



BTP Standard Terms & Conditions of Hire

1. Definitions and Interpretation

1.1 In this Contract, unless a contrary intention appears, the following definitions apply:

Approval means all approvals, certificates, licenses, consents, permits, assessment notices and requirements of organisations having jurisdiction in connection with the Equipment or the carrying out of any work under this Contract (including the transportation, loading, unloading, delivery, operation, maintenance, repair or use of the Equipment), including all fees and charges payable in connection with such approvals;

Australian Standards means those documents published by Standards Australia from time to time setting out applicable specifications to procedures with respect to certain products, services and systems;

BTP means **BTP Equipment Pty Ltd (ABN 55 128 386 201)** and includes its related bodies corporate, successors, administrators and assigns;

Business Day means a day that is not a Saturday, Sunday or public holiday in the state in which the Site is located;

Claim means any means any claim, debt, cause of action, suit, proceeding or demand of any nature howsoever arising and whether direct or indirect, present or future, fixed or ascertained, actual or contingent, and whether in law, equity or otherwise;

Commencement Date means the date specified in the Quotation, or if none is specified, the Hire Start Date;

Contract means the Quotation, these BTP Standard Terms and Conditions of Hire, the Purchase Order and any other schedules provided or approved by BTP;

Drop Off Location means the place specified in the Quotation;

Equipment means the item(s) of equipment provided by BTP including all ancillary components and accessories, as specified in the Quotation and includes any replacement or substitute equipment;

Equipment Condition Report means a report in the format provided by BTP, detailing the condition of the Equipment in accordance with clause 5;

Force Majeure means an event which is not within the control of BTP, and which will directly impact the ability of BTP to perform its obligations under this Contract, including any act of god, war, revolution, pandemic, a governmental restraint or any industrial-related dispute;

Governing Law means of the laws of the State specified in the Quotation, and if no State is so specified, the laws of Western Australia;

Hire Location means the location where the Equipment is to be used and kept during the Term, as specified in the Quotation;

Hire Rates means the rates specified in the Quotation, payable by the Hirer to BTP under this Contract in accordance with clause 11;

Hire Start Date means the date on which the Hirer (or the Transport Provider) takes possession of the Equipment;

Hirer means the Party specified as Hirer in the Contract Particulars and includes its related bodies corporate, successors, administrators and assigns;

HSE Legislation means all applicable Legislative Requirements in connection with health, safety and the environment;

Intellectual Property means all statutory and other proprietary rights in respect of patents (including inventions), trademarks, copyright (and associated moral rights), designs, circuit layout and know how (including trade secrets), and the right to apply for such rights and all other intellectual property as defined in Article 2 of the *Convention Establishing the World Intellectual Property Organisation* of July 1967, or any application or right to apply for registration of any of the preceding rights;

Legislative Requirements means any applicable statutes, regulations, by-laws, orders, awards, proclamations of the Commonwealth, certificates, licences, consents, permits, Approvals, codes, standards or requirements of government and statutory authorities;

Loss means any losses, liabilities, damages, costs, charges, expenses, penalties, interest and fines, including those arising as a result of a Claim by any person;

Manufacturer means the original manufacturer of the Equipment;

Operating Manual means the manual published by the Manufacturer for the proper operation and maintenance of the Equipment;

Party means BTP or the Hirer, and **Parties** means both of them;

Personnel means any directors, officers, employees, agents, representatives, suppliers and subcontractors engaged by a Party, but a reference to BTP's Personnel excludes the Hirer and its Personnel;

Pick Up Location means the place specified in the Quotation.

Proportionate Liability Legislation means:

- (a) if the Governing Law is the law of Western Australia, then Part 1F of the *Civil Liability Act 2002* (WA);
- (b) if the Governing Law is the law of New South Wales, then Part 4 of the *Civil Liability Act 2002* (NSW);
- (c) if the Governing Law is the law of Queensland, then Chapter 2, Part 2 of the *Civil Liability Act 2003* (Qld);
- (d) if the Governing Law is the law of Tasmania, then Part 9A of the *Civil Liability Act 2002* (Tas);
- (e) if the Governing Law is the law of the Northern Territory, then the *Proportionate Liability Act 2005* (NT);
- (f) if the Governing Law is the law of Victoria, then Part IVAA of the *Wrongs Act 1958* (Vic); or
- (g) if the Governing Law is the law of South Australia, then Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA);

Purchase Order means a purchase order issued by the Hirer to BTP in respect of a Quotation, which will be subject to the terms of this Contract, to the exclusion of any of the Hirer's standard purchase order terms and conditions;

Quotation means the proposal or other document that BTP provides to the Hirer which specifies, among other things, the Commencement Date, Return Date, Hire Rates and Special Conditions, to which the Purchase Order relates;

Representative means the representative of each Party, as specified in the Quotation, and any replacement person nominated by a Party in writing from time to time;

Request for Quotation means a request from the Hirer for a quote from BTP for the hire of Equipment, which request can either be made in writing or verbally;

Return Date means the date specified in the Quotation, or if none is specified, the date the Equipment is returned to the possession of BTP, subject to:

- (a) variation pursuant to clause 3.6; or
- (b) termination pursuant to clause 17;

Special Conditions means the special conditions contained in the Quotation;

Term means the period from the Commencement Date to the Return Date, unless terminated earlier pursuant to clause 17;

Transport Provider means the Hirer's nominated transport provider;

Validity Period means the period specified in the Quotation.

- 1.2 In this Contract unless the contrary intention appears:
- (a) the singular includes the plural and vice versa;
 - (b) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
 - (c) the words "include" and "including" are to be construed without limitation;
 - (d) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure in this Contract;
 - (e) headings in this Contract are for convenience and will not affect interpretation of this Contract;
 - (f) reference to a day or month means a calendar day or calendar month;
 - (g) a reference to "AUD", "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency;
 - (h) all lump sums, rates and prices stated in this Contract will be deemed to include GST unless expressly stated otherwise;
 - (i) a reference to any Legislative Requirement includes all amendments, consolidations, re-enactments or replacements to or of it, and all regulations or statutory instruments issued under it;
 - (j) where the Hirer is required to perform an obligation or discharge a liability, the Hirer must do so at its own cost, unless expressly provided otherwise;
 - (k) if the due date for anything to be done under this Contract falls on a day that is not a Business Day, then it must be done on the next Business Day; and
 - (l) no provision of this Contract will be construed to the disadvantage of a Party because that Party was responsible for the preparation of this Contract.

2. Contract

- 2.1 This Contract commences on the Commencement Date and continues for the Term.
- 2.2 The terms of this Contract become effective and binding on and from the Commencement Date or the Hirer's acceptance of a Quotation, whichever occurs first.
- 2.3 The:
- (a) acceptance by the Hirer of delivery of the Equipment; or
 - (b) collection of the Equipment by the Transport Provider from the Pick Up Location,
- will be deemed to be acceptance of the terms and conditions of this Contract and will constitute a binding contract between the Hirer and BTP notwithstanding that this Contract may not have been executed by the Hirer.
- 2.4 If there is any ambiguity, inconsistency or conflict between the provisions of any of the documents comprising the Contract, then unless otherwise agreed in writing by the Parties, the documents take precedence in the following order:
- (a) the Quotation;
 - (b) BTP Standard Terms and Conditions of Hire;
 - (c) any other schedules provided or approved by BTP; and
 - (d) the Purchase Order.
- 2.5 This Contract contains the entire agreement between the Parties and supersedes any prior communications and negotiations between the Parties.

- 2.6 Any terms or conditions that may have been attached to, referred to or embodied in the Hirer's request for hire, Purchase Order or any other document are deemed to have been withdrawn in favour of the terms of this Contract and will not form part of this Contract.
- 2.7 Any Equipment hired by the Hirer from BTP prior to the Commencement Date is subject to the terms and conditions of this Contract.
- 2.8 The Parties acknowledge and agree that:
- (a) this Contract in a non-exclusive arrangement and BTP may hire equipment to any third party; and
 - (b) the Hirer is an independent contractor and neither it, nor its Personnel, will act or be regarded as an agent or employee of BTP.
- 2.9 BTP does not guarantee and is not obliged to provide any minimum quantity or value of Equipment to the Hirer under this Contract.
- 2.10 The Parties will each appoint and at all times have available a Representative duly authorised to carry out that Party's obligations under this Contract. BTP's Representative may appoint a delegate at any time to exercise or perform any of its rights or duties.

3. Equipment Hire

- 3.1 If the Hirer wishes to hire any Equipment from BTP, it will issue a Request for Quotation.
- 3.2 Upon receipt of a Request for Quotation, BTP may, in its sole discretion, issue a Quotation.
- 3.3 The Quotation will be subject to the Validity Period.
- 3.4 If the Hirer wishes to hire the Equipment, the Hirer must issue a Purchase Order to BTP which references the respective Quotation.
- 3.5 BTP may, in its sole discretion, accept or decline a Purchase Order (including accepting a Purchase Order in respect of a Quotation which has an expired Validity Period).
- 3.6 The terms of a Quotation may only be varied by agreement of both Parties in writing.
- 3.7 For the avoidance of doubt, the only terms and conditions which are binding upon the Parties in relation to the hire of Equipment are those set out in this Contract. Any subsequent terms and conditions submitted or issued by the Hirer (including as attached to, or referenced in, any purchase orders, request for hire forms, correspondence, equipment condition reports or other instrument) are not applicable and binding unless agreed and accepted in writing by BTP.
- 3.8 Any request by the Hirer to extend the Return Date must be provided in writing to BTP at least five (5) Business Days prior to the Return Date.
- 3.9 If the Hirer is in possession of the Equipment beyond the Return Date, without the approval of BTP, the Hirer will be considered to be in breach of this Contract and notwithstanding any other rights or remedies BTP may have against the Hirer, the Hirer will be liable to pay the Hire Rates until the date the Equipment is returned to the possession of BTP.

4. Collection and Return of Equipment

- 4.1 Unless otherwise specified in the Quotation:
- (a) the Hirer (or the Transport Provider) must:
 - (i) collect the Equipment from the Pick Up Location on the Commencement Date; and
 - (ii) deliver the Equipment to the Drop Off Location on the Return Date;
 - (b) the cost, risk and responsibility of transportation, delivery, loading and unloading of the Equipment and all associated costs will be borne by the Hirer.

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- 4.2 In the event BTP is responsible for return of the Equipment to the Drop Off Location, the Hirer must, on the Return Date:
- (a) make the Equipment available for collection by BTP, at a time requested by BTP; and
 - (b) ensure that the Equipment is appropriately packed and fitted with all lifting and handling devices required to safely lift and handle the Equipment during transit.
- 4.3 Risk in the Equipment transfers to the Hirer upon the Hirer's (or Transport Provider's) collection of the Equipment at the Pick Up Location and remains solely with the Hirer for the duration of the Term, until BTP's acceptance of the Equipment on the Return Date.
- 4.4 BTP retains title to the Equipment at all times during the Term.

5. Equipment Condition Report

- 5.1 BTP will undertake an inspection of the Equipment on or immediately prior to the Commencement Date and will prepare an Equipment Condition Report.
- 5.2 BTP will provide a copy of the Equipment Condition Report, undertaken in accordance with clause 5.1, to the Hirer (or Transport Provider) upon collection of the Equipment at the Pick Up Location.
- 5.3 Within three (3) Business Days of delivery of the Equipment to the Hire Location, the Hirer must notify BTP if it disagrees with any aspect of the Equipment Condition Report and the parties must endeavour to resolve the issue as soon as practicable and failing that, the matter shall be dealt with in accordance with clause 20.
- 5.4 If the Hirer fails to respond within the time frame prescribed in clause 5.3, the Hirer will be deemed to have accepted the Equipment Condition Report or if there is no Equipment Condition Report, the condition of the Equipment on an as is where is basis.
- 5.5 No review, inspection, acceptance or approval by BTP of, or failure by BTP to review, inspect, accept or approve, the Equipment (including failure to prepare an Equipment Condition Report), limits or otherwise affects the Hirer's liabilities and obligations arising out of, or in connection with, this Contract.

6. Hirer Warranties

- 6.1 The Hirer warrants that for the duration of the Term:
- (a) it is authorised to hire the Equipment from BTP and holds the necessary Approvals required by Legislative Requirements to do so;
 - (b) it will do all things necessary and incidental for the proper performance of its obligations under this Contract;
 - (c) it will promptly disclose all information that may reasonably be material to BTP in relation to the Equipment or this Contract; and
 - (d) all information and advice it provides BTP in relation to the Equipment or this Contract will be true and correct in every respect, and not misleading or deceptive.
- 6.2 The Hirer warrants that at all times during the Term, it:
- (a) will keep the Equipment clean, free from damage, and in good condition and working order;
 - (b) will perform all necessary, statutory and prudent checks, inspections, maintenance and services in respect of the Equipment (at the times recommended by the Manufacturer, the Operating Manual and as required by the Legislative Requirements), unless and to the extent that any repairs and/or maintenance is to be undertaken by BTP, as specified in the Quotation;

- (c) will use, operate, service and maintain the Equipment in accordance with the Manufacturer's specifications, Operating Manual, Legislative Requirements, Australian Standards and any specifications provided by BTP, unless and to the extent that any services and/or maintenance is to be undertaken by BTP, as specified in the Quotation;
 - (d) will only use the Equipment for the purpose for which it was designed, in suitable terrain and conditions and in a manner that has regard to the capacity, capabilities and limitation of the Equipment;
 - (e) will provide adequate training to ensure that its Personnel use or operate the Equipment in a manner that minimises the risk to their own health and safety and the health and safety of others, and do not undertake any tasks for which they have not received adequate training;
 - (f) will keep the Equipment stored safely and protected from theft, loss, damage or severe weather conditions; and
 - (g) subject to clause 19.2, will keep the Equipment free from any charges, liens or encumbrances.
- 6.3 The Hirer warrants that the Equipment will only be used or operated by Personnel who:
- (a) are experienced, competent and are fit to use and operate the Equipment;
 - (b) hold the necessary Approvals;
 - (c) fully comply with all relevant Legislative Requirements;
 - (d) are provided with all necessary safety equipment (including PPE) to operate the Equipment;
 - (e) abide by and fully comply with all relevant HSE Legislation in their use or operation of the Equipment; and
 - (f) exercise reasonable and necessary precautions appropriate to the nature of the Equipment, the work to be performed and the conditions under which the work is carried out.
- 6.4 The Hirer acknowledges and agrees that BTP enters into this Contract in reliance on the warranties provided by the Hirer in this Contract.

7. Servicing and Maintenance

- 7.1 If the Quotation provides that the Hirer is responsible for servicing or maintenance of the Equipment during the Term, then the Hirer must, at its cost, in accordance with the Manufacturer's Operating Manual, any applicable Legislative Requirements and BTP's instructions and requirements:
- (a) perform all routine servicing and repairs of the Equipment (including the cost of provision of all parts, labour, tools, plant, equipment and lubricants and consumables);
 - (b) keep detailed records of all maintenance, service or repairs performed on the Equipment, which demonstrate the Equipment is being maintained and operated in accordance with this Contract, with such records being available for inspection and copying by BTP upon request; and
 - (c) ensure that all servicing and maintenance carried out by the Hirer must be in accordance with good engineering and operating practices and as otherwise agreed by the Parties in writing.
- 7.2 If the Quotation provides that BTP is responsible for servicing or maintenance of the Equipment during the Term, then:
- (a) the Hirer must make the Equipment available to BTP's Personnel as required for servicing and maintenance during ordinary business hours; and

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- (b) BTP must, at its cost, in accordance with the Manufacturer's Operating Manual and any applicable Legislative Requirements:
 - (i) perform such routine services and maintenance of the Equipment (including the cost of provision of all parts, labour, tools, plant, equipment and lubricants and consumables); and
 - (ii) keep detailed records of all maintenance, and services performed on the Equipment, which demonstrate the Equipment is being maintained in accordance with this Contract.

8. Return of Equipment

- 8.1 The Hirer must return the Equipment to BTP on the Return Date in clean, good working order, free from damage and defects, and in a state consistent with the Hirer having complied with its obligations under this Contract (subject to fair wear and tear).
- 8.2 If BTP determines that any rectification, repair, maintenance or servicing of the Equipment is necessary to:
 - (a) repair or rectify any defect or damage;
 - (b) improve the condition of the Equipment such that it matches its initial condition recorded in the Equipment Condition Report (fair wear and tear excluded); or
 - (c) reflect the level of service or maintenance consistent with the Hirer having complied with its obligations under this Contract,BTP will, by notice to the Hirer in writing, either:
 - (d) require the Hirer to perform the additional rectification, repair, maintenance or service required at the Hirer's cost (plus the Hirer will be liable to pay the Hire Rates during this further period); or
 - (e) perform the additional rectification, repair, maintenance or service itself, and the cost of such will be a debt due and payable by the Hirer to BTP.

9. Damage or Breakdown

- 9.1 The Hirer must immediately notify BTP in writing of any loss, defect in, damage to, or breakdown of, the Equipment.
- 9.2 The Hirer is responsible for any loss or breakdown of, or damage to, the Equipment whilst it is in the Hirer's possession or control.
- 9.3 The Hirer must repair or replace the Equipment, or arrange for the Equipment to be repaired, as soon as possible and in any event no later than five (5) Business Days after being directed by BTP.
- 9.4 If the Equipment is to be removed from the Hire Location for repairs, the Hirer will be solely responsible for the necessary transport and other costs in relation to the Equipment's removal and return.
- 9.5 If:
 - (a) the Hirer fails to comply with its obligations within the time frame specified in clause 9.3; or
 - (b) BTP considers that emergency repairs are required to protect the Equipment, people or property,then:
 - (c) BTP may, in its sole discretion, elect to repair the Equipment at the Hire Location and/or remove the Equipment from the Hire Location; and
 - (d) all costs and/or Loss incurred by BTP in respect of repairing and/or removing and returning the Equipment from, and to, the Hire Location, will be a debt due and payable by the Hirer to BTP.
- 9.6 Notwithstanding clause 9.5(d), Hire Rates will continue to apply during any period of non-use or repair.

- 9.7 If the defect, damage or breakdown is a direct result of negligence or wilful misconduct by BTP or its Personnel, BTP will be responsible to the extent of the necessary repair or replacement of the Equipment (at BTP's election).

10. Hire Rates

- 10.1 The Hirer must pay BTP the Hire Rates in consideration for hiring the Equipment.
- 10.2 Payment of the Hire Rates will commence on the earlier of the Commencement Date or the Hire Start Date and the Hirer is liable for payment of the Hire Rates until the Equipment is returned to BTP.
- 10.3 BTP will have no liability to the Hirer for any amounts not included in the Hire Rates.
- 10.4 If the Quotation provides for a review of the Hire Rates, such rates will be:
 - (a) calculated on the review dates identified in the Quotation, using the formula/s stated in the Quotation; and
 - (b) will be applicable on and from the review dates identified in the Quotation.
- 10.5 If the Quotation does not provide for a review of the Hire Rates, then BTP will be entitled to review and amend the Hire Rates no more than twice per annum from the Commencement Date, by giving not less than thirty (30) days' notice.
- 10.6 BTP will notify the Hirer's Representative of any new Hire Rates as soon as practicable, but in any event before the respective effective dates.

11. Payment

- 11.1 BTP will submit a tax invoice to the Hirer within five (5) Business Days of the end of each calendar month during the Term, for the Hire Rates payable by the Hirer during the preceding month and any other Claims that BTP is entitled to make under this Contract.
- 11.2 The Hirer must pay BTP the invoice amount within twenty one (21) days of the end of the month to which the invoice relates (or such shorter period as required by the Legislative Requirements applicable to security of payment under the Governing Law).
- 11.3 If the Hirer reasonably disputes any portion of an invoice, the Hirer must notify BTP in writing of the amount in dispute in accordance with clause 20 and pay the undisputed portion in accordance with clause 11.2.
- 11.4 The Hirer is not entitled to set-off against or deduct from the invoices amounts from any sums owed or claimed to be owed to the Hirer by BTP.
- 11.5 Should the Hirer fail to pay BTP in accordance with the terms of this Contract, BTP will be entitled to recover interest at the rate of 10% per annum compounded monthly.

12. Insurance & Registration

- 12.1 The Hirer must effect and maintain the following insurances for the duration of the Term:
 - (a) public and product liability insurance, providing cover for an amount in respect of any one occurrence of not less than \$20,000,000.00 per claim, which notes the interest of BTP and includes a cross liability clause and waiver of subrogation in favour of BTP;
 - (b) equipment insurance, covering loss or damage to any Equipment in the care, custody and control of the Hirer for no less than the replacement value of such Equipment at the time of loss;

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- (c) marine transit insurance (where applicable), covering loss or damage to the Equipment in the care, custody and control of the Hirer for no less than its replacement value at the time of loss, except to the extent such Equipment is otherwise insured against the risk of loss or damage under the equipment insurance specified in clause 12.1(b);
 - (d) motor vehicle and third-party liability insurance, covering all liabilities in respect of any injury to or death of any person or any loss, damage or destruction to any property arising from the use of such vehicles;
 - (e) workers compensation or employer's liability insurance as required by Legislative Requirements, providing cover against statutory and common law liability for death of or injury to persons employed by the Hirer in connection with the Contract, and where permitted by Legislative Requirements, extended to provide indemnity for BTP's statutory and common law liability to the Hirer's employees (including a waiver of subrogation in favour of BTP, where available); and
 - (f) any additional insurance(s) specified in the Quotation.
- 12.2 The Hirer must ensure that at all times during the Term, all Equipment is registered and insured as required by Legislative Requirements.
- 12.3 The Hirer must, in respect of each insurance under clause 12.1:
- (a) provide BTP with a certificate of currency for the above insurances prior to the Commencement Date and otherwise within three (3) Business Days of any subsequent request by BTP;
 - (b) give written notice to BTP immediately of any lapse in or cancellation of any policy;
 - (c) not do anything which prejudices any insurance held by it; and
 - (d) give written notice to BTP of any Claims made under a policy, in connection with the Equipment or this Contract.
- 12.4 The Hirer is responsible for the payment of all excesses payable in respect of any insurance referred in this clause 12, to the extent such excess is payable in respect of a claim under such insurance in relation to BTP's Equipment. The Hirer's insurances will be exhausted first and BTP's insurances will only apply in excess of the Hirer's insured values under this Contract.
- 12.5 The Hirer is not relieved from, and remains fully responsible for, its obligations and liabilities under this Contract regardless of whether the insurances respond or fail to respond to any Claim and regardless of the reason any of the insurances respond or fail to respond.
- 12.6 If the Hirer fails to take out any of the insurances required under this clause 12, BTP may at its sole option:
- (a) take out and maintain such insurances and such costs will be a debt due and payable by the Hirer; or
 - (b) treat the failure as a default which will be dealt with pursuant to clause 17.
- 12.7 Without prejudice to BTP's rights under clause 12.6, the Hirer shall be deemed to have indemnified BTP against all Claims which may arise as a result of the Hirer failing to take out or maintain any of the insurances required under this clause 12.

13. Health, Environment and Safety

- 13.1 The Hirer must carry out its obligations under this Contract safely and so as to protect persons and property. The Hirer must ensure that in carrying out its obligations under this Contract, the Hirer and its Personnel comply with all applicable HSE Legislation.

- 13.2 The Hirer must provide to BTP all information regarding any notifiable or reportable incidents (as defined under the applicable HSE Legislation) and any HSE risks in connections with use of the Equipment.
- 13.3 Upon request by BTP, the Hirer must immediately provide BTP with access to all safety related information in respect of its use or operation of the Equipment, including:
- (a) relevant Approvals;
 - (b) work method statements;
 - (c) job hazard analyses, including risk assessments;
 - (d) induction and training records; and
 - (e) incident records and reports.

14. Confidentiality

- 14.1 The Hirer acknowledges and agrees that any information provided by BTP under or in relation to this Contract, including but not limited to pricing, technical specifications and other information is commercial in confidence. Such information must at all times remain confidential and must not be disclosed to any third party without BTP's prior written consent.
- 14.2 The Hirer must not, and must ensure that its Personnel do not, disclose or use any confidential information relating to this Contract (including intellectual property), unless written consent has been given by BTP.
- 14.3 The Hirer agrees to comply with the *Privacy Act 1988* (Cth) in respect to the collection, management and disclosure of any personal information obtained or disclosed to them in the performance of this Contract.
- 14.4 The Hirer shall indemnify, and keep indemnified, BTP from and against all Claims arising from a breach of this clause 14 by the Hirer.

15. Liability & Indemnity

- 15.1 The Hirer indemnifies and holds BTP harmless from and against all Claims and Losses in respect of:
- (a) injury to (including illness or disability), or death of, any person;
 - (b) any claim by third parties (including contractors and subcontractors) carrying out work on or in the vicinity of the Hire Location; and
 - (c) physical loss or destruction of or physical damage to or loss of use of any property, caused or contributed to by an act, omission or negligence of the Hirer or its Personnel, including the Hirer's failure to properly maintain, service and repair the Equipment in accordance with this Contract, or by any breach of this Contract by the Hirer (including any breach of a warranty), except to the extent that it has been caused or contributed to by the negligence of BTP.
- 15.2 The indemnities in this clause 15 are held by BTP for the benefit of, and will extend to protect, BTP's Personnel.
- 15.3 Insurances under this Contract are primary to the indemnities referred to in this Contract in respect of any Claim or Loss to which such indemnities apply. The Parties acknowledge to the other that if a claim is made under an insurance policy that extends protection to a relevant Party, it is their intention that the insurer cannot require a Party to exhaust any remedies referred to in this Contract before the insurer considers or meets the relevant claim.
- 15.4 Notwithstanding any other provision of this Contract and to the maximum extent permitted by law:
- (a) BTP will not be liable to the Hirer for any indirect, special, contingent or consequential Loss, including any loss of actual or anticipated profits, loss of opportunity, loss of use, loss of goodwill, loss of revenue, loss of production, loss of plant or facility, wasted overheads or business interruption of any nature;

- (b) BTP's maximum liability to the Hirer, howsoever arising, is limited to the Hire Rates paid to BTP under this Contract; and
- (c) the limitations in this clause 15.4 shall apply regardless of whether a claim is based in contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability, statute or otherwise.

16. Intellectual Property

Each party shall retain ownership of all confidential information and Intellectual Property it had prior to this Contract. All new Intellectual Property conceived or created by BTP in the performance of this Contract, whether alone or with any contribution from the Buyer, shall be owned exclusively by BTP.

17. Default & Termination

- 17.1 BTP may terminate this Contract:
 - (a) if the Hirer is in breach of this Contract or has repudiated this Contract, and does not remedy such default within three (3) Business Days' written notice from BTP requiring it to do so;
 - (b) if the Hirer becomes insolvent, enters receivership or administration, has a winding up order made against it or ceases or threatens to cease carrying on business; or
 - (c) in its absolute discretion, by giving the Hirer ten (10) Business Days' prior written notice.
- 17.2 If BTP terminates this Contract pursuant to clause 17.1 the Hirer must immediately:
 - (a) stop using and return to BTP all Equipment; and
 - (b) pay all amounts due and payable to BTP up to the date of termination, including all costs associated with demobilising and returning the Equipment to BTP (subject to clause 17.3).
- 17.3 If the Contract is terminated pursuant to clause 17.1(c) the Party specified in the Quotation will be responsible for demobilisation.
- 17.4 In the event the Hirer fails to return the Equipment following termination for any reason, the Hirer grants an irrevocable and unfettered right of access to BTP to enable BTP to enter the Hire Location to recover the Equipment. The Hirer indemnifies BTP for all and any costs incurred or damages suffered by BTP as a result of entry into the Hire Location to recover the Equipment.
- 17.5 If the Equipment is located on a third party site, the Hirer will do all things necessary to obtain the third party's approval for BTP to enter the site and retrieve the Equipment.
- 17.6 Termination of this Contract will not affect any of the Parties' obligations under any other existing contracts, unless BTP advises the Hirer otherwise in writing.

18. Force Majeure

- 18.1 If BTP is prevented from carrying out the whole or any part of its obligations under this Contract by reason of Force Majeure, BTP must immediately give written notice to the Hirer. BTP must keep the Hirer informed of any changes in the circumstances causing the Force Majeure.
- 18.2 The obligations of BTP will be suspended for the period that the Force Majeure persists and BTP will not be in default under this Contract.
- 18.3 Notwithstanding any provision of this Contract, if the Force Majeure causes the suspension of BTP's obligations for a continuous period of thirty (30) days or a cumulative period of sixty (60) days in any ninety (90) day period, BTP may terminate this Contract by written notice to the Hirer.

19. Personal Properties Securities Act

- 19.1 In this clause 19, terms used that have a defined meaning in the *Personal Property Securities Act 2009* (Cth) (**PPSA**), have the same meaning as in the PPSA.
- 19.2 Where the Hire Location is on a site that is owned by a third party, or a third party has (or may be deemed to have) possession or control of the Hire Location or the Equipment, the Hirer must:
 - (a) register a security interest(s) in the Equipment against that third party;
 - (b) ensure that any such security interest (and BTP's rights in relation to such security interest) are effective, enforceable and perfected against that third party;
 - (c) obtain the best priority achievable for that security interest, including a purchase money security interest (**PMSI**) where possible;
 - (d) provide all documentation and information regarding that security interest to BTP; and
 - (e) immediately discharge that security interest upon return of the Equipment to BTP at the end of the Hire Period.
- 19.3 The Hirer must keep the Equipment under its possession and control during the Hire Period, and must not attempt or purport to sell, dispose of, or encumber the Equipment or create any security interest in the Equipment (except pursuant to clause 19.2).
- 19.4 The Hirer acknowledges and agrees that BTP has a security interest in the Equipment and without limiting the generality of the foregoing, such security interest may be a PMSI arising out of a PPS Lease.
- 19.5 The Hirer must not, except with the prior written consent of BTP:
 - (a) remove the Equipment from the Hire Location;
 - (b) allow or permit any accession or co-mingling of the Equipment (or parts thereof); or
 - (c) grant any security interest over the Equipment to any third party or part with possession of the Equipment or do anything that prejudices the security interest BTP may have in the Equipment.
- 19.6 In the event the Hirer becomes aware of any third party's assertion of any claim of a security interest in the Equipment the Hirer will, as soon as it is reasonably practicable for it to do so, notify BTP and further, will cooperate with BTP, including by:
 - (a) providing all relevant details within the Hirer's knowledge of such third party's claim; and
 - (b) doing all things necessary, desirable or requested by BTP to ensure the security interest of BTP in the Equipment has priority to all other claims of security interest in the Equipment.
- 19.7 Each Party agrees that it will not disclose information of any kind referred to in section 275(1) of the PPSA and will not authorise and will ensure that no other person authorises the disclosure of such information.
- 19.8 Nothing in clause 19.7 prevents disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.
- 19.9 The Parties agree that the following provisions of the PPSA are contracted out of by them and shall have no application:
 - (a) sections 95, 118 and 130, to the extent that they require BTP to give a notice to the Hirer; and
 - (b) sections 121(4), 125, 128, 129, 132(3)(d), 132(4), 134(1), 135, 142 and 143.

20. Dispute Resolution

- 20.1 If a difference or dispute between the Parties arises under or in connection with this Contract (**Dispute**), either Party may give the other Party a written notice of the dispute pursuant to this clause 20.1, identifying and providing details of the dispute (**Dispute Notice**).
- 20.2 Within five (5) Business Days of receipt of the Dispute Notice, the Parties' Representatives must confer to seek to resolve the Dispute.
- 20.3 If the Dispute has not been resolved within fifteen (15) Business Days of the receipt of the Dispute Notice, a representative from each Parties' senior management must confer to seek to resolve the dispute or agree a method of doing so. All aspects of such conference(s) will be privileged and without prejudice.
- 20.4 If the Dispute is not resolved within ten (10) Business Days of the conferral pursuant to clause 20.3 then either Party may commence legal proceedings in the applicable court to resolve the matter.
- 20.5 During the existence of any Dispute, the Parties must continue to perform all of their obligations under this Contract, unless otherwise agreed by the Parties in writing.
- 20.6 Clauses 20.1 to 20.4 must be satisfied prior to either Party commencing any legal action. Notwithstanding, nothing in this clause 20 prevents a Party from seeking any urgent interlocutory relief in relation to this Contract.

21. Notices

- 21.1 Any notice (including a notice in respect of any Claim) given in relation to this Contract must be in writing, signed, and given or sent by hand delivery, pre-paid mail or in an attachment to an email, to the Representative's address as specified in the Quotation, or as last communicated in writing to the Party giving the notice.
- 21.2 A notice will be deemed to be received:
 - (a) if hand delivered, on that day if it is before 5:00pm (WST) on a Business Day, otherwise on the next Business Day;
 - (b) if sent by pre-paid mail, on the third Business Day after posting if the source and destination are within Australia or on the ninth Business Day if the delivery is to or from outside of Australia; or
 - (c) if emailed, on that day if it is before 5:00pm (WST) on a Business Day, otherwise on the next Business Day (unless the sender knows, or ought reasonably to suspect, that the email or the attachment was delayed or not received by the recipient that day).

22. GST

- 22.1 The Parties confirm that they are both registered for goods and services tax (**GST**) pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) and should either Party cease to be so registered, it will inform the other Party at the earliest opportunity.
- 22.2 If a Party makes a supply under or in connection with this Contract in respect of which GST is payable, the consideration for the supply but for the application of this clause 22.2 (**GST exclusive consideration**) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- 22.3 If a Party must reimburse or indemnify another Party for a Loss, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other Party is entitled to for the Loss, and then increased in accordance with clause 22.2.

- 22.4 A Party need not make a payment for a taxable supply made under or in connection with this Contract until it receives a tax invoice for the supply to which the payment relates.

23. Proportionate Liability Legislation

The Parties agree that the Proportionate Liability Legislation is excluded from operation with respect to any Claim brought by one Party against the other Party.

24. Anti-Bribery and Anti-Corruption Legislation

- 24.1 In this clause 24, "**Anti-Bribery and Anti-Corruption Legislation**" means any Legislative Requirement in connection with the prohibition of bribery and corruption (including by virtue of the place of domicile of BTP or the Hirer or members of their respective corporate group), including the *United States Foreign Corrupt Practices Act*, the *United Kingdom Bribery Act 2010* and the *Australian Criminal Code 1995* (Cth).
- 24.2 The Hirer represents and warrants that it complies with Anti-Bribery and Anti-Corruption Legislation and maintains reasonable and effective policies and procedures in relation to the same which will be provided to BTP upon request.
- 24.3 If BTP reasonably considers that the Hirer has breached Anti-Bribery and Anti-Corruption Legislation, it will give the Hirer written notice to show cause as to why this Contract should not be terminated.
- 24.4 If the Hirer is unable to show that no breach has occurred then BTP may terminate this Contract in accordance with clause 17.1(a).

25. General

- 25.1 **Jurisdiction:** This Contract is governed by the Governing Law and the Parties agree to submit to the exclusive jurisdiction of the Governing Law's courts.
- 25.2 **Counterparts:** This Contract may be executed in any number of counterparts. Each counterpart is an original but the counterparts together form the same Contract.
- 25.3 **Severability:** If any provision of this Contract is determined to be unenforceable or void by a court, that determination will not affect any other provision of this Contract, which otherwise will remain in full force and effect.
- 25.4 **Subcontracting and assignment:** The Hirer must not subcontract, assign, novate or transfer this Contract or the Equipment or any of its rights or obligations under this Contract, without the prior written consent of BTP.
- 25.5 **Variation:** An amendment or variation to this Contract is not effective unless it is in writing and signed by BTP's Representative.
- 25.6 **Waiver:** Any waiver of BTP's rights under this Contract is not effective unless it is in writing and signed by BTP's Representative. No waiver by BTP of any breach of a provision of this Contract is a waiver of any subsequent breach of that provision, or any other provision.
- 25.7 **Holding over:** If the Hirer continues to use any or all of the Equipment after the expiry of the Term with BTP's consent, then the Parties agree that the terms and conditions of this Contract will continue to apply.
- 25.8 **Survival:** Clauses 4, 5, 14, 15, 16, 19, 20, 22, and 25 survive the expiration or termination of this Contract.
- 25.9 Nothing in these terms and conditions will be read or applied so as to exclude, restrict or modify any condition, warranty, guarantee, right or remedy implied by law and which by law cannot be excluded, restricted or modified, arising out of or in connection with this Contract or any of the Hirer's subcontracts.



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