



## WESTANKS TERMS OF HIRE

### DEFINITIONS AND INTERPRETATION

1. **"Business Day"** means any day other than a Saturday, Sunday, bank holiday or public holiday in the state of Western Australia.  
**"Customer"** means the person, corporation, firm, organisation or entity that is hiring the Equipment as set out in the Proposal and shall include its officers, servants, agents or invitees.  
**"Deposit"** means any payment by the Customer to the Owner in advance of the Period of Hire as referred to in the Proposal.  
**"Equipment"** means the equipment supplied for hire by the Owner to the Customer as specified in the Hire Agreement, including any associated or attached tools, accessories and other attachments included within or forming part of the hire.  
**"Event of Insolvency"** means a party becoming bankrupt or insolvent, executing a personal insolvency agreement, entering into liquidation, administration, receivership or ceasing to carry on a business, or any event occurring, or an application being made that is preparatory to, or likely to lead to, any of the foregoing.  
**"Hire Agreement"** has the meaning in clause 2  
**"Hire Agreement Date"** is the date the Hire Agreement is entered into between the Owner and the Customer.  
**"Hire Rates"** means those amounts payable for the hire and use of the Equipment by the Customer as set out in the Proposal or otherwise within the Hire Agreement.  
**"Insolvency Provision"** means any law relating to insolvency, sequestration, liquidation or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences, and any law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions), and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.  
**"Owner"** means Westanks Australia Pty Ltd (ACN 121 863 607) and includes its employees, agents or any sub-contractors and their employees.  
**"Owner's Premises"** means the principal place of business of the Owner from time-to-time.  
**"Party"** means a party to this Hire Agreement.  
**"Period of Hire"** has the meaning in clauses 19 to 22 below.  
**"Permitted Use"** means the agreed purpose for which the Equipment may be used as set out in the Hire Agreement, or if not specifically described, then the ordinary and usual use of the Equipment the subject of the Hire Agreement as operated and used in accordance with the manufacturer's reasonable operating specification and parameters.  
**"Proposal"** has the meaning in clause 2(a).  
**"PPSA"** means the *Personal Property Securities Act 2009* (Cth).
2. These Terms of Hire, together with:
  - (a) any Proposal provided to the Customer by the Owner, whether signed or not; and
  - (b) any variation or other document signed or issued by Westanks that is stated to, or by its inherent nature, is intended to form part of the Hire Agreement,constitute the terms of the Hire Agreement between the Customer and the Owner ("Hire Agreement"). Any terms contained in any document supplied by the Customer, including any terms on the Customer's purchase order, will not form part of the Hire Agreement, unless expressly accepted in writing by the Owner.
3. Unless otherwise required by the context or subject matter, a reference to a Party includes that Party's executors, administrators, personal representatives, successors and assigns.
4. If a Party comprises two or more persons, the Hire Agreement binds and must be performed by each of them jointly and severally and may be enforced against any one or any two or more of them.
5. If the date for any payment under this Hire Agreement falls due on a day that is not a Business Day, then that payment shall be deemed to be due and payable on the next Business Day.
6. In the interpretation of this Hire Agreement, unless there is something in the subject or context inconsistent therewith:
  - (a) words importing the singular include the plural and vice versa;
  - (b) words importing any gender include the other genders;
  - (c) headings used in this Hire Agreement are for convenience only and shall not be used in the interpretation or construction of this Hire Agreement; and
  - (d) references to currency means Australian currency.
7. To the extent not inconsistent with the express terms of this Hire Agreement, words as defined in the PPSA and *A New Tax System (Goods and Services Tax) Act 1999* ("GST Act") shall have the same meaning in this Hire Agreement.

### SUPPLY OF EQUIPMENT

8. The Owner will supply on hire to the Customer the Equipment for the Customer's exclusive use for the Period of Hire on the terms and conditions contained in the Hire Agreement in good working order and the Customer

9. accepts the Equipment in accordance with the provisions of the Hire Agreement. If the Customer receives the Equipment in a broken, damaged and/or defective condition, the Customer must notify the Owner within 24 hours after receiving the Equipment, failing which it is assumed that the Equipment received was in good order and condition.
9. Unless the Owner and Customer otherwise agree in writing, the Customer shall be responsible for the transport and delivery of the Equipment to, and its installation at, the Customer's nominated Premises at the commencement of the Period of Hire, and also for the return of the Equipment to the Owner's Premises at the end of the Period of Hire. The Equipment shall be at the risk of the Customer at all times as and from the collection of the same by the Customer.
10. Unless otherwise agreed, the Customer is responsible for all and any reasonable costs and expenses associated with the transport, installation, delivery and collection of the Equipment referred to in clause 9 above.
11. In the event that the Owner is requested to effect transportation of the Equipment, the Customer agrees to pay to the Owner the reasonable costs and expenses associated with the same.
12. The Owner will not be liable to the Customer for any loss or damage caused by, arising out of or in any way connected with non-delivery or late delivery of the Equipment or for the Equipment not being in good working order.
13. The Equipment is and shall at all times be and remain the sole and exclusive property of the Owner and the Customer acknowledges and confirms that it has no right, title, or interest therein or thereto except as expressly stated in this Hire Agreement and that its interest in the Equipment shall be limited to that of bailee.
14. The Customer acknowledges and agrees that the Owner is not obliged or required, pursuant to the terms of this Hire Agreement or otherwise, to supply any other item of equipment to the Customer other than the Equipment and the Customer shall have no claim against the Owner in the event the Owner is unable or unwilling to supply any other equipment requested.

### HIRE RATES AND PAYMENTS

15. The Customer must pay the Owner the Hire Rates (which Hire Rates are exclusive of GST) for the Period of Hire in accordance with the following sub-clauses:
  - (a) the Customer must pay the Hire Rates to the Owner in the manner as directed by the Owner in writing from time-to-time and without any right of set-off or deductions;
  - (b) the Customer agrees that its obligations to pay Hire Rates shall continue notwithstanding any defect or breakdown in the Equipment;
  - (c) subject to anything to the contrary in the Proposal, the Owner shall issue a tax invoice at the end of each calendar month, and the Customer must pay such invoice within a period of thirty (30) days of such invoice being presented to the Customer by the Owner; and
  - (d) if the Customer fails to pay monies under the Hire Agreement when due and payable, the Customer must pay to the Owner interest on the total outstanding balance at a rate of 15% per annum to be calculated and compounded monthly until the date of payment.
16. The Customer must pay the Owner the Deposit which is to be held by the Owner until the end of the Period of Hire at which time the Deposit will be set-off against any amount owing by the Customer to the Owner with the balance, if any, to be returned to the Customer.
17. The Customer is responsible for and shall pay any sales, rental or other taxes, duties, import duties, bonds or any other charges which may be levied upon this Hire Agreement or on the use or delivery of the Equipment.
18. The Parties acknowledge and agree that in the event of:
  - (a) damage to the Equipment, or
  - (b) the Equipment being returned other than in substantially the same condition as it was at the commencement of the Period of Hire,not caused by the Owner, then the Hire Rates shall continue to be paid by the Customer until such time as the Equipment is replaced, repaired or brought to the same condition (as the case may be).

### PERIOD OF HIRE

19. The Period of Hire commences on the earlier of the following:
  - (a) the date the Hire Agreement states as the commencement of hire;
  - (b) when the Customer takes possession of the Equipment; or
  - (c) if the Customer request delivery and collection of the Equipment, the time the Owner delivers the Equipment to the Owner's Premises.
20. The Period of Hire includes weekends and public holidays and is for an indefinite term and ends when the Equipment is back in the Owner's control or possession.
21. A minimum Period of Hire may apply in respect of certain items of Equipment ("Minimum Hire Period") as notified by the Owner in the Proposal or otherwise in writing. If the Customer returns the Equipment to the Owner before the expiration of the Minimum Hire Period, the Customer is required to pay all Hire Rates in respect of the Minimum Hire Period.
22. Upon the request of the Customer, the Owner may in its absolute and unfettered discretion agree to extend the Minimum Hire Period, which extension shall be evidenced in writing. If the Minimum Hire Period is so extended, all of the terms and conditions of this Hire Agreement continue to

apply to the extended Minimum Period of Hire unless otherwise agreed or varied by the Owner and the Customer in writing.

#### OBLIGATIONS OF THE CUSTOMER

23. During the Period of Hire the Customer must:
- keep the Equipment safe and secure and not in any way modify, alter, tamper with or damage the Equipment;
  - ensure that the Equipment is only operated by fully trained and experienced operators and not otherwise;
  - ensure the Equipment is used in a skilful and proper manner;
  - comply with and conform to all relevant laws, ordinances and regulations that in any way relate to the possession, use of or maintenance of the Equipment;
  - maintain the Equipment in a safe, clean and serviceable condition and in good and substantial repair allowing for reasonable wear and tear;
  - ensure that at the end of the Period of Hire the Equipment is clean and in substantially the same condition as it was at the commencement of the Period of Hire. Without limitation, if at the end of the Period of Hire the Equipment is marked, dirty, damaged or contaminated, the Customer will be liable for the cost incurred by the Owner repairing or reinstating or decontaminating the Equipment to substantially the same condition as it was at the commencement of the Period of Hire; and
  - pay the replacement cost of Equipment if Equipment is not able to be repaired, reinstated or decontaminated.
24. During the Period of Hire the Customer must not without the prior written consent of the Owner:
- in any way part with possession, custody or control of the Equipment;
  - remove or permit the removal of the Equipment from the stated location of hire;
  - make any alterations, additions or replacements to the Equipment;
  - assign any of its rights or obligations under this Hire Agreement without prior written consent; or
  - use the Equipment other than in accordance with the Permitted Use.

#### SECURITY INTERESTS

25. The Customer acknowledges and agrees that for the purposes of section 20(2) of the PPSA, the collateral is the Equipment, and the Owner has a security interest in the Equipment pursuant to the PPSA, and without limiting the generality of the foregoing, such security interest may be a PMSI arising out a PPS Lease. The Owner may register any actual or impending security interest (in any manner the Owner considers appropriate) in relation to any such security interest contemplated or constituted by this Hire Agreement in the Equipment and the proceeds arising in respect of any dealing in the Equipment.
26. The Customer shall not, without the prior written consent of the Owner, grant a Security Interest in the Equipment or its proceeds to another party or part with the possession of any of the Equipment or otherwise do anything to prejudice the security interest of the Owner, and in no circumstances will the Equipment be deemed to be a fixture.
27. In the event that another Security Interest is claimed by a third party in the Equipment or in its proceeds or if another person is given possession of the Equipment, then the Customer shall immediately provide to the Owner all information within its knowledge of the identity of the party claiming such interest or being in possession and the nature and circumstances of any Security Interest claimed, and do all things necessary, desirable or as requested by the Owner to ensure that the Security Interest of the Owner in the Equipment has priority to all others.
28. The Customer agrees to:
- do anything that is required by the Owner so that the Owner may acquire and maintain one or more perfected security interest(s) under the PPSA in respect of the Equipment and its proceeds, to register a financing statement or financing charge statement, and to ensure that the Owner's security position, and rights and obligations, are not adversely affected by the PPSA;
  - not register a financing leave statement in respect of a security interest contemplated or constituted by this Hire Agreement without the prior written consent of the Owner; and
  - not create or purport to create any security interest in the Equipment, nor register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without the prior written consent of the Owner.
29. The Customer:
- waives its right under section 157 of the PPSA to receive a copy of the verification statement relating to a security interest created under the Hire Agreement;
  - agrees that to the extent permitted by the PPSA, the following provisions of the PPSA will not apply and are contracted out of, namely section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143;
  - agrees that the following provisions of the PPSA will not apply and that the Customer will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137; and
  - waives its right to apply to a Court for an order concerning the removal of an accession under section 97.
30. To the extent permitted by the PPSA, the Owner and Customer agree not to disclose information of the kind referred to in section 275(1) of the PPSA to an interested person, or any other person requested by an interested person. The Customer waives any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.

#### SCHEDULED SERVICING

31. The Owner shall perform any scheduled maintenance and servicing of the Equipment in accordance with manufacturer's specifications.

32. The Customer shall remain liable for the payment of Hire Rates during the period of any such scheduled maintenance or servicing.

#### RIGHT TO INSPECT

33. During the Period of Hire, the Owner has the right to inspect the Equipment upon giving reasonable prior notice to the Customer. Upon receipt of such reasonable prior notice and to the extent that the Customer is lawfully entitled to do so, the Customer grants the Owner an irrevocable license to access to any site upon which the Equipment is situated so that the Owner may inspect the Equipment.
34. The Customer will bear the full responsibility and cost for any inductions or other matter necessary for the Owner to enter any premises where the Equipment is located.

#### RISK AND INDEMNITY

35. Subject to clause 36, the Customer is solely liable for and will indemnify and hold harmless the Owner against any actions, claims, loss, costs, expenses, liability or damage including its legal fees on a full indemnity basis in respect of any:
- death of or injury to any person;
  - damage to property, including but not limited to the Equipment,
  - claim by a third party; or
  - fines or penalties payable,
- howsoever caused or arising from the possession, use, repair hire or storage of the Equipment by the Customer during the Period of Hire.
36. The Customer is responsible for any loss, theft or damage to the Equipment from any and every event whatsoever and howsoever and by whosoever caused during the Period of Hire, except where any such loss, theft or damage was caused by the actions of the Owner.
37. In the event that the Equipment breaks down or is damaged or becomes unsafe to use during the Period of Hire, the Customer must:
- immediately cease using the Equipment and notify the Owner;
  - take all steps necessary to prevent injury occurring to persons or damage to property or further damage to the Equipment itself; and
  - not attempt to repair the Equipment without first obtaining the Owner's written consent.
38. Upon receiving notice from the Customer under clause 37, the Owner will take all reasonable steps to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after receipt of such notice.
39. If the Equipment has broken down or is damaged or become unsafe to use as a result of the acts or omissions of the Customer, including lack of maintenance, or if the Equipment is lost, stolen or damaged beyond fair wear and tear during the Period of Hire, the Customer will be liable for and indemnify the Owner against:
- any costs incurred by the Owner to recover and repair or replace the Equipment; and
  - the Hire Rates for that portion of the Period of Hire during which the Equipment is being recovered and repaired or replaced.
40. In addition to all of its other obligations under the risk and indemnity clauses, where the use of the Equipment by the Customer results in an accident or claim, or where loss or damage is sustained to the Equipment, the Customer must:
- ensure that as soon as practicable after such incident occurs the incident is reported to:
    - the police; and
    - the Owner;
  - co-operate fully with the Owner, any insurer of the Equipment and/or any other relevant party; and
  - not without the Owner's prior written consent, make or give any offer, promise of payment, waiver, release, settlement, indemnity or admission of liability in relation to the Equipment.
41. The Owner shall not in any circumstances be liable to the Customer for any indirect or consequential loss or damage, loss of actual or anticipated profits or loss of revenue, whether or not such loss was foreseeable arising from a breach by the Owner of its obligations under this Hire Agreement, or otherwise.
42. To the maximum extent permitted by law, the Owner's maximum aggregate liability to the Customer is limited to the amount paid by the Customer under the Hire Agreement.
43. Each indemnity in this Hire Agreement is a continuing obligation, separate and independent from the other obligations of the Parties and survives termination, completion and expiration of this Hire Agreement. It is not necessary for a Party to incur expense or make any payment before enforcing a right of indemnity conferred by this Hire Agreement.

#### ENVIRONMENTAL DAMAGE OR CONTAMINATION

44. The Customer shall not by use (or misuse) of the Equipment in any manner or as a result of its conduct or any other act or omission, cause or contribute to any environmental damage or contamination to premises ("Premises") or the land on which the Equipment is situate ("Land") or any nearby land, whether above or below ground, and including any surface water or groundwater. For the purposes of this clause "contamination" means the presence of any substance in or on that Premises, Land, water or site at above background concentrations that presents, or has the potential to present, a risk of harm to human health, the environment to any environmental value.
45. The Customer must immediately notify the Owner of any incident that may result in the Equipment being responsible or involved in any such contamination or potential contamination and provide the Owner with full particulars thereof, including the nature and extent of such contamination and how it was caused.
46. Upon giving reasonable prior notice to the Customer, the Owner shall be entitled to enter the Premises or the Land or any nearby land for the purposes of ascertaining whether any contamination has taken place, and if so, its cause, nature and extent thereof and without limiting the generality of the foregoing the Owner shall be entitled to conduct such tests as are necessary including testing and inspecting the Equipment and taking water and soil samples, drilling holes and taking any other such remedial action as it considers necessary.

47. In the event of any environmental damage or contamination having been caused by, the Customer or the Customer's use (or misuse) of the Equipment, then the Customer shall do all such things necessary to remediate the contamination in accordance with the Western Australian Department of Water and Environmental Regulation Guidelines (as amended, substituted or replaced) and restoring the site to the environmental state it was in before the environmental damage or contamination occurred.
48. The cost of the remediation and restoration will be borne by the Customer and the Customer shall indemnify and reimburse all costs, losses or damage incurred by the Owner in respect of remediating the environmental damage or contamination to the satisfaction, including but not limited to costs associated with remediating the site and causing the removal of any encumbrances placed on and/or restriction placed on the use of, the Land, and further agrees to indemnify the Owner against any liability, loss or damage, cost or expense suffered by the Owner pursuant to any law in respect of contamination or otherwise including but not limited to clean-up costs, any damages claim, and all legal and associated costs of the Owner relation to the event of environmental damage or contamination.

**DAMAGE WAIVER**

49. With the exception of the satisfaction of the conditions listed in clause 50, if the Customer has not produced to the Owner copies of relevant insurance policies/certificates of currency complying with the insurance obligations in these Terms of Hire, then the Customer is deemed to have agreed to accept the relevant damage waiver options available from the Owner as outlined in the Proposal and is liable to immediately pay to the Owner the relevant charge in relation to the relevant damage waiver option. Upon satisfaction of the conditions in clause 50 below, for each separate event involving damage to or loss of the Equipment or those parts of the Equipment to which the selected damage waiver(s) relate, then the Owner agrees to waive any claim against the Customer for loss or damage to the Equipment or those parts of the Equipment in relation to which any selected damage waiver(s) relates.
50. The relevant conditions to be satisfied by the Customer to be able to take advantage of the Damage Waiver are:
- (a) for theft, the Customer has promptly reported the incident to the police and provided the Owner with a written police report;
  - (b) the Customer has cooperated with the Owner and provided the Owner with the details of the incident, including any written or photographic evidence the Owner requires;
  - (c) the loss, theft or damage does not fall into one or more of the circumstances set out in clause 51 below; and
  - (d) the Customer has paid any applicable excess.
51. The Customer notwithstanding any terms or conditions of this Hire Agreement, always remains liable for and must always pay:
- (a) any excess amount(s) arising from any loss or damage to the Equipment as notified by the Owner to the Customer from time to time;
  - (b) for loss or damage due to negligence or abandonment;
  - (c) for loss or damage due to use not in accordance with the Permitted Use; or
  - (d) it will promptly provide written evidence of its GST registration if so requested by the other Party;
  - (e) it will indemnify the other Party against any loss or damage that may arise from it not being registered for GST; and
  - (f) it will promptly notify the other Party in writing if it ceases to be registered for GST.
58. All invoices issued pursuant to this Hire Agreement shall be tax invoices for the purposes of any relevant GST legislation.
59. If GST has application to any Supply made under or in connection with this Hire Agreement, in addition to any payment or amount due under or consideration or Hire Rates payable or to be provided pursuant to this Hire Agreement ("Payment") the Owner may recover from the Customer an additional amount on account of GST, such amount will be calculated by multiplying the value of the payment for the relevant supply by the prevailing GST rate.
60. Any amount on account of GST recoverable from the Customer under this Hire Agreement must be calculated without any deduction or set-off of any amount and must be paid by the Customer at the same time as the consideration for the relevant Supply is payable or to be provide.
61. Without prejudice to any other remedies the Owner may have against the Customer, the Hire Agreement may be terminated by either party:
- (a) by either Party if the other Party commits any breach of this Hire Agreement and fails to remedy the breach within seven (7) days of written notification of the breach; or
  - (b) by either Party without prior notice if an Event of Insolvency occurs in respect of the other Party; or
  - (c) by the Owner if the Customer abandons the Equipment or repudiates the Hire Agreement, or makes any false, inaccurate, or misleading statement in relation to the making of the Hire Agreement.
62. The Customer indemnifies the Owner from and against all costs, charges, damages and expenses (including legal fees on a full indemnity basis) incurred resulting from breaches of the Hire Agreement.
63. At the end of the Period of Hire, or upon earlier termination of this Hire Agreement, the Customer shall return the Equipment to the Owner. In the event such Equipment is not returned, then the Owner will at the Customer's cost be entitled to collect and/or take possession of the Equipment, for which purposes the Customer hereby irrevocably appoints the Owner as its agent and attorney for collection and grants the Owner an irrevocable licence to enter any land or premises of the Customer or under its control upon which the Equipment is situated to recover the same.
64. Following termination of this Hire Agreement, if due to any reason not arising from the default or negligence of the Owner, the Owner is unable to gain access to the Equipment, the Customer shall continue to incur Hire Rates for the Equipment for the period commencing from the termination of this Hire Agreement and ending at the time that the Owner is able to recover the Equipment.
65. Any termination of this Hire Agreement will be without prejudice to any rights, entitlements and liabilities of either Party accrued prior to the date of such termination, up to the time of termination.
66. The Parties agree that without prejudice to any other claim or right to damages at law or in equity under this Hire Agreement, the Customer is liable to the Owner as and by way of liquidated damages for the Hire Rates for the balance of the Period of Hire as if such termination had not occurred less the sum that the Owner can

- (d) for loss or damage not otherwise within the scope of the Owner's insurance policy.

**INSURANCE**

52. During the Period of Hire (including any extensions thereof), the Customer will obtain and maintain the following insurance:
- (a) public liability insurance that:
    - (i) is for an amount not less than \$20,000,000.00; and
    - (ii) notes the interests of the Owner as owner of the Equipment, and which covers liability to any person or entity for:
    - (iii) loss or damage to property including the Equipment (and including loss of use of property); and
    - (iv) death of or injury to any person, arising out of or resulting from the use, hire, possession, maintenance, repair, storage, operation or transport of the Equipment by the Customer;
  - (b) workers' compensation that covers liability for death of or injury to any person employed by the Customer to operate, use, possess, store or maintain the Equipment including liability under any statute and at common law; and
  - (c) insurance covering repair or replacement of the Equipment in relation to all usual insurable events that:
    - (i) is for an amount not less than the value of the Equipment, which value shall be deemed to be the amount as nominated by the Owner in writing from time-to-time; and
    - (ii) notes the interests of the Owner as owner of the Equipment.
53. The Customer agrees that the Owner is irrevocably authorised by it to appropriate any insurance or other monies received by, or payable to, the Customer in respect of loss or damage to the Equipment or any part of the Equipment to satisfy any liability of the Customer pursuant to this Hire Agreement.
54. The Customer will ensure that each of its subcontractors maintains the insurance detailed in clause 52 above for the duration of any period that any such subcontractor is engaged by the Customer to operate, use, possess, store or maintain the Equipment.
55. Without limitation, the Customer must ensure that the Equipment is not used, kept or otherwise situated in a manner which would, if the Equipment was lost, stolen or damaged by fire or accident, permit any insurer of the Equipment to decline or reduce a claim arising out of such damage, theft, fire or accident.
56. The Customer shall produce to the Owner upon demand copies of all required insurance policies and certificates of currency.

**GST**

57. Each Party acknowledges and agrees that:
- (a) at the time of entering into this Hire Agreement, it is registered for GST; reasonably obtain by leasing the Equipment to a third party until the end of the Period of Hire. Nothing in this clause shall be taken to oblige the Owner to hire the Equipment to a third party on terms similar to those set out in this Hire Agreement.

**INTELLECTUAL PROPERTY**

67. The Customer acknowledges that all intellectual property rights including patents, rights to inventions, copyright, trademarks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off, rights in designs, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, whether registered or unregistered ("Intellectual Property Rights") used by or in connection with or subsisting in the Equipment are and shall remain the sole property of the Owner.

**NOTICE**

68. Any notice or statement to be given or demand to be made on either Party under this Hire Agreement:
- (a) will be in writing and effectively signed on behalf of a Party if it is executed by that Party, any of its officers, its solicitor or its duly constituted attorney; and
  - (b) may be served by any of the following methods:
    - (i) personally delivered;
    - (ii) by post in a prepaid envelope to the mailing address of the relevant Party specified in the Hire Agreement or such other address as either Party may provide in writing to the other Party from time-to-time for the purpose of this clause;
    - (iii) by facsimile transmission to the facsimile number of the other Party specified in the Hire Agreement or such other facsimile number as either Party may provide in writing to the other Party from time-to-time for the purpose of this clause; or
    - (iv) by email to the email address of the other Party specified in the Hire Agreement or such other email address as either Party may provide in writing to the other Party from time-to-time for the purpose of this clause.
69. A demand or notice if:
- (a) personally delivered will be deemed to have been served at time of delivery;
  - (b) posted, will be deemed to have been served 2 Business Days after posting;
  - (c) sent by facsimile transmission, will be deemed served on conclusion of transmission provided that the recipient's receipt appears on the sender's copy of the notice or on the activity record print-out of the sender's machine or the activity record print-out of the sender's machine shows a successful transmission of an appropriate size document to the recipient's facsimile machine on the date indicated on the print-out; and
  - (d) emailed, will be deemed served immediately upon transmission provided that no subsequent notification of non-delivery has been received by the sending Party.
70. If a notice is served or received on a day that is not a Business Day or after 5.00 pm on a Business Day it will be deemed to be given or served on the next Business Day.

**SEVERANCE**

71. If any provision of any clause or part thereof of this Hire Agreement is or becomes

invalid, illegal or unenforceable whether due to the provisions of any statute or otherwise, then that provision shall be severed from this Hire Agreement and the remaining provisions and clauses of this Hire Agreement shall remain in full force and effect and be unaffected by any severance.

**ASSIGNMENT BY OWNER**

72. The Owner has the right to assign its interest in this Contact to a third party on giving reasonable prior notice to the Customer PROVIDED HOWEVER THAT if the Customer have reasonable grounds to believe the assignment will be detrimental to the Customer's rights, the Customer may terminate the Hire Agreement without penalty giving the Owner twenty eight (28) days prior written notice of its intention to do so.

**GOVERNING LAW**

73. This Hire Agreement shall be construed with and governed by the laws of the state of Western Australia and the Parties agree that the Courts of that state shall have non-exclusive jurisdiction in relation to this Hire Agreement.

**WAIVER**

74. Any waiver must be in writing, and no delay or omission in exercising a power, right or remedy affect the ability to exercise such power, right or remedy.

**PRIVACY POLICY**

The Owner will comply with the Australian Privacy Principles in its dealings with the Customer. Copies of its privacy policy are available upon request or may be viewed on the Owner's website.