reasonably required to enable the owner to acquire a perfected security interest in all equipment (tangible and intangible) supplied by the Owner to the Hirer and, if applicable, a PMSI including:
    - register a Financing Statement or Financing Change Statement in relation to a security interest on the PPSR;
    - register any other document required to be registered by the PPSA; or
    - correct a defect in a statement registered under the PPSA
  - The Hirer hereby agrees to contract out of, waive or exclude such sections of the PPSA as the Owner may require, to the extent and subject to those sections being able to be excluded under the law. The Hirer hereby expressly agrees to:
    - contract out of the enforcement provisions of the PPSA referred to at section 115 (1) sub sections (a) to (r) inclusive;
    - wave its right to receive a copy of any Financing Statement or any Financing Change Statement registered by the Owner and/or any verification statement under section 157 and/or notice in relation to a registration event under section 175 of the PPSA in respect of the security interest created by these terms and conditions;
    - The Hirer will not, without the prior written consent of the Owner, change its name or initiate any change to any documentation registered under the PPSA under this agreement.
  - The Hirer agrees that, until all monies owing to the Owner are paid in full, it shall not sell or grant any other security interest in the Collateral without the prior written consent of the Owner.
  - The Owner undertakes to maintain the accuracy of the registered security interest and to remove the registration when the account with the Hirer closes.
  - If any of the provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.

### 18. DEFAULT INTEREST

- Notwithstanding any other remedy available to the Owner under this Agreement or at law, if the Hirer fails to pay an amount owing to the Owner on the date due for payment, the Hirer is liable for interest at the Default Rate from the due date for payment until the date that payment is made.
  - If an amount claimed by the Owner is in dispute:
    - The amount not in dispute must be paid by the Hirer in accordance with this Agreement; and
    - Any disputed amount that is ultimately determined to have been payable to the Owner must be paid by the Hirer with interest at the Default Rate from the original due date until the payment is made.

### 19. PRIVACY

- The Owner is collecting the information on this form to determine whether it is prepared to enter into a rental agreement with you. The Owner may disclose this information to Caterpillar Inc and its subsidiaries to assist with the recording of statistics relating to the rental of Caterpillar equipment in Queensland and the Northern Territory.