

## TERMS AND CONDITIONS OF TRADE

### 1. DEFINITIONS:

- 1.1 The "Owner" is Longreach Access Rentals Pty Ltd ATF Longreach Access Rentals Trust ABN: 37 946 047 877.
- 1.2 The "Customer/Hirer" is the person, firm or corporation hiring Equipment from the Owner and includes, as far as the context permits, the officers, employees, servants, agents or contractors of the Customer/Hirer.
- 1.3 The "Equipment" means all plant, equipment, vehicles and machinery, and includes, without limiting the generality of the foregoing, all tools, accessories and spare parts supplied therewith which the Owner agrees to hire to the Customer/Hirer.
- 1.4 Subject to clause 1.2 hereof, the hiring is personal to the Customer/Hirer and the rights of the Customer/Hirer are not assignable to any person, firm or corporation whatsoever.
- 1.5 Reference to "Terms and Conditions" means these terms and conditions of trade.
- 1.6 In this Terms and Conditions, unless repugnant to the context, words importing the singular number shall include the plural and words importing the plural only shall include the singular number and words importing the masculine gender shall include the feminine and, if applicable, a corporation and the word "includes", "including", "such as" or "for example" or similar expressions are not words of limitation.

### 2. PERIOD OF HIRE

- 2.1 The minimum period of hire shall be one (1) day and shall apply where the Equipment is taken on hire between the hours of 9:00 am and 5:00 pm or any part thereof any one day.
- 2.2 The period of hire shall commence:
  - (i) from the time the Equipment is collected by the Customer/Hirer from the Owner's premises and shall expire at the time of return of the Equipment to the Owner's premises; or
  - (ii) where the Owner has agreed at the request of the Customer/Hirer to deliver or collect the Equipment, from the time the Equipment leaves the Owner's premises and shall expire at the time when the Customer/Hirer notifies the Owner that the Equipment is available for collection provided that the Customer/Hirer notifies the Owner that the Equipment is available for collection provided that the Customer/Hirer has given the Owner sufficient notice to enable collection and return of the Equipment to the Owner's premises by 9.00 am following the last day of hire.
- 2.3 If the Customer/Hirer fails to:
  - (i) return the Equipment to the Owner's premises; or
  - (ii) give the Owner sufficient notice to enable collection and return of the Equipment to the Owner's premises before 9:00 am on the day following the last day of hire, then the Customer/Hirer shall incur an extra charge at the daily rates charged by the Owner at that particular time (being the time of return) in respect of that Equipment for each day or part thereof until the Equipment is returned.
- 2.4 In these Terms and Conditions, "sufficient notice" means notice given to the Owner by the Customer/Hirer in writing, by telephone or personally between:
  - (a) 8:00 am and 4:00 pm on weekdays;
  - (b) 8:00 am and 11:00 am on Saturdays; and
  - (c) 8:00 am and 11:00 am on Sundays.
- 2.5 Notwithstanding any other condition herein, and without prejudice to any other remedies the Owner may have against the Customer/Hirer, the Owner may terminate this agreement:
  - (i) at any time by giving to the Customer/Hirer twenty four (24) hours notice of its intention to so terminate, such termination to be effective as of the expiry of the said twenty four (24) hours.;
  - (ii) where the Customer/Hirer makes default in the observance or performance of any of these Terms and Conditions, without notice;
  - (iii) where the Customer/Hirer is subject to any winding up petition or order, appointment of receiver, official management, assignment, arrangement, or compromise for the benefit of creditors, an act of bankruptcy, any action taken or threatened to be taken to place the Customer/Hirer in bankruptcy, a judgement which is unsatisfied or partly unsatisfied, a sequestration order, a writ or execution or where the Customer/Hirer ceases or carry on business, without notice;
  - (iv) where the Customer/Hirer fails to pay his account within seven (7) days of the date of an invoice or where the Hirer's payment by cheque is not honoured, without notice.
- 2.6 Upon termination of the hire period, the Owner shall be entitled to take possession of the Equipment without notice and for this purpose the Customer/Hirer hereby irrevocably authorises the Owner, its servants and agents to enter upon any land or premises of the Customer/Hirer or under the control of or in the occupation of the Customer/Hirer upon which the Equipment is situated at the time of termination to search such premises and to remove the Equipment there from and the Customer/Hirer agrees to indemnify the Owner in respect of any claims, damages or expenses arising out of any action taken out under this condition.

### 3. RATES OF HIRE

- 3.1 The Customer/Hirer on or before the start of the hire period (or as provided in the Customers/Hirer credit application with the Owner), will pay the hire

rates.

- 3.2 The hire rates are based on the Customer/Hirer using the Equipment for not more than eight (8) hours in any day or more than forty eight (48) hours each week or continuous seven (7) day period. Where the Hirer/Customer uses the Equipment for more than eight (8) hours in any day or more than forty eight (48) hours in any week or more than seven (7) consecutive days, the Customer/Hirer will be liable (in addition to the daily charge) to pay the Owner for the excess usage charged on a pro rata hourly (or part thereof) or daily basis (whichever is the higher), based on the rates being charged by the Owner to the Customer/Hirer in respect of that particular hire of the Equipment.
- 3.3 The Owner reserves the right at any time and without notice to revise the hire rate charges to take affect once the Customer/Hire has been informed of the change.
- 3.4 All government charges, rates, duties (including State Government stamp duty) on hiring arrangements and GST shall be charged as an extra on all hire/billing transactions.

### 4. BREAKDOWNS

- 4.1 In the event of breakdown or failure of the Equipment, the Customer/Hirer:
  - (i) shall notify the Owner as soon as practicable; and
  - (ii) shall not have any repairs effected to the Equipment by any person other than an employee of the Owner or a person nominated by the Owner.
- 4.2 Where the Customer/Hirer notifies the Owner immediately of a breakdown occurring that renders the Equipment unusable, the hire charges calculated on an hourly basis (or part thereof) will abate for the period during which the Equipment is unusable (but starting no earlier than the time the Owner is so notified) provided that the unusable condition of the Equipment is, in the opinion of the Owner, caused by fair wear and tear and not attributable wholly or partly to the Customer/Hirer's negligence, misuse or breach of contract or the acts or omissions of any other third party and the Owner will at his own expense restore the Equipment to working order as soon as reasonable possible.
- 4.3 The Owner shall not be liable to the Customer/Hirer on grounds of breach of contract or negligence or otherwise whatsoever for any loss or damage suffered by the Customer/Hirer arising from defects, breakdown or failure of the Equipment and the Customer/Hirer hereby releases the Owner from all claims and demands in respect thereof.

### 5. OPERATOR

- 5.1 The Customer/Hirer is responsible for ensuring that all persons who use the Equipment are properly instructed by the Customer/Hirer in the safe use of the Equipment and also for providing such users with appropriate safety items (such as gloves, boots, ear muffs and safety goggles). The Customer/Hirer hereby indemnifies the Owner against any loss or damage suffered or incurred by the Owner as a result of the Customer/Hirer breaching this condition.

### 6. CUSTOMER/HIRER'S OBLIGATIONS

- 6.1 The Customer/Hirer shall pay all hire charges and, where applicable, all delivery charges, collection charges and extras in cash unless otherwise specified (such as the Customer/Hirer being entitled to credit)
- 6.2 The Customer/Hirer shall use the Equipment in a skilful and safe and proper manner and only for the purposes and within the capacity for which the Equipment was designed and shall comply at their own expense with all notices, directions and legal requirements of all government authorities, Acts of Parliament and regulations in any way relating to the Equipment, acknowledging that the Owner can give no warranty as to the said capacity.
- 6.3 The Customer/Hirer shall ensure that any persons using the Equipment shall comply with all relevant statutes, regulations and maintenance of the Equipment.
- 6.4 The Customer/Hirer shall at their own expense supply all fuel, oil and lubricate necessary for the operation, service and maintenance of the Equipment.
- 6.5 The Customer/Hirer shall at their own expense service and clean the Equipment in a skilful and proper manner and maintain the Equipment in a clean condition and in good and substantial working order and repair (reasonable wear and tear excepted unless caused by negligence or misuse on the part of or attributable to the Customer/Hirer or any other third party) except for prearranged major servicing which will be carried out by the Owner during normal working hours.
- 6.6 Accept full responsibility for all flat and/or damaged tyres.
- 6.7 If upon return of the Equipment to the Owner the Equipment is not in clean condition and/or not in good and substantial working order and repair, reasonable wear and tear excepted, the Customer/Hirer shall pay to the Owner the costs and expenses of restoring the Equipment to clean condition and good and substantial working order and repair.
- 6.8 The Customer/Hirer shall accept full responsibility and liability for the safekeeping of the Equipment and shall indemnify or compensate the Owner to the extent of the new replacement value for all loss or damage to the Equipment or parts thereof howsoever caused from the earlier of
  - (i) the time of commencement of the hire in respect of that particular item of Equipment or
  - (ii) the time of delivery by the Owner of that particular item of Equipment

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- (where the Owner has agreed to make delivery), until the earlier of (i) the time that particular item of Equipment is returned to the Owner's premises or (ii) the time that the Owner actually collects that particular item of Equipment (where the Owner has agreed to collect same) regardless of whether the Customer/Hirer has made it available at an earlier time by giving sufficient notice or not, and without limiting the generality of the foregoing whether or not such loss or damage is attributable to any abandonment of any Equipment, negligence, failure or omission of the Owner. The Owner's rights under this clause shall not be prejudiced by or prejudice any other right under these Terms and Conditions. This clause prevails to the extent of any inconsistency with the provisions of clause 2.
- 6.9 The Customer/Hirer shall not in any way part with possession of the whole or part of the Equipment nor remove the Equipment from the job site specified to the Owner or from the job site the Equipment was delivered to without the written consent of the Owner except for the purpose of returning the Equipment to the Owner's premises nor sell, assign, mortgage, pledge, sub-lease, lend or otherwise deal with the whole or part of the Equipment.
- 6.10 The Customer/Hirer shall not remove or cover up any plates or other marks that the Owner may affix or cause to be affixed to the Equipment to indicate that the Equipment is the property of the Owner.
- 6.11 The Customer/Hirer shall give the Owner access to the equipment for inspection at any reasonable time without prior notice.
- 6.12 The Customer/Hirer shall pay within 7 days of demand to the Owner all costs/commissions and other fees and expenses including the Owner's legal fees on a solicitor and own client basis associated with any default by the Customer/Hirer under the Terms and Conditions or the Customer/Hirer's credit account with the Owner, including without limitation the collection or attempted collection of any outstanding money's owed by the Customer/Hirer to the Owner.
- 7. DELIVERY, COLLECTION AND RETURN**
- 7.1 Where the Customer/Hirer requests the Owner to deliver the Equipment or to transport the Equipment to or from the Owner's premises
- The Customer/Hirer shall pay the Owner all charges and expenses incurred in so delivering, transporting, installing or collecting the Equipment (in addition to the hire charges);
  - the Equipment shall be at the Customer/Hirer's risk from the time the Equipment leaves the Owner's premises until returned to the Owner's premises; and
  - the Owner will use its best endeavours to make delivery by the specified time but in any event the Owner shall not be liable to the Customer/Hirer for late delivery, non-delivery or any loss or damage occasioned to the Customer/Hirer as a result thereof.
- 7.2 Notwithstanding anything contained in these Terms and Conditions, the onus shall be on the Customer/Hirer to ensure that the Equipment is returned to the Owner's premises or is collected by the Owner.
- 7.3 Without prejudice to any other remedies or rights of the Owner, where the Equipment or any part of it is not returned at the expiry of the hire period, it will be treated as stolen property unless otherwise notified and legal action may be taken by the Owner to recover stolen property.
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- 8. EXCLUSION AND INDEMNITY**
- 8.1 To the fullest extent permitted by the law the Customer/Hirer shall indemnify, keep indemnified and hold the Owner, its servants and agents, harmless against any union actions, claims, suits or demands and shall have no claim whatsoever against the Owner resulting from such union actions, claims, suits, demands or any interference or protest that affects the Equipment or property on which the Equipment may from time to time be situated.
- 8.2 To the fullest extent permitted by law the Customer/Hirer shall indemnify, keep indemnified and hold the Owner, its servants and agents, harmless against any union actions, claims, suits, demands, costs and expenses of every description whatsoever (including all legal costs and expenses on a full indemnity basis) and howsoever arising either directly or indirectly out of the use, maintenance, transport or operation of the Equipment by the Customer/Hirer or otherwise during the period of hire whether caused by negligence of the Owner, his servants or agents or by negligence of any other person whatsoever or arising out of the condition of the Equipment or the use to which it is put or otherwise whatsoever.
- 8.3 To the fullest extent permitted by law the Owner shall not be liable to the Customer/Hirer for any damages, suit, actions, claims and demands of every description whatsoever and howsoever arising either directly or indirectly from representations, warranties, terms and conditions express or implied (except in so far as statutory conditions and warranties cannot be excluded under Part V Division 2A of the Trade Practices Act (1974) or relevant State legislation), use, maintenance, transport, operation of the Equipment or otherwise and whether resulting from the negligence of the Owner, its servants or agents or otherwise.
- 8.4 Clauses 8.2 and 8.3 hereof, to the extent they are inconsistent with other clauses of these Terms and Conditions, shall override such clauses and be of paramount force.
- 8.5 To the fullest extent that the Commonwealth and State laws permit, all conditions, terms and warranties not expressly contained herein are hereby excluded.
- 8.6 To the fullest extent permitted by law the Owner is not liable to the Customer/Hirer for any indirect or consequential loss or damage suffered or incurred by the Customer/Hirer.
- 9. INSPECTION AND WARRANTY**
- 9.1 The Customer/Hirer acknowledges that he has had a reasonable opportunity to inspect the Equipment prior to accepting the Equipment and unless the Customer/Hirer notifies the Owner of any damage at the time of inspection the Customer/Hirer agrees that is satisfied that the Equipment is in clean condition and in good and substantial working order, repair and condition.
- 9.2 The Customer/Hirer acknowledges that he is aware of the proper use for which the Equipment is designed and that the Customer/Hirer is competent to use the Equipment.
- 9.3 The Customer/Hirer acknowledges that information as to any dangers associated with the Equipment, specifications of the Equipment and the conditions necessary to ensure that persons properly using the Equipment are not exposed to hazards, has been provided to the Customer/Hirer.
- 9.4 Notwithstanding anything herein contained, the Customer/Hirer expressly acknowledges that no warranty or condition express or implied is given by the Owner as to the description, quality or condition of the Equipment or as to the suitability or fitness of the Equipment for any purpose except insofar as any such condition is implied by Commonwealth or State legislation.
- 9.5 All warranties and conditions are excluded to the full extent permitted by law and the Owner's only obligation resulting from a breach by it of any condition or warranty is, to the full extent permitted by law, limited to the supplying of the Equipment again or to the repair of the Equipment as determined by the Owner.
- 10. PRIVACY ACT 1988 (CTH) ("PRIVACY ACT")**
- 10.1 To enable the Owner to assess the Customer/Hirer's application for credit, The Customer/Hirer authorises the Owner:
- To make such enquiries as the Owner sees fit in order to satisfy itself as to the creditworthiness of the Customer/Hirer and to assess the application for commercial credit, and that these enquiries may include applying to and obtaining from any credit reporting agency a credit report of the Customer/Hirer which may contain personal information, in accordance with s18K(1)(b) of the Privacy Act, and to obtain a report containing information from a person or business which provides information about the commercial credit worthiness of a person in relation to credit provided by the Owner, in accordance with s18L(4) of the Privacy Act
  - To obtain a report from a credit reporting agency and other information in relation to the Customer/Hirer's commercial credit activities; and
- 10.2 To give a credit reporting agency information including particulars and application details – AND the Owner is authorised in terms of s18N(1)(b) of the Privacy Act to disclose information of a report received by it and to exchange information with other credit providers for the purpose of notifying other credit providers of a default by the Customer/Hirer, assessing an application for credit by the Customer/Hirer, and assessing the creditworthiness of the Customer/Hirer and the Owner may give information about the Customer/Hirer or the Customer/Hirer's business to a credit reporting agency for the purpose of obtaining a consumer credit code report, and/or to allow the consumer credit reporting agency to create or maintain a credit information file about the Customer/Hirer or the Customer/Hirer's business
- The Customer understands that information can be used for the purposes of assessing its application for credit (Section 18L(4) Privacy Act), assisting it to avoid defaulting on its credit obligations, assessing its credit worthiness and notifying other credit providers and credit reporting agencies of a default by it under this Hire Agreement.
- 11. NOTIFICATION**
- 11.1 The Customer/Hirer must notify the Owner in writing within seven (7) days of:
- Any alteration of the name or ownership of the Customer/Hirer.
  - The issue of any legal proceedings against the Customer/Hirer.
  - The appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to the Customer/Hirer.
  - Any change in the ownership of the business name of the Customer/Hirer. The Customer/Hirer agrees it shall be liable to the Owner for all goods and services supplied to the new owner by the Owner until notice of any such change is received.
- 12. SEVERANCE**
- 12.1 In the event of any part of these Terms and Conditions becoming void or unenforceable whether due to the provisions of any Statute or otherwise then part shall be severed from these Terms and Conditions to the intent that all parts that shall not be or become void or unenforceable shall remain in full force and effect and be unaffected by any such severance.

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### 13. ENUREMENT OF CERTAIN OBLIGATIONS

13.1 The expiration or determination of the period of hire howsoever arising shall not affect such provisions of these Terms and Conditions as are expressly or implied to operate or have effect thereafter and shall be without prejudice to any right or action already accorded to either the Owner or the Customer/Hirer in respect of any breach of these Terms and Conditions by the other party.

### 14. FORCE MAJEURE

14.1 Where a Party is unable, wholly or in part, by reason of force majeure, to carry out any obligation under this Agreement, and that Party:

- (i) gives each other Party prompt notice of that force majeure including reasonable particulars, and, in so far as known, the probable extent to which it will be unable to perform or be delayed in performing that obligation;
- (ii) uses all possible diligence to remove that force majeure as quickly as possible, that obligation is suspended so far as it is affected by force majeure during the continuance of that force majeure and that Party shall be allowed a reasonable extension of time to perform its obligations.

14.2 If after a period of one (1) month, the force majeure has not ceased, the Parties shall meet in good faith to discuss the situation and endeavour to achieve a mutually satisfactory resolution to the problem.

14.3 The requirement that any force majeure must be removed with all possible diligence does not require the settlement of strikes, lockouts or other labour disputes or claims or demands by any government on terms contrary to the wishes of the Party affected.

14.4 In this Agreement, "force majeure" means an act of God, strike, lockout or other interference with work, war (declared or undeclared), blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, governmental or quasi governmental restraint, expropriation, prohibition, intervention, direction or embargo, unavailability or delay in availability of equipment or transport, inability or delay in obtaining governmental or quasi governmental approvals, consents, permits, licenses, authorities or allocations, and any other cause, whether of the kind specifically enumerated above or otherwise which is not reasonably within the control of the Party affected.

### 15. OTHER

15.1 These Terms and Conditions prevail to the extent of any inconsistency with any terms put forward by the Customer/Hirer relating to the hire of the Equipment.

15.2 The Owner may vary these Terms and Conditions from time to time, in which case those new Terms and Conditions shall apply to every hire of Equipment after the Customer/Hirer is notified in writing of the new Terms and Conditions. Subject to the foregoing and any other provision of these Terms and Conditions, any variation, amendment or consent to departure by any party from these Terms and Conditions, shall have no force or effect unless agreed in writing between the Owner and the Customer/Hirer.

15.3 These Terms and Conditions are governed by and construed in accordance with the laws of New South Wales. Each party submits to the jurisdiction of the courts of New South Wales and any Federal Courts of Australia in respect of any legal action or proceedings with respect to these Terms and Conditions.

15.4 The failure to exercise or delay in exercising any right conferred by these Terms and Conditions shall not operate as a waiver and the single or partial exercise of any right by that party shall not preclude any other or further exercise of that right or any other right by that party.

15.5 The rights of a party conferred by these Terms and Conditions are cumulative and are not exclusive of any rights provided by law.

15.6 Any provision of these Terms and Conditions that is capable of having operation after the termination or expiry of the hire period shall continue in full force and effect.

### 16. APPLICATION

16.1 Subject to any other provisions of these Terms and Conditions, these Terms and Conditions shall apply to every hire of Equipment that the Customer/Hirer places with the Owner.