

## TERMS &amp; CONDITIONS OF TRADE

## 1. Definitions and interpretation

1.1 **Carriage** - Any carrying or other work performed or agreed to be performed by the Carrier in relation to the Goods.

**Carrier** - the Supplier.

**Charge** - The amounts shown on the Schedule payable by the Customer to the Supplier.

**Commencement** - The date stated in a Schedule.

**Contract** - This document, each Schedule and such other documents as Supplier may require the Customer to sign or accept.

**Customer** - The party named as the Customer in a Schedule.

**Equipment** - Means any kind of equipment, vehicles, tools or parts supplied by the Supplier to the Customer pursuant to this Contract.

**Goods** - Goods of any type or description whatsoever whether originally contracted for in a Schedule, substituted for or added to this Contract.

**Guarantor** - The party named as the Guarantor in a Schedule.

**Hire Period** - Means from Commencement until the end of the period shown (if any) on the Schedule. **Operator** - Means a suitably qualified operator of Equipment.

**Premises** - The premises of the Customer described in the Schedule.

**Schedule** - Means a document which Supplier may require the Customer to sign (or accept in a way Supplier requires) including particulars of the Goods for Carriage, the Equipment, Operators, the Hire Period and such other information as Supplier may decide to require.

**Supplier** - The company or companies listed on the Schedule.

1.2 Unless the context otherwise requires:

- (a) references to a party to this Contract includes the executors, administrators, successors and permitted assigns of that party;
- (b) references to any statute, ordinance or other law includes all regulations and other instruments thereunder and all consolidations, amendments, re-enactment's or replacements thereof;
- (c) words importing the singular include the plural and vice versa, words importing a gender include other genders and references to a person must be construed as references to an individual, firm, body corporate, association (whether incorporated or not), government and governmental, semi-governmental and local authority or agency;
- (d) where any word or phrase is given a defined meaning in this Contract, any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning;
- (e) headings included in this Contract are for convenience only and must be disregarded in the construction of this Contract.

## CARTAGE SERVICES

## 2. Negation of liability as a common carrier

The Carrier is not a common carrier and does not undertake the obligations or liability of a common carrier. The Carrier reserves the right to refuse the Carriage or transport of Goods for any person, corporation or company and the Carriage or transport for any class of Goods at its discretion.

## 3. Customer warranties

3.1 It is agreed that the person delivering the Goods to the Carrier for Carriage is authorised to sign any consignment note for the Customer.

3.2 The Customer warrants that in agreeing to the terms of this Contract, the Customer has the authority of the person or persons owning or having any interest in the Goods or any part thereof.

3.3 The Customer indemnifies the Carrier in respect of any liability whatsoever in respect of the Goods to any person other than the Customer who claims to have or has or may have any interest in the Goods or any part thereof.

## 4. Right to sub-contract

4.1 The Carrier and any sub-contractor shall be entitled to sub-contract on any terms the whole or any part of the Carriage.

4.2 The Customer undertakes that no claim or allegation shall be made, whether by the Customer or any other person who is or may be interested in the Goods, against any person (including the Carrier) by whom (whether as sub-contractor, principal, employer, servant, agent or otherwise) the Carriage of any part of the Goods is performed or undertaken which imposes or attempts to impose upon such person any liability whatsoever in connection with the Goods whether or not arising out of negligence on the part of such person, and if such claim or allegation should nevertheless be made, to indemnify the Carrier and the person against whom such claim or allegation is made against the consequences thereof. Without prejudice to the foregoing and for the purpose of this clause 4.2 the Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons against whom a claim or allegation may be made and each of them.

## 5. Extension of exemptions to sub-contractors

Every exemption, limitation, condition and provision contained in this Contract and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled under this Contract shall also be available and shall extend to protect:-

- (a) all sub-contractors;
- (b) every servant or agent of the Carrier or of a sub-contractor;
- (c) every other person by whom the Carriage or any part thereof is performed or undertaken;
- (d) all persons who are or might be vicariously liable for the acts or omissions of any person falling within clauses 5(a), (b) or (c) and for the purposes of this clause 5 the Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them.

## 6. Liability of the Carrier

6.1 The Carrier has no obligation to, and does not, arrange insurance for the Goods or the Carriage of the Goods. Insurance of the Goods or the Carriage of the Goods is the responsibility of the Customer and at the Customer's cost.

6.2 The Goods are at all times at the risk of the Customer and not the Carrier and the Carrier shall not be responsible in tort or contract or otherwise for any loss or damage to or deterioration of the Goods or mis-delivery or failure to deliver or delay in delivery of the Goods either in transit or in storage for any reason whatsoever including without limiting the foregoing the negligence or breach of contract or wilful act or default of the Carrier or others and

this clause 6.2 shall apply to all such loss or damage to or deterioration of the Goods or mis-delivery or failure to deliver or delay in delivery of the Goods whether or not the same occurs in the course of performance by or on behalf of the Carrier of the Contract or in events which are in the contemplation of the Carrier and/or the Customer or in events which are foreseeable by them or either of them or in events which could constitute a fundamental breach of this Contract or a fundamental term of this Contract.

## 7. Indemnity by Customer

The Customer indemnifies the Carrier and shall keep the Carrier indemnified in respect of any liability to any person, corporation or company for:-

- (a) any damage whatsoever including injury, delay or loss of any nature arising out of or incidental to the Carriage or any services incidental thereto whether due to misconduct or negligence on the part of the Carrier or not or whether or not the cause of the damage is known or unknown to the Carrier; or
- (b) any other cause whatsoever under or arising out of or in relation to or incidental to the Goods or the Carriage or any services ancillary thereto.

## 8. Handling of Goods

If the Customer expressly or implicitly instructs the Carrier to use or it is expressly or implicitly agreed that the Carrier will use a particular method of handling or storing the Goods or a particular method of Carriage whether by road, rail, sea or air the Carrier will give priority to that method but if it cannot conveniently be adopted by the Carrier, the Customer hereby authorises the Carrier to handle or store or to carry or to have the Goods carried by another method or methods.

## 9. Authorisation of deviation from usual route

Where the Carrier considers the mode of Carriage or route quoted (if any) is not at the time the Goods are to be carried the most practical or feasible route or mode of Carriage to be used the Carrier reserves the right to vary the same and charge any extra cost thereby incurred to the Customer.

## 10. Delivery

10.1 The Carrier is authorised to deliver the Goods at the address nominated to the Carrier by the Customer for that purpose and it is expressly agreed that the Carrier shall be conclusively presumed to have delivered the Goods in accordance with this Contract if at that address the Carrier delivers the Goods.

10.2 If the nominated place of delivery should be unattended or if delivery cannot otherwise be effected by the Carrier, the Carrier may at its option deposit the Goods at that place (which shall be conclusively presumed to be due delivery) or store the Goods and if the Goods are stored by the Carrier the Customer shall pay or indemnify the Carrier for all costs and expenses incurred in or about such storage. In the event that the Goods are stored by the Carrier, the Carrier shall be at liberty to redeliver them to the Customer from the place of storage at the Customer's expense.

## 11. Carrier's Charges

11.1 All Charges quoted are correct at the time of entry into this Contract. In the event of any increases in costs of Carriage to the Carrier between the date of this Contract and the date of completion of Carriage the Charges may be

- increased by amounts equivalent to the full amounts of all such increases in costs to the Carrier.
- 11.2 Where the Carriage involves the performance of two or more separate items of work then for the purposes of clause 11.1 the date when the Carriage is completed shall be deemed to be the respective dates on which the separate items of work are completed.
- 11.3 The Charges shall be considered payable as soon as the Goods are loaded and dispatched and the Customer will be and remain responsible to the Carrier for all its proper charges incurred for any reason. Labour and the use of mechanical equipment to load and unload the Goods shall be the responsibility and expense of the Customer.
- 11.4 In addition to all other amounts payable pursuant to this Contract and any other agreements contemplated by this Contract, the Customer shall pay to the Carrier, at the same time as the amount to which this payment is referable is payable to the Carrier, all amounts for which the Carrier is liable, or shall become liable in relation to this Contract or any other agreements contemplated by this Contract, on account of any State or Federal goods and services tax or other consumption or similar tax charge, assessments, duty or fees.
- 11.5 The Carrier reserves the right to rescind all discounted quoted rates and recalculate outstanding Charges at the current advertised schedule should accounts fail to be finalised within the Carrier's trading terms published from time to time.
- 12. Carrier's Lien**  
The Carrier shall have a lien on the Goods and any documents relating thereto and on any other Goods of the Customer in the possession of the Carrier or any documents relating thereto for all sums payable by the Customer to the Carrier and for that purpose shall have the right to sell any such Goods by public auction or private treaty without notice to the Customer.
- 13. Dangerous Goods**  
13.1 The Customer shall not tender for Carriage any volatile spirits or explosive Goods or Goods which are or may become dangerous, inflammable or offensive (including radio-active materials) or which are or may become liable to damage any property whatsoever without presenting a full description disclosing the nature of such Goods and in any event shall be liable for all loss and damage caused thereby and if in the opinion of the Carrier the Goods are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or damaging nature the same may at any time be destroyed, disposed of, abandoned or rendered harmless by the Carrier without compensation to the Customer and without prejudice to the Carrier's right to any Charges.
- 13.2 The Customer warrants that it has complied with all laws and regulations relating to the nature, packaging, labelling or cartage of the Goods and that the Goods are packed in a manner adequate to withstand the ordinary risks of Carriage having regard to their nature and hereby indemnifies the Carrier for any liability whatsoever as a result of or arising out of the Customer's failure to comply with each of these warranties.
- 14. Declaration of weight**  
Where the Customer has declared the weight and/or dimensions of the Goods and the Carrier has called upon such declared weight and/or dimensions in making its arrangements for transportation and the actual weight and/or dimensions of the Goods differs from the declared weight and/or dimensions then in every such case the Customer shall be responsible for all extra cost and risk incurred by the Carrier resulting from its reliance upon the declared weight and/or dimensions.
- 15. Other documents**  
All goods are carried subject and liable in every respect to the bills of lading issued by and/or conditions imposed by any steamship company, railway, port or harbour authority or other carriers of the Goods and to the issue of permits or authorisations where required from Commonwealth and/or State Government authorities and the conditions and limitations stated in any such permits or authorisations.
- EQUIPMENT & OPERATOR HIRE**
- 16. Supplier Obligations**  
Subject to the terms of this Contract, Supplier agrees to:
- 16.1 hire Equipment and Operators to the Customer on terms set out in this Contract, subject to the Supplier's right in its absolute discretion to decline to hire Equipment and Operators to the Customer at any time;
- 16.2 provide Operators who are suitably instructed in the safe and proper use of Equipment and where necessary hold a current certificate of competency and/or are fully licensed;
- 16.3 pay all wages, salary and other allowances to Operators;
- 16.4 take out and maintain all appropriate insurances in respect of Equipment and Operators;
- 16.5 allow the Customer to take and use the Equipment and Operators for the Hire Period;
- 16.6 provide the Equipment to the Customer clean and in good working order;
- 16.7 deliver the Equipment and Operators to the Premises;
- 16.8 collect the Equipment and Operators from the Premises.
- 17. Obligations of the Customer**  
The Customer agrees:
- 17.1 to sign (or accept in a way Supplier requires) a Schedule and such other documents as Supplier may require;
- 17.2 to allow the Supplier to deliver the Equipment and Operators to, and collect the Equipment and Operators from, the Premises at the times provided in this Contract;
- 17.3 to keep the Equipment clean and in good repair;
- 17.4 to satisfy itself at Commencement that the Equipment and Operators are suitable for the purposes intended by the Customer;
- 17.5 to allow the Equipment to be operated only safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's or other instructions whether supplied by Supplier or posted on the Equipment;
- 17.6 to provide reasonable instructions as required to Operators for the operation of the Equipment, subject to the overall supervision and control of the Operators by the Supplier;
- 17.7 to comply with all instructions of the Supplier in respect of the Equipment and Operators, including in respect of the removal of Equipment and/or Operators;
- 17.8 to indemnify Supplier for all injury and/or damage caused to persons and property in relation to the Equipment and its operation and have adequate insurance to cover all liabilities incurred as a result of the use of the Equipment and/or engagement of Operators;
- 17.9 to ensure that any person collecting or taking delivery of Equipment, or involved in the engagement of Operators, 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;
- 17.10 to conduct a thorough hazard and risk assessment before using the Equipment and engaging Operators and comply with all occupational health and safety laws relating to the Equipment and the Operators;
- 17.11 to safely secure all items loaded in or on the Equipment or in or on the Customer's vehicle, trailer or equipment, and indemnify Supplier in respect of any injury and/or damage caused by items falling from the Equipment or from any vehicle, trailer or equipment operated by or on behalf of the Customer;
- 17.12 to report and provide full details to Supplier of any accident or damage to, or theft of Equipment as soon as practicable and in all circumstances within 2 hours of the accident, damage or theft occurring;
- 17.13 to report and provide full details to Supplier of any accident or injury to, or the death of, Operators immediately upon the accident, injury or death occurring;
- 17.14 to be responsible for loss or theft of, or damage to the Equipment or accident or injury to, or death of, Operators whilst engaged by the Customer;
- 17.15 to insure the Equipment (with a reputable insurer) for its full replacement value whilst in the possession or control of the Customer (or whilst in the possession or control of a sub-hiree of the Customer). The Customer shall ensure that the Supplier is noted as a co-insured on, and provide the Supplier with a certificate of currency in respect of, any such policy of insurance;
- 17.16 to have in place (with a reputable insurer) insurances in respect of accident or injury to, or death of, Operators whilst engaged by the Customer. The Customer shall ensure that the Supplier is noted as a co-insured on, and provide the Supplier with a certificate of currency in respect of, any such policy of insurance;
- 17.17 at all times to store the Equipment at the Premises separately from any other equipment that may be in the possession of the Customer and in a manner which makes the Equipment readily identifiable as the Supplier's Equipment;
- 17.18 to hold the Equipment as the Supplier's bailee; and
- 17.19 to return the Equipment and the Operators to the Supplier on demand;
- 17.20 to ensure that it complies with all requirements of any applicable government industrial relations management guideline, enterprise bargaining agreement, building industry agreement, determination, judgment, order of any court, commission, other industrial tribunal, and all other requirements of this Contract, relating to industrial relations;
- 17.21 to provide to the Supplier, if required, evidence of the type requested by the Supplier to demonstrate its compliance with clause 17.20;
- 17.22 to keep the Supplier fully informed of all industrial relations issues arising out of, or associated with, the work under this Contract as soon as they occur;
- 17.23 to comply with any legislation relating to occupational health & safety;
- 17.24 to ensure its employees, agents and subcontractors comply with the requirements of clause 17.23;
- 17.25 immediately to comply with any directions on safety issued by any relevant authority or by the Supplier;
- 17.26 that if the Supplier considers there is a risk of injury to people or damage to property arising from work under this Contract, the Supplier may direct the Customer to change its manner of working or to cease working, remove any persons from the Premises or other site or do or refrain from doing any other thing;
- 17.27 at its cost, to comply with any direction by the Supplier under clause 17.26;
- 17.28 that if the Customer fails to comply with any direction by the Supplier under clause 17.26, the Supplier may perform or have performed the obligation and the cost incurred by the Supplier shall be a debt due from the Customer.
- 17.29 time shall be of the essence in respect of the Customer's obligations under this Contract.

The Customer must NOT:

- 17.30 provide instructions to Operators which conflict with the overall supervision and control of the Operators by the Supplier;
- 17.31 hold itself out, or represent itself, as the employer of Operators;
- 17.32 operate the Equipment other than by using Operators supplied by the Supplier to operate the Equipment;
- 17.33 tamper with, damage or repair the Equipment;
- 17.34 lose or part with possession of the Equipment;
- 17.35 rely upon any representation relating to the Equipment or its operation other than those contained in this Contract;
- 17.36 allow any person to operate Equipment other than an Operator supplied by the Supplier;
- 17.37 exceed the recommended or legal load and capacity limits of the Equipment;
- 17.38 use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
- 17.39 use the Equipment for any illegal or immoral purpose;
- 17.40 engage or attempt to engage, or allow to be engaged, any Operator supplied by the Supplier as an employee or contractor of the Customer or any person other than the Supplier.
- 18. PPS Law**
- 18.1 This Contract creates a 'security interest' in the Equipment for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPS Law"). References to PPS Law in this Contract include references to amended, replacement and successor provisions or legislation.
- 18.2 Further, for the purpose of securing payment to the Supplier of all monies now payable or which may become payable in the future or contingently by the Customer under this Contract (**Money Secured**), the Customer:
- (a) creates a security interest in all its present and after acquired property (**Collateral**) (including anything in respect of which the Customer has a sufficient right or interest under the PPS Law in favour of the Supplier;
- (b) charges all of the Customer's present and future legal and beneficial interest and all its present and future rights in relation to any land and any other property other than personal property to which the PPS Law applies in favour of the Supplier whether or not a demand has been made on the Customer;
- (c) agrees to deliver to the Supplier within seven (7) days of written demand a Memorandum of Mortgage in registrable form and that the Money Secured is payable on demand incorporating the covenants contained in Memorandum No. Q860000 registered at the Land Titles Office of New South Wales as amended to comply with and reflect any appropriate laws in the jurisdiction(s) where the Customer has any legal or beneficial interest in real and personal property and as amended appropriately to comply with any formal requirements of registration; and
- (d) authorises and consents to the Supplier taking all actions necessary to give effect to this security interest, including the lodgement of a Caveat upon Title of the Customer's real property and registration of the security interest on the Personal Property Securities Register (**PPSR**). The Customer irrevocably appoints the Supplier and any person nominated by the Supplier severally the attorney of the Customer with power to execute, sign, seal and deliver (which delivery may be subject to the terms and conditions as the attorney thinks fit) the mortgage or other document to give effect to this Contract.
- 18.3 The security interests created by this Contract extend not only to the Equipment and the Collateral but also to all and any proceeds arising from any dealings with the Equipment and/or the Collateral. However, for the avoidance of doubt, the Supplier does not, by this Contract and unless otherwise agreed by the Supplier in writing, agree to any such dealings with the Equipment and/or the Collateral.
- 18.4 Even though the Customer has granted security interests over the Collateral to the Supplier, the Customer may keep possession of the Collateral subject to this Contract.
- 18.5 If the Customer parts with possession of the Equipment and/or the Collateral or deals in any way with the Equipment and/or the Collateral in breach of this Contract, the Customer acknowledges that the Supplier has not authorised the dealing or agreed that the dealing would extinguish the security interests created by this Contract, and the security interests continue in the Equipment and/or the Collateral, despite the dealing.
- 18.6 Despite anything referred to in clause 18.4, the Supplier does not agree to subordinate any security interest it has in the Equipment and/or Collateral.
- 18.7 The Customer may not permit any Equipment and/or Collateral to become a fixture or an accession to anything that is not also subject to a security interest in favour of the Supplier and, in those circumstances, only if the priority of that security interest is no less favourable than the priority of the Supplier's security interest in the Equipment and/or Collateral that are to become a fixture or an accession.
- 18.8 If any security interest created by this Contract is or becomes void or unenforceable, it may be severed from this Contract without any effect on its validity and the Customer will not be exonerated in whole or in part, nor will Supplier's right, remedies or recourse against the Customer be in any way prejudiced or adversely affected by any severance.
- 18.9 In respect of the PPS Law:
- (a) the parties contract out of each provision which section 115(1) or 115(7) permits them to contract out, other than:
- A. sections 117 and 118 (relationship with land laws);
- B. section 120 (enforcement of liquid assets);
- C. section 123 (right to seize collateral);
- D. section 126 (apparent possession);
- E. sections 128 and 129 (disposal of collateral);
- F. sections 134(1) and 135 (retention of collateral); and
- G. Division 6 of Part 4.3 (seizure and disposal or retention of crops and livestock);
- (b) the Customer waives each right to receive a notice which section 144 or 157 permits it to waive;
- (c) the Customer waives its rights to receive anything from the Supplier under section 275 and agrees not to make any request of the Supplier under that section; and
- (d) any disposal or exercise of rights by the Supplier under this Contract or otherwise will only be taken to be under a section listed in clause 18.9(a) if the Supplier so elects.
- (e) the Supplier does not need to give the Customer any notice under the PPS Law (including a notice of a verification statement or financing statement) unless the notice is required by the PPS Law and that requirement cannot be excluded.
- 18.10 Supplier may register its security interest. The Customer must do anything (such as obtaining consents and signing documents) which Supplier requires for the purposes of:
- (a) ensuring that Supplier's security interest is enforceable, perfected and otherwise effective under the PPS Law;
- (b) enabling Supplier to gain first priority (or any other priority agreed to by Supplier in writing) for its security interest; and
- (c) enabling Supplier to exercise rights in connection with the security interest.
- 18.11 The rights of Supplier under this Contract are in addition to and not in substitution for Supplier's rights under law (including the PPS Law) and Supplier may choose whether to exercise rights under this Contract, and/or under such law, as it sees fit
- 18.12 The following provisions of the PPS Law: section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral) confer rights on Supplier. Customer agrees that in addition to those rights, Supplier shall, if there is default by Customer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any Equipment and/or Collateral, not only under those sections but also, as additional and independent rights, under this Contract and the Customer agrees that Supplier may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 18.13 Supplier and the Customer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this clause 18.13 is made solely for the purpose of allowing to Supplier the benefit of section 275(6)(a) of the PPS Law and Supplier shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this clause 18.13.
- 18.14 Customer must not dispose or purport to dispose of, or create or purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the Equipment and/or the Collateral other than with the express written consent of Supplier.
- 18.15 Customer must not lease, hire, bail or give possession ('sub-hire') of the Equipment and/or Collateral to anyone else unless Supplier (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to Supplier and must be expressed to be subject to the rights of Supplier under this Contract. Customer may not vary a sub-hire without the prior written consent of Supplier (which may be withheld in Supplier's absolute discretion).
- 18.16 Customer must ensure that Supplier is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment and/or Collateral.
- 18.17 Customer must take all steps including registration under PPS Law as may be required to:
- (a) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
- (b) enabling the Customer to gain (subject always to the rights of Supplier) first priority (or any other priority agreed to by Supplier in writing) for the security interest; and
- (c) enabling Supplier and the Customer to exercise their respective rights in connection with the security interest.

- 18.18 To assure performance of its obligations under this Contract, the Customer hereby gives Supplier an irrevocable power of attorney to do anything Supplier considers the Customer should do under this Contract. Supplier may recover from Customer the cost of doing anything under this clause 18, including registration fees.
- 18.19 The Customer acknowledges and agrees that the Supplier may exercise any and all remedies afforded to a Secured Party (as that term is defined in the PPS Law) under the PPS Law including, but not limited to, entry into any building or premises owned, occupied, or used by the Customer, to search for and seize, dispose of or retain Equipment and/or Collateral in respect of which the Supplier has a security interest.
- 18.20 The Customer warrants that it is not at the time of entering into this Contract insolvent and knows of no circumstances which would entitle any creditor to appoint a receiver or to petition for winding up or to exercise any other rights over or against the assets of the Customer.
- 19. Risk and Title to Equipment**
- 19.1 Risk in all Equipment supplied by the Supplier to the Customer passes to the Customer upon the first to occur of:
- delivery of the Equipment by the Supplier to the Customer; or
  - despatch by the Supplier of the Equipment from the premises of the Supplier to the Customer.
- 19.2 Unless otherwise agreed in writing between the Supplier and the Customer, the Equipment supplied by the Supplier to the Customer shall at all times remain the sole and absolute property of the Supplier as legal and beneficial owner.
- 20. Payments by the Customer to Supplier**
- 20.1 On or about Commencement (or as otherwise specifically agreed with Supplier), the Customer will pay the Charge.
- 20.2 Immediately on request by Supplier, the Customer will pay to the Supplier and indemnify the Supplier in respect of:
- any outstanding Charges;
  - the new list price of any Equipment which is for whatever reason not returned to Supplier;
  - all costs incurred in cleaning the Equipment;
  - the full cost of repairing any damage to the Equipment, unless expressly agreed otherwise in this Contract;
  - stamp duties, GST, any other taxes or duties, and all tolls, fines, penalties, levies or charges payable in respect of this Contract or arising from Supplier's supply or the Customer's use of the Equipment and/or Operators or the Carrier's Carriage of Goods;
  - all costs incurred by Supplier in delivering and recovering possession of the Equipment and/or Operators;
  - a late payment fee calculated daily at 10% per month on all amounts owing by the Customer not paid on time;
  - any additional Charges;
  - the cost of consumables provided by Supplier and not returned by the Customer;
  - any expenses and legal costs incurred by Supplier in enforcing this Contract; and
  - any amount payable to, or in respect of, any Operator (other than as provided for in clause 16.3) arising as a consequence of the Customer's engagement of the Operator.
- 20.3 Without limiting the ability of Supplier to recover all amounts owing to it, the Customer authorises Supplier to charge any amounts owing by the Customer to any credit card or account details of which are provided to Supplier.
- 21. Termination**
- 21.1 Without prejudice to any other rights the Supplier may have under this Contract or at law, the Supplier may terminate this Contract and the arrangements between the Supplier and the Customer at any time by providing two (2) weeks written notice to the Customer.
- 21.2 For the avoidance of doubt, upon termination of this Contract, all amounts owing by the Customer to the Supplier under this Contract are immediately payable by the Customer to the Supplier.
- 22. Customer Not to Claim Damages**
- 22.1 Subject to any rights the Customer may have under the Australian Consumer Law or other law which may not be lawfully excluded or modified under this Contract, the Customer, and any person claiming through or under the Customer, cannot recover from Supplier compensation for any loss (including indirect or consequential loss) or damage howsoever arising (including arising from the negligent act or omission of the Supplier, its servants or agents) in connection with this Contract or the hiring or the use of the Equipment and/or Operators or the Carriage of Goods.
- 22.2 Unless otherwise agreed in writing between the Supplier and the Customer, time shall not be of the essence in respect of any obligation of the Supplier under this Contract.
- 23. Breach of Contract by Customer**
- 23.1 If:
- the Customer is in breach of any obligation on the part of the Customer under this Contract and such breach is not remedied by the Customer within five (5) business days after service by the Supplier upon the Customer of a written notice requiring the Customer to rectify the breach;
  - the Customer becomes insolvent; or
  - an administrator, receiver or receiver and manager is appointed in respect of the Customer or all or any of the assets of the Customer,
- Supplier shall be entitled to:
- terminate all or part of this Contract immediately by notice in writing to the Customer, and/or
  - sue for recovery of all monies owing by the Customer;
  - repossess the Equipment and/or Operators (and is authorised to enter any premises where the Equipment and/or Operators is located to do so); and/or
  - take possession of and sell by public or private sale the Goods.
- 23.2 The Customer must indemnify and keep indemnified the Supplier and the servants and agents of the Supplier against any loss or damage whatsoever arising out of or in any way connected with any breach of this Contract by the Customer or any servants or agents of the Customer.
- 24. No Warranties**
- Subject to any rights the Customer may have under the Australian Consumer Law or other law which may not be lawfully excluded or modified under this Contract, all warranties and conditions are excluded to the full extent permitted by law and Supplier's only obligation resulting from a breach by it of any condition or warranty is limited to the supplying of the Equipment and/or Operators or Carriage of the Goods again.
- 25. Disputes**
- 25.1 If a dispute arises relating to this Contract, the hiring or the use of the Equipment and/or Operators or the Carriage of Goods (except in regard to payments due to Supplier), the parties agree to negotiate to settle the dispute with the assistance of an independent expert agreed upon between the Supplier and the Customer. If the Supplier and the Customer cannot reach agreement upon the appointment of an independent expert, then either the Supplier or the Customer may request the President for the time being of the Law Society of New South Wales to appoint such an independent expert. The costs of the independent expert shall be borne equally between the Supplier and the Customer.
- 25.2 If the Supplier and the Customer are unable to resolve a dispute within 30 days of the appointment of the independent expert, then either the Supplier or the Customer may commence legal proceedings to resolve the dispute.
- 25.3 Nothing in this clause 25 shall prevent either the Supplier or the Customer from seeking urgent interlocutory relief from the courts.
- 26. Governing Law**
- Except where Supplier in its discretion takes action against the Customer under any applicable Building and Construction Industry legislation, Supplier and the Customer agree that this Contract is governed by the law of the state of New South Wales, and the parties submit to the jurisdiction of the courts of that State.
- 27. Amendment**
- 27.1 The conditions in this Contract may be changed by Supplier from time to time by Supplier giving notice of the amendment to the Customer. Notice is deemed given (whether or not actually received) when Supplier does any of the following: (a) sends notice of the amendment to the Customer at any address (including an email address) supplied by the Customer; (b) publishes the amended terms on its website; or (c) displays the amended terms at premises from which Supplier conducts its operations.
- 27.2 No variation of this Contract is binding on the Supplier unless in writing signed by or on behalf of the Supplier.
- 28. Contract**
- 28.1 This Contract contains the whole contract between the Supplier and the Customer and no earlier agreement, understanding or representation, whether oral or in writing, in relation to any matter dealt with in this Contract will have any effect from the date of this Contract.
- 28.2 Each Schedule is not a separate contract but forms a part of this Contract between Supplier and the Customer, together with any credit application, guarantee and indemnity or other contractual documents.
- 28.3 Subject to law and whether or not the Customer has executed a copy of this Contract:
- each offer or request made by the Customer to the Supplier for the supply of any Equipment and/or Operators or the Carriage of Goods shall be deemed to be made subject to the conditions in this Contract; and
  - each supply of Equipment and/or Operators or the Carriage of Goods by the Supplier to the Customer shall be deemed to be made in accordance with the conditions in this Contract, despite any contrary provision in any offer or request made by the Customer to the Supplier, or otherwise.
- 29. Invalidity**
- If the whole or any part of a provision of this Contract is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this Contract shall have full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

30. **Confidentiality**

The Customer must not disclose any information concerning the existence or contents of this Contract without the prior written consent of the Supplier unless:

- (a) the disclosure is required at law; or
- (b) the disclosure is to a professional advisor of the Customer, upon the basis that the advisor must not further disclose that information without the prior written consent of the Supplier.

**EXECUTED by Charman Earthmoving & Heavy Haulage Pty Ltd** )  
**PTY LIMITED** )  
**A.C.N. 100 734 594** )  
in accordance with section 127 of the )  
Corporations Act )

.....  
Director

31. **Assignment**

31.1 The Customer must not assign any of the rights of the Customer pursuant to this Contract without the prior written consent of the Supplier, which may be refused in the absolute discretion of the Supplier. Any consent by the Supplier will not release the Customer from any obligation of the Customer pursuant to this Contract.

31.2 The Supplier may assign all or any of the rights of the Supplier pursuant to this Contract.

.....  
Director/Secretary

**EXECUTED by** )  
**PTY LIMITED** )  
**A.C.N.** )  
in accordance with section 127 of the )  
Corporations Act )

.....  
Director

32. **No Agency**

The Customer will not by virtue of this Contract be, or for any purpose be deemed to be, an agent of the Supplier.

.....  
Director/Secretary

33. **Legal Advice**

The Customer acknowledges and agrees that it has read and understood this Contract and that it has taken, or has been afforded the opportunity to take, legal advice in relation to the terms and effect of this Contract prior to entering into this Contract.

**EXECUTED by [GUARANTOR]** )  
in the presence of: )

34. **Guarantee**

The Guarantor guarantees the performance by the Customer of the Customer's obligations under this Contract, including in accordance with the terms of the deed of guarantee annexed to this Contract.

.....  
Witness Signature

.....  
Witness Name

Issue Date - October 2013.

.....  
.....

**SCHEDULE**

***pursuant to Charman Earthmoving & Heavy Haulage Pty Ltd ACN 100 734 594 Terms & Conditions of Trade  
(Issue Date – October 2013)***

Charge:	Guarantor:
Commencement:	Hire Period:
Customer:	Operators:
Customer ACN/ABN:	Payment Terms (if not paid at Commencement):
Customer Address:	Premises:
Customer Credit Card/Account Details:	Special Conditions:
Delivery Address:	Supplier: Charman Earthmoving & Heavy Haulage Pty Ltd
Equipment:	Supplier ACN/ABN: ACN 100 734 594 / ABN 57 123 095 624
Goods:	Supplier Address: PO Box 397, Queanbeyan NSW 2620

**DEED OF GUARANTEE, INDEMNITY AND CHARGE**

To: Charman Earthmoving & Heavy Haulage Pty Ltd A.C.N. 100 734 594

In consideration of the Supplier providing or continuing to provide Goods and Services or supplying commercial credit to the Customer or not commencing or continuing legal action against the Customer at the request of the Guarantor and for the business purposes of the Customer, the Guarantor enters this Deed and agrees with the Supplier as follows:

- Guarantee**
- To guarantee and be responsible for:
    - the payment of the Money Secured to the Supplier by the Customer; and
    - the performance of all Obligations.
  - This guarantee and indemnity is given for valuable consideration and is a continuing guarantee to the Supplier for the whole of the Money Secured and performance of the Obligations.
  - The Supplier may at any time at its discretion and without giving any notice whatsoever to the Guarantor refuse to provide further Goods and Services to the Customer.
  - Where the Guarantor consists of more than one person, this Deed is enforceable against all persons signing as Guarantor and each Guarantor will be jointly and severally liable immediately on signing this Deed.
  - If it is intended that more than one person be a Guarantor, this Deed will remain enforceable against each person signing as Guarantor even if any person proposed or contemplated to sign this Deed does not in fact do so.
  - The Supplier may at any time release or discharge the Guarantor or any of the persons included as Guarantor from the obligations of this Deed or grant time to pay, accept a composition from or enter other arrangements with the Customer or any Guarantor under this Deed except that any payment received by the Supplier under any composition or arrangement will operate as a discharge of liability to the extent of the payment.
  - Any payment made by or on behalf of the Customer which is later avoided by the application of any statutory provision will not discharge the Customer's indebtedness and in that event the parties are to be restored to rights which each respectively would have had if the payments had not been made.
  - Where the Guarantor has the right to prove in any insolvency administration of the Customer, the Guarantor must do so and hold any dividends received on trust for the Supplier.

- Indemnity**
- The Guarantor indemnifies the Supplier against any and all losses and expenses of any nature including the cost of preparation of this Deed, stamp duty (if any) and legal costs on a solicitor/client basis arising in any way out of its dealings with the Customer, the intent being that the Guarantor is primarily liable for payments to the Supplier of any losses and expenses and of the Money Secured.
- Security interest**

- For the purpose of securing payment to the Supplier of the Money Secured, the Guarantor:
  - creates a security interest in the Collateral (including anything in respect of which the Guarantor has a sufficient right or interest under the PPSA) in favour of the Supplier to secure the payment of the Money Secured;
  - charges all of the Guarantor's present and future legal and beneficial interest and all of its present and future rights in relation to any land and any other property other than personal property to which the PPSA applies in favour of the Supplier whether or not a demand has been made on the Customer or the Guarantor;
  - agrees to deliver to the Supplier within seven (7) days of written demand a Memorandum of Mortgage in registrable form and that the Money Secured is payable on demand incorporating the covenants contained in Memorandum No. Q860000 registered at the Land Titles Office of New South Wales as amended to comply with and reflect any appropriate laws in the jurisdiction(s) where the Guarantor has any legal or beneficial interest in real and personal property and as amended appropriately to comply with any formal requirements of registration;
  - authorises and consents to the Supplier taking all actions necessary to give effect to this security interest including the lodgement of a Caveat upon Title of the Guarantor's real property and registration of the security interest on the Personal Property Security Register (the "PPSR"). The Guarantor irrevocably appoints the Supplier and any person nominated by the Supplier severally the attorney of the Guarantor with power to execute, sign, seal and deliver (which delivery may be subject to the terms and conditions as the attorney thinks fit) the mortgage or other document to give effect to this Deed.
- The security interest created by this Deed extends not only to the Collateral but also to all and any proceeds arising from any dealings with the Collateral. However, for the avoidance of doubt, the Supplier does not, by this Deed and unless otherwise agreed by the Supplier in writing, agree to any such dealings with the Collateral.
- Even though the Guarantor has granted a security interest over the Collateral to the Supplier, the Guarantor may keep possession of the Collateral subject to this Deed.
- If the Guarantor parts with possession of the Collateral or deals in any way with the Collateral in breach of this Deed, the Guarantor acknowledges that the Supplier has not authorised the dealing or agreed that the dealing would extinguish the security interest created by this Deed and the security interest continues in the Collateral, despite the dealing.
- Despite anything referred to in clause 13, the Supplier does not agree to subordinate any security interest it has in the Collateral.
- The Guarantor may not permit any Collateral to become a fixture or an accession to anything that is not also subject to a security interest in favour of the Supplier and, in those circumstances, only if the priority of that security interest is no less favourable than the priority of the Supplier's security interest in the Collateral that are to become a fixture or an accession.
- If the security interest created by clause 10.1 is or becomes void or unenforceable, it may be severed from this Deed without any effect on its validity and the Guarantor will not be exonerated in whole or in part, nor will the Supplier's right, remedies or recourse against the Guarantor be in any way prejudiced or adversely affected by any severance.
- In respect of the PPSA:
  - the parties contract out of each provision which section 115(1) or 115(7) permits them to contract out, other than:
    - sections 117 and 118 (relationship with land laws);
    - section 120 (enforcement of liquid assets);
    - section 123 (right to seize collateral);
    - section 126 (apparent possession);
    - sections 128 and 129 (disposal of collateral);
    - sections 134(1) and 135 (retention of collateral); and
    - division 6 of Part 4.3 (seizure and disposal or retention of crops and livestock);
  - the Guarantor waives each right to receive a notice which section 144 or 157 of the PPSA permits it to waive;

- the Guarantor waives its rights to receive anything from the Supplier under section 275 and agrees not to make any request of the Supplier under that section;
- any disposal or exercise of rights by the Supplier under this Deed or otherwise will only be taken to be under a section listed in clause 17.1.1 if the Supplier so elects; and
- the Supplier does not need to give the Guarantor any notice under the PPSA (including a notice of a verification statement or financing statement) unless the notice is required by the PPSA and that requirement cannot be excluded.
- Supplier may register its security interest. The Guarantor must do anything (such as obtaining consents and signing documents) which Supplier requires for the purposes of:
  - ensuring that Supplier's security interest is enforceable, perfected and otherwise effective under the PPSA;
  - enabling Supplier to gain first priority (or any other priority agreed to by Supplier in writing) for its security interest; and
  - enabling Supplier to exercise rights in connection with the security interest.
- The rights of Supplier under this Deed are in addition to and not in substitution for Supplier's rights under law (including the PPSA) and Supplier may choose whether to exercise rights under this Deed, and/or under such law, as it sees fit
- The following provisions of the PPSA: section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral) confer rights on Supplier. Guarantor agrees that in addition to those rights, Supplier shall, if there is default by Guarantor, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any Collateral, not only under those sections but also, as additional and independent rights, under this Deed and the Guarantor agrees that Supplier may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.
- Supplier and the Guarantor agree not to disclose information of the kind that can be requested under section 275(1) of the PPSA. The Guarantor must do everything necessary on its part to ensure that section 275(6)(a) of the PPSA continues to apply. The agreement in this clause 21 is made solely for the purpose of allowing to Supplier the benefit of section 275(6)(a) of the PPSA and Supplier shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this clause 21.
- Guarantor must not dispose or purport to dispose of, or create or purport to create or permit to be created any 'security interest' (as defined in PPSA) in the Collateral other than with the express written consent of Supplier.
- Guarantor must not lease, hire, bail or give possession (sub-hire) of Collateral to anyone else unless Supplier (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to Supplier and must be expressed to be subject to the rights of Supplier under this Deed. Guarantor may not vary a sub-hire without the prior written consent of Supplier (which may be withheld in Supplier's absolute discretion).
- Guarantor must ensure that Supplier is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Collateral.
- Guarantor must take all steps including registration under PPSA as may be required to:
  - ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPSA;
  - enabling the Guarantor to gain (subject always to the rights of Supplier) first priority (or any other priority agreed to by Supplier in writing) for the security interest; and
  - enabling Supplier and the Guarantor to exercise their respective rights in connection with the security interest.
- To assure performance of its obligations under this Deed, the Guarantor hereby gives Supplier an irrevocable power of attorney to do anything Supplier considers the Guarantor should do under this Deed. Supplier may recover from Guarantor the cost of doing anything under this clause 26, including registration fees.
- The Guarantor acknowledges and agrees that the Supplier may exercise any and all remedies afforded to a Secured Party (as that term is defined in the PPSA) under the PPSA including, but not limited to, entry into any building or premises owned, occupied, or used by the Guarantor, to search for and seize, dispose of or retain Collateral in respect of which the Supplier has a security interest.
- The Guarantor warrants that it is not at the time of entering into this Deed insolvent and knows of no circumstances which would entitle any creditor to appoint a receiver or to petition for winding up or to exercise any other rights over or against the assets of the Guarantor.
- A certificate signed by a Director or Secretary of the Supplier will be prima facie evidence of the amount of the Money Secured owed by the Customer or Guarantor at that time.
- The Guarantor acknowledges that the Supplier has afforded him, her or it full and unrestricted opportunity of seeking independent legal advice on the Guarantor's obligations under this Deed prior to the signing of this Deed.
- The Guarantor acknowledges that the Guarantor has made his, her or its own enquiries of the Customer regarding the Customer's past and prospective dealings with the Supplier and is satisfied as to the extent of his, her or its obligations arising from this Deed and that the Supplier is under no obligation to notify the Guarantor of any changes to its trading terms or dealings with the Customer even if these changes increase the Guarantor's liability under this Deed.
- This Deed will be constructed according to the laws of the State or Territory as the Supplier in its sole discretion determines. Proceedings may be instituted in such State or Territory as the Supplier may in its sole discretion determines. Failing such determination the Guarantor consents to any proceedings being instituted and heard by any appropriate Court sitting in the State of New South Wales applying the laws of the State of New South Wales.
- Permission is irrevocably granted to the Supplier before, during or after the provision of credit to give and receive information about the Guarantor to and from any credit reporting agency, credit provider, bank or financial institution or any other corporation, association or person in accordance with the Privacy Act, 1988 or otherwise.

This information may concern the Guarantor's consumer credit and/or commercial credit and trading arrangements, may consist of credit reports and other credit and trading information concerning the Guarantor, the Guarantor's business and the Customer's business and may be used to assess or review at any time the creditworthiness of the Guarantor and the Customer or to collect any overdue payments and/or to provide credit references in accordance with provisions of the Privacy Act, 1988 or otherwise and may include notifying other credit providers of any default by the Guarantor and/or the Customer and exchanging credit and trading information with other credit providers.

**THIS IS A LEGAL DOCUMENT AND IF YOU ARE UNSURE OF ITS MEANING AND EFFECT YOU SHOULD SEEK LEGAL ADVICE**

**Definitions and Interpretations**

"**Collateral**" means all present and after acquired property of the Guarantor.  
 "**Customer**" means the person or company set out in Item 1 of the Schedule.  
 "**Deed**" means this Deed of Guarantee, Indemnity and Charge.  
 "**Goods and Services**" means all goods, merchandise and services supplied or which may be supplied in the future at the Customer's request or credit extended by the Supplier to the Customer.  
 "**Guarantor**" means the person or company set out in Item 2 of the schedule or any person or persons signing or purporting to sign this Deed as Guarantor and that person's personal representative.  
 "**Money Secured**" means all monies now payable or which may become payable in the future or contingently by the Customer to the Supplier for any reason whether alone or jointly with another person including without limitation; money owed by the Customer for the

supply of Goods and Services; all money the Supplier pays or becomes liable to pay at the request of the Customer; all losses and expenses including legal costs on a solicitor/client basis however or indirectly arising from any dealings by the Customer under its contract with the Supplier or by the Guarantor under this Deed; all the costs incurred by the Supplier for recovering monies under any related security.

"**Obligations**" means all obligations of the Customer to the Supplier including, but not limited to any such obligations contained in any agreement or contract to which this Deed is annexed.

"**PPSA**" means Personal Properties Securities Act 2009 (Cth)

"**Supplier**" means Charman Earthmoving & Heavy Haulage Pty Ltd A.C.N. 100 734 594 and successors or assigns.

In interpreting this Deed words incorporating the singular number denotes the plural and vice versa; any gender denotes the relevant gender; and a person denotes an individual, a body corporate, a partnership or any unincorporated association.

(ABN )

**SCHEDULE**

Item 1: The Customer: \_\_\_\_\_  
 Item 2: The Guarantor \_\_\_\_\_  
 Name: \_\_\_\_\_ Address: \_\_\_\_\_  
 Name: \_\_\_\_\_ Address: \_\_\_\_\_

**THIS IS A LEGAL DOCUMENT AND IF YOU ARE UNSURE OF ITS MEANING AND EFFECT YOU SHOULD SEEK LEGAL ADVICE**

EXECUTED AS A DEED ON THIS DAY OF , 20

SIGNED SEALED AND DELIVERED )  
 by the said Guarantor )  
 in the presence of: )

SIGNED SEALED AND DELIVERED )  
 by the said Guarantor )  
 in the presence of: )

.....  
 Witness signature

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 Witness signature

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 Witness name

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 Witness name

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 Witness address

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 Witness address