

Aitkin Cranes

 **GENERAL TERMS AND CONDITIONS**
29 March 2016



Safety and quality systems



Equipment



Operational capability



Engineering expertise

1. DEFINITIONS

“**AITKIN**” is AKN Pty Limited ABN 46 120 745 851 trading as Aitkin Crane Services.

“**AITKIN Personnel**” means the person or persons employed or engaged by AITKIN to drive, operate, use or transport the Plant and Equipment provided to the Hirer as specified under the Hire Agreement and may include operators, riggers, dogmen, supervisors, drivers and any such other employee, contractor or agent of AITKIN.

“**Breakdown**” includes breakdown, damage, full or partial loss, loss of use, seizure or impoundment by operation of law or otherwise.

“**Dry Hire**” means the hire of Plant and Equipment under the exclusive direction and control of the Hirer.

“**Force Majeure Event**” has the meaning given to it under clause 13 of these General Conditions.

“**General Conditions**” means the conditions set out in this document, as amended from time to time.

“**GST**” has the meaning given to it in *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth).

“**Hire Agreement**” means the conditions set out in these general conditions in conjunction with any Special Conditions, quotation, Purchase Order, appendix, annexure or other document agreed in writing between both Parties.

“**Hire Docket**” means the form issued by AITKIN at the time a Purchase Order is submitted to AITKIN and includes job details, Plant and Equipment and other details.

“**Hirer**” is the person, firm, company, government instrumentality, entity or corporation (including any personal representatives or permitted assigns of such) that engages AITKIN for the purpose of hiring Plant and Equipment, with or without AITKIN Personnel.

“**Limited Damage Waiver**” has the meaning given in clause 12i of these General Conditions.

“**OEM**” means the original equipment manufacturer or its representative or equivalent.

“**Parties**” includes both the Hirer and AITKIN.

“**Plant and Equipment**” is all plant and equipment described in the Hire Agreement together with such accessories, machinery, tools and associated items, manuals, log books and AITKIN vehicles as accompanies such plant and equipment when it is dispatched from the AITKIN depot.

“**PPSA**” means the *Personal Property Securities Act 2009* (Commonwealth) as amended from time to time.

“**PPSR**” means the Personal Property Securities Register established under the PPSA.

“**Purchase Order**” means any order in writing by or on behalf of the Hirer for the supply of Services by AITKIN and each schedule or document accompanying such Purchase Order.

“**Rates**” has the meaning given to it in clause 5.

“**Relevant Laws**” means the applicable laws, codes, authorisations or rules in the relevant jurisdiction including any law or legal requirement under equity, statute, regulation, ordinance or by-law whether commonwealth, territorial, state or local and includes the WHS laws.

“**Services**” means the functions or task specific outcomes which AITKIN has agreed to provide under the Hire Agreement using the Plant and Equipment and / or AITKIN Personnel as detailed in each Purchase Order.

“**Special Conditions**” are specific amendments, additions or deletions to the General Conditions, as agreed in writing by both Parties.

“**Term**” means the period of supplying the Services as detailed in the Purchase Order and which may include weekends and / or public Holidays, and continues until the supply of the Services is completed or the Hire Agreement is terminated in accordance with these Standard Conditions.

“**Wet Hire**” means the hire of fully maintained Plant and Equipment combined with stated AITKIN Personnel to operate the Plant and Equipment”.

“**WHS laws**” means the occupational health and safety legislation (howsoever named) and regulations, codes or practice and standards of safety that apply in the State or Territory in which the Hirer and AITKIN operate.

2. INTERPRETATION

In these General Conditions, unless the context otherwise states or requires:

- a. any words importing the singular include the plural and vice versa;
- b. capitalised words are defined terms and shall have their defined meaning;
- c. a reference to a "Party" or "Parties" shall mean a party or parties to this Hire Agreement;
- d. any reference to gender includes the other gender;
- e. an obligation of two (2) or more Parties binds them jointly and severally;
- f. a reference to a person includes the legal representatives, employees, successors, and assignees of that person;
- g. a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it, consolidations, amendments, re-enactments or replacements of any of them made by any legislative authority;
- h. a reference to \$ or dollars means Australian Dollars;
- i. the Hire Agreement shall constitute the entire agreement between the Parties and supersedes all previous agreements, understanding, representations and negotiations; and
- j. to the extent of any inconsistency between documents forming the Hire Agreement, precedence of contract shall be determined in the following order of priority: 1) Special Conditions, 2) General Conditions, 3) Purchase Order, 4) quotation, 5) any other document signed by both Parties, 6) all other documents.

3. CONTRACT TO HIRE AND TERM

- a. Subject to clause 11, AITKIN agrees to provide the Services to the Hirer for the Term. The Hirer shall be obliged to return the Plant and Equipment on the completion or termination of the Hire Agreement.
- b. A Hire Agreement is accepted by both Parties on the earlier of AITKIN issuing a Hire Docket to the Hirer or the signed acceptance by the Hirer of the delivered Plant and Equipment.
- c. Unless otherwise stated in the Hire Agreement, the Hirer acknowledges and agrees that on each occasion that it issues a Purchase Order to AITKIN for the supply of Services, and AITKIN accepts that Purchase Order, a separate and binding contract is made in relation to the supply of those Services in accordance with the provisions of the Hire Agreement.
- d. AITKIN shall use reasonable efforts to make the Plant and Equipment available for the commencement of the Term but shall not be liable for any loss or damage due to delay.
- e. Where a minimum period of hire is specified in the Hire Agreement, the Hirer agrees to pay for such period irrespective of utilisation of the Plant and Equipment, AITKIN Personnel, completion of the Services or a Force Majeure Event.

4. DELIVERY AND RISK

- a. If the Hirer has elected in the Hire Agreement for AITKIN to transport the Plant and Equipment from the AITKIN depot to the Hirer's premises, risk will transfer to the Hirer at the time that the Plant and Equipment is delivered to the Hirer's premises by AITKIN.
- b. If the Hirer has elected in the Hire Agreement to transport the Plant and Equipment to its premises itself, risk transfers to the Hirer from the time that possession of the Plant and Equipment is transferred to the Hirer, its employees, agents, contractors or subcontractors.

5. CHARGES FOR HIRE

- a. The Hirer will pay AITKIN for hire of the Plant and Equipment and AITKIN Personnel at the rates agreed in the Hire Agreement (**Rates**).
- b. In addition to the Rates the following charges also apply unless otherwise agreed:
 - i. the Hirer shall pay for mobilisation and demobilisation when AITKIN is required to transport the Plant and Equipment to and from the AITKIN depot;
 - ii. rates in respect of AITKIN Personnel are subject to additional charges for loadings, penalties and allowances as applicable to AITKIN Personnel pursuant to their terms of engagement including night shifts, weekends, standby, overtime, public holidays, meals, travel and accommodation;
 - iii. where the Plant and Equipment supplied by AITKIN is used by Hirer to Excess, AITKIN reserves the right to impose additional hire charges as reasonable compensation to AITKIN. "**Excess**" is more than 10 hours per calendar day; and
 - iv. where applicable, fuel levy, administration levy and Limited Damage Waiver fee as disclosed to Hirer.
- c. The charges in clauses 5a and 5b are referred to in this agreement as the "**Hire Charges**".
- d. Rates quoted in the Hire Agreement are exclusive of GST, government duties, taxes and charges.
- e. The Rates are subject to change at AITKIN's discretion. The Hirer may terminate the Hire Agreement without penalty by written notice to AITKIN if the revised Rates are unacceptable. Subject to this clause, the revised Rates apply from the date of advice to the Hirer.
- f. If a supply under the Hire Agreement is subject to GST, the recipient of the supply (Hirer) must pay to the supplier (AITKIN) at the same time and in the same manner as the consideration is otherwise payable, an amount equal to the amount of consideration multiplied by the applicable GST rate, subject to the supply of a valid tax invoice by the supplier (AITKIN).

- g. AITKIN may invoice the Hirer by providing a tax invoice at the completion of the Term or at the end of each calendar month, whichever is the earlier. AITKIN reserves the right to not enter into any recipient created tax invoice arrangements with the Hirer.
- h. The Hirer agrees to pay each tax invoice in full within 30 days of the tax invoice date. No claims for credit will be recognised by AITKIN after 7 days following the date of the tax invoice.
- i. The Hirer shall not set-off any amounts due under the tax invoice in respect of a request for credit or other disputed amount.
- j. If either Party is required to indemnify or reimburse a part of a cost, expense or liability ("**Expense**") incurred by the other, then the Expense shall be reduced by the credit or refund of GST to which the Party which first incurred the Expense is entitled to claim in respect of the Expense.
- k. AITKIN reserves the right to charge interest to the Hirer on amounts which remain unpaid after the due date for payment. Interest will be calculated at 1.0% per month or part thereof on the unpaid amount, compounded daily. Without limiting the above, the Hirer hereby indemnifies AITKIN for all costs and expenses (including commissions payable to commercial or mercantile agents, legal costs and filing fees) incurred by AITKIN in recovering amounts which remain unpaid after the due date.

6. BREAKDOWN OF PLANT AND EQUIPMENT

- a. In the event of a Breakdown to Plant and Equipment, the Hirer shall immediately notify AITKIN. If AITKIN Personnel are present, advising such AITKIN Personnel shall be considered sufficient notice.
- b. Upon notifying AITKIN of a Breakdown, the Hirer must secure and safeguard the Plant and Equipment, comply with all Relevant Laws, cease using the Plant and/or Equipment in any way and take all reasonable steps to prevent injury to any persons or damage to any property as a result of the condition of the Plant and Equipment. AITKIN does not accept liability for expenses incurred in such prevention or safeguarding activities. The Hirer remains responsible for the security of the Plant and Equipment until such time as the Plant and Equipment is returned to AITKIN's physical possession or depot.
- c. From the date on which Hirer gives the notice in clause 6a and subject to clause 6d, the Hirer may request that Hire Charges be suspended until the Plant and Equipment is replaced (at AITKIN's election) or returned to operating condition.
- d. If the Hirer, its employees, agents, contractors or subcontractors materially contributed to or caused the Breakdown (including by directions given to AITKIN Personnel) through the misuse of the Plant and Equipment accident, negligence, fraud, misconduct, breach of the Hire Agreement, failure to comply with Relevant Laws, failure to observe warning signs or directions, failure to observe safety systems or OEM operational procedures, then the Hirer will continue to pay the Hire Charges until the Plant and Equipment is fit for return to service and in addition shall pay the reasonable costs of repair incurred by AITKIN or its appointed agent.
- e. Under no circumstances shall the Hirer commence any works to repair the Plant and Equipment without the written consent of AITKIN.
- f. AITKIN shall without delay take all reasonable steps to replace the Plant and Equipment the subject of the Breakdown with Plant and Equipment of a similar type or capacity but is under no obligation to do so.
- g. AITKIN shall not be liable for any direct, indirect or consequential costs, losses or damages suffered by Hirer or third parties in relation to a Breakdown.

7. SAFETY AND OPERATIONS

Laws and Safety Standards

The Hirer must ensure that all Relevant Laws and safety standards relating to the safe use and handling of the Plant and Equipment, are complied with during the Term and that the Plant and Equipment during the Term does not place the public, the community or the environment at risk of injury, illness or damage.

Dry Hire

In relation to Dry Hire the Hirer **warrants** as follows:

- a. The Plant and Equipment will only be used for a proper purpose and for which it has been designed, manufactured and supplied.
- b. Prior to first use, the commencement of each new activity and any daily pre-starts thereafter, the Hirer must fully inspect and walk around the site and the Plant and Equipment, complete AITKIN/OEM pre-start checks, review OEM operating manuals, review safety alerts and inspection reports and take such other steps required to determine the suitability of the Plant and Equipment to undertake the proposed task. The Hirer will identify any foreseeable hazards or risks of harm in respect of the planned use of the Plant and Equipment and implement appropriate controls to minimise or where possible, to eliminate the risks in accordance with all Relevant Laws.
- c. The Hirer will notify AITKIN immediately if the Plant and Equipment supplied is damaged, inappropriate or not suited to the proposed task. AITKIN provides no warranty in relation to the condition of the Plant and Equipment or that the Plant and Equipment is suitable for the task.
- d. The Plant and Equipment will only be operated by qualified and trained personnel who possess current licenses to operate the Plant and Equipment, vehicle orientation and familiarity. The Hirer must provide evidence of such qualifications and licenses to AITKIN on request.
- e. The Hirer will ensure that all safety information supplied with the Plant and Equipment is conveyed to the operator of the Plant and Equipment and that any safety related signs, banners, flags or warnings supplied by AITKIN in relation to the Plant and Equipment are prominently displayed.

Wet Hire

In relation to a Wet Hire, the Hirer agrees to the following:

- f. AITKIN Personnel shall work under the direction of the Hirer who must consult with and fully brief the AITKIN Personnel on the proposed task, the site, site conditions, matters affecting the health and safety of the personnel in respect of the task to be performed and other relevant matters including information requested by the AITKIN Personnel. The Hirer accepts that AITKIN Personnel may require further information or clarification to complete tasks to be performed, or a lift study prior to commencing the task and may refuse to operate the Plant and Equipment if they believe any directions or control requested by the Hirer may affect the safety of people, property, Plant or Equipment.
- g. The Hirer will not allow any person other than AITKIN Personnel to operate the Plant and Equipment without the prior written consent of AITKIN.
- h. AITKIN will ensure that the Aitkin Personnel who operate the Plant and Equipment are qualified and trained personnel who possess current licenses to operate the Plant and Equipment, vehicle orientation and familiarity.
- i. AITKIN shall do all things reasonably practicable to ensure its employees, contractors and persons working under its direction or control shall:
 - i. take active steps including review of operating manuals to ensure they are familiar with the safe operation and operating parameters of the Plant and Equipment;
 - ii. be fit for duty and not under the influence of drugs or alcohol;
 - iii. be appropriately briefed by the Hirer as to the site, safe work systems, control/restricted zones and any applicable lift plans or studies;
 - iv. wear suitable protective and high visibility clothing when working with, on or around the Plant and Equipment; and
 - v. operate the Plant and Equipment to a standard of skill, knowledge and competence of an experienced and professional operator of the assigned tasks in compliance with all Relevant Laws.

Wet Hire or Dry Hire

In relation to a Wet Hire or Dry Hire, the Hirer agrees to the following:

- j. The Hirer shall do all things reasonably practicable to ensure its employees, AITKIN Personnel and other persons working under its direction or control shall:
 - i. take active steps including review of operating manuals to ensure they are familiar with the safe operation and operating parameters of the Plant and Equipment;
 - ii. be fit for duty and not under the influence of drugs or alcohol;
 - iii. be appropriately briefed by Hirer as to the site, safe work systems, control / restricted zones and any applicable lift plans or studies;
 - iv. wear suitable protective and high visibility clothing when working with, on or around the Plant and Equipment, and
 - v. operate the Plant and Equipment to a standard of skill, knowledge and competence of an experienced and professional operator of the assigned tasks in compliance with all Relevant Laws.
- k. The Hirer must obtain and furnish any necessary permits, consents, approvals or notices required for the use or transport of the Plant and Equipment during the Term and comply with any Relevant Laws and industry standards or protocols whilst in possession of the Plant and Equipment.
- l. The Hirer shall pay all fines and penalties incurred while the Plant and Equipment is in the possession of the Hirer.
- m. The Hirer will consult and co-operate with AITKIN in respect of matters relating to the safe use and handling of the Plant and Equipment.
- n. The Hirer must immediately notify AITKIN of any incident, near miss, safety breach, fine, penalty or investigation by a regulator during the Term which involves the Hirer, its agents, AITKIN Personnel or the Plant and Equipment.

8. MAINTENANCE, SAFEKEEPING AND RETURN

Dry Hire

In relation to Dry Hire, the Hirer agrees to the following:

- a. The Hirer is responsible for and must complete daily maintenance and servicing of the Plant and Equipment in accordance with OEM maintenance manuals including to clean, maintain, lubricate and fuel the Plant and Equipment to the standard and level specified in the manual or as otherwise specified by AITKIN and record such checks in the log book provided.
- b. Plant and Equipment must be returned to AITKIN in the same condition (fair wear and tear excepted) as it was provided by AITKIN at the start of the Term including a full tank of fuel, washed and clean.
- c. The Hirer shall pay the cost of replacing damaged tyres and rims, cleaning and any repainting which AITKIN reasonably requires to return Plant and Equipment to pre-hire condition, fair wear and tear excepted.

Wet Hire

- d. In relation to Wet Hire, AITKIN is responsible for and must complete daily maintenance and servicing of the Plant and Equipment in accordance with OEM maintenance manuals including to clean, maintain, lubricate and fuel the Plant and Equipment to the standard and level specified in the manual or as otherwise specified by AITKIN and record such checks in the log book provided.

Wet Hire or Dry Hire

In relation to Wet Hire or Dry Hire, the Hirer agrees to the following:

- e. The Hirer shall secure and protect the Plant and Equipment throughout the Term. The Hirer will not part with possession, remove or allow the Plant and Equipment to be removed from the location stated in Hire Agreement without AITKIN's written approval.
- f. The Hirer shall indemnify and hold harmless AITKIN against all costs, losses or liabilities due to damage, loss or incident relating to the Plant and Equipment during the Term including the Hirer's breach of Hire Agreement, loss of possession, theft, vandalism, negligence, legal process or otherwise except to the extent that the Limited Damage Waiver limits such liability.
- g. The Hirer will permit and grant access to AITKIN to any location or premises where the Plant and Equipment is located for the purposes of periodic inspection of the Plant and Equipment by AITKIN or for audit purposes and the Hirer will indemnify AITKIN in respect of any claims, damages or expenses arising out of any action taken pursuant to this condition.

9. HAZARDOUS MATERIALS

If during the Term the Hirer wishes to use the Plant and Equipment to lift or transport materials that are noxious, inflammable, hazardous, dangerous or explosive in nature (**Hazardous Materials**) the Hirer acknowledges and agrees that it must comply with all Relevant Laws applicable to the Hazardous Materials and their lifting or transportation at all times during the Term.

10. AITKIN OBLIGATIONS

- a. AITKIN will use its best endeavours to ensure that the Plant and Equipment is in good working order at the commencement of the Term and is promptly delivered or supplied to the Hirer in accordance with the Hire Agreement.
- b. AITKIN will perform the Services where specified in the Hire Agreement to the standard of skill and care of an experienced and professional operator of the assigned tasks in compliance with Relevant Laws and industry standards.

11. TERMINATION

- a. AITKIN may terminate the Hire Agreement without reason or for its convenience upon 24 hours advance notice to the Hirer.
- b. AITKIN may terminate the Hire Agreement **without notice** if the Hirer:
 - i. commits a breach of the Hire Agreement;
 - ii. permits any act or thing to be done which may prejudice, diminish or alienate AITKIN's rights to or in the Plant and Equipment;
 - iii. commits an act of bankruptcy;
 - iv. becomes insolvent or is unable to pay its debts when they fall due;
 - v. enters into voluntary liquidation, provisional liquidation, administration or receivership,
 - vi. has a winding up petition presented against it;
 - vii. has any of its property seized by a secured creditor or any secured creditor takes steps to enforce its rights;
 - viii. ceases to be carrying on business or substantially changes its business activities, or
 - ix. suffers a change of management or voting control without prior AITKIN approval.
- c. On termination of the Hire Agreement, AITKIN is entitled to immediate possession of the Plant and Equipment and where such possession is not obtained, the Hirer irrevocably appoints AITKIN as its agent and authorised attorney to enter upon any land or premises on behalf of the Hirer to recover the Plant and Equipment and agrees to indemnify AITKIN in respect of any claims, damages or expenses arising out of any action taken under this condition.

12. LIABILITY, INDEMNITY, INSURANCE AND LIMITED DAMAGE WAIVER

- a. The Parties must effect and maintain at all times insurance covering their statutory workers compensation, product and public liability, professional indemnity and motor vehicles in each instance for the greater of the amount required by any Relevant Law or not less than \$10,000,000 per occurrence or event. Except where the Limited Damage Waiver applies, the Hirer must also effect and maintain at all times insurance covering the Plant and Equipment to fair market value.
- b. Product and Public Liability and Plant and Equipment Insurances so held by the Hirer must note AITKIN as an insured party with the full right of entitlement to claim under the insurance and the insurer shall waive all rights of subrogation against AITKIN and AITKIN insurers. The deductible or excess payable in respect of a claim shall be at the Hirer's cost. On request, the Hirer shall provide AITKIN with certificates of currency in respect of all required insurance.
- c. AITKIN is not a common carrier and is not responsible for any loss or damage to the Hirer's property or goods in transit. Responsibility and risk for insurance of goods in transit rests with the Hirer.
- d. The Hirer assumes liability for and indemnifies and holds harmless AITKIN, its agents, contractors and employees from and against all claims, costs, damages, losses or expenses of any kind howsoever arising under tort (including but limited to negligence), contract, strict liability, statute or otherwise from the arrangements between the Hirer and AITKIN and including (without limitation) in relation to death of or injury to any person, loss, damage or destruction of any property including the Plant and Equipment and goods in transit. This indemnity shall not include the Plant and Equipment to the extent that the Limited Damage Waiver applies.
- e. To the full extent permitted by law the Hirer releases, holds harmless and discharges AITKIN, its agents, contractors and employees in respect of all claims and demands on AITKIN and any loss or damage caused to the Hirer or its customers, agents, employees or

other third parties, whether by death of or injury to any person, accident, loss or damage to property, delay, financial loss or otherwise.

- f. To the full extent permitted by law, AITKIN makes no express warranty or condition and excludes all implied warranties and conditions of any type including as to the fitness of the Plant and Equipment for any use to which it is employed by the Hirer.
- g. In the event of the Hirer suffering any damage or loss arising from this Hire Agreement including without limitation in respect of delay or inconvenience following a Breakdown, failure or defect in the Plant and Equipment, the liability of AITKIN is limited to taking all reasonable steps to facilitate the repair or replacement of the Plant and Equipment and does not include any economic, indirect or consequential losses, damages or liabilities of any nature whatsoever.
- h. Notwithstanding any other provision of the Hire Agreement, neither AITKIN nor the Hirer shall be liable for any indirect, economic or consequential losses.
- i. **LIMITED DAMAGE WAIVER:** Subject to the limitations and exclusions listed below, the Limited Damage Waiver limits the Hirer's liability in respect of applicable Dry Hire Plant & Equipment following its loss, theft, damage or destruction to payment of \$10,000 (plus GST) per item.

The Limited Damage Waiver applies only to designated Dry Hired Plant and Equipment as disclosed to the Hirer and the Limited Damage Waiver fee shall be payable. If the Hirer provides evidence of Plant and Equipment insurance which notes AITKIN as an insured party which is satisfactory to AITKIN, the Limited Damage Waiver and fee shall not apply.

EXCLUSIONS: The Limited Damage Waiver shall not apply to the following Plant and Equipment or circumstances:

- (A) While being loaded/unloaded or in transit on a transport vehicle engaged by the Hirer;
 - (B) A Breakdown event where clause 6d applies;
 - (C) Damage or breakage to tyres, glass and accessories (including accidental damage or breakage);
 - (D) If it exceeds the rated load or carrying capacity;
 - (E) If the Plant and Equipment is operated or traverses over water, bridge or wharf;
 - (F) Damage caused by exposure to corrosive substances including caustic, hazardous or toxic materials, cyanide, water or acid and damage caused by paint or other overspray; or
 - (G) To the extent that the Hirer or its personnel, agents or contractors have contributed to the loss, damage or destruction by their negligence, wilful misconduct, theft or fraud.
- j. The liabilities, indemnities, insurances and limitations of liability rights and obligations contained in this clause 12 remain in full force and effect notwithstanding termination of the Hire Agreement.

13. FORCE MAJEURE

- a. A Force Majeure Event is an event which is beyond the reasonable control of the Hirer or AITKIN and includes but is not limited to the following types of events:
 - i. an act of God;
 - ii. war or other state of armed hostilities, insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or martial law;
 - iii. weather conditions of a severity that could not reasonably be expected to occur within a 10 year period at the location of the Plant and Equipment and causing inundation or flood that prevents access to the Plant and Equipment; or
 - iv. action or inaction by, or orders, judgments, rulings, decisions or enforcement actions of, any government, governmental authority or court of competent jurisdiction whether local, State or Federal (including denial, refusal or failure to grant any permit, authorisation, licence, approval or acknowledgment despite timely endeavours to obtain same).
- b. Where either the Hirer or AITKIN can no longer perform their obligations under the Hire Agreement by virtue of a Force Majeure Event, they shall immediately notify the other Party of the Force Majeure Event and shall be temporarily relieved of their respective obligations under the Hire Agreement whilst the Force Majeure Event continues. Regardless of such relief, the Party making the notification of the Force Majeure Event shall do everything within its power to minimise the duration of the Force Majeure Event and shall notify the other Party immediately upon cessation of the circumstances relating to the Force Majeure Event.
- c. Without limiting AITKIN's rights under clause 11, if the Force Majeure Event continues for a period in excess of fourteen (14) calendar days, the Hirer or AITKIN may terminate the Hire Agreement at their discretion without penalty.
- d. Notwithstanding any Force Majeure Event, no Party is relieved or excused from performance of its obligation to pay amounts due to the other under the Hire Agreement.

14. RIGHT TO ASSIGNMENT AND TO SUBCONTRACT

- a. AITKIN may assign or subcontract the performance of all or any of AITKIN's rights and obligations under the Hire Agreement with any other person or company and such person or company and its servants and agents shall be the beneficiary of these General Conditions to the same extent as AITKIN.
- b. The Hirer shall not assign, subcontract, sub-lease or sub-hire the performance of all or any of the Hirer's rights and obligations under the Hire Agreement unless it has obtained the prior written consent of AITKIN to do so.

15. TITLE TO PLANT AND EQUIPMENT

- a. The rights of the Hirer to use and take possession of the Plant and Equipment are as bailee only.
- b. The Hirer shall not offer, sell, assign, sub-let, pledge, mortgage or otherwise deal with or part with possession of the Plant and Equipment in any way which is inconsistent with the rights of AITKIN as owner of the Plant and Equipment, whether or not AITKIN is owner, lessee, hirer or otherwise of the Plant and Equipment. The Hirer shall not deface or cover any name or registration plate on the Plant and Equipment.
- c. The Hire Agreement may create a registrable security interest under the PPSA in the Plant and Equipment and any proceeds. Neither Party has agreed to postpone the time for attachment of the security interest. The Hirer agrees that value has been given for the creation of the security interest.
- d. Where AITKIN has other enforcement rights in addition to the enforcement rights provided for in the PPSA, those other enforcement rights will continue to apply.
- e. The Hirer must ensure that any security interest created is enforceable, that AITKIN's priority is preserved and any defect in the security interest, including registration on the PPSR, is overcome, including by promptly executing any documents and do anything reasonably required by AITKIN.
- f. The Hirer must not, without AITKIN's written consent, sell, lease, dispose of, create a security interest in, mortgage or part with possession of the Plant and Equipment or any interest in it (or purport or attempt to purport to do such thing) or permit any lien over it. The Hirer may only disclose information or documents, including information of a kind referred to in section 275(1) of the PPSA, if AITKIN has given its prior written consent.
- g. To the extent that the PPSA permits, the Hirer waives its rights to receive a copy of any verification statement or financing change statement, any notice required under the PPSA, and its rights under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 135, 142 and 143 of the PPSA.

16. MISCELLANEOUS

- a. The person signing the Hire Agreement for and on behalf of the Hirer hereby covenants with AITKIN that such person has the authority of the Hirer to enter this Hire Agreement.
- b. The Parties to the Hire Agreement are independent contractors and nothing shall imply that they are in partnership, agency or legal representatives of the other except where expressly stated to the contrary.
- c. AITKIN reserves the right to revise these General Conditions and any such revision shall then be communicated and distributed to the Hirer in writing. The Hirer agrees that it shall from the date of receipt of such communication be legally bound by such revised terms and its sole remedy in the event it does not accept the terms shall be to give AITKIN immediate notice to terminate the Hire Agreement without penalty.
- d. All notices shall be served on a Party to the address first set out in the Hire Agreement or as subsequently notified in writing to the other Party. Notices in writing shall be deemed to be received when they are personally received at the address first set out or the registered office of a Party unless sent by post in which receipt is three days after posting.
- e. The terms and existence of the Hire Agreement and information obtained by one Party from the other Party during the performance of the Hire Agreement are confidential and shall not be disclosed to any third party except where required by law, stock exchange or regulator to do so. Hirer shall not make public announcements or respond to media requests in relation to the subject matter of this Hire Agreement without the written consent of AITKIN.
- f. Information about AITKIN's privacy policy is available on request.

17. WAIVER AND SEVERABILITY

- a. If AITKIN fails to or delays in exercising any right, power or remedy which it is entitled to under the Hire Agreement, such failure does not amount to a waiver of that right, power or remedy nor does it preclude any further exercise of such rights, powers or remedies as may be provided under the Hire Agreement.
- b. Any waiver by AITKIN must be in writing signed by AITKIN and is only effective in relation to the particular obligation or breach in which it is given.
- c. If any provision of the Hire Agreement is invalid or unenforceable in accordance with its terms in any jurisdiction, it is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable and will otherwise be capable of being severed to the extent of the invalidity or unenforceability without effecting the remaining provisions of the Hire Agreement or effecting the validity or enforceability of that provision in any other jurisdiction.

18. GOVERNING LAW AND DISPUTES

The Hire Agreement is governed and construed by the laws of the State or Territory in which the Hire Agreement is duly executed by AITKIN or if not executed, the State of Victoria, Australia. All disputes shall be subject to the non-exclusive jurisdiction of the courts of that State or Territory.