

1. DEFINITIONS

In this document:

ACL means the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Agreement has the meaning given in clause 2.1.

Company means Max Hire Pty Ltd ABN 40 123 987 093.

Conditions means these Conditions of Quotation and Sale.

Customer means the person or persons, corporation, firm, organisation, trust or other entity purchasing Goods from the Company, as identified in a Quote or Order.

Goods means the goods sold by the Company to the Customer from time to time, including without limitation vehicles, machinery, plant and equipment.

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

Order means a purchase order for Goods submitted by the Customer to the Company in response to a Quote.

PPSA means the *Personal Property Securities Act 2009* (Cth) (as amended), and the following words have the meanings given to them respectively in the PPSA: collateral, financing change statement, financing statement, interested person, purchase money security interest, registration, security agreement, security interest and verification statement.

PPSR means the Personal Property Securities Register established under section 147 of the PPSA.

Quote means a written quotation, estimate or price given by the Company to the Customer in respect of specified Goods.

2. AGREEMENT TO SUPPLY

2.1 The Company agrees to sell the Goods to the Customer on the terms of these Conditions and any Commercial Credit Application properly completed by the Customer and returned to, and accepted by, the Company (the **Agreement**).

2.2 The Agreement constitutes the entire agreement between the parties. Unless expressly agreed in writing by the Company, no other terms and conditions (including those contained in any Order) apply to the sale of any Goods.

3. QUOTES AND ORDERS

3.1 The Company may provide the Customer with a Quote. Unless stated otherwise in the Quote, prices contained in Quotes: (a) in respect of labour and Goods, are valid for 30 days from the date of the Quote (except in the case of clerical error); (b) are subject to the Customer's Order being for the full quantity of Goods quoted; (c) do not include delivery or insurance; and (d) are exclusive of GST.

3.2 Any Order submitted by the Customer is an offer to purchase the relevant Goods on the terms of these Conditions. An Order is not binding unless and until it is accepted in writing by the Company.

3.3 An Order cannot be cancelled or deferred without the prior written consent of the Company, which may be given or declined in the Company's sole discretion and subject to any conditions the Company determines.

3.4 If an Order is cancelled or deferred by the Customer, the Company reserves the right to charge the Customer for all loss, damage and expense sustained or incurred by the Company as a result of the cancellation or deferral, including without limitation holding costs, freight costs, foreign exchange and treasury costs and expenses incurred by the Company in assembling or preparing the Goods to the Customer's specification.

4. PAYMENT

4.1 If the Customer has a commercial credit account with the Company, the Customer must (unless otherwise agreed in writing) pay for used vehicles, machinery, plant and equipment, in full before delivery.

4.2 If the Customer does not have a commercial credit account with the Company: (a) the Customer must pay for the Goods in full before the Goods are delivered; and (b) the Customer authorises the Company to charge all amounts payable by the Customer under the Agreement to the Customer's credit card or account details provided to the Company.

4.3 If the Customer fails to pay an invoice in full by the due date, the Company reserves the right to charge interest (in addition to any other legal remedy the Company may have) on the amount outstanding calculated on a daily

basis and compounded monthly at the interest rate fixed under Section 2 of the *Penalty Interest Rates Act 1983* (Vic) as at the due date of payment.

4.4 All costs and expenses associated with recovering overdue amounts or otherwise enforcing the Agreement (including but not limited to legal costs on an indemnity basis) are to be paid by the Customer as a debt due and payable to the Company.

4.5 The Customer must pay any taxes, including a sum equal to the amount of any GST payable by the Company on any taxable supplies made by the Company to the Customer under or in connection with the Agreement, any duties (including stamp duty), levies, charges, fines or imposts on or in connection with the Agreement.

5. DELIVERY

5.1 Delivery of the Goods will occur at the Company's premises, unless otherwise agreed. If the Company agrees to a request from the Customer for Goods to be delivered at a place other than the Company's premises, the Customer will be responsible for, and must indemnify the Company against, all costs, expenses and liabilities associated with that delivery (except to the extent caused or contributed to by the Company).

5.2 If there is a dispute as to the time of delivery, delivery will be deemed to have occurred when the Goods left the Company's premises.

5.3 The Customer must notify the Company in writing within 7 days of delivery of any shortfall, loss or damage to the Goods delivered, failing which the Company will have no liability for any such shortfall, loss or damage. The Company must be given a reasonable opportunity to inspect the Goods in the same condition in which they were delivered.

5.4 Any special packing and packing materials used in delivering the Goods is at the Customer's expense (even if not included in a Quote).

5.5 The Company reserves the right to charge the Customer reasonable holding costs if the Customer does not take delivery of the Goods, within three days after the Company notifies the Customer that delivery is available.

5.6 Any date or time specified by the Company for delivery of Goods is an estimate only.

6. RISK IN GOODS

6.1 Risk in the Goods passes on delivery even if ownership has not passed under clause 7.

6.2 The Customer must insure the Goods on normal commercial terms with a reputable insurer for their full replacement value, noting the interest of the Company, from the time risk passes until ownership passes under clause 7. The Customer must provide the Company with Certificates of Currency evidencing the insurance on request.

6.3 The Customer must hold the proceeds of any insurance claim on trust for the Company up to the amount owing to the Company for the Goods.

7. OWNERSHIP OF GOODS

7.1 Ownership of the Goods passes to the Customer when all monies owing by the Customer to the Company (whether under the Agreement or otherwise) have been paid in full.

7.2 Until ownership of the Goods passes to the Customer: (a) the Customer must store the Goods, including products into which the Goods have been incorporated, so that they are clearly identified as the property of the Company; (b) the Customer must act in a fiduciary capacity to the Company and hold any proceeds from the sale or disposal of the Goods, or any products into which the Goods have been incorporated, on trust for the Company's benefit and pay those amounts to the Company on demand; (c) the Company may demand that the Customer return the Goods, and may enter any land or premises to repossess the Goods if that demand is not complied with; (d) the Customer must not grant a security interest in the Goods to any person other than the Company; and (e) despite any other rights or remedies to which the Company is entitled, the Company has a lien (including a right of sale) over the Goods.

8. PPSA

8.1 The Customer acknowledges that the Agreement may be a security agreement in respect of which the Goods are the collateral.

8.2 The Customer understands that the Company may effect and maintain registrations on the PPSR in respect of security interests (including purchase money security interests) created or contemplated by the Agreement in the Goods and any proceeds from dealing in the Goods.

8.3 The Customer waives its right under section 157 of the PPSA to receive a verification statement in relation to any registration on the PPSR of a security interest in respect of the Goods.

8.4 The Customer must not without the Company's prior written consent: (a) register a financing change statement in respect of a security interest

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- created or contemplated by the Agreement; or (b) register, or allow to be registered, in a third party's favour a financing statement or financing change statement in respect of the Goods.
- 8.5 The Customer and the Company agree to contract out of the enforcement provisions referred to in section 115(1) of the PPSA (to the extent permitted by section 115 and if they would otherwise have applied to the enforcement of a security interest arising under or in connection with the Agreement).
- 8.6 The Customer and the Company agree, to the extent permitted by section 115(7) of the PPSA, to contract out of Part 4.3 of the PPSA, other than sections 123(1), 126, 128, 129(1), 133, 134(1), 136(1) and 136(2).
- 8.7 The Customer may not without the Company's prior written consent assign or factor its right and interest in any debt it is owed by a customer on account of the proceeds of sale of any Goods in respect of which title has not passed to the Customer under clause 7, where the Customer has sold those Goods to its customer on credit or deferred payment terms.
9. **SECURITY**
- 9.1 In order to secure the Customer's due and punctual performance of all its obligations to the Company (including the payment of all monies owing) under the Agreement or otherwise, the Customer charges all of its legal and beneficial interest (present and future) in any and all real property.
- 9.2 On the Company's request, the Customer must at its cost execute any documents and do all things required by the Company to more fully document or better secure a charge arising under clause 9.1 on such terms as it sees fit or to register a charge or security interest in respect of any of the Customer's real property. The Customer consents to the Company lodging caveats in respect of any of the Customer's real property.
- 9.3 The Customer appoints the Company or an authorised officer of the Company to be its attorney for the purpose of executing and registering such documents.
10. **WARRANTIES AND LIABILITY**
- 10.1 Except as provided for in these Conditions, to the maximum extent permitted by law, all warranties, conditions, representations and guarantees (whether express or implied) in respect of the Agreement or the Goods are excluded. Used Goods are sold in an 'as is' condition and no warranties (express or implied) of any kind are given in respect of used Goods.
- 10.2 The Company will provide the Customer with details of any applicable manufacturers' warranties in respect of the Goods (where the Company is not the manufacturer), which will be the only warranties given to the Customer in respect of those Goods.
- 10.3 The Company warrants that any plant it manufactures will be free from defects in materials and workmanship for 180 days from the date the plant is delivered to the Customer. The Company's liability is limited, at the Company's election, to the replacement or repair of the defective materials or the repair of the defective workmanship. This warranty does not cover labour for removal or installation, or parts or exchange components. The Customer will bear all transportation and handling costs.
- 10.4 The Customer agrees that it has satisfied itself before placing its Order as to the condition and suitability of the Goods for the Customer's intended use. Subject to clause 8.7, the Company makes no representation or warranty as to the suitability of the Goods for the Customer's intended use.
- 10.5 If a condition, representation or guarantee is imposed by law and is not able to be excluded, as far as the law permits the Company's liability for a breach of that condition, representation or guarantee will be limited to the replacement or repair of the Goods or the supply of equivalent goods, or the payment of the cost of replacement, repair or equivalent supply.
- 10.6 Nothing in this Agreement affects any rights or remedies the Customer may have under the ACL or any other law if, and to the extent that, those rights or remedies may not lawfully be excluded or modified.
- 10.7 The Company's liability for consequential, special or indirect loss, loss of profits, loss of expected savings, loss of business or opportunity or business interruption arising under or in connection with the Agreement or the Goods, whether in contract, tort (including negligence) at law or in equity and whether or not foreseeable, is excluded to the maximum extent permitted by law.
- 10.8 The Customer is responsible for ensuring that all: (a) applicable health and safety regulations are observed and other appropriate steps taken in respect of the storage, handling and use of the Goods; and (b) safety information, operating instructions and notices supplied with the Goods are attached to (or contained in) the Goods, conveyed to and observed by any person using the Goods and not defaced or removed from the Goods.
- 10.9 The Company will not be liable to the Customer for any loss or damage whatsoever if the Company is delayed or prevented from delivering Goods or otherwise performing its obligations under the Agreement due to any cause or circumstance beyond the Company's reasonable control.
11. **DEFAULT**
- 11.1 The Company may terminate all or any part of an unperformed Order or the Agreement as a whole immediately on written notice to the Customer if: (a) the Customer breaches the Agreement and fails to remedy that breach within 5 days of receiving notice to do so; (b) the Customer becomes insolvent, bankrupt, dies, ceases to carry on business, enters into liquidation or administration or has a receiver appointed to any of its assets; or (c) in the Company's reasonable opinion any other event occurs which is likely to materially affect the Customer's ability to meet its obligations to the Company.
- 11.2 The Customer may terminate an unperformed Order or the Agreement as a whole immediately if the Company becomes insolvent, ceases to carry on business, enters into liquidation or administration or has a receiver appointed to any of its assets.
- 11.3 The parties' termination rights are in addition to any other rights or remedies they have under the Agreement or at law or in equity.
- 11.4 Following termination of an Order or the Agreement as a whole, the Company may take all necessary steps to repossess any Goods in respect of which ownership has not transferred to the Customer under clause 7.1. The Customer authorises the Company to enter the Customer's premises to enable the Company to repossess the Goods. If the Company reasonably suspects that the Goods are located on premises other than the Customer's premises, the Company or its agents may enter those other premises as the Customer's agent to repossess the Goods. The Customer indemnifies the Company from and against all costs, claims, actions and liabilities the Company suffers or incurs as a consequence of repossessing the Goods, including legal costs on an indemnity basis.
12. **TRADE-IN**
- 12.1 If the Company agrees to purchase trade-in goods from the Customer, the Customer warrants that it has or will have at the time of delivery unencumbered title to the trade-in goods.
- 12.2 Risk in trade-in goods remains with the Customer until inspection and acceptance by the Company at the Company's nominated point of delivery (which will be at the Customer's expense).
- 12.3 If on inspection the Company reasonably considers that the value of the trade-in goods is significantly less than the value previously attributed to those goods by the Company (as shown in the Quote), the Company reserves the right to reduce the value attributed to those goods accordingly and the difference becomes a debt owing from the Customer to the Company.
13. **PRIVACY**
- 13.1 The Company will comply with the Australian Privacy Principles (as amended or replaced) in all dealings with the Customer.
- 13.2 The Customer agrees and acknowledges that the Company will collect personal information about the Customer and may use and / or disclose that information to: (a) provide and market goods and services to the Customer; (b) assess the Customer's credit worthiness; and (c) assist the Company in the collection of overdue payments. If the Customer does not provide the personal information requested then the Company may refuse to enter into the Agreement. The Company may disclose the personal information to other related entities and to Caterpillar Inc and its related entities in Australia, Singapore and the United States of America.
- 13.3 The Company's Privacy Policy contains information about how the Customer may access the personal information about the individual that is held by the Company and seek correction of such information if required. It also contains information about how the Customer can complain about a breach of the Australian Privacy Principles, or a registered APP code (if any) that binds the Company and how the Company will deal with the complaint. The Customer may obtain a copy of the Company's Privacy Policy by request or by visiting www.maxhire.com.au.
- 13.4 For privacy related enquiries, please contact: Max Hire Pty Ltd, Company Secretary, Phone: (03) 9566 0666, email: privacy@maxhire.com.au.
14. **VARIATION**
- The Company may vary these Conditions at any time by publishing the varied version at www.maxhire.com.au. The varied terms will apply to all Quotes issued, and Orders subsequently accepted, by the Company after

the varied terms are published. Accepted Orders which remain unperformed at the date of publication are not affected. No other variations to the Agreement can be made without the written agreement of the Company and the Customer.

15. **EXCLUSIONS FROM CERTAIN CONTRACTS**

If the Agreement is a consumer contract or small business contract as defined in the ACL or the *Australian Securities and Investments Commission Act 2001* (Cth), clause 9 will not apply to the Agreement.

16. **NO RELIANCE**

Subject to clause 8.6, the Customer acknowledges that neither the Company nor any person acting on behalf of the Company has made any representation or other inducement to the Customer to enter into the Agreement and the Customer has not entered into the Agreement in reliance on any representations or inducements (including in relation to the Goods) except for any representations contained in this Agreement.

17. **PRODUCT LINK**

17.1 The Customer acknowledges that the Goods may be fitted with Caterpillar's equipment remote monitoring and information collection system known as Product Link and if this is the case: (a) Data and Information concerning the Goods, their condition and operation may be transmitted to the Company, Caterpillar, Sitech and / or other Caterpillar dealers; and (b) the Customer will be responsible for any periodic subscription fees payable to activate and utilise Product Link unless those fees are included in the purchase price of the relevant Goods.

17.2 In respect of any Goods fitted with Product Link, the Customer grants to the Company an irrevocable royalty free licence to sell, sub licence, grant access to or in any other way use, all Data and Information created by, or provided to, the Company (including without limitation Data and Information transmitted by Product Link) in connection with any servicing, maintenance, repair or other dealings with the Goods.

17.3 In this clause 17, **Data and Information** includes without limitation, machine serial number and location, operational data (including but not limited to fault codes, emissions data, fuel usage, service meter hours, software and hardware version numbers), details of installed attachments, and machine service and repair history.

18. **GENERAL**

18.1 The Agreement is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

18.2 If any part of the Agreement becomes void or unenforceable then that part is severed so that all parts which are not void or unenforceable remain in full force and effect.

18.3 A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

18.4 Any indemnity under the Agreement is independent and survives termination of the Agreement.

18.5 Time is of the essence in respect of the Customer's obligations under the Agreement.