

## TERMS AND CONDITIONS FOR EQUIPMENT HIRE

### THE PARTIES AGREE

#### 1. Definitions

The terms used have the meaning given below:

- (a) **'Agreement'** means this agreement, which incorporates the hire contract, these terms and conditions and all annexures and schedules.
- (b) **'Commencement Date'** means the earlier of:
  - (i) The date the Hirer, or a person authorised by the Hirer, takes possession of the Equipment; or
  - (ii) In the event the Hirer requests the Owner deliver the Equipment, the date the Equipment is delivered to the Work Site.
- (c) **'Default Rate'** means an interest rate of 15% per annum above the Reserve Bank of Australia target cash rate.
- (d) **'Dispute Notice'** means a notice given under clause 15.1.
- (e) **'Equipment'** means the equipment described in the Agreement.
- (f) **'GST'** means a tax, impost or duty on goods, services or other things imposed by any fiscal, national, state, territory or local authority or entity and whether presently imposed or novel, together with interest or penalties either before or after the date of this Agreement.
- (g) **'Hire Fee'** means the amounts payable by the Hirer to the Owner for the hire of the Equipment, as set out in the Agreement.
- (h) **'Hirer'** means the party identified as the hirer of the Equipment in the Agreement.
- (i) **'Immediately Available Funds'** means cash, bank, cheque or telegraphic or other electronic means of transfer of cleared funds into a bank account nominated in advance by the Owner.
- (j) **'Insolvency Event'** means any of the following in respect of a Hirer:
  - (i) The Hirer is or states that the Hirer is unable to pay from the Hirer's own money all the Hirer's debts as and when they become due and payable.
  - (ii) An application is made to a court for an order, or an order is made appointing an administrator, liquidator, provisional liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction in respect of a Hirer (or proceedings are commenced or a resolution passed or proposed in a notice of meeting for any of those things).
  - (iii) a receiver or receiver and manager is appointed in respect of any property of the Hirer.
  - (iv) Proceedings are initiated with a view to obtaining an order for the winding up or similar process of the Hirer or an order is made or any effective resolution is passed for the winding up of the Hirer.
- (v) The Hirer enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors or it proposes a reorganisation, moratorium or other administration involving any class of its creditors.
- (vi) A controller is appointed to take over or takes possession of all or a substantial part of the assets or undertakings of the Hirer.
- (vii) The Hirer is or is deemed or presumed by law or a court to be insolvent.
- (viii) If the Hirer is a corporation, it is deregistered under the Corporations Act or notice of its proposed deregistration is given to the corporation.
- (ix) The Hirer takes any step to obtain protection or is granted protection from their creditors under any applicable legislation or an administrator is appointed to the Hirer.
- (x) Anything analogous or having a substantially similar effect to any of the events specified above happens in respect of the Hirer under the law of any applicable jurisdiction.
- (k) **'Independent Person'** means a Queensland Law Society approved mediator to be agreed between the parties or failing agreement to be appointed on the application of either party by the president for the time being of the Queensland Law Society. The person agreed or appointed must have sufficient expertise in the areas in which the parties are in dispute. However, if any appointment is made by the Queensland Law Society, then that appointment is not subject to challenge by the parties on any grounds. If the Queensland Law Society is abolished, then reference to that body will mean such other recognised professional association as may assume the role of the Queensland Law Society.
- (l) **'Minimum Hire Period'** means the minimum number of months or hire hours per month (or part thereof) that the Owner will charge to the Hirer at the agreed Hire Fee, as set out in the Agreement.
- (m) **'Month'** means a calendar month.
- (n) **'Notice'** means a written notice, consent, approval, direction, order or other communication.
- (o) **'Owner'** means Powermac Hire Pty Ltd.
- (p) **'Payment Terms'** means the payment terms as set out in the Agreement.
- (q) **'PPSA'** means Personal Property Securities Act 2009 for the time being in force, including the Personal Property Securities Regulations 2010.
- (r) **'Purchase Money Security Interest'** means has the meaning given to it in the PPSA.
- (s) **'Right'** includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action.
- (t) **'Security Interest'** has the meaning given to it in the PPSA.

- (u) **'Uncontrolled Event'** means an act of God, strike, lock out or other interference with work, war declared or undeclared, blockage, disturbance, lightning, fire, drought, earthquake, storm, flood, explosion, government or quasi-government restraint, exploration, prohibition intervention, direction, or embargo, unavailability or delay in availability of equipment or transport, inability or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licences, authorities or allocations, or any other cause whether of the kind specifically set out above or otherwise which is not reasonably within the control of the party relying on the Uncontrolled Event.
- (v) **'Work Site'** means the site described in the Agreement.

## 2. Agreement to hire

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The Owner agrees to hire to the Hirer, and the Hirer agrees to hire from the Owner, the Equipment, on the terms and conditions set out in these terms and conditions.

## 3. Term of hire

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- (a) This Agreement commences on the Commencement Date.
- (b) The term of the hire is for an indefinite term and ends when the Equipment is back in the Owner's custody or possession.

## 4. Title and Risk

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- (a) The Owner retains full title to the Equipment notwithstanding the possession and use of the Equipment by the Hirer. The Hirer has no right of property in the Equipment and is bailee only of the Equipment subject to the terms and conditions of this Agreement.
- (b) Delivery occurs and risk of loss and damage to the Equipment passes to the Hirer on the earlier of:
  - (i) collection of the Equipment by the Hirer;
  - (ii) delivery of the Equipment to the Hirer, and
  - (iii) delivery of the Equipment by the Owner to a carrier nominated by the Hirer or arranged by the Owner for the purpose of delivering the Equipment to the Hirer.
- (c) In the event the Equipment is lost, damaged or destroyed, the Hirer is not released from its obligations under this Agreement until the Owner is paid all amounts due to it under the Agreement.

## 5. PPSA

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### 5.1 Security Interest

The Hirer agrees and acknowledges that the transaction under this Agreement constitutes a Security Interest in the Equipment in favour of the Owner. The Security Interest may be registered pursuant to the PPSA at the absolute discretion of the Owner as a Purchase Money Security Interest or otherwise.

### 5.2 Security agreement

- (a) This Agreement is a security agreement for the purposes of the PPSA.
- (b) For the purposes of section 20(2) of the PPSA, the collateral is the Equipment including any Equipment which is described in the Agreement.

### 5.3 Other Security Interests

- (a) The Hirer will not create or permit to be created any Security Interest over the Equipment other than the Owner's Security Interest under this Agreement without the express written consent of the Owner.
- (b) If the Owner consents to the Hirer creating a Security Interest over the Equipment under clause 5.3(a), then the Hirer must do all things requested by the Owner to ensure the Owner's Security Interest over the Equipment retains priority.

### 5.4 Copy of this Agreement

The Hirer hereby acknowledges receipt of a copy of this Agreement, and, to the extent permitted by the PPSA, waives any right it may have to receive a copy of the financing statement, a financing change statement or a verification statement, as those terms are defined in the PPSA, relating to it.

### 5.5 Contracting out of the PPSA

Sections 95, 96, 117, 118, 121(4), 125, 126, 128, 129, 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA do not apply to the obligations owed between the parties under this Agreement and the Hirer has no rights under those sections.

### 5.6 Disclosure of information

Unless otherwise agreed in writing and to the extent permitted by the PPSA, the Hirer agrees not to disclose information of the kind referred to in section 275(1) of the PPSA to an interested person, or any other person requested by an interested person. The Hirer waives any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.

## 6. Condition of Equipment

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- (a) The Hirer must notify the Owner within 24 hours of collecting or receiving the Equipment (whichever is applicable) if it is found to be damaged, broken or defective. If the Hirer does not notify the Owner within this time period, then the Owner is entitled to assume that the Equipment is in good order and condition.
- (b) The Owner warrants the Equipment complies with the manufacturer's specification.
- (c) The Owner is not responsible to the Hirer, whether on grounds of breach of contract, contractual duty or negligence for any loss or defects or malfunction, breakdown or failure of performance of the Equipment, and the Hirer exonerates and releases the Owner from all claims, demands and liabilities in respect of those matters.

## 7. Fees and expenses

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### 7.1 Hire Fee

- (a) Subject to this clause 7, the Hirer agrees to pay the Owner the Hire Fee.
- (b) The Hire Fee accrues on and from the Commencement Date.
- (c) The Hire Fee is subject to any Minimum Hire Period specified.
- (d) Subject to clause 7.1(e), accrual of the Hire Fee will end when:

- (i) the Equipment is returned to the Owner's premises; or
  - (ii) if the Owner has agreed in writing to collect the Equipment, then the date the Hirer notifies the Owner in writing that the Equipment is no longer required and is available for collection.
- (e) If the equipment is damaged by the Hirer and requires repair before it can be recommissioned, the Hire Fee will continue to accrue until such time as those repairs have been completed to the satisfaction of the Owner. If the Hire Fee is based on an hourly consumption rate and no minimum monthly charge applies, then a monthly minimum of 250 hours will apply for the purposes of this clause 7.1(e).
- (f) The Hirer must pay the Hire Fee in Immediately Available Funds.
- (g) If the Hirer does not pay the Hire Fee in accordance with the Payment Terms, then the Hirer must pay the Owner, in addition to any other costs recoverable under this Agreement:
- (i) interest at the Default Rate calculated daily on unpaid amounts and capitalised daily, on any amount not paid from when payment falls due until payment in full is received;
  - (ii) any costs and expenses incurred by the Owner in recovering any unpaid amounts accrued under this Agreement;
  - (iii) any costs incurred by the Owner in repossessing the Equipment, including but not limited to, legal and transportation costs; and
  - (iv) any costs of cleaning, reconditioning, repair or maintenance of the Equipment to return the Equipment to good order and repair, fair wear and tear excepted.

## 7.2 Additional fees and expenses

In addition to any other payment required to be made by the Hirer under this clause 7, if requested by the Owner, the Hirer agrees to pay to, or at the direction of, the Owner the following:

- (a) In the event of the Hirer requesting the Owner to transport the Equipment to or from the Owner's premises, the Hirer shall pay the Owner all charges and expenses quoted by the Owner in delivering, installing and/or collecting the Equipment (mobilisation and demobilisation).
- (b) In the event the Hirer damages the Equipment, the Hirer shall pay all the costs associated with repairing the Equipment to the Owner's satisfaction, including, but not limited to, the cost of labour, parts, consumables and freight.
- (c) In the event the Hirer fails to fulfil its obligations under clause 8 or elsewhere under this Agreement, all costs incurred by the Owner to fulfil those obligations.
- (d) Any statutory duties, levies or costs arising out of the hire arrangement the subject of this Agreement or any fines or penalties arising out of the Hirer's use of the Equipment.
- (e) In the event the Equipment is not clean upon return to the Owner, a cleaning fee for any cleaning which the Owner, in its reasonable opinion, deems necessary.
- (f) In the event the Equipment is returned to the Owner with items missing, including but not limited to, spare

keys, owner's manuals, first aid kits, fire extinguishers and other sundry items, a fee for their replacement.

## 8. Equipment use, checks, service and repair

- (a) The Hirer agrees to the following:
  - (i) To notify the Owner immediately of any failure of the Equipment of any nature whatsoever and to then immediately cease using the Equipment until notified by the Owner.
  - (ii) To supply a qualified operator and pay his/her wages.
  - (iii) At all times use the Equipment in a proper and skilful manner and within the capacity for which it was designed to operate, and not use the Equipment for any other purpose.
  - (iv) Unless otherwise agreed, at its own expense use qualified personnel to service the Equipment in accordance with the manufacturer's recommendations and subject to clause 8(b), repair the Equipment in accordance with the supplied operator's manual so the Equipment is in good and substantial repair (with due allowance for fair wear and tear) and at all times is capable of being operated fully and efficiently for the purpose and capacity for which it is intended.
  - (v) At its own expense, clean, fuel, lubricate and maintain the Equipment in good condition and repair in accordance with the manufacturer's recommendations.
  - (vi) At its own expense, to complete pre start inspections in accordance with the supplied documentation and signify it has been completed on the relevant instrument.
  - (vii) To report all vehicle faults to the Owner immediately and complete the Fault Report – Repair Request Form provided with the Equipment.
  - (viii) Where a major fault is detected, the operator will contact the relevant person who will make arrangements for the fault to be rectified. The driver will record the instruction given in relation to rectifying any major fault.
  - (ix) To notify the Owner when a service is due.
  - (x) To ensure that the Equipment is stored safely and securely when not in use.
  - (xi) Not to use the Equipment to carry or move any illegal, prohibited or dangerous substances.
  - (xii) Where the Hirer undertakes repair of the Equipment resulting in the replacement of existing parts of the Equipment, to use only replacement parts recommended by the Owner, and such parts will become the property of the Owner.
  - (xiii) Not to alter or make any addition to the Equipment without the prior consent of the Owner.
  - (xiv) Supply all fuel, oil and grease necessary for the operation of the Equipment.
  - (xv) Clean the Equipment upon completion of the hire arrangement under this Agreement or be charged a cleaning fee as per clause 7.2(e).

- (xvi) Not allow or authorise any other person or entity to use, re-hire or have possession of the Equipment at any time, unless expressly agreed by the Owner in writing.
- (b) The Owner is responsible for all major component mechanical repairs, including repairs to the transmission, engine, hydraulics, differentials and tandems.

## 9. Warranties

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- (a) The Hirer will have the benefit of any manufacturer's warranty with respect to the Equipment during the term of hire.
- (b) Other than the warranty referred to in clause 9(a) above, all warranties with respect to the Equipment are excluded to the full extent permissible by law.
- (c) In circumstances where the law does not permit the Owner to exclude or limit its liability under the Agreement, then the liability of the Owner for any breach of condition, warranty or damages or loss suffered will be limited to (at the Owner's discretion):
  - (i) the resupply of the Equipment;
  - (ii) the supply of equivalent Equipment; or
  - (iii) the repair of the Equipment.
- (d) The Hirer acknowledges that neither the Owner, nor any person acting on the Owner's behalf, has made any representation or made any promise or undertaking in relation to the quality of the Equipment, its fitness for purpose, or the use of the Equipment.

## 10. Insurance

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- (a) The Hirer must do the following in relation to insuring the Equipment:
  - (i) Effect and maintain comprehensive insurance, noting the Owner's interest as owner of the Equipment, over and in relation to the Equipment with an insurance company with an S&P Financial rating of not less than "A", for amounts, against risks and on terms the Owner reasonably requires or, if the Owner does not notify the Hirer of its requirements, that a prudent and reasonable owner of the Equipment would effect and maintain including insurance for full replacement value on a reinstatement basis in the instance of theft, damage, accident, transport or fire.
  - (ii) Pay or procure the payment of the premiums and other amounts payable for those insurances when due.
  - (iii) Give the Owner on request a copy of the policies and certificates of currency for those insurances.
  - (iv) Not do or permit anything to be done, or omit to do or permit not to be done anything that may prejudice or make void or voidable any of those insurances.
  - (v) Pay any excess in the event that a claim is made against the Hirer's insurance policy.
- (b) The Hirer must do the following in relation to liability insurance:
  - (i) Effect and maintain policies of insurance for third party property damage, public and products liability, and property damage indemnity cover of not less than twenty million dollars (\$20,000,000)

- per occurrence with an insurance company with an S&P Finance rating of not less than "A".
- (ii) Pay or procure the payment of the premiums and other amounts payable for those insurances when due.
- (iii) Give the Owner on request a copy of the policies and certificates of currency for those insurances.
- (iv) Not do or permit anything to be done, or omit to do or permit not to be done anything that may prejudice or make void or voidable any of those insurances.
- (v) Pay any excess in the event that a claim is made against the Hirer's insurance policy.

## 11. Cancellation

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### 11.1 Hirer's cancellation

- (a) If for any reason the Hirer wishes to cancel its hire arrangement with the Owner and terminate this Agreement, then the Hirer must provide seven days written notice of the cancellation to the Owner.
- (b) The Hirer must return the Equipment to the Owner in the same order and condition as at the date of this Agreement (subject to fair wear and tear) together with all registration certificates, handbooks, warranty forms and other documents relating to the Equipment (and, where applicable, all keys and remotes).

### 11.2 Owner's cancellation

- (a) The Owner reserves the right to cancel its hire arrangement with the Hirer and terminate this Agreement:
  - (i) without notice, if the Hirer commits a breach of the terms or conditions of this Agreement, or
  - (ii) without notice, if an Event of Default has occurred in accordance with clause 16.1, or
  - (iii) for any other reason, by providing seven days written notice to the Hirer.
- (b) On cancellation, the Owner is entitled without notice, to take possession of the Equipment and the Hirer irrevocably appoints the Owner as its agent for and authorises the Owner to enter any land or premises of, or under the control of, the Hirer upon which the Equipment is situated for this purpose. The Owner acknowledges its own responsibility to comply with any entry conditions of this site if necessary.
- (c) The Owner will not be liable to the Hirer for any loss or damage suffered by the Hirer due to the cancellation of the hire arrangement and the termination of this Agreement under clause 11.2(a).

## 12. Assumption of risk and release from liability

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- (a) The Hirer hires the Equipment at its own risk and expressly assumes the risk of any personal injury or harm (including loss of life) or loss or damage to personal property and the Equipment which may result during the hire of the Equipment.
- (b) The Hirer releases, waives and agrees to hold harmless the Owner (including its servants and agents) from any and all liability, claims, demands and actions which may be made by the Hirer on its own behalf or by other parties, against the Owner, its servants or agents, with respect to any injury or harm (including loss of life)

suffered by any person or loss or damage to personal property of any person during the hire of the Equipment, whether by negligence, breach of contract or in any way whatsoever. However, the Hirer's indemnity to the Owner is reduced proportionately to the extent the Owner contributed to the loss, damage, injury or death (if at all).

## 13. Possession

- (a) The Hirer agrees to the following:
  - (i) The Equipment will remain in the possession and control of the Hirer at all times during the term of hire.
  - (ii) This Agreement will not be assigned without the consent of the Owner first being obtained in writing.
  - (iii) To notify the Owner immediately in writing of any change in the Hirer's address and/or the address where the Equipment is located.
  - (iv) The Equipment is a chattel and will not be affixed to any land.

## 14. Indemnity

- (a) The Hirer indemnifies and keeps indemnified the Owner, its officers, agents, contractors and employees:
  - (i) against all claims, demands, losses, costs, liabilities and expenses arising out of injury to or death of any person, or damage to or destruction of any property, to the extent caused by the Hirer, and their officers, agents, contractors or employees;
  - (ii) for any loss suffered as a result of the Hirer breaching this Agreement;
  - (iii) for any act, omission, negligence or default of the Hirer or its agents or employees;
  - (iv) a breach of any law by the Hirer or its agents or employees; and
  - (v) for any loss suffered by the Owner in relation to the Equipment where risk has passed to the Hirer according to clause 4, but title remained with the Owner.
- (b) The Owner, including any agents or employees of the Owner, is indemnified to the fullest extent permissible by law and accepts no liability for:
  - (i) any consequence arising from any delay, failure or inability to deliver any Equipment;
  - (ii) any consequential, direct, indirect, special or punitive damages arising whether due to the Owner's negligence or otherwise, and
  - (iii) the Hirer's use of the Equipment from the date of delivery from the Owner.
- (c) The Owner may alter any or all specifications of any Equipment without prior notice, and the Hirer cannot claim for any costs incurred by the Hirer by such change/s.

## 15. Disputes

### 15.1 Dispute Notice

- (a) A party asserting a dispute must give the other party a Dispute Notice.
- (b) The Dispute Notice must state:
  - (i) what is in dispute;

- (ii) the arguments of the party giving the Dispute Notice; and
  - (iii) what should be done to rectify the dispute.
- (c) A Dispute Notice is deemed to be a Notice for the purposes of this Agreement.

### 15.2 Notice in response

The party receiving the Dispute Notice must respond in writing within seven days of receiving the Dispute Notice.

### 15.3 Settlement conference

- (a) If the dispute is not resolved by the exchange of notices, then the parties must confer in the presence of an Independent Person to attempt to resolve the dispute.
- (b) The conference with the Independent Person must be held within 14 days (or at a later time to meet the convenience of the Independent Person) from a Notice convening the conference being sent by one of the parties.
- (c) The Independent Person is to act as a mediator at the conference.

### 15.4 Negotiations without prejudice

Evidence of anything said or done in the course of attempting to settle a dispute is not admissible in subsequent proceedings.

### 15.5 Continued performance

During the dispute resolution process the parties must continue to perform their obligations under the Agreement.

### 15.6 Arbitrator's determination

If the parties are unable to resolve the dispute by the exchange of Notices or conference with the Independent Person and both parties agree, then they may require the dispute to be submitted to and settled by an arbitrator. Each party may make submissions to the arbitrator. The decision of the arbitrator will be final and binding on the parties. The arbitrator must also determine which party or parties pays the costs of and incidental to the resolution of the dispute. The arbitrator will be subject to the provisions of the Commercial Arbitration Act Queensland.

### 15.7 Payment during disputes

If an amount claimed by the Owner is in dispute:

- (a) The amount not in dispute must be paid by the Hirer in accordance with this Agreement.
- (b) Any disputed amount that is ultimately determined to have been payable to the Owner must be paid by the Hirer with interest at the Default Rate, from the original due date until the payment is made.

## 16. Default

### 16.1 Events of Default

Any one or more of the following occurrences will be an Event of Default:

- (a) The Hirer does not pay the Hire Fee as required by this Agreement.
- (b) The Hirer fails to rectify within seven days a breach or breaches of this Agreement after written notice of the breach is served by the Owner.



- (c) The Hirer ceases or threatens to cease to carry on its business.
- (d) Any insurance renewal or insurance proposal made by the Hirer in respect of the Equipment is declined.
- (e) Any insurance policy in respect of the Equipment is cancelled.
- (f) An Insolvency Event occurs in relation to the Hirer.

## 16.2 Consequences

- (a) If an Event of Default occurs in accordance with clause 16.1, then the Owner may terminate this Agreement and:
  - (i) notify the Hirer that it requires the Hirer to return the Equipment to an address notified by the Owner; or
  - (ii) without Notice (except where legally required), immediately retake possession of the Equipment.
- (b) Nothing in this clause 16.2 precludes the Owner from seeking any other remedies available at law.

## 16.3 Return of Equipment

If the Owner notifies the Hirer that it requires the Hirer to return the Equipment under clause 16.2(a)(i), then:

- (a) the Hirer must deliver the Equipment to the Owner in the same order and condition as at the date of this Agreement (subject to fair wear and tear) to such address as the Owner directs together with all registration certificates, handbooks, warranty forms and other documents relating to the Equipment (and, where applicable, all keys and remotes); and
- (b) the Hirer must meet all costs of delivery to the Owner.

## 17. Uncontrolled Event

To the extent permitted by law, if the Owner is prevented from performing its duties under the Agreement due to the occurrence of an Uncontrolled Event, then the Owner is not liable to the Hirer for any loss or damage suffered.

## 18. Goods and Services Tax

- (a) Unless expressly included, the consideration for any supply under or in connection with this Agreement does not include GST.
- (b) To the extent that any supply made under or in connection with this Agreement is a Taxable Supply (as defined in the defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)), the Hirer must pay, in addition to the consideration to be provided under this Agreement for that supply (unless it expressly includes GST), an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.

## 19. General provisions

### 19.1 Delivery as a deed

Subject to express provisions in this Agreement to the contrary, each party by signing or executing this Agreement is deemed to unconditionally sign, seal and deliver this Agreement as a deed, with the intention of being immediately legally bound by this Agreement.

### 19.2 Variation

This Agreement may only be varied by a document signed by or on behalf of each party.

### 19.3 Further assurances

Each party to this Agreement must promptly do all further acts and execute and deliver all further documents required by law or reasonably requested by the other party to give effect to this Agreement.

### 19.4 Assignment

Subject to clause 13(a)(ii), no party is entitled to assign or subcontract any of its rights, duties or obligations under this Agreement.

### 19.5 Counterparts

- (a) This Agreement may be executed in one or more counterparts and all counterparts taken together constitute one agreement.
- (b) The parties further agree communication of execution of this Agreement by a party may, as an alternative to any other lawful method, be completed by successfully transmitting an attachment to an email (provided the sender has not received a notification that, for any reason, the email and attachment were not received by the recipient) of this Agreement bearing execution by that party to all other parties.

### 19.6 Trustee provision

In the event that any party is a trustee of any trust or enters into this Agreement as trustee of any trust and whether or not every other party has notice of any such trust or trusts the party entering into this Agreement as trustee of a trust covenants and warrants that:

- (a) despite the existence of the trust, that party will be liable for the performance of all covenants contained in this Agreement; and
- (b) that party has full complete and valid authority pursuant to the trust to execute and enter this Agreement and the consent of the beneficiaries is not required or if required has been obtained.

### 19.7 Severability

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement but the rest of this Agreement is not affected.

### 19.8 Waiver

The fact that either party fails to do, or delays in doing, something it is entitled to do under this Agreement, does not amount to a waiver of its right to do it. Any waiver must be in writing. A written waiver by the Owner is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach; or as an implied waiver of that obligation or breach in relation to any other occasion.

### 19.9 Hirer authority

The party signing this Agreement as the Hirer has full authority to sign on behalf of the Hirer and agrees to be bound by the terms and conditions of this Agreement.

## **19.10 Entire agreement**

This Agreement replaces all previous agreements between the parties concerning its subject matter and contains the entire agreement between the parties.

## **19.11 Governing law and jurisdiction**

The terms and conditions set out in this document are governed and construed in accordance with the law of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.

Execution Page

This Agreement is made on \_\_\_\_\_.  
(Insert date)

Signed by the **Hirer** in accordance with section 127 of the Corporations Act by:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

Signed by **Powermac Hire Pty Ltd ACN 662 684 086** in accordance with section 127 of the Corporations Act:

\_\_\_\_\_  
Director/Secretary

Peter McMahon  
\_\_\_\_\_  
Name (please print)