



## ORANGE HIRE STANDARD CONDITIONS OF HIRE ("STANDARD CONDITIONS")

Subject to the state in which building & construction work is taking place, this Hire Contract is a claim for payment under the Building & Construction industry Security of Payment Act 1999 (NSW) or similar legislation in any other state or territory

### 1. Definitions

"Owner" of Plant is Altro Holdings Pty Ltd Trading as Orange Hire (ABN 97 133 373 154).

"Hirer" refers to the person, firm, organisation, partnership, corporation or other entity hiring Plant from the Owner, as identified in the Hire Contract.

"Plant" means all equipment including tools, temporary fencing, vehicles, accessories and parts supplied to the Hirer.

"Environmental Laws" means any statute, policy directions or regulations made or issued by a regulatory body or government body regulating or otherwise relating to the environment including without limitation the use or protection of the environment.

"Hire Contract" means the agreement between the Owner and Hirer for the hire of Plant which includes:

- (a) any credit application;
- (b) these Standard Conditions, and
- (c) any Hire delivery note provided to the Hirer by the Owner, whether signed or not.

"Hire Period" means the period from which the hire commences when the Hirer takes possession of the Plant or when the Owner delivers the Plant in accordance with the Hirer's instructions and the period of hire ends when the Plant is back in the possession of the Owner.

### 2. Title to Plant

2.1 The Hirer acknowledges that in all circumstances the Owner retains title to the Plant (even if the Hirer goes into liquidation or becomes bankrupt during the Hire Period) and in no circumstances will it be deemed to be a fixture. The rights of the Hirer to use the Plant are as a bailee only during the Hire Period.

2.2 The Hirer will not be entitled to offer, sell, assign, sub-let, mortgage, pledge or otherwise deal with the Plant in any such way without the written consent of the Owner.

### 3. Hire Period

3.1 The Hirer hires the Plant for the Hire Period.  
3.2 The Hire Period includes weekends and public holidays and is irrespective of the time the Plant is being used.

3.3 The Hirer is to be charged for the Hire Period. Any variation to the Hire Period must be agreed by the Owner.

3.4 Should the Owner agree with the Hirer that the Owner will deliver and collect the Plant, hire charges will commence from the time the Plant leaves the Owner's premises and continue until the Owner is notified by the Hirer of the date that the Plant is available for collection ("Off-Hire Date"), at which time the Owner will give the Hirer a number as verification that such notification has been received ("Off-Hire Number"). The notification will be given by the Hirer in time for the Plant to be picked up and returned to the Owner's premises within the Owner's normal business hours by the Off-Hire Date. In the event of insufficient notice being given, the Hirer will be charged a minimum of an extra day hire at the Owner's absolute discretion. The Hire Period on the Hire Contract will not be deemed notice to the Owner that the Plant is available for collection. Where the Owner agrees to collect the Plant the Hirer remains responsible for theft, loss or damage to the Plant until the Plant is collected by the Owner.

3.5 The Hire Contract will specify the type of rate which will apply (e.g. "daily" or "weekly"). Plant hired for at least 5 days in a seven day continuous period, will be charged at the 'weekly rate'.

3.6 The Owner reserves the right to charge a minimum period of hire for certain types of Plant.

### 4. Hire Charges and Other Charges

4.1 Hire: Subject to clause 4.10 the Hirer will pay the Owner the hire charges set out in the Hire Contract. The Hirer is not entitled to any discount or rebate if the Plant is not used by the Hirer for the entire Hire Period. Additional rental charges

may apply if the Plant is used for more than 8 hours per day.

4.2 Other Services: The Owner will, subject to clause 5.5, if requested by the Hirer, and only if personnel are available, attend the site and instruct the Hirer in the operation of the Plant.

The Hirer will in addition to the hire charges pay the Owner for such services. Any other additional services provided to the Hirer, will be paid for by the Hirer at rates agreed with the Owner.

4.3 Consumables & Trade Materials: The Hirer will be liable for charges made for consumables and trade materials provided by the Owner.

4.4 Tax and Government Charges: The Hirer will be liable for stamp/ hire duty, GST and all other applicable taxes, duties levies and any other government charges imposed on the Hire Contract or in respect of the Hire Period. Where the Hirer claims exemption from duty or tax the Hirer must furnish appropriate exemption certificates to the Owner.

4.5 Environmental Levy: The Hirer will pay the amount specified by the Owner in the Hire Contract in consideration of any oil, grease or other environmental contaminants used, applied or discarded in connection with the Plant.

4.6 Credit Card Payments: The Hirer acknowledges that the Owner may impose a charge for accepting payments by credit card.

4.7 Delivery: If the Hirer requires the Owner to deliver, collect or install the Plant, the Hirer will be liable for the cost of delivery, collection or installation. In these circumstances, the Hirer is liable for all risks associated with the delivery of the Plant. The Owner will not be responsible for any delays in delivery or installation or failure to deliver due to causes beyond its control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations or governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages or inability to obtain shipping space or land transportation.

4.8 Damage Waiver: The Hirer will pay an amount for damage waiver in accordance with this clause and clause 8 below ("Damage Waiver"). Subject to this clause, the Damage Waiver will be automatically charged in addition to the Owners hire charge. The Hirer is not required to pay Damage Waiver if it produces to the Owner a Certificate of Currency for an appropriate policy of insurance that covers loss or damage to the Plant arising from the Hirer's hire and the Plant is insured for an amount not less than the full new replacement cost of the Plant.

4.9 Late Return of Equipment: If the Hirer returns the Plant to the Owner's premises after the end of the Hire Period, the Hirer will be charged a minimum of an additional full day hire. The Hirer will remain liable to be charged for the Plant until it is returned to the Owner.

4.10 Early Return of Equipment: If the Hirer wants to return the Plant before the end of the Hire Period, the Hirer will remain liable for all hire and other charges payable to the Owner for the entire Hire Period. The Owner may, at its absolute discretion, accept return of the Plant, and if it does so, may:

(a) attempt to re-hire the Plant, in which case the Hirer will be liable for those hire and other charges payable up until the date of the commencement of the re-hire or until the end of the Hire Period, whichever is earlier, and

(b) revise the hire charges payable by the Hirer from the start of the hire Period to account for the reduction to the Hire Period.

4.11 Payment Due Date: The Hirer is required to pay all fees, charges and costs that may become due and payable under the Hire Contract within 30 days of the invoice date.

4.12 Late Payment: If a Hirer does not pay the amount of the Hire Contract invoice by the payment due date, a late payment fee of 2% per month, compounding monthly, may be imposed. In addition, without limiting clause 10, the Hirer will be liable to indemnify the Owner for all expenses incurred by the Owner in recovering any amounts which the Hirer fails to pay by the payment due

date (including any commission payable to any commercial or mercantile agents and legal costs)

4.13 Offset: The Owner may set-off against any credit owed to the Hirer, any amounts which are owing by the Hirer to the Owner pursuant to this Hire Contract.

### 5. Hirer's Hire Obligations

5.1 Possession and Use by Hirer: The Hire Contract is personal to the Hirer and the Hirer will not allow nor authorise any other person or entity to use, re-hire or have possession of the Plant at any time during the Hire Period.

5.2 Purpose: The Hirer's purpose for the Plant is wholly and predominantly for business purposes. The Owner has a right to cancel this Hire Contract if the Hirer's purpose of hiring the Plant is found to be wholly or predominantly for personal, domestic or household use.

5.3 The Plant shall be used for their intended purpose only, in strict compliance with the operating instructions and other instructions issued by the Owner. Where damage is caused by improper use, or use other than the intended purpose, the Hirer shall be liable for the loss or damage. The Plant shall only be used with the corresponding insert tools, parts, accessories and consumables of the Owner or with other products of equivalent quality. The Hirer will not offer the Plant for rental, in whole or in part or otherwise make them available to third parties for use, without the express prior written consent of the Owner.

5.4 Suitability: To the extent permissible by law:

(a) the Hirer agrees that before accepting the Plant it has satisfied itself as to the suitability, condition and fitness for purpose of the Plant.

(b) the Owner gives no warranty that the plant is suitable for the Hirer's purpose.

5.5 Operation of Equipment: The Hirer warrants that at all times it will:

(a) operate the Plant safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;

(b) ensure persons operating or erecting the Plant are suitably instructed/trained in its safe and proper use and where necessary hold a current Certificate of Competency and be licensed to use it;

(c) return the Plant to the Owner in the same good and clean condition it was in when the Hirer received it, ordinary fair wear and tear excluded. If the Hirer fails to clean the Plant, the Owner will charge the cleaning cost to the Hirer;

(d) display, maintain safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Plant;

(e) ensure all persons operating the Plant wear suitable clothing and protective equipment as required or recommended by the manufacturer or by the Owner;

(f) ensure that no persons operating the Plant are under the influence of drugs or alcohol;

(g) at all times comply with all relevant legislation relating to the operation of the site where the Plant is utilised including all applicable OH&S laws;

(h) conduct a job safety analysis prior to using the Plant at a site,

(i) accept responsibility for the safekeeping of and insuring the Plant during the Hire Period;

(j) ensure that no persons carry illegal, prohibited or dangerous substances in or on the Plant, and comply with all Environmental Laws from time to time and immediately rectify any breach of an Environmental Law caused by the use of the Plant.

5.6 Operator: If the Owner supplies an operator to operate the Plant ("Operator"), the following additional conditions apply;

(a) the Operator will be under the sole direction and control of the Hirer and will during the Hire Period be deemed to be the employee of the Hirer and the Hirer will remain liable for the actions of the Operator during the Rental Period;

(b) the Hirer will not allow any other person to operate the Plant without the Owner's prior written consent;

(c) the Hirer must provide all amenities and first aid services to the Operator in compliance with the relevant Health and Safety legislation;

5.7 the Owner accepts no liability if the Operator damages any Plant or the Hirer's other equipment and the Hirer agrees to indemnify the Owner in such circumstances in accordance with clause 10. Cleaning and Maintenance: The Hirer must:

(a) clean, fuel, lubricate and maintain the Plant in good condition and in accordance with the manufacturer's and the Owner's instructions at the Hirer's cost, and

(b) not in any way alter, modify, tamper with, damage or repair the Plant without the Owner's written consent.

5.8 Safekeeping: The Hirer must ensure that during the Hire Period the Plant is stored safely and securely and is protected from theft, seizure or damage.

5.9 Alteration and Identifying Marks: The Hirer must not alter, deface, remove or erase any notices, safety information, identifying mark, plate or number on the Plant.

5.10 Inspections: The Hirer consents to the Owner inspecting the Plant from time to time during the Hire Period and the Hirer will provide such access to premises to the Owner where the Plant is located as the Owner requires. In addition, the Hirer may arrange a joint inspection with the Owner at the end of the Hire Period.

5.11 Safe Loading and Transport: The Hirer will ensure the safe loading, securing and transporting of all Plant in accordance with all laws and manufacturer's guidelines. Hirer and any transporting contractor will observe any safety directions advised by the Owner and/or manufacturer of the Plant for its loading and safe handling.

5.12 Location: The Hirer must not remove the Plant from the State in which it was hired without the Owner's written consent. The Plant will be returned to the location from where the Plant was collected by the Hirer or delivered by the Owner.

5.13 Electrical Equipment re-testing and re-tagging; Hirer is responsible for arranging at the Hirer's cost the re-testing and re-tagging of the electrical equipment by the manufacturer's agent in accordance with the manufacturer's instructions and the applicable Australian Standard(s) and Regulatory Authority requirements. The Owner is able to arrange, at the Hirer's cost, for such re-testing and re-tagging of the electrical equipment if requested by the Owner in writing. Any damage caused to the Plant resulting from incorrect testing will be at the Hirer's cost.

### 6. Equipment Breakdown

6.1 Obligations of Hirer: In the event that the Plant breaks down or becomes unsafe to use during the Hire Period the Hirer will:

(a) immediately stop using the Plant and notify the Owner and follow the Owner's instructions (if any);

(b) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Plant;

(c) take all steps necessary to prevent any further damage to the Plant; and

(d) not repair or attempt to repair the Plant without the Owner's written consent.

6.2 Obligations of the Owners: In the event that the Plant breaks down or becomes unsafe to use through no fault, negligence, recklessness or misuse by the Hirer, the Owner will:

(a) take all steps necessary to repair the Plant or provide suitable substitute Plant as soon as reasonably possible after being notified by the Hirer;

(b) not impose a hire charge for that portion of the Hire Period for which the Plant was broken down or unsafe, nor the costs associated with any repair or replacement of the Plant; and

(c) not be liable for any expenditure, damages, loss or



inconvenience incurred by the Hirer arising from a breakdown of Plant, however so caused.

**7. Lost , Stolen or Damaged Equipment**

Risk in the Plant passes to the Hirer on delivery, which is in accordance with clause 4.7 and risk remains with the Hirer during the entirety of the Hire Period.

The Hirer is responsible for the Plant and its attached tools and accessories whilst on hire until the Plant is collected by the Owner, or returned to the Owner by the Hirer. If the Plant is lost, stolen or damaged during the Hire Period the Hirer will be liable for:

- (a) any costs incurred by the Owner in repairing or the new replacement cost of the Plant, and
- (b) any other costs whatsoever, including but not limited to transportation costs, incurred by the Owner as a Result of the loss, theft or damage to the Plant, including the continuation of hire charges when the damages were caused by the negligence or act or omission of the Hirer relating to loss, theft or damage to Plant, except where the Hirer pays the Damage Waiver fee, in which case its liability is subject to the Damage waiver clause below.

**8. Damage Waiver**

8.1 Subject to the exclusions in clause 8.2, where Damage Waiver has been charged to the Hirer, the Owner agrees, upon prompt submission of a written Police Report from the Hirer and any other written or photographic evidence requested by the Owner, to waive its right to claim for loss or damage to the Plant caused by fire, storm, collision, accident, theft or burglary. Such waiving of rights is subject to payment by the Hirer of an excess for either the loss of the Plant or damage to the Plant, being the greater of \$500.00 per item or 15% of the cost of repairs or the new replacement cost of the Plant (as the case may be).

- 8.2 Expressly excluded from the above Damage Waiver is loss or damage as defined below:
- (a) damage due to misuse, abuse or over loading of the Plant or any components thereof;
  - (b) wrongful conversion of the Plant or any components thereof;
  - (c) loss or damage in contravention of the conditions of this Hire Contract;
  - (d) loss or damage from use in violation of any statutory laws & regulations;
  - (e) damage caused to tyres & tube blowout, bruiser, cuts or other causes inherent in the use of the Plant;
  - (f) glass breakage or graffiti;
  - (g) loss or damage relating to lack of lubrication or other normal servicing of Plant;
  - (h) loss or damage to the Plant whilst located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
  - (i) loss or damage to motors or other electrical appliances or devices caused by overloading or artificial electrical current, including use of underrated or excessive length of extension leads on electrical powered tools and machines;
  - (j) damage caused by exposure to any corrosive or caustic substance, such as cyanide, salt water, acid, etc.;
  - (k) theft of the Plant unless reasonably locked and secured;
  - (l) loss or damage to Plant during transport, except where transported by the Owner. This sub-clause will not apply to Motor Vehicles, trailers or trailerised Plant;
  - (m) loss or damage to items which the Hirer has elected not to pay Damage Waiver premium and thereby the Hirer has accepted liability for the Plant, and
  - (n) loss or damage caused by the negligence of the Hirer.

8.3 Where the Owner determines that one of the exclusions in clause 8.2 applies, Damage Waiver will not apply unless the Hirer is able to establish to the reasonable satisfaction of the Owner that the exclusion does not apply. The Hirer will provide the Owner with all the information requested by the Owner for the purpose of establishing whether one of the exclusions in clause 8.2 applies.

8.4 Damage Waiver does not apply to Plant used off-shore, over water or down in underground mines. Prior to the commencement of the Hire Period, the

Hirer must produce evidence that they have taken out suitable insurance cover for items of Plant that are to be used off-shore, over water or down in underground mines, which includes the Owner being listed as an insured party and cover the Owner's liability as a principal in connection with the performance of the Hire Contract and contain provisions whereby;

- (a) all rights of subrogation or action against any other person comprising the insured are waived;
- (b) the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject to the overall sum insured not being increased as a result); and
- (c) any non-disclosure or misrepresentation by one insured does not prejudice the right of the other insured to claim under any insurance.

**9. Personal Properties and Securities Act 2009 (Cth) ("PPSA")**

9.1 To the extent that the Plant hire arrangement documented in these Standard Conditions constitutes a PPSA lease, this clause 5 applies.

9.2 Defined terms in this clause have the same meaning as given to them in the PPSA.

9.3 The Owner and the Hirer acknowledge that the agreement arising under these Standard Conditions creates a Security Interest under the PPSA in favour of the Owner over the Plant supplied to the Hirer, as Grantor, pursuant to these Standard Conditions, and over the Proceeds including but not limited to any sale or rent monies or an account for such monies and insurance monies.

9.4 The Plant supplied or to be supplied under these Standard Conditions fall within the PPSA classification of "Other Goods" leased by the Hirer pursuant to these Standard Conditions, will be the Commercial Property of the Hirer and will not form part of the Inventory of the Hirer.

9.5 The Owner and the Hirer acknowledge that the Owner, as Secured Party, is entitled to register its Security Interest in the Plant supplied or to be supplied to the Hirer under these Standard Conditions on the PPSA Register as Collateral.

9.6 To the extent permissible at law, the Hirer:

- (a) waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Hirer, as Grantor, to the Owner.

- (b) agrees to indemnify the Owner on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the:
  - (i) registration or amendment or discharge of any Financing Statement registered by or on behalf of the Owner; and
  - (ii) enforcement or attempted enforcement of any Security Interest granted to the Owner by the Hirer.

9.7 The Owner and the Hirer acknowledge that for the purpose of section 109(1) of the PPSA, each lease under the Agreement does not secure payment or performance of an obligation. However, if Chapter 4 of the PPSA does apply to the enforcement of a security interest arising under or in connection with a lease under these Standard Conditions, the Hirer agrees, to the extent permissible at law, to the following:

- (a) that nothing in sections 130 to 143 of the PPSA will apply to this Agreement or the Security under this Agreement;
- (b) to waive its right to do any of the following under the PPSA:
  - (i) receive notice of removal of an Accession under section 95;
  - (ii) receive notice of an intention to seize Collateral under section 123;
  - (iii) object to the purchase of the Collateral by the Secured Party under section 129;
  - (iv) receive notice of disposal of Collateral under section 130;
  - (v) receive a Statement of Account if there is no disposal under section 130(4);
  - (vi) receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and

whether Security Interests held by other Secured Parties have been discharged.

- (vii) receive notice of retention of Collateral under section 135;
- (viii) redeem the Collateral under section 142; and
- (ix) reinstate the Security Agreement under section 143.

**10. Indemnities and Exclusion of Liabilities**

10.1 The Owner's liability in respect of a breach of a consumer guarantee or any warranty made under these Conditions for any Plant not of a kind ordinarily acquired for personal, domestic or household use is limited to, to the extent permissible by law and at the Owner's option to:

- (a) in relation to the Plant;
- (i) replacing the Plant or the supply of equivalent equipment;
- (ii) the repair of the Plant;
- (iii) the payment of the cost of replacing the Plant or of acquiring equivalent equipment; or
- (iv) the payment of the cost of having the Plant repaired.
- (b) in relation to services;
- (i) re-supplying the services;
- (ii) reimbursing the consumer for paying someone else to supply the services.

10.2 To the extent permitted by law, all other warranties whether implied or otherwise, not set out in these Conditions are excluded and the Owner is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Hirer for:

- (a) any increased costs or expenses;
- (b) any loss of profit, revenue, business, contracts or anticipated savings;
- (c) any loss or expense resulting from a claim by a third party; or
- (d) any special, indirect or consequential loss or damage of any nature whatsoever caused by the Owner's failure to complete or delay in completing the order to deliver the equipment or meet its obligations in these Conditions.

10.3 The Hirer is liable for and indemnifies the Owner against all liability, claims, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor/client basis, determined without taxation, assessment or similar process and whether incurred or awarded against the Owner and any environmental loss, cost, damage or expense) arising from or incurred in connection with Hirer's hire and use of the Plant or its breach of the Hire Contract.

10.4 Each indemnity in this Hire Contract is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Hire Contract. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Hire Contract. The Hirer must pay on demand any amount it must pay under an indemnity in this Hire Contract.

10.5 For the purposes of clauses 10.3 to 10.5, use of Plant operated by a person supplied by the Owner will be use of the Plant by the Hirer.

**11. Termination**

11.1 The Owner may terminate the Hire Contract immediately by notice to the Hirer, if:

- (a) the Hirer breaches any term of the Hire Contract, or
- (b) the Hirer becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business.

11.2 The Owner may terminate the Hire Contract for any other reason by 24 hours notice.

11.3 The right of termination is in addition to any other rights under the Hire Contract and does not exclude any right or remedy under law or equity or the survival of other terms under the Hire Contract.

**12. Recovery of Equipment**

If the Hirer is in breach of the Hire Contract or if the Owner has terminated the Hire Contract with the Hirer pursuant to clause 11, then without prejudice to any other rights which

the Owner may have at law under this Hire Contract, and without notice to the Hirer:

- (a) the Owner or its agents may enter Hirer's premises or any premises under the control of the Hirer for the purposes of recovering the Plant;
- (b) the Owner may recover and resell the Plant;
- (c) if the Plant cannot be distinguished from similar goods which the Hirer has or claims to have paid for in full, the Owner may in its absolute discretion seize all goods matching the description of the Plant and hold same for a reasonable period so that the respective claims of the Owner and the Hirer may be ascertained. The Owner must promptly return to the Hirer any goods that are the property of the Hirer and the Owner is in no way liable or responsible for any loss or damage to those goods or for any loss, damage or destruction to the Hirer's business howsoever arising from the seizure of any of the goods.

**13. Hire of Motor Vehicles**

Where the Plant hired by the Hirer is a Motor Vehicle the following additional conditions also apply to the Hire Contract:

- 13.1 Definitions: 'Motor Vehicle' means a car, truck, utility or trailer.
- 13.2 Insurance: The Owner will arrange motor vehicle accident insurance for each Motor Vehicle to cover any damage caused through a motor vehicle accident and the Hirer must pay a charge for such insurance. This insurance will not cover the Hirer for the loss, theft or other damage to the vehicle (other than a Motor Vehicle accident). If the Motor Vehicle is damaged in a motor accident then the Hirer will be liable for the following additional costs:
- (a) the first \$2,500 of the cost of any damage if the driver is 25 years or over
  - (b) the first \$3,500 of the cost of any damage if the driver is under 25 years;
  - (c) the cost of repairing damage:
    - (i) to the pantech;
    - (ii) to or caused by a truck mounting device;
    - (iii) to tyres;
    - (iv) caused other than by the normal use of the Motor Vehicle;
    - (v) caused while the Motor Vehicle is being driven on any road that is unsealed or is not a public road; or
    - (vi) caused while the Hirer is in breach of any clause of the Hire Contract.
- 13.3 Damage to Motor Vehicle: In the event that the Motor Vehicle is lost, stolen or damaged (not through a motor accident) during the Hire Period, the Hirer is liable to pay the amount to replace or repair the Motor Vehicle, except where the Hirer pays the Damage Waiver Fee, in which case its liability is subject to the Damage Waiver clause (clause 8).
- 13.4 Damage to Tyres: The Hirer is liable to pay the cost of repairing or replacing flat or damaged tyres and other damage to tyres arising outside of the ordinary and reasonable use of the Motor Vehicle.
- 13.5 Operation of Motor Vehicles : The Hirer warrants that it will not allow a person to drive a Motor Vehicle if:
- (a) the person does not hold an unrestricted licence to drive that class of Motor Vehicle;
  - (b) the person is under the age of 21 years;
  - (c) the person is affected by drugs and/or alcohol;
  - (d) the person has been convicted of any offence relating to driving a motor vehicle under the influence of drugs or more than the legally prescribed limit of alcohol; or
  - (e) the person has previously been refused motor vehicle insurance.
- A breach of any of this clause 13.5 will render the Owner's insurance void and the Hirer liable for the costs of repairs or the replacement cost of the Motor Vehicle.
- 13.6 Fines and Government Charges: The Hirer will promptly pay all tolls, fines, penalties and other statutory or Government charges arising out of the use of the Motor Vehicle by the Hirer during the Hire Period. If the Owner pays any such charges the Hirer must reimburse the Owner within 7 days of receiving notification of the charges from the Owner.
- 13.7 Kilometre Charge: The Hirer must pay a charge for the number of kilometres that the Owner



reasonably believes the Motor Vehicle has travelled during the Hire Period or for excess kilometres if an agreed usage is made within the hire charge.

- 13.8 Driver Information: Prior to the commencement of the Hire Period the Hirer will provide the Owner with all information required by the relevant legislation for those persons who will operate the Motor Vehicle for or on behalf of the Hirer. The Owner is also permitted to take a copy of any drivers licences at the commencement of the Hire Period.
- 13.9 Safe Loading: The Hirer warrants that no Motor Vehicle will be laden in excess of the Motor Vehicle's gross vehicle mass at anytime during the Hire Period.
- 13.10 Consumables: The Hirer must return the Motor Vehicle to the Owner with a full tank of fuel or the Hirer will be liable to pay the Owner the reasonable cost of filling the fuel tank.
- 13.11 Other Conditions: The Hirer acknowledges that these Standard Conditions, particularly clause 5 - Hirer's Hire Obligations also apply to Motor Vehicles.

#### 14. Hire of Temporary Fencing and its Accessories

Where the Plant hired by the Hirer is temporary fencing and related accessories, the following additional conditions also apply to the Hire Contract.

- 14.1 Delivery, Collection, Installation and Removal: Subject to clause 4.7 the Hirer retains the Owner to deliver, collect, install, or remove the temporary fencing, the Owner will do so as the agent of the Hirer. All hire rates assume collection by the Hirer from the depot. Delivery and collection charges are extra and will be quoted upon request.
- 14.2 Excess Labour: An excess labour charge is payable by the Hirer if the following occurs:
- (a) installation location exceeds a 30m radius from access point;
  - (b) rough, steep and/or poor terrain whereas access is hindered and/or installation process has slowed;
  - (c) heavy growth, vegetation or lack of accessibility due to site conditions;
  - (d) an installation falls below the average installation rate of 75m of fencing for every one hour of labour,
  - (e) any installation where product is required to be moved, altered, amended or secured after initial installation. Transport and/or product charges may also apply in addition to relocation/ labour charges and will be applied at the Owner's discretion.
- 14.3 Additional Delivery: Maximum load capacity is restricted to 200m of fencing per truck. If requirements exceed the maximum amount, additional delivery charges apply.
- 14.4 Partial Collection: Transport cost provided in quote will cover the Hirer for the 1st delivery/installation of Plant, and the final pick-up of Plant. Any partial pickups during this time constitute additional transportation costs.

#### 15. Hire of Earth Moving Plant

Where the Plant hired by the Hirer is deemed to be earth moving Plant as nominated by the Owner, then the following additional conditions also apply to the Hirer.

- 15.1 Excess Hire Charges: An excess hire charge is payable by the Hirer where the Hirer uses the earth moving Plant in excess of the number of hours specified in the Hire Contract. The excess hire charge is payable only in respect of those hours exceeding the specified number of hours.
- 15.2 Useable Items Charge: Unless otherwise indicated in the Hire Contract, the Hirer must pay a useable items charge in respect of the fuel, tyres, track gear, ground engaging tools and any other useable items listed in the Hire Contract. The level of usage will be determined by the Owner as a percentage of the actual cost of the useable item to the Owner. This percentage is to be calculated by deducting the percentage usage at the start of the Hire Period from the percentage usage at the end of the Hire Period. The Hirer will not be entitled to a payment or credit in respect of any useable item returned with less usage than at the start of the Hire Period.
- 15.3 Replacement of Useable Items: The Hirer is responsible for replacing useable items when they

become worn out or they run out.

- 15.4 Wear to Tyres: The Owner is responsible for the cost of ordinary wear and tear of tyres and tracks. Ordinary wear and tear is considered to be 4,000 SMU hours. The Hirer is liable for the cost of repairing or replacing flat or damaged tyres and is responsible for all wear and tear and damage to tyres and tracks which is caused by use of the tyres and tracks in conditions which the Owner considers are adverse or abnormal. At all times the Hirer must adhere to the manufacturer's recommended tyre pressure and track tension.
- 15.5 Bucket and Blade Wear: The Owner is responsible for the cost of normal bucket and blade wear or damage. The Hirer is responsible for the cost of all bucket and blade wear or damage which is caused by use of the buckets or blades in conditions which the Owner considers to be abnormal or adverse.
- 15.6 Ground Engaging Tools: The Hirer is responsible for all wear and tear to cutting edges, bucket teeth, hardware, ripper teeth and all other ground engaging tools hired. All ground engaging tools hired by the Hirer are to be returned to the Owner at the end of the Hire Period in the same condition in which they were supplied. Usage of ground engaging tools will be measured by comparing the percentage of use at the commencement of the Hire Period with the percentage of use at the end of the Hire Period.
- 15.7 Cleaning and Maintenance: The Hirer will at its own expense service, clean, maintain and return the Plant to the Owner in good and substantial repair and condition, with the exception of reasonable wear and tear. Except as otherwise notified by the Owner:
- (a) the Hirer is responsible for undertaking all preventative maintenance servicing and minor running repairs (including electrical, hydraulic hoses and oil leaks) in accordance with the manufacturer's specifications; and
  - (b) the Hirer is responsible for completing the manufacturer's oil sampling analysis (set out in the Operations and Maintenance Guide) on all compartments. If this is not completed the Hirer will be responsible for paying the Owner the reasonable Cost of doing so.

#### 16. Remote Area Hire Conditions

- 16.1 Definitions: 'Remote Area' is a location in excess of 50km from the Owner's branch.
- 16.2 The Hirer remains responsible for daily maintenance and care of all Plant in their possession, including but not limited to, daily checking of all fluids (fuel, oil, water, battery levels etc), general tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points.
- 16.3 If the Plant breaks down in a Remote Area the Hirer will pay the Owner the costs associated with any attendance to the site.

#### 17. Miscellaneous

- 17.1 Severability: If any part of these Standard Conditions become void or unenforceable for any reason then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.
- 17.2 Governing Law and Default Recovery: The Hire Contract is governed by the laws of the State or Territory of Australia where the Hire Contract is entered into by the parties and each party submits to the exclusive jurisdiction of the courts of that State or Territory. The Hirer will not object to the Owner using the jurisdiction of New South Wales for the recovery of any outstanding amount.
- 17.3 Security of Obligations: As security for the obligations and liabilities of the Hirer under the Hire Contract, the Hirer hereby charges for the due and punctual payment and performance of those obligations and liabilities, all of its legal and equitable interest (both present and future) of whatsoever nature held in any and all real property. Without limiting the generality of the Charge in this clause, the Hirer agrees, on request by the Owner, to execute any documents and do all things necessary required by the Owner to register a mortgage security over any real property. The Hirer will indemnify the Owner on an indemnity basis against all costs and expenses incurred by the Owner in connection

with the preparation and registration of any such mortgage documents. The Hirer also consents unconditionally to the Owner lodging a caveat or caveats noting its interest in any real property.

- 17.4 Entire Contract: The Hire Contract issued to the Hirer, including these Standard Conditions, comprises the entire agreement between the parties. No additional terms and conditions proposed by the Hirer (including any terms contained in any purchase order provided by the Hirer) apply to the hire of the Plant unless agreed in writing by the Owner.
- 17.5 No Reliance: To the extent permissible by law, the Hirer acknowledges that neither the Owner or any person acting on the Owner's behalf has made any representation or other inducement to it to enter into the Hire Contract and that it has not entered into the Hire Contract in reliance on any representations or inducements (including in relation to the use of the Plant) except for those representations or inducements contained herein.
- 17.6 Variation: The Owner may at anytime vary the Hire Contract by giving the Hirer 30 days written notice of its intention to do so. Any other variation of these Standard Conditions must be agreed in writing by the Owner and the Hirer.
- 17.7 Privacy:
- (a) The Owner may collect personal information about the Hirer. The Owner may use the Hirer's personal information to provide services to the Hirer, to fulfil administrative functions associated with these services (for example assessment of credit worthiness), to enter into contracts with the Hirer or third parties, and for marketing and client relationship purposes. If the Hirer does not provide all information required by the Owner, the Owner will not be able to hire the Plant or provide the associated services to the Hirer. The Owner may disclose the Hirer's information to the Owner's service providers and contractors from time to time to help provide and market the Owner's services to the Hirer. Generally the Hirer has a right to access personal information the Owner holds about the Hirer.
  - (b) The Hirer consents to and authorises the Owner to use and disclose the Hirer's personal information in accordance with clause 17.7(a).
- 17.8 Notice to Hirer: Any document given by the Owner in accordance with the Hire Contract may be served on the Hirer by leaving it at or posting it to the address of the Hirer as stated in the Hire Contract or last notified by the Hirer in writing to the Owner and will be deemed to have been served or rendered at the time of leaving or, if posted, on the business day following the day of postage and any notice may be signed by an officer, manager or solicitor of the Owner on behalf of the Hirer.
- 17.9 No Waiver: No delay or omission to exercise any right, power or remedy accruing to the Owner upon any continuing breach or default under the Hire Contract will impair any such right, power or remedy, nor will it be construed to be a waiver of any right of the owner to take action or make a claim in respect of a continuing breach or default or to be acquiescence to it.
- 17.10 Withdrawal of Credit Accommodation: Any credit accommodation granted by the Owner to the Hirer may be reviewed at anytime without notice. Credit may be withdrawn for Hirers failing to make payments or use the Plant in accordance with these Standard Conditions and a statement may be issued at that time requiring payment within 7 days of any amount due and owing.
- 17.11 Authority of Hirer: The person signing the Hire Contract for and on behalf of the Hirer hereby covenants with the Owner that he or she has the authority of the Hirer to make the Agreement on the Hirer's behalf and is empowered by the Hirer to bind the Hirer to the Agreement and hereby indemnifies the Owner against all losses, costs and claims incurred by the Owner arising out of the person so signing the Contract not in fact having such power and/or authority.
- 17.12 Previous Editions: This edition of the Standard Conditions replace and supersede all previously issued conditions of hire by the Owner.
- 17.13 Time of the Essence: Time is to be of the essence of all obligations of the Hirer in the Hire Contract.
- 17.14 Right of Refusal to Hire: The Owner is in no way obliged to hire any Plant to the Hirer and may refuse to hire Plant to a Hirer at its absolute

discretion, including but not limited to, if the Hirer fails to provide adequate identification or if in the opinion of the Owner, the Hirer's safety is put at risk by providing them with such Plant.