

# AOES HIRE TERMS

These Hire Terms, together with any Hire Form (defined in clause 2(a)), annexures and schedules set out the agreement under the terms of which you or the company which you represent (the **Customer, you**) will rent the Equipment from AOES Pty Ltd ABN 82 141 870 813 (**AOES, we, us, our**).

## 1. DEFINITIONS

In addition to capitalised terms defined in the Hire Form above, capitalised terms used in this agreement will have the following meanings:

**Breakdown** has the meaning set out in clause 9(a) of these Hire Terms.

**Business Days** means a day (other than a Saturday, Sunday or any other day which is a public holiday) on which banks are open for general business in Sydney.

**Contact Email** means AOES' contact email set out in the Hire Form, or as otherwise notified to the Customer from time to time.

**Daily Checklist** means the daily checklist form annexed at Annexure A.

**Equipment** means the Machine and the Included Attachments included in a Hire Form.

**Equipment Fault** has the meaning set out in clause 9(b)(i).

**Hire Form** has the meaning set out in clause 2(a).

**Hire Term** means the period of the Equipment hire, from the Start Date set out in the Hire Form until the Equipment is returned to AOES.

**Job Site** means the site at which the Customer will use the Equipment.

**Laws** mean any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the relevant jurisdiction(s) where the Equipment is provided and includes any industry codes of conduct.

**Personnel** means, in respect of a party, that party's officers, employees, contractors (including subcontractors) and agents.

**PPSA** means the Personal Property Securities Act 2009 (Cth) and PPS Register means the register established and maintained under that Act.

**Third Party Charge** has the meaning set out in clause 12(g)(i).

**Third Party Terms** has the meaning set out in clause 15(a).

## 2. HIRE FORM, THIS AGREEMENT

(a) These Hire Terms will apply to all the Customer's dealings with AOES, including being incorporated in all agreements, quotations or orders under which AOES is to rent equipment and/or provide services to the Customer (each a **'Hire Form'**) together with any additional terms included in such a Hire Form (provided such additional terms are recorded in writing).

(b) The Customer will be taken to have accepted this agreement if the Customer accepts a Hire Form, or if the Customer orders, accepts or pays for any equipment and/or services provided by AOES after receiving or becoming aware of this agreement or these Hire Terms.

(c) In the event of any inconsistency between these Hire Terms and any Hire Form, the clauses of these Hire Terms will prevail to the extent of such inconsistency, except that any "Special Conditions" (being terms described as such in the Hire Form) will prevail over these Hire Terms to the extent of any inconsistency

## 3. HIRE

AOES provides to the Customer and the Customer accepts from AOES the hire of the Equipment upon and subject to the provisions of this agreement.

## 4. PRE HIRE

The Customer warrants that they:

- (a) will provide a copy of their valid Australian driver's licence/s before the Hire Term starts, either by sending a copy to the Contact Email within 24 hours of confirming their booking or by providing their valid Australian driver's licence to AOES to make a copy on pick-up of the Equipment before the Start Time;
- (b) have read and understood any instructional manuals and materials (including the Daily Checklist) that were provided to the Customer prior to the Start Time, including any training AOES requires to be completed;
- (c) will obtain up to date information from relevant authorities, (for example, by using the "Dial Before You Dig" service), about any infrastructure networks at the Job Site; and
- (d) ensure that any person collecting or taking delivery of the Equipment on behalf of the Customer is authorised by the Customer to do so and the Customer will not allege that any such person is not so authorised.

## 5. EQUIPMENT USE

### Use

- (a) The Customer must ensure that the Equipment is only used:
  - (i) for the Purpose;
  - (ii) in a proper and skilful manner, by Personnel who are appropriately trained, licensed, certified and/or competent;
  - (iii) by Personnel who are over the age of 25;
  - (iv) in accordance with the Equipment manufacturer's requirements, any recommendations and directions, and the instructional manuals and materials provided to the Customer; and
  - (v) in accordance with all Laws, rules and regulations applicable to the Equipment and its use and/or relating to the Job Site.
- (b) The Customer must not, and must not allow any Personnel or third party to:
  - (i) use or allow the Machine to be operated on unsealed or public roads;
  - (ii) tow trailered Equipment with an unsuitable or unroadworthy Equipment on unsealed or public roads;
  - (iii) tow trailered Equipment, if the driver is not the holder of a valid driver licence;
  - (iv) use or allow the Equipment to be used for any dangerous or illegal purpose;
  - (v) use or allow the Equipment to be used to carry passengers for payment of any kind and/or for racing;
  - (vi) make any alterations to the Equipment, including by unauthorised repair;
  - (vii) use or allow the Equipment to be used while the operator is under the influence of alcohol or drugs;
  - (viii) use the Equipment when it is damaged or unsafe;
  - (ix) affix or install any accessories, equipment or device on or to the Machine (other than the Included Attachments set out in the Hire Form) without AOES' prior written consent;
  - (x) sub-hire the Equipment; and
  - (xi) use the Equipment for the conveyance or towing of any load.

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## Maintenance

- (c) The Customer must, on each day during the Hire Term:
- (i) perform the actions set out in the Daily Checklist;
  - (ii) complete the Daily Checklist, and provide such completed copy to AOES at the end of the Hire Term; and
  - (iii) otherwise perform the maintenance procedures in accordance with any other maintenance checklist/manual issued to the Customer.

## Operator

- (d) The Customer agrees that they are responsible for the acts and omissions of any other person they allow to use the Equipment.

## Fuel

- (e) The Customer must:
- (i) ensure that the Machine has a full tank of fuel when it is returned to AOES;
  - (ii) only fill the Machine with fuel of a type that meets the Machine's specifications; and
  - (iii) promptly pay AOES the costs of refuelling the Machine, at the Fuel Rate for each litre of fuel required to refill the Machine's tank, if the Customer fails to comply with clause 5(e)(i).

## Personal Property

- (f) AOES is not liable to any person for any loss of, or damage to, personal property that is left in the Equipment after its return to AOES or stolen from the Equipment or otherwise lost during the Hire Term.

## Cleaning

- (g) If AOES considers that the Equipment is returned in a substantially different state of cleanliness (inside and/or outside) to the state the Customer received it on the Start Date, AOES will invoice the Customer, and the Customer must promptly pay, its reasonable costs of having the Equipment professionally cleaned.

## Secure Storage

- (h) The Customer must always, when the Equipment is unattended, secure the Equipment in a safely locked premises and otherwise ensure the safe and secure storage of the Equipment (including by keeping the keys under the Customer's control at all times).

## 6. RETURN

- (a) Subject to any agreement between the parties that AOES will collect the Equipment from the Customer on the Return Date, the Customer must on the Return Date and by the Return Time specified in the Hire Form, return the Equipment to AOES at the Return Address in the same condition as it was in on the Start Date.
- (b) If the Customer does not comply with clause 6(a), the Customer must pay the Late Charge in addition to the Hire Rate for every additional 24 hour period after the Return Time on the Return Date for which the Customer retains possession of the Equipment.
- (c) If the Customer returns the Equipment before the Return Date, the Customer will be liable for the full Fees as if the Equipment was in the Customer's possession from the Start Date until the Return Date, notwithstanding the early return of the Equipment.
- (d) Notwithstanding any other clause in this agreement, AOES may demand (and the Customer must return) the Equipment before the Return Date, or retake possession of the Equipment, if AOES reasonably suspects that:

- (i) damage to the Equipment or injury to any person in connection with the Equipment is reasonably likely; or
- (ii) the Equipment may be used for an unlawful purpose,

## 7. OFF HIRE

- (a) This clause only applies to Equipment for which Off Hire Discount Rates apply, as set out in the Hire Form.
- (b) For Equipment that this clause 7 applies to, AOES will apply the Off Hire Discount Rate in respect of that Equipment and for a particular date, subject to the following:
- (i) the Equipment not being subject to a rent to buy arrangement; and
  - (ii) AOES receiving a written notice from the Customer before 9AM on the relevant date, requesting the Off Hire Discount Rate on one of the following grounds:
    - A. wet weather conditions, provided that the Equipment is [insert] tonnes or over in weight;
    - B. the date being a public holiday; or
    - C. the date being a rostered day off.
- (c) AOES will determine in its reasonable discretion whether any of the grounds set out in clause 7(b)(ii) apply.

## 8. REMOTE HIRE

Where the Customer hires Equipment and/or the Services are to be provided in a Remote Site, the Customer will pay the Remote Area Charges specified in the Hire Form.

## 9. FAULTY EQUIPMENT

- (a) If the Equipment is faulty, breaks down or becomes unsafe to use during the Hire Term (**Breakdown**), the Customer must immediately:
- (i) notify AOES;
  - (ii) stop using the Equipment;
  - (iii) take all steps necessary to prevent injuries from occurring to any person or property as a result of the condition of the Equipment;
  - (iv) take all steps necessary to prevent the Equipment from sustaining any further damage;
  - (v) not repair or attempt to repair the Equipment without AOES' written consent; and
  - (vi) comply with AOES' directions in relation to the return of the Equipment.
- (b) Subject to clause 9(c), if, upon inspection of the Equipment, AOES determines that a Breakdown was:
- (i) caused by a fault in the Equipment (not caused or contributed to by the Customer) (**Equipment Fault**) then AOES will provide the Customer with a pro-rata refund of any Fees paid for the period of the Hire Term during which the Breakdown persisted; or
  - (ii) not caused by an Equipment Fault, then the Customer will still be required to pay Fees in accordance with the Hire Form.
- (c) Clause 9(b) does not limit:
- (i) any of the Customer's rights under the *Competition and Consumer Act 2010* (Cth); or

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- (ii) any rights or remedies AOES may have access to in relation to a Breakdown, under this agreement or otherwise.

## 10. REPLACEMENT, LOSS AND DAMAGE

### Loss, damage and personal injury

- (a) The Customer will be fully liable to AOES for:
  - (i) any loss or damage to the Equipment during the Hire Term, or otherwise when the Equipment is in the Customer's possession, and must give reasonable notice to AOES in writing of any such loss or damage; and
  - (ii) all damage to the property of any person which is caused or contributed to by the Equipment during the Hire Term, or otherwise when the Equipment is in the Customer's possession.

### Replacement

- (b) If AOES notifies the Customer in writing, the Customer must replace all parts of the Equipment which during the Hire Term have become worn out, lost, stolen, damaged beyond repair or permanently rendered unfit for use (fair wear and tear excepted), provided that the Customer must not make any replacement, alteration or addition of any nature which may lead to a material reduction in the value of the Equipment.

## 11. INCIDENTS, INSURANCE AND EXCESS REDUCTION

### Insurance

- (a) The Customer acknowledges that AOES may, in its discretion, hold insurances in relation to the Equipment but such insurances may not cover the Customer or the Customer's use of the Equipment and AOES will have no obligation or requirement to insure the Customer's use of the Equipment under this agreement. The Customer is strongly encouraged to take out adequate insurance to cover all potential liabilities that could arise from their use of the Equipment.
- (b) If AOES notifies the Customer that it holds insurance in relation to the Equipment, or if the Customer has paid an Excess Reduction Fee, the Customer must not do or permit anything to be done which may make AOES' insurance invalid or able to be cancelled or which may increase AOES' insurance premiums.
- (c) AOES reserves the right to apply any insurance policy it does hold in respect of the Equipment during the Hire Term, to damage or loss caused or contributed to by the Customer, however AOES is under no obligation to. If AOES chooses to make a claim under an applicable insurance policy in accordance with this clause in respect of any damage or loss during the Hire Term, and there is an excess payable by AOES under that policy, then the Customer must pay to AOES an amount equal to that excess, on demand from AOES.

### Excess Reduction

- (d) If an Excess Reduction Fee is set out in the Hire Form, and the Customer pays this amount to AOES before the Start Date, then the excess payable under clause 11(c) will be limited, per incident, to the Reduced Excess amount set out in the Hire Form, subject to the terms of this agreement.
- (e) The Customer's liability in relation to the Equipment will only be reduced to the Reduced Excess amount set out in the Hire Form, if:
  - (i) the liability was not caused or contributed to by any unlawful act or omission (including any unlawful use of the Equipment);
  - (ii) the liability was not caused or contributed to by the Customer's breach of this agreement (including any failure

by the Customer to safely secure the Equipment in accordance with clause 5(h) or report an incident in accordance with clause 11(h); and

- (iii) AOES' relevant insurance policy covers that liability.

- (f) The Customer's liability in relation to the Equipment will not be reduced to the Reduced Excess amount set out in the Hire Form, even if the Customer has paid the Excess Reduction Fee, if the loss or damage is:

- (i) occasioned by the Customer failing to take reasonable care of the Equipment;
- (ii) caused to the Equipment as a result of any illegal activity, misappropriation or wrongful conversion of the Equipment by the Customer;
- (iii) caused by the Customer's misuse, abuse, overloading, exceeding the rated capacity or improper servicing or repairs of the Equipment;
- (iv) caused by the exposure of the Equipment to corrosive substances, salt water or toxic materials;
- (v) to the Included Attachments and/or tools, accessories, parts, grease guns, hoses, electrical cords, lights, light globes and other similar accessories, ground engaging tools, tracks, tyres and glass;
- (vi) occurred while the Equipment was in transit, including during loading and unloading; and
- (vii) arising in circumstances where a claim has been made by or against a third party.

### Incidents, Loss and Damage

- (g) Subject to any AOES insurance policy that covers the Customer, which AOES has indicated it will claim against to cover the Customer (either by accepting an Excess Reduction Fee or as otherwise agreed in writing), if the Equipment is lost, damaged, destroyed or stolen during the Hire Term or otherwise while the Equipment is in the Customer's possession, the Customer must compensate AOES for any costs of repair or replacement. The Customer will remain liable for the Fees described in the Hire Form until the earlier of:
  - (i) AOES receiving compensation for such costs of repair or replacement; or
  - (ii) the repair, replacement or return of the Equipment to AOES in accordance with this agreement.
- (h) If the Equipment is involved in an accident or claim, damaged, destroyed, stolen or if damage or loss is sustained to the property of any third party in connection with the Equipment during the Hire Term, or otherwise when the Equipment is in the Customer's possession (**Incident**), the Customer:
  - (i) must promptly report the Incident to the local police and provide to AOES a copy of the written police report;
  - (ii) must report the Incident to AOES in writing within one Business Day;
  - (iii) must, if such damage, destruction or theft is covered by and compensated to AOES under an insurance policy, pay the relevant excess amount to AOES, as well as any other reasonable costs that AOES incurs in relation to such damage, destruction or theft;
  - (iv) must not, without AOES' prior written consent, make or give any offer, promise of payment, settlement, waiver, release or admission of liability in relation to the incident, except as required by law;
  - (v) must, if requested, permit AOES or its insurer bring, defend, enforce or settle any legal proceedings in the Customer's name in relation to the incident;

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- (vi) must, if requested, provide to AOES, within a reasonable time, any statement, information or assistance which AOES or its insurer requests, including by attending a lawyer's office or a court to give evidence; and
- (i) The Customer's compliance with clause 11(h) will not absolve the Customer of its obligations under this agreement.

## 12. PAYMENT

### Fees

- (a) The Customer must pay the Fees to AOES in the amounts set out in the Hire Form or as otherwise agreed in writing.

### Time for payment

- (b) Unless otherwise agreed in writing:
  - (i) the Customer must pay for all goods and services on or before the Start Date; and
  - (ii) in all other circumstances, if AOES issues an invoice to the Customer, payment must be made in the amounts and by the time(s) specified in such invoice.

### Payment method

- (c) The Customer must pay Fees using the payment method specified in the Hire Form.

### Late payment

- (d) If the Customer does not pay AOES the amounts due and payable under this agreement or on an invoice on or before its due date, without limiting any of AOES' other rights under this agreement, the Customer must pay AOES interest at the Interest Rate per on each amount outstanding, from the due date for payment to the date on which the payment is received by AOES.

### GST

- (e) Unless otherwise indicated, amounts stated in a Hire Form do not include GST. In relation to any GST payable for a taxable supply by AOES, the Customer must promptly pay the GST subject to AOES providing a tax invoice.

### Card surcharges

- (f) AOES reserves the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card (including Visa, MasterCard, American Express or Diners Club).

### Toll & Infringement Fees

- (g) The Customer acknowledges and agrees that:
  - (i) they will be responsible for the costs of all tolls, infringement notices and fines (e.g. tolls, parking tickets, towing fines) and any other additional charges incurred in relation to the Equipment during the Hire Term, or otherwise when it is in the Customer's or its Personnel's possession (**Third Party Charge**);
  - (ii) AOES will notify or direct the Customer to notify the relevant authority that any tolls, infringement notices and fines incurred during the Hire Term, or otherwise when it is in the Customer's or its Personnel's possession, was incurred by the Customer;
  - (iii) if any Third Party Charge is incurred by AOES, then AOES will charge the Customer:
    - A. an amount equal to that Third Party Charge; and
    - B. the Toll & Infringement Admin Charge as set out in the Hire, or as otherwise notified to the Customer, for the administration cost of receiving, verifying and handling the Third Party Charge.

### Payments other than fees

- (h) Immediately on request by AOES, the Customer will pay:
  - (i) the price of any Equipment which is for whatever reason not returned to AOES;
  - (ii) the full cost of repairing any damage to the Equipment caused or contributed to by the Customer;
  - (iii) all costs incurred by AOES in delivering and recovering possession of the Equipment; and
  - (iv) any expenses and legal costs (including commission payable to a commercial agent) incurred by AOES in enforcing this agreement due to the Customer's breach of this agreement.
- (i) Without limiting the ability of AOES to recover all amounts owing to it, the Customer authorises AOES to charge any amounts owing by the Customer to any credit card or account which the Customer provides in a Hire Form.

### Online Payment Partners

- (j) If payments are made using a third-party provider (Payment Providers), the processing of payments by the Payment Provider will be, in addition to these Hire Terms, subject to the terms, conditions and privacy policies of the Payment Provider and AOES is not liable for the security or performance of the Payment Provider. AOES reserves the right to correct, or to instruct the Payment Provider to correct, any errors or mistakes in collecting your payment.

## 13. OWNERSHIP, POSSESSION AND TITLE

### Ownership

- (a) The Equipment is and will at all times remain the property of AOES, notwithstanding delivery of the Equipment to the Customer or the possession and use of the Equipment by the Customer.
- (b) The Customer will not have any right, title or interest in or to the Equipment except as expressly set out in this agreement.

### Possession

- (c) The Customer must not, without AOES' prior written consent, part with possession of the Equipment during the Hire Term.

### Encumbrances

- (d) The Customer must not allow any security interest, encumbrance, charge or lien of any kind to arise or remain in relation to the Equipment, including a repairer's lien, except:
  - (i) if a repairer's lien arises, the Customer must take all necessary steps to have it removed or satisfied, or, at AOES' option, AOES may remove or satisfy the lien at the Customer's cost; and
  - (ii) a security interest, lien or charge that arises by law in respect of unpaid rates, taxes, fees or duties of any kind, in which event the Customer must pay any money due so that the Equipment will be free of the lien or charge.

## 14. PERSONAL PROPERTY SECURITIES

- (a) The Customer grants a security interest in all of its present and after acquired property and in all of its present and future rights, title, estate and interest, whether legal and equitable, in relation to any personal property, including any debts owed to the Customer, in favour of AOES to secure the performance of its liabilities and obligations hereunder or on any account whatsoever.
- (b) If requested by AOES the Customer must immediately sign any documents, provide all necessary information and do anything

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else required by AOES to ensure that the security interest created in AOES' favour is a perfected security interest.

- (c) The Customer must not grant any other security interest in favour of any party until AOES has perfected its security interest created under these Terms.
- (d) The Customer must not do or permit anything to be done that may result in the security interest granted to AOES ranking in priority behind any other security interest.
- (e) The Customer acknowledges that these Terms constitute a security agreement for purposes of the PPSA and the Customer will do all things necessary to enable a security interest to be registered under the PPSA, and will comply with all requirements of the PPSA.
- (f) To the fullest extent permitted by the PPSA, the Customer agrees to contract out of the application of the provisions listed in sections 115(1) and 115(7) and the sections listed therein shall not apply.
- (g) The Customer hereby waives any rights the Customer may otherwise have to:
  - (i) receive any notices or statements the Customer would otherwise be entitled to receive under sections of the PPSA including for the avoidance of any doubt the sections referred to in sections 115(1) and 115(7) of the PPSA;
  - (ii) apply to a Court for an order concerning the removal of an accession under section 97 of the PPSA;
  - (iii) object to a proposal of the Customer to purchase or retain any collateral under sections 130 and 135 of the PPSA; and
  - (iv) receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest created under this document.

For the purpose of this clause and other relevant clauses in this agreement, the expressions "accession", "collateral", "financing statement", "financing change statement", "security agreement", "security interest", "perfected security interest" and "verification statement" have the meanings given to them under, or in the context of the PPSA.

## 15. THIRD PARTY GOODS AND SERVICES

- (a) If AOES is required to acquire goods or services supplied by a third party, the Customer may be subject to the terms and conditions of that third party (**Third Party Terms**).
- (b) The Customer agrees to any Third Party Terms applicable to any goods or services supplied by a third party that the Customer or AOES acquires as part of renting the Equipment and AOES will not be liable for any loss or damage suffered by the Customer in connection with such Third Party Terms.

## 16. LIABILITY, WARRANTIES AND INDEMNITIES

### Liability

- (a) To the maximum extent permitted by law, AOES' liability for all claims in aggregate (whether those claims be for breach of contract, negligence or otherwise, and whether those claims are for economic loss, or for personal injury or other damage) arising under or in connection with this agreement:
  - (i) is totally excluded, to the extent it concerns liability for indirect, special and consequential damages, and damages (whether direct or indirect) reflecting loss of revenue, loss of profits and loss of goodwill (except to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth)); and

- (ii) is limited, insofar as it concerns other liability, to the total money paid to AOES under this agreement as at the date the event giving rise to the relevant liability occurred (or, where there are multiple events, the date of the first such event).

### Warranties

- (a) The Customer acknowledges that in deciding to rent the Equipment and in entering into this agreement the Customer has not relied on the skill or judgment of AOES and that the Customer has satisfied itself as to the condition and suitability and fitness for the Customer's purpose of the Equipment.
- (b) To the maximum extent permitted by applicable law, all express or implied representations and warranties (whether relating to fitness for purpose or performance, or otherwise) not expressly stated in this agreement are excluded.
- (c) Nothing in this agreement is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**). Under the ACL, the Customer may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services provided.

### Indemnities

- (d) The Customer indemnifies AOES from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of:
  - (i) the maintenance, use, storage or operation of the Equipment during the Hire Term or otherwise when the Equipment is in the Customer's possession;
  - (ii) injuries to or deaths of persons and damage to property in connection with the Equipment during the Hire Term or otherwise when the Equipment is in the Customer's possession;
  - (iii) any breach of this agreement by the Customer;
  - (iv) any negligent, fraudulent or criminal act or omission of the Customer or its Personnel; or
  - (v) if applicable, any Third Party Terms that the Customer has agreed to in accordance with clause 15(a).

## 17. TERMINATION

- (a) (**Termination by AOES**) AOES may terminate this agreement in whole or in part immediately by written notice to the Customer, if the Customer is in breach of any term of this agreement.
- (b) (**Termination by the Customer**) The Customer may terminate this agreement in whole or in part by written notice to AOES.
- (c) (**Effect of Termination**) Upon termination of this agreement, the Customer must promptly:
  - (i) pay any Cancellation Fees set out in the Hire Form;
  - (ii) pay any payments required by AOES in respect of the period of the Hire Term prior to the date of termination; and
  - (iii) subject to any contrary direction given by AOES, immediately deliver the Equipment and any other goods included in a Hire Form to the Return Address.
- (d) (**Survival**) Any clause that by its nature would reasonably be expected to be performed after the termination or expiry of this agreement will survive and be enforceable after such termination or expiry.

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## 18. DISPUTE RESOLUTION

- (a) The parties must, without delay and in good faith, attempt to resolve any dispute which arises out of or in connection with this agreement prior to commencing any proceedings.
- (b) If a party requires resolution of a dispute it must immediately submit full details of the dispute to the chief executive officer of the other party or, if the party is an individual, that individual.
- (c) The parties acknowledge that compliance with this clause 18 is a condition precedent to any entitlement to claim relief or remedy, whether by way of proceedings in a court of law or otherwise in respect of such disputes, except:
  - (i) in the case of applications for urgent interlocutory relief; or
  - (ii) a breach by another party of this clause 18.

## 19. NOTICES

- (a) A notice or other communication to a party under this agreement must be:
  - (i) in writing and in English; and
  - (ii) delivered via email to the other party, to the email address specified in this agreement, or if no email address is specified in this agreement, then the email address most regularly used by the parties to correspond regarding the subject matter of this agreement as at the date of this agreement (**Email Address**). The parties may update their Email Address by notice to the other party.
- (b) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given on the earlier of:
  - (i) 24 hours after the email was sent; or
  - (ii) when replied to by the other party,whichever is earlier.

## 20. GENERAL

- (a) (**Governing law and jurisdiction**) This agreement is governed by the law applying in New South Wales, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
- (b) (**Amendments**) This agreement may only be amended in accordance with a written agreement between the parties.
- (c) (**Waiver**) No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.
- (d) (**Severance**) Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this agreement is not limited or otherwise affected.
- (e) (**Joint and Several Liability**) An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.
- (f) (**Assignment**) A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.
- (g) (**Counterparts and Electronic Signature**) This agreement may be executed in any number of counterparts. Each counterpart constitutes an original of this agreement and all together

constitute one agreement. The counterparts of this Amendment may be executed and delivered by facsimile or other electronic signature (including via portable document format, DocuSign or similar electronic signature technology) by either of the parties and the receiving party may rely on the receipt of such document as if the original had been received.

- (h) (**Costs**) Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.
- (i) (**Entire agreement**) This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.
- (j) **Interpretation**
  - (i) (**singular and plural**) words in the singular includes the plural (and vice versa);
  - (ii) (**gender**) words indicating a gender includes the corresponding words of any other gender;
  - (iii) (**defined terms**) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
  - (iv) (**person**) a reference to "person" or "you" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
  - (v) (**party**) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
  - (vi) (**this agreement**) a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
  - (vii) (**document**) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
  - (viii) (**headings**) headings and words in bold type are for convenience only and do not affect interpretation;
  - (ix) (**includes**) the word "includes" and similar words in any form is not a word of limitation; and
  - (x) (**adverse interpretation**) no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision.