

Jonox Pty Ltd - Terms and Conditions of Hire ("Hire Terms")

1 Application of Hire Terms

- 1.1 These Hire Terms, together with the Hire Schedule, govern our hire of Equipment to you (whether or not a Dry Hire or Wet Hire basis).
- 1.2 If you wish to negotiate these Hire Terms with us then you should respond to this document, marking up these Hire Terms and drawing those changes to our attention and obtain our agreement in writing.
- 1.3 It is not our practice to otherwise review terms and conditions on documents that you issue to us.
- 1.4 Unless we otherwise agree in writing, we do not accept, and will not be bound by, any terms or conditions included in, attached to, or referenced in, any other document you give to us like a purchase order.

2 Quotations

Each quotation that we issue:

- (a) is an estimate only;
- (b) is not an offer or obligation to hire any Equipment to you, or perform any services (including Temporary Recruitment and labour hire services);
- (c) is exclusive of GST;
- (d) does not include the costs of delivering the Equipment; and
- (e) remains valid for acceptance for a period of thirty (30) days from the date of quotation, unless withdrawn by us before a hire contract is formed, unless the quotation states otherwise.

3 Formation of a hire contract

- 3.1 We are not obliged to hire any Equipment to you until after a hire contract is formed.
- 3.2 A contract for supply is formed, and you have accepted these Terms, when:
 - (a) you sign the Hire Schedule and return it to us; or
 - (b) direct us to mobilise the Equipment following your receipt of the Hire Schedule; or alternatively
 - (c) you have placed an Order with us; and
 - (d) we have received any deposit we have required from you in respect of the Hire Schedule or Order before progressing it; andeither we have:
 - (e) accepted your Order in writing; or
 - (f) supplied you with any Equipment or performed any Services following receipt of your Order.
- 3.3 If you revoke an Order:
 - (a) prior to the formation of a hire contract then:
 - (i) we will refund you any deposit you have paid in respect of that Order; and
 - (ii) you will not be required to pay any fee for the cancellation of the Order and arrive on Site; or alternatively
 - (b) after the formation of a hire contract then unless we are in breach of the hire contract:
 - (i) you must pay all our reasonable costs associated with fulfilment of your Order; and
 - (ii) we may apply any deposit you have paid towards those costs.

4 Hire Period

- 4.1 This clause 4 applies to both the Dry Hire and Wet Hire of Equipment (as the context requires).
- 4.2 The Hire Period will commence:
 - (a) (where you collect the Equipment):

- (i) on the On-Hire Date; or alternatively
 - (ii) if the Equipment is collected after the On-Hire Date, when the Equipment leaves the point of hire; or
- (b) (where we deliver the Equipment) the date we or our nominated carrier delivers the Equipment to the Site (or to such other location as agreed in writing).

- 4.3 Where you hire the Equipment on a Dry Hire basis, we may, on or before the On-Hire Date, provide you with an On-Hire Report. The On-Hire Report will include:

- (a) a genuine indication of the state of the Equipment, including major componentry and sub-components;
- (b) the utilisation hours recorded by the Equipment's SMU (where applicable);
- (c) whether the Equipment is in a clean and serviceable condition;
- (d) any known faults; and
- (e) a list of any attachments or tools (including GETs), accessories, spares, and supporting documentation.

- 4.4 If a Minimum Hire Period applies, you agree to:

- (a) hire the Equipment for the Minimum Hire Period; and
- (b) pay us the full Hire Rate for the Minimum Hire Period.

- 4.5 For the removal of doubt, you must pay the full Hire Rate for the Minimum Hire Period, together with all other fees and charges stated in the Hire Schedule, even if you return the Equipment, or arrange for us to collect the Equipment, prior to the expiry of the Minimum Hire Period.

5 Delivery and risk

- 5.1 This clause 5 applies to the Dry Hire of Equipment.

- 5.2 You are responsible for:

- (a) arranging the collection or delivery of the Equipment;
- (b) loading and unloading the Equipment; and
- (c) the costs of collecting or delivering the Equipment, unless the Hire Schedule states otherwise.

- 5.3 You acknowledge and agree that:

- (a) time in respect of delivery is not of the essence; and
- (b) any timeframe or date for delivery is an estimate only and is not a contractual commitment, unless the Hire Schedule states otherwise.

- 5.4 Risk of loss, damage, or deterioration to the Equipment passes to you, and delivery is deemed to occur, at the time:

- (a) (where you collect the Equipment):
 - (i) you or any third party on your behalf collects the Equipment from the point of hire; or
 - (ii) your nominated carrier takes possession of the Equipment; or
- (c) (where we deliver the Equipment) we or our nominated carrier delivers the Equipment to the Site (or to such other location as agreed in writing).

- 5.5 Risk in the Equipment remains with you until such time as:

- (a) you return the Equipment to us or our nominated carrier; or
- (b) we repossess the Equipment, **(Risk Period)**.

- 5.6 You must inspect the Equipment within twenty-four (24) hours of delivery for any damage and you must satisfy yourself that:

- (a) you have received the Equipment in good order and condition and in accordance with the On-Hire Report (where provided);
- (b) you, and any of your Personnel operating the Equipment have in place all required or necessary licences and understand its safe and proper operation; and
- (c) the Equipment is fit for the purpose for which you require it.

- 5.7 You must notify us within twenty-four (24) hours if you are not so satisfied. Failing such notification, you will be deemed to have accepted the Equipment in the condition in which it was delivered and as fit for the purpose for which you require it.

6 End of Hire Period

- 6.1 This clause 6 applies to both the Dry Hire and Wet Hire of Equipment (as the context requires).

- 6.2 Unless the Hire Schedule provides we are to collect the Equipment, you must return the Equipment during Business Hours to the point of hire or to such other location advised by us (acting reasonably):
- (a) on the Off-Hire Date (or such other date as agreed between the parties); or otherwise
 - (b) as soon as possible if the hire contract is terminated.
- 6.3 Subject to clauses 4.4 and 4.5, you may terminate a hire contract early by:
- (a) (in the case of the Dry Hire of Equipment):
 - (i) returning the Equipment to us at the point of hire (during Business Hours); or
 - (ii) notifying us the Equipment is ready for collection (in which case you must obtain from us an 'Off-Hire Number', failing which you will not be deemed to have notified us the Equipment is ready for collection);
 - (b) (in the case of the Wet Hire of Equipment): by notifying us you no longer require the Equipment.
- 6.4 Where you hire the Equipment on a Dry Hire basis, you must return the Equipment to us:
- (a) in the same state of cleanliness and in substantially similar condition that the Equipment was in when you took possession of it (Fair Wear and Tear excepted); and
 - (b) with a full tank of fuel which conforms with the Equipment manufacturer's specifications.
- 6.5 If:
- (a) the hire contract expires or is terminated; and
 - (b) you fail to comply with clause 6.1,
- then you:
- (c) permit us to enter upon the Site and any premises you occupy (or any premises any receiver, receiver and manager, administrator, liquidator, or trustee in bankruptcy of yours occupies) as your invitee to repossess the Equipment; and
 - (d) authorise us to disconnect, dismantle, and remove the Equipment (whether or not it is affixed to the Site).

7 Hire Rate and other charges

- 7.1 In consideration of us hiring the Equipment to you, you agree to pay us:
- (a) the Hire Rate;
 - (b) mobilisation and demobilisation costs;
 - (c) (where you hire the Equipment on a Wet Hire basis) loadings, penalties, and allowances for Jonox Personnel pursuant to their terms of engagement with us including night shifts, weekends, standby, overtime, public holidays, meal, travel, and accommodation expenses;
 - (d) (where you hire the Equipment on a Dry Hire basis):
 - (i) the Damage Waiver (subject to clause 15.3);
 - (ii) cleanings costs (if the Equipment is returned to us in an unclean state);
 - (iii) decontamination costs (if the Equipment is contaminated with any hazardous substance, such as asbestos);
 - (iv) charges at our then prevailing rates where you require induction or training in relation to the operation of the Equipment;
 - (v) any tolls, levies, fines, or penalties we incur arising out of or in connection with your use or operation of the Equipment; and
 - (e) all other amounts, charges, levies, and fees stated in the Hire Schedule.
- 7.2 Where the Hire Schedule provides for a flat rate, the flat rate will be the Hire Rate and will be charged weekly in advance.
- 7.3 Where the Equipment is hired for a flat rate, we will not be required to adjust the Hire Rate based on the hours recorded by the Equipment's SMU or the number of days the Equipment is in operation.
- 7.4 The maximum usage for the Equipment is one-hundred and sixty (160) average hours per month. We may charge you reasonable additional charges if you exceed this maximum at any point in time during the Hire Period.

- 7.5 Unless agreed otherwise, any excess usage of the Equipment will be calculated and charged on a pro-rated basis of the Hire Rate.
- 7.6 If we incur any cost on your behalf or associated with your failure to perform your obligations under the hire contract such as where:
- (a) you fail to return the Equipment and we collect the Equipment;
 - (b) you return the equipment in an unclean state; or
 - (c) we incur demurrage costs associated with the delivery or collection of the Equipment,
- then you agree to pay us those costs plus an uplift of 10% as a management and administration charge.

8 Payment terms

- 8.1 Unless you have a Credit Facility with us which is not in default:
- (a) deposits we have requested must be paid before we hire any Equipment to you; and
 - (b) you must pay us the Hire Rate in accordance with the payment terms stated in the Hire Schedule.
- 8.2 Payment may be made by cash, cheque, electronic funds transfer, Visa, or Mastercard credit cards. We reserve the right to change the payment methods that we accept at any time.
- 8.3 We may charge a payment surcharge for applicable payment transactions equal to our reasonable cost of acceptance.
- 8.4 You agree to pay GST on all taxable supplies upon us issuing you a tax invoice relating to the taxable supply.
- 8.5 You agree to pay sums due to us free of any set off or counterclaim and without deduction or withholding.

9 Wet Hire

- 9.1 This clause 9 applies to the Wet Hire of Equipment.
- 9.2 Where the Equipment is hired on a Wet Hire basis:
- (a) our Personnel will work under your direction;
 - (b) you must consult with and fully brief our Personnel on the proposed task, the Site, the conditions of the Site, and matters affecting health and safety and must furnish our Personnel with such other information and documentation they require to complete the task;
 - (c) you must not permit any other person other than our Personnel to enter or operate (or attempt to enter or operate) the Equipment; and
 - (d) our Personnel may refuse to carry out any direction you give if they consider it would be unsafe to any person or property to do so.

10 Hirer's obligations

- 10.1 This clause 10 applies to the Dry Hire of Equipment.
- 10.2 You must:
- (a) comply with all laws relating to the transportation, storage, and operation of the Equipment;
 - (b) protect the Equipment from loss or damage, and store the Equipment safely and securely;
 - (c) observe warranties and guidelines given by the manufacturer of the Equipment;
 - (d) keep the Equipment in good working order and condition and provide us with reports on the condition of the Equipment whenever reasonably requested to do so;
 - (e) each day:
 - (i) complete the pre-start safety checklist and logbook provided with the Equipment; and
 - (ii) check the Equipment for oil, lubricants, coolant, battery levels, any sign of looseness or wear, and anything else required by the pre-start safety checklist or logbook;
 - (f) ensure that any Personnel operating the Equipment are lawfully authorised to do so and are suitability instructed in the safe and proper operation of the Equipment;
 - (g) ensure any Personnel operating the Equipment do so:

- (i) properly and skilfully in accordance with the manufacturer of the Equipment's manuals and guidelines and our directions;
 - (ii) in accordance with any workplace health and safety laws;
 - (iii) under competent supervision; and
 - (iv) in a manner which will minimise damage to the Equipment;
 - (h) ensure any Personnel operating the Equipment are not affected or impaired by alcohol or drugs (prescribed or non-prescribed);
 - (i) allow us to affix labels, decals, and/or plates to the Equipment stating that the Equipment is our property (and you must not alter, remove, deface, or cover up such labels, decals, and/or plates);
 - (j) use best endeavours to ensure that the Equipment is not contaminated with any hazardous substances;
 - (k) ensure that no Personnel carry illegal or dangerous substances in or on the Equipment;
 - (l) allow our Personnel to at all reasonable times to enter upon the Site or any other premises you occupy to inspect the Equipment, and otherwise enforce our rights and carry out our obligations under the hire contract;
 - (m) immediately give us any notice or order received from any government authority about the operation or condition of the Equipment; and
 - (n) within five (5) Business Days from the end of each calendar month, provide to us the actual machine hours reported by the Equipment's SMU (where equipped),
- unless the Hire Schedule states otherwise.
- 10.3 You must not, without our prior written and fully informed consent:
- (a) exceed the Equipment's maximum usage being one-hundred and sixty (160) average hours per month;
 - (b) remove the Equipment from the Site;
 - (c) move the Equipment over any body of water;
 - (d) use the Equipment in conjunction with any forestry activity, underground mining or drilling activity, or for any purpose other than what the Equipment is designed or commonly used for;
 - (e) use the Equipment in an area where asbestos is present;
 - (f) use the Equipment in or around caustic or corrosive substances such as salt water, acid, or fertiliser;
 - (g) use the Equipment to carry or transport animals;
 - (h) make any replacements, modifications, alterations, additions, or improvements to the Equipment;
 - (i) exceed the recommended or legal load and capacity limits of the Equipment;
 - (j) place any identifying mark on the Equipment or allow it to become an accession (within the meaning of the PPS Act);
 - (k) lease, sublease, licence, or lend the Equipment to any other person (or otherwise deal with the Equipment in a manner inconsistent with our rights and interest in the Equipment); or
 - (l) do or allow to be done any act, matter, or thing which may invalidate or prejudice any:
 - (i) insurance policy effected and maintained by us or you;
 - (ii) defence or prosecution of any Claim; or
 - (iii) Claim or right we may have against any person.

11 Servicing, maintenance, and repairs

- 11.1 This clause 11 applies to the Dry Hire of Equipment.
- 11.2 During the Hire Period we will carry out, at our own expense:
- (a) any repair which is necessary to rectify any damage to, or malfunction of, the Equipment to the extent that such damage or malfunction was caused by any act or omission of ours or that of our Personnel;
 - (b) any major repair which is necessary to rectify any damage to, or malfunction of, the Equipment caused by Fair Wear and Tear where the damage or malfunction renders the Equipment unsafe or unsuitable for normal use or operation; and

- (c) any service, maintenance, or repair items described in the Hire Schedule which are noted to be our responsibility.
- 11.3 Where we are responsible for carrying out any repairs to the Equipment:
- (a) we will do so as soon as possible after being notified by you of the defect or malfunction, and if it is necessary for the Equipment to be returned to our premises for repairs, then we will collect the Equipment from you and will re-deliver the repaired Equipment or a suitable replacement as soon as reasonably practicable; and
 - (b) you must not carry out any repairs on our behalf without our prior written and fully informed consent. If you carry out repairs without first obtaining our consent, we will not be liable for the cost of those repairs.
- 11.4 Notwithstanding clauses 11.2 and 11.3, you are otherwise responsible for maintaining, servicing, and repairing the Equipment at your own expense and must perform such work in accordance with:
- (a) the maintenance schedule provided by us; and
 - (b) the servicing and maintenance manuals and/or guidelines provided by the manufacturer of the Equipment; or alternatively
 - (c) customer service documentation pre-approved by us.
- 11.5 To the extent that you are responsible for maintaining and servicing the Equipment, you are also solely responsible for the cost of any replacement parts and consumables that would ordinarily be installed in the Equipment as part of its regular maintenance or servicing.
- 11.6 You are responsible for supplying at your own expense all fuel, oil, hydraulic fluid, and other consumable items required for the proper operation of the Equipment, unless the Hire Schedule states otherwise.
- 11.7 You acknowledge and agree that all replacements, modifications, alterations, additions, and improvements which you make to the Equipment and which cannot be removed from the Equipment without detriment to it will become our property and the title to those things will vest in us on their incorporation.

12 Wear and tear

- 12.1 This clause 12 applies to both the Dry Hire and Wet Hire of Equipment (as the context requires).
- 12.2 We accept liability for the Fair Wear and Tear of major and minor components of the Equipment.
- 12.3 Physical harm to the Equipment and major components that fail prematurely (i.e. they fail outside of the manufacturer of the Equipment's expected life cycle) will be considered to be damage caused to the Equipment if we can prove, on the balance of probabilities, that the damage was caused by the wilful neglect, negligence, or the improper operation of the Equipment by you, your Personnel, or any other third party during the Risk Period.
- 12.4 You are responsible for all wear to tyres, tracks, GETs, trays, and undercarriages (**Wear Items**).
- 12.5 Before the Equipment is mobilised, we will measure the amount of wear in respect of each of the Wear Items. When the Equipment is returned to the original point of hire, we will take these measurements again.
- 12.6 Usage of each of the Wear Items will be measured by comparing the percentage of use at the On-Hire Date with the percentage of use at the end of the Hire Period.
- 12.7 We will advise you in writing of the amount of wear incurred to the Wear Items during the Hire Period.
- 12.8 You agree to pay for any wear incurred to the Wear Items, calculated on a pro rata basis as a percentage increase in wear multiplied by the cost of a new Wear Item of the same or substantially similar type and quality.

13 Damage, loss, and theft

- 13.1 This clause 13 applies to the Dry Hire of Equipment.
- 13.2 You are strictly liable for any damage, loss, or theft to the Equipment that occurs during the Risk Period.
- 13.3 If the Equipment breaks down, is damaged, or otherwise becomes inoperable (for whatever reason, including due to it being deemed unsafe to operate), you must promptly:
- (a) notify us by telephone and in writing; and

- (b) take all reasonable steps to secure and safeguard the Equipment from any potential damage or injury to any person or property (including further damage to the Equipment).
- 13.4 Upon receipt of your notice under clause 13.3(a):
 - (a) the Hire Rate will be suspended until such time as the Equipment is repaired or we have provided you with a suitable replacement (unless you or your Personnel have caused the damage); and
 - (b) we will take all reasonable steps to repair the Equipment or provide you with a suitable replacement as soon as reasonably practicable.
- 13.5 If the Equipment breaks down, is damaged, needs to be recovered (due to it being bogged or stuck), or otherwise becomes inoperable due to any act or omission of yours, your Personnel, or any third party, you agree to:
 - (a) pay us any costs we incur to repair or recover the Equipment (as the case may be); and
 - (b) continue to pay us the Hire Rate during the period in which we are recovering or repairing the Equipment or procuring a suitable replacement.
- 13.6 If the Equipment is unable to be returned to us (for example, if it is lost, stolen, damaged beyond economic repair, or if title to the Equipment is lost) then you must pay us the aggregate of the following:
 - (a) all money past due but not yet paid under the hire contract;
 - (b) any salvage costs we incur in salvaging the Equipment; and
 - (c) the replacement cost of the Equipment (calculated in accordance with then prevailing market value of the Equipment).
- 13.7 If the Equipment is stolen during the Risk Period, you must promptly (and in any event within forty-eight (48) hours of the date the Equipment was stolen) provide us with a copy of a police report explaining the circumstances of the theft.

14 Stand downs

- 14.1 This clause 14 applies to both the Dry Hire and Wet Hire of Equipment (as the context requires).
- 14.2 Subject to clause 13.4, you acknowledge and agree you are not entitled to any discount or rebate for any period in which the Equipment:
 - (a) is not in use by you; or
 - (b) is stood down by you.
- 14.3 We may (but are not obliged to) grant you a discount or rebate in circumstances where the Equipment cannot be operated (for example, due to adverse weather conditions).

15 Damage Waiver

- 15.1 This clause 15 applies to the Dry Hire of Equipment.
- 15.2 Subject to clause 15.3, as a condition of hire, you must pay us the Damage Waiver. The Damage Waiver:
 - (a) is not insurance and is not a substitute for insurance;
 - (b) will automatically be charged to you (in addition to the Hire Rate); and
 - (c) must be paid to us on or before the On-Hire Date.
- 15.3 You do not have to pay us the Damage Waiver if you:
 - (a) insure the Equipment on or before the On-Hire Date for an amount not less than the Insured Value in accordance with clause 16.2(a); and
 - (b) provide us with a certificate of currency or such other evidence we may reasonably require evidencing the insurance contemplated by clause 16.2(a).
- 15.4 Upon payment of the Damage Waiver, we will be responsible for the cost of any damage, loss, of theft to the Equipment during the Hire Period, subject to clause 15.5.
- 15.5 We will not waive our rights to Claim against you for any damage, loss, of theft of the Equipment and the Damage Waiver will not apply to damage, loss, of theft to the Equipment arising out of or in connection with:
 - (a) your negligence;
 - (b) your unlawful use of the Equipment;
 - (c) burglary, theft, or vandalism of the Equipment (where you have failed to properly secure the Equipment);
 - (d) theft of any components, replacement parts, tools, or accessories supplied with the Equipment;

- (e) use of the Equipment in any forestry activity, underground mining or drilling activity, or for any purpose other than what the Equipment is designed or commonly used for (unless pre-approved by us);
- (f) caustic or corrosive substances such as salt water, acid, or fertiliser;
- (g) any misuse, abuse, wilful or malicious acts or omissions, or reckless use (including exceeding the legal load and capacity limits of the Equipment);
- (h) lack of lubrication or improper lubrication or your failure to otherwise adhere to your repair and maintenance responsibilities;
- (i) any unexplained disappearance of the Equipment;
- (j) any lifting of the Equipment;
- (k) damage caused by an overhead collision due to insufficient clearance;
- (l) damage to tyres (including punctures, cuts, and abrasions) and other Wear Items, glass, or instrumentation;
- (m) use of the Equipment in or over water (including damage caused by partial or total submersion); or
- (n) damage to the interior of the Equipment.
- 15.6 The Damage Waiver will not continue to operate after the Hire Period expires unless otherwise agreed in writing.
- 15.7 This clause 15 in no way entitles you to, nor implies the availability of, compensation from us for any liability incurred by you in relation to your use or operation of the Equipment.

16 Insurance

- 16.1 This clause 16 applies to the Dry Hire of Equipment.
- 16.2 You must for the duration of the Risk Period effect and maintain, at your own expense:
 - (a) a policy of plant insurance and must keep the Equipment insured for no less than the Insured Value (with our interest as owner of the Equipment noted on the policy), against fire, theft, and damage and the other usual risks which a prudent owner or hirer would insure and any other risks specified by us, acting reasonably; and
 - (b) a policy of public liability insurance to cover your liability for loss or damage to property and the death of or injury to any person (other than liability which applicable law requires to be covered under a workers compensation policy) for no less than \$20,000,000 in respect of any one occurrence,
 unless the Hire Schedule states otherwise.
- 16.3 You must ensure that each insurance you are required to effect and maintain under clause 16.1 is:
 - (a) effected with an insurer with a financial security rating equal to or better than Standard and Poor's A minus rating or the equivalent rating with another recognised agency; and
 - (b) on terms and conditions usual to that class of insurance.
- 16.4 You must, in respect of each insurance required by clause 16.1:
 - (a) when requested by us, promptly satisfy us that each insurance is current by providing us with certificates of currency or such other evidence we may reasonably require;
 - (b) pay each insurance premium before the due date and, upon request, produce receipts for the payment;
 - (c) bear the cost of any excesses and deductibles;
 - (d) not do, omit to do, or permit anything which prejudices the insurances;
 - (e) not, without our prior written and fully informed consent:
 - (i) insure the Equipment only in your name; or
 - (ii) vary, cancel, or allow to lapse any insurance;
 - (f) immediately rectify anything which might prejudice the insurances and reinstate any insurance if it lapses; and
 - (g) notify us immediately when an event occurs which gives rise or might give rise to a Claim under any of the insurances.

17 Property and title in the Equipment

- 17.1 You acknowledge and agree that we are the owner of the Equipment and retain title to the Equipment in all circumstances. Where you hire the Equipment on a Dry Hire basis, your right under the hire contract to possess the Equipment is as a bailee only.
- 17.2 For the removal of doubt, neither payment of compensation nor any other event or circumstances will amount to, constitute, or result in any transfer of property or interest in the Equipment from us.

18 Security interest

- 18.1 Unless you have obtained our prior written and fully informed consent, you undertake not to:
- (a) register a financing change statement in respect of a security interest in our favour; or
 - (b) create, or purport to create, any security interest in the Equipment, nor register, nor permit to be registered, a financing statement or financing change statement in relation to the Equipment in favour of any third party.
- 18.2 You:
- (a) waive your right to receive a copy of any verification statement in accordance with section 157 of the PPS Act; and
 - (b) agree that, to the extent permitted by the PPS Act:
 - (i) sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132, 134, 135, 142, and 143 of the PPS Act do not apply and are hereby contracted out of; and
 - (ii) you waive your right to receive notices under sections 95, 118, 121(4), 127, 130, 132(3)(d), and 132(4) of the PPS Act.
- 18.3 We need not disclose information of the kind detailed in section 275(1) of the PPS Act, unless required by law.
- 18.4 Where we have rights in addition to those under Part 4 of the PPS Act, those rights continue to apply.

19 Temporary Recruitment and labour hire services

The following clauses 20 to 24 also apply where you seek to engage us for Temporary Recruitment and labour hire services.

20 Recruitment process

- 20.1 Introductions are strictly confidential and the details of any Temporary Employee may not be disclosed to any third party without our prior written and fully informed consent.
- 20.2 We give no warranties with respect to any Temporary Employee's skills, qualifications, experience, general integrity, references or suitability and, to the extent permitted by law, we will not be liable for any loss or damage suffered or incurred by you or any third party arising out of, or in connection with, the conduct of any Temporary Employee during an Assignment.

21 Additional charges

Should you request us to undertake or coordinate any service or activity that falls outside the scope of our normal screening and recruitment process or results in us incurring any third-party costs, including medical testing, airfare or travel expenses, accommodation expenses, project bonuses, or advertising costs, then we will be entitled to charge you, and you agree to pay us, such costs, together with a 10% uplift.

22 Temporary Recruitment

- 22.1 Upon receipt of an Order from you for Temporary Recruitment, we will, in our Hire Schedule, inform you of the applicable hourly/daily/weekly charge rate applicable to each Temporary Employee to be on-hired on an Assignment (the "**Charge Rate**").
- 22.2 Unless specified otherwise, the Charge Rate:
- (a) is exclusive of GST;
 - (b) contemplates all Temporary Employee Employment Costs;
 - (c) does not account for:

- (i) overtime;
- (ii) penalty rates;
- (iii) allowances (including, without limitation, travelling, meal, and living away allowances);
- (iv) medical examinations;
- (v) drug and alcohol assessment; or
- (vi) police checks (or any such equivalent enquiries),

the costs of which will be charged by us, and payable by you, in addition to the Charge Rate.

- 22.3 Subject to clause 22.4, our minimum daily on-hire period for any Temporary Employee is eight (8) hours.
- 22.4 You acknowledge that under the *Fair Work Act 2009* (Cth), modern awards, enterprise agreements, industrial instruments, and other legislation, minimum shift times may apply. If a Temporary Employee is on-hired for a shift time less than the legal minimum shift time, you will be charged, and agree to pay to us, the Charge Rate applicable to the legal minimum shift time.
- 22.5 We will be responsible for the payment of all Temporary Employee Employment Costs. We reserve the right to vary the Charge Rate upon reasonable notice to you by providing you with an updated Hire Schedule if there is any change to our Temporary Employee Employment Costs, or any other costs incurred by us in respect of the on-hire of our Temporary Employees during the continuance of an Assignment.
- 22.6 Temporary Employees are employed by us and once on-hired to you will perform work for you under your control, direction, and supervision.
- 22.7 If you wish to hire one of our Temporary Employees, you must notify us in writing, in which case we will be entitled to charge you, and you agree to pay to us, a placement fee. If a Temporary Employee is hired by you, our liability and obligations in relation to that Temporary Employee cease when their employment is terminated with us.
- 22.8 If, within twelve (12) months after the later of a Temporary Employee being Introduced to you or the end of a Temporary Employee's last Assignment with you, the Temporary Employee accepts any engagement with you (or any Related Party of yours), either as an employee or in any other capacity, you will be charged, and you agree to pay to us, a fee equivalent to a percentage of the Temporary Employee's Total Gross Annual Remuneration in accordance with the Hire Rate.
- 22.9 For clarity, where a Temporary Employee accepts an engagement with you (or a Related Party of yours) pursuant to clauses 22.8 or 22.9 and that engagement is either on a fixed term, part-time, or casual basis, or if they are engaged by you as a subcontractor, then the Temporary Employee's Total Gross Annual Remuneration will be calculated on the basis of their full-time equivalent Total Gross Annual Remuneration (calculated as a multiple of the expected weekly hours worked multiplied by forty-eight (48) weeks times the hourly charge) and the fee will be charged on that basis.
- 22.10 clauses 22.8 or 22.9 survive the termination or performance of a contract of which these Terms form part.

23 Timesheets

- 23.1 You must ensure that each of our Temporary Employee complete a timesheet for the hours they have worked in the preceding week ("**Timesheet**").
- 23.2 You must sign and return to us each Temporary Worker's Timesheet at the time agreed by us.
- 23.3 By signing a Timesheet, you warrant and represent to us that the hours stated on each Timesheet in respect of each of our Temporary Employees are correct and were worked by said Temporary Employees.
- 23.4 If you fail to sign a Timesheet, but submit the Timesheet to us, you will be deemed to have accepted the hours claimed on the Timesheet as being correct. A failure to sign a Timesheet does not in any way alter your liability to us under a contract of which these Terms form part.
- 23.5 Where provision is made for the use of an online Timesheet, your submission of an online Timesheet constitutes your acceptance of the hours claimed within that electronic Timesheet.
- 23.6 If you fail to submit a Timesheet to us, we will be entitled to charge you, and you agree to pay to us, the applicable hourly Charge Rate for each hour worked by a Temporary Employee, as advised to us by that Temporary Employee.

24 Your obligations

You undertake to:

- (a) conduct your business lawfully at all times;
- (b) maintain at all times all insurances required by law;
- (c) communicate with us clearly and frequently about your requirements of us and the work to be performed for you;
- (d) provide appropriate access to the workplace for us and our Temporary Employees at all reasonable times during the continuance of an Assignment;
- (e) provide a workplace specific and job specific induction to be completed before any of our Temporary Employees commence an Assignment with you;
- (f) ensure that our Temporary Employees are familiar with your operations, facilities, policies, and procedures;
- (g) provide a suitable and safe workplace for our Temporary Employees that complies with all applicable work health and safety legislation and standards applicable to your business;
- (h) promptly inform us of any proposed change to the location of your workplace;
- (i) promptly inform us of any proposed change to the job specification or work activities performed by our Temporary Employees;
- (j) not pay our Temporary Employees directly;
- (k) not on-hire or resupply our Temporary Employees to any third party during the continuance of an Assignment;
- (l) provide our Temporary Employees with adequate training, supervision, and direction at all times during the continuance of their Assignment;
- (m) promptly inform our Temporary Employees and us of any unusual workplace risk or practice or of any change in site or safety conditions that may present a hazard to our Temporary Employees;
- (n) properly maintain all plant and equipment (where applicable);
- (o) promptly notify us in writing of any performance issues in relation to our Temporary Employees; and
- (p) as soon as practicable, notify us in writing of:
 - (q) any serious incident, 'near miss,' injury, or illness with respect of our Temporary Employees; and
 - (r) any event or circumstances that may give rise to a claim by, against, or involving any of our Temporary Employees (including any claim pertaining to bullying, harassment, or discrimination).

25 Default

- 25.1 Clauses 25.2 to 25.4 apply if you fail to pay sums to us when they fall due.
- 25.2 We may charge you interest on the outstanding debt (including any judgment debt) at the rate of 10% per annum.
- 25.3 We may suspend or cease the supply of any further Equipment to you.
- 25.4 We may require pre-payment in full for any Equipment which has not yet been supplied.

26 Indemnity

- 26.1 If you default in the performance or observance of your obligations under any hire contract of which these Hire Terms form part, then:
 - (a) we will take steps to mitigate our loss and act reasonably in relation to any default by you; and
 - (b) we will give you notice requesting payment for loss and damage occasioned in respect of those events and requesting that you remedy any breach within a reasonable time; and
 - (c) if that demand is not met then you indemnify us in respect of loss, damage, costs (including collection costs, bank dishonour fees, and legal costs on an indemnity basis) that we have suffered arising therefrom.
- 26.2 Your liability to indemnify us will be reduced proportionally to the extent that any fraud, negligence, or wilful misconduct by us or a breach of our obligations under contract has

contributed to the Claim, loss, damage, or cost which is the subject of the indemnity.

- 26.3 Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives the termination or performance of any hire contract of which these Hire Terms form part.

27 Limitation of liability

- 27.1 No party is liable to the other party for any Consequential Loss, including under clause 26, however caused arising out of or in connection with any hire contract of which these Hire Terms form part.
- 27.2 While we will take reasonable endeavours to meet any estimated delivery date for Equipment or estimated time for services, you acknowledge and agree that we are not liable for any delay associated with meeting those estimated timeframes.
- 27.3 If the hire contract is not a Consumer Contract or a Small Business Contract then, to the extent permitted by law, our liability is limited to:
 - (a) (in the case of the hire of Equipment):
 - (i) us repairing the Equipment or providing a suitable replacement; or
 - (ii) us paying you the cost of having the Equipment repaired or procuring a suitable replacement.
 - (b) (in the case of a supply of services):
 - (i) us supplying the services again; or
 - (ii) us paying you the cost of having equivalent services supplied.
 - (c) (in the case of Temporary Recruitment):
 - (i) the replacement of a Temporary Employee with a suitable replacement; or
 - (ii) the charges paid to us by you under the Contract in the month prior to you first suffering loss or damage in connection with the Contract.

28 Termination

A party may, with immediate effect, terminate any hire contract of which these Hire Terms form part by notice in writing, if the other party:

- (a) commits a material or persistent breach of these Hire Terms and does not remedy that breach (if capable of remedy) within seven (7) days of the receipt of a notice (or such longer time as specified in the notice) identifying the breach and requiring its remedy; or
- (b) has failed to pay sums due to the party within seven (7) days; or
- (c) has indicated that it is, or may become, insolvent; or
- (d) ceases to carry on business; or
- (e) comprises an entity which is the subject of the appointment of receivers or managers; or
- (f) comprises a natural person who:
 - (i) has committed an act of bankruptcy; or
 - (ii) has been made bankrupt;
- (g) comprises a corporation which:
 - (i) enters into voluntary administration;
 - (ii) is subject to a deed of company arrangement; or
 - (iii) is subject to the appointment of liquidators or provisional liquidators.

29 Variation

We may amend these Hire Terms in the future by notifying you in writing. The amended Hire Terms will thereafter apply to each Order you place unless you earlier give us written notice in advance of placing a further Order.

30 Assignment

A party may only assign its rights under the hire contract with the written consent of the other party.

31 Subcontracting

You acknowledge and agree that, given the nature of our business and industry, we may be reasonably required to subcontract any part of our obligations under the hire contract, including, for example, our obligation to repair the Equipment, however, any subcontracting of our obligations will not relieve us of any of our obligations to you under the hire contract.

32 Conflicts and Inconsistencies

If there is any conflict or inconsistency between any of the documents which together govern the relationship between the parties, it is agreed the order of precedence will be (highest to lowest):

- (a) the Hire Schedule;
- (b) any terms governing your Credit Facility; and
- (c) these Hire Terms.

33 Severance

If any part or term of our agreement with you (including any Credit Facility) is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from the contract and the remaining provisions will not be affected, prejudiced, or impaired by such severance.

34 Governing law and jurisdiction

- 34.1 Our relationship is governed by and must be construed according to the law applying in the State of Western Australia.
- 34.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State of Western Australia with respect to any proceedings that may be brought at any time relating to our relationship.

35 Definitions

In these Hire Terms, unless the context otherwise requires, the following apply.

- 35.1 **Australian Consumer Law** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as amended.
- 35.2 **Assignment** means the on-hire placement of one or more of our Temporary Employees to perform work at your premises or anywhere else specified by you and approved by us.
- 35.3 **Business Hours** means between 06:00am to 6:00pm on a day that is not a Saturday, Sunday, or gazetted public holiday in the place where the Equipment is to be hired.
- 35.4 **Claim** includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, or award howsoever arising, whether present, unascertained, immediate, future, or contingent, whether based in contract, tort, pursuant to statute or otherwise and whether involving a third party or a party to a hire contract.
- 35.5 **Consequential Loss** includes any:
 - (a) consequential loss;
 - (b) loss of anticipated or actual profits or revenue;
 - (c) loss of production or use;
 - (d) financial or holding costs;
 - (e) loss or failure to realise any anticipated savings;
 - (f) loss or denial of business or commercial opportunity;
 - (g) loss of or damage to goodwill, business reputation, future reputation, or publicity;
 - (h) loss or corruption of data;
 - (i) downtime costs or wasted overheads; or
 - (j) special, punitive, or exemplary damages.
- 35.6 **Consumer Contract** has the meaning given to this term in section 23(3) of the Australian Consumer Law.
- 35.7 **Credit Facility** means an account we have opened for you on which we may, from time to time, extend you with additional time to pay for the hire of Equipment and associated charges.
- 35.8 **Damage Waiver** means the amount stated in the Hire Schedule you are required to pay to reduce your financial liability in the event of damage, loss, or theft to the Equipment (or, where no amount is stated, the Damage Waiver will be an amount equal to 12.5% of the Hire Rate).

- 35.9 **Dry Hire** means the hire of Equipment under the exclusive direction and control of the Hirer.
- 35.10 **Equipment** means the plant, machinery, vehicles, or equipment described in the Hire Schedule (including, unless otherwise agreed in writing, any replacement parts, components, tools, and other items used to service and maintain the Equipment), including manuals and logbooks, associated or attached tools (including GETs), accessories and parts we have agreed to hire to you in accordance with the hire contract.
- 35.11 **Fair Wear and Tear** means wear and tear which would be normal for similar Equipment operated under normal operating conditions (and within its design parameters and recommended procedures), but expressly excludes:
 - (a) wear of, or damage to, Wear Items;
 - (b) dents or other impact damage;
 - (c) damage to glass or instrumentation; and
 - (d) panel or structural damage from collision or abuse and damage to the drive system.
- 35.12 **GETs** means any wear part or tool of the Equipment that engages the ground or comes into contact with specific material and includes all cutting edges, bucket teeth, hardware, bucket ends, ripper teeth, blade faces, blade push arms, blade mould boards, and roller feet.
- 35.13 **Jonox, we, us** means Jonox Pty Ltd (ACN 630 042 321).
- 35.14 **Hire Period** means the period the Equipment is to be hired by you, as stated in the Hire Schedule.
- 35.15 **Hire Rate** means the rate payable by you to hire the Equipment, calculated in accordance with rates stated in the Hire Schedule.
- 35.16 **Hire Schedule** means a document (including hire dockets) we provide you which includes particulars of the Equipment, the Site, the Hire Rate (including labour hire or Temporary Employee rates), any other applicable charges, and the Off-Hire Date.
- 35.17 **Hirer, you** means the person or other entity hiring Equipment from us (whether on a Dry Hire or Wet Hire Basis).
- 35.18 **Insured Value** means the value of the Equipment stated in the Hire Schedule or otherwise advised by us.
- 35.19 **Minimum Hire Period** means the minimum Hire Period stated in the Hire Schedule (if any).
- 35.20 **Off-Hire Date** means the date you expect the Hire Period to end, as stated in the Hire Schedule.
- 35.21 **On-Hire Date** means the date stated in the Hire Schedule as the on-hire date.
- 35.22 **On-Hire Report** means an on-hire inspection report prepared by us.
- 35.23 **Order** means a written or oral order from you requesting:
 - (a) to hire Equipment from us; or
 - (b) Temporary Recruitment services from us.
- 35.24 **Personnel** means officers, employees, and agents engaged by each party (but does not include the other party) and, in the case of Jonox, includes its subcontractors (and any employee of those subcontractors).
- 35.25 **PPS Act** means the *Personal Property Securities Act 2009* (Cth), as amended.
- 35.26 **Related Party** means a related entity or related body corporate of yours, or a body corporate owned or controlled by a related entity of yours (whether wholly or in part).
- 35.27 **Site** means the land (including any structure or other facility on the land) upon, over, below, or through where the Equipment will be used, as stated in the Hire Schedule.
- 35.28 **Small Business Contract** has the meaning given to this term in section 23(4) of the Australian Consumer Law.
- 35.29 **SMU** means a service meter unit or similar device fitted to the Equipment designed to record the utilisation hours of the Equipment.
- 35.30 **Temporary Employee** means one of our employees or independent contractors registered with us for on-hire engagements (including, where the context requires, their employees, agents, and sub-contractors).
- 35.31 **Temporary Employee Employment Costs** means any expenses or deductions incurred by us directly in relation to our employment of a Temporary Employee and includes:
 - (a) remuneration;
 - (b) superannuation;
 - (c) sick leave;
 - (d) holiday entitlements;

- (e) leave loading; and
 - (f) insurance (including public liability and workers compensation).
- 35.32 **Temporary Recruitment** means the Assignment of a Temporary Employee with you.
- 35.33 **Total Gross Annual Remuneration** means total annual remuneration, including base salary, employer superannuation contributions (including compulsory contributions), allowances, inducements or sign-on payments, anticipated commission and bonus earnings, and non-salary benefits (e.g. medical cover, education, the use of a motor vehicle, or parking allowance), the value of which will be determined by us, acting reasonably. Unless otherwise agreed in writing, the provision of a full maintained motor vehicle will be attributed to the value of \$20,000.
- 35.34 **Wet Hire** means the hire of fully maintained Equipment together with Jonox Personnel to operate the Equipment.

36 Interpretation

In these Hire Terms, unless the context otherwise requires:

- 36.1 A time is a reference to the time zone of Perth, Australia unless otherwise specified.
- 36.2 \$, dollar, or AUD is a reference to the lawful currency of Australia;
- 36.3 A party includes a reference to that person's executors, administrators, successors, substitutes (including a person who becomes a party by novation), assigns, and in the case of a trustee, includes any substituted or additional trustee.
- 36.4 A right includes a benefit, remedy, authority, discretion, or power.
- 36.5 The singular includes the plural and vice versa, and a gender includes other genders.
- 36.6 "In writing" or "written" means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.
- 36.7 If a word or phrase is given a defined meaning, its other grammatical forms have a corresponding meaning.
- 36.8 Words such as "includes", "including", and "for example" are not words of limitation and are to be construed as though followed by the words "without limitation".
- 36.9 A term of an agreement in favour of two or more persons is for the benefit of them jointly and each of them separately.