

CAPS Rental Terms and Conditions 2025

1. GENERAL

1.1 Definitions. In this Rental Agreement:

- (a) The "Owner" is CAPS AUSTRALIA PTY LTD. (ABN 79 008 877 790).
- (b) The "Renter" means the person, firm or corporation renting plant from the Owner.
- (c) The "Plant" means all plant, equipment, machinery of whatever nature rent by the renter from the Owner.
- (d) The "Rent" means the amount charged by the Owner and payable by the Renter for the Plant for the Rental Period;
- (e) The "Rental Period" means the period commencing when the Plant is taken from the Owner's premises by the Renter and ending when the Plant is returned to the Owner's premises or delivered to another place named by the Owner.

2. THE RENTAL AGREEMENT

2.1 Any quotation, estimate or pricing prepared or represented by the Owner and communicated to the Renter (Quote) is indicative only, is not an offer to contract, and may be withdrawn or varied by the Owner at any time prior to acceptance.

2.2 If the Renter orders the rental of Equipment and the order is consistent with a Quote (an Order), the Renter offers to contract with The Owner on the basis of the terms and conditions set out in the Order and the Quote.

2.3 The Owner accepts and is deemed to have accepted an Order made by the Renter in accordance with clause 2.2 of these Terms, on the earlier of:

- (a) when The Renter notifies the Owner that it accepts the Order, by any of the following; PO, returned Rental Agreement or Email Correspondence ;
- (b) when the rental Equipment is delivered to the Renter in performance of the Order; and
- (c) 3 days after The Owner receives the Order and does not dispute it or any part of it.

2.4 Upon the Owner accepting under clause 2.3, a binding contract comes into existence between the Owner and the Renter incorporating the following documents (together the Rental Agreement):

- (a) any Quote, invoice or other document of the Owner whether attaching these Terms to the back of it or not;
- (b) any notice of acceptance provided by The Owner in accordance with clause 2.3(a);
- (c) these Terms;
- (d) any document attached or annexed to the back of these Terms by the Owner; and
- (e) the Order placed by the Renter including any attached or associated terms and conditions.

2.5 In the event of any inconsistency, ambiguity or discrepancy, the order of precedence set out above applies with the first listed document taking the highest priority and so on.

2.6 If, after applying the order of precedence, there still remains an inconsistency, ambiguity or discrepancy, either party may give the other party written notice.

2.7 If notice is given under clause 2.6, The Owner shall (acting reasonably) direct the Renter as to the proper interpretation and any liability for additional costs.

2.8 Maintenance to be carried out exclusively by CAPS Ltd Pty. Maintenance carried out by another provided will not be recognised as a legitimate service by CAPS.

3. CREDIT

3.1 Upon completion by the Renter of an Application for Commercial Credit (Credit Application), a copy of which is available at www.caps.com.au, a credit facility may, in the sole and absolute discretion of The Owner, be made available to the Renter.

3.2 The Renter is not entitled to any credit or use of other funds from the Owner until the Owner accepts a Credit Application by formal written notice to the Renter from a properly authorised credit officer stating that a credit facility has been made available and the limit.

3.3 The Owner may, acting in its sole and absolute discretion, and without being obliged to do so

- (a) specify the maximum amount that may be charged to the credit facility within a specified time (Credit Limit); and
- (b) regularly assess the Credit Limit and adjust it accordingly by increasing or decreasing it, or changing these terms.

3.4 The Renter must not charge to the credit facility amounts that exceed the Credit Limit. To the extent that it does, the Owner is entitled to immediate repayment of any and all amounts charged to the credit facility in excess of the Credit Limit as a debt immediately due and payable.

3.5 If the personal guarantee on the Credit Application is selected, in consideration of the Owner supplying the rental Equipment and a credit facility to the Renter, the guarantors jointly and severally guarantee payment to the Owner of all money due and payable by the Renter to the Owner on any existing or future account or in any manner whatsoever.

4. RENTAL PERIOD

4.1 The Renter rents the equipment detailed in the Quote (Equipment) from the Owner for the Initial Rental Period specified in the Quote, as extended under clause 4.2 or terminated earlier in accordance with this Rental Agreement (the Rental Period). (a) The Owner may terminate the Rental Agreement prior to the end of the Initial Rental Period by giving the Renter 3 days' prior written notice, the Renter must immediately return the Equipment to the Owner and pay the charges specified in the Quote (Rental Charges) up to the time of the return of the Equipment to the Owner.

4.2 Upon expiration of the Initial Rental Period specified in the Quote, the Renter may continue renting the Equipment on the same terms and conditions but the Rental Period will be deemed to be on a month to month basis only, and

(a) The Owner may terminate the Rental Agreement by giving the Renter 3 days' prior written notice and on expiry, the Renter must immediately return the Equipment to the Owner and pay the charges specified in the Quote (Rental Charges) up to the time of the return of the Equipment to the Owner; and (b) the Renter may terminate the Rental Agreement by giving the Owner 3 days' prior written notice and on expiry the Renter must immediately return the Equipment to The Owner and pay the Rental Charges up to the end of the month in which the extended Rental Period expired.

4.3 Notwithstanding the underlying term of the contract, the Renter is to advise the owner in writing with no less than 3 days' notice of its intent to return the equipment. Failure to do so will result in a further months' rent at the contracted rate being charged for each month such notice is not received.

5. RENTAL CHARGES

5.1 The Renter must pay the Rental Charges to the Owner for the duration of the Rental Period.

5.2 If the Equipment is returned:

(a) on or before 8am there will be no Rental Charges for that day;

(b) after 8am but before 12pm, 10% of the weekly Rental Charges will apply for that day when the Rental is weekly, or 50% of the daily Rental Charges will apply for that day when the Rental is daily; and

(c) on or after 12pm, 20% of the weekly Rental Charges will apply for that day when the Rental is weekly, or 100% of the daily Rental Charges will apply for that day when the Rental is daily.

5.3 The Rental Charges are based on the Equipment being used for the defined hours as displayed in the quote.

5.4 To the extent the actual hours used on any given day or week (as applicable) exceed the maximum allowable daily or weekly hours (as applicable), the Renter must pay the Owner the Excess Hours Rental Rate as specified in the Quote for each additional hour of use or part thereof.

5.5 If the Initial Rental Period is equal to or exceeds 6 months and the Renter wishes to return the Equipment to the Owner prior to the expiry of the Rental Period (except if clause 4.2 applies):

(a) with greater than or equal to 6 months remaining on the Initial Rental Period, the Renter must pay in addition to any Rental Charges, a further 6 months of Rental Charges that would have been payable calculated from the date that the Equipment is returned to the Owner or its nominated location; or

(b) with less than 6 months remaining on the Initial Rental Period, the Renter shall be liable to pay in addition to any Rental Charges, the balance of the Rental Charges that would have been payable under the Rental Agreement for the remainder of the Initial Rental Period as if the Renter had not returned.

6. OTHER CHARGES

6.1 (Consumables) During the Rental Period, the Renter is responsible for and must pay all costs of operating the Equipment, including consumable costs such as fuels, oils, grease, ultracoolant top-up, lubricants, desiccant and hoses.

6.2 (Taxes and Government Charges) The Renter shall be liable for stamp duty, goods and services tax (GST) and all other applicable taxes, duties, levies, tolls, penalties and any other government charges imposed in connection with the Rental Agreement. All prices are exclusive of GST, unless otherwise stated.

6.3 (Credit Card Payments) the Renter acknowledges that the Owner may impose a charge for accepting payments by credit card.

6.4 (Delivery) If the Renter requires the Owner to deliver, unload, collect or install the Equipment, the Renter shall be liable for the cost of delivery, crantage, collection, installation and commissioning.

6.5 (Costs and Expenses) The Renter must pay any costs or expenses incurred by the Owner in enforcing the Rental Agreement, as a result of the Renter's breach of the Rental Agreement or in order to return the Equipment to the same condition as at the date the Equipment was Delivered to the Renter (including any cleaning costs).

6.6 (Maintenance and Servicing) The Renter shall be liable for all daily maintenance for the machine, the owner is liable for all maintenance of the rental equipment. Maintenance to be carried out exclusively by CAPS Ltd Pty.

7. PAYMENT

7.1 The Renter must pay all Rental Charges and other amounts to the Owner and ensure the Owner receives such amounts in full, cleared funds and without any deduction or set off within 30 days from the date of invoice, monthly in advance with the first rental payment due on the Date Out.

7.2 To the extent that the Renter has the Owners approved credit facility with immediately available and sufficient funds to pay the full Rental Charges and any other amounts due and payable under this Rental Agreement:

- (a) The Owner may issue an invoice for payment on the last day of each month on account of Equipment rented, or undertaken to be rented, up to and including the date of that invoice;
- (b) if the Renter disputes the whole or any part of the invoice issued under clause 7.2(a), the Renter must, within 14 days of the invoice date, give the Owner notice in writing with reasons why it disputes the amount claimed and provide adequate reasons;
- and (c) within 28 days after the date of an invoice issued under clause 7.2(a), except to the extent validly disputed under clause 7.2(b), the Renter must pay, and ensure the Owner receives in full, cleared funds and without any deduction or set off, the amount invoiced.

7.3 Any invoice issued by the Owner before or after the last day of each month is taken to be issued on the last day of the month in which it is issued, and for the above payment process to apply accordingly.

7.4 Time is of the essence in relation to payment of Rental Charges. The Owner may charge the Renter interest calculated on a daily basis and compounded monthly on overdue amounts from the due date for payment to the date of actual receipt of payment at an interest rate which is 10% greater than the Reserve Bank of Australia cash target rate as at the due date of payment.

7.5 The Renter remains responsible for all amounts payable under the Rental Agreement. If the Renter has directed billings for such payments and charges to be transferred to another person, firm or corporation, which upon so being billed has failed to make payment as required of the Renter under these Terms, then the Renter shall upon demand promptly pay such payments and charges to the Owner.

7.6 The Owner may set off, or otherwise allocate or account for, amounts paid by the Renter to or against any other amounts owed by the Renter to the Owner or claimed to be so owed whether arising under or in connection with this Contract or otherwise.

8. PURCHASE OPTION

8.1 At any time during the Rental Period, the Renter may, by notice in writing to the Owner, offer to purchase the Equipment.

8.2 The amount offered by the Renter to the Owner to purchase the Equipment shall be equal to:

- (a) the purchase price stated in the Quote; if applicable

8.3 If a purchase price is not state in the quote, the renter may ask the owner to provide a purchase price.

8.4 The Owner may accept the Renter's offer by notice in writing.

8.5 From the time of payment of the amounts specified in clause 8.3 & 8.4 above, the Terms and Conditions of Sale will govern the purchase and these terms will be superseded.

9. RENTER'S OBLIGATIONS

9.1 (Possession and Use by the Renter) The Rental Agreement is personal to the Renter and the Renter will not allow any other person or entity to use or have possession of the Equipment at any time during the Rental Period.

9.2 Operation of Equipment: The Renter acknowledges and agrees that the Owner has provided the Renter with the manufacturer's specific operation and maintenance manual with respect to the Equipment (O&M Manual).

9.3 Standards and laws: The Renter will:

- (a) comply with all statutory laws and regulations and all common laws with respect to use of the Equipment and will not permit the Equipment to be used for any illegal purpose or in any manner that would amount to a breach of any statute or any other law;
- (b) operate the Equipment safely, only for its intended use and in accordance with the O&M Manual;
- (c) ensure persons operating the Equipment are suitably instructed in its safe and proper use and where necessary hold a current certificate of competency and/or are licensed to use the Equipment;
- (d) ensure that the Equipment is not operated by any person under the influence of alcohol and/or drugs; and
- (e) ensure that the Equipment is used only for the general purpose for which it was designed, in suitable terrain as determined by CAPS and in a manner which has regard to the capacity, capabilities and limitations of the Equipment.

9.4 Safety: The Renter must at all times:

- (a) ensure that all safety information supplied with the Equipment is attached to the Equipment and conveyed to any person using the Equipment;
- (b) maintain any safety signs supplied by the Owner and ensure they are clearly legible and brought to the attention of any person using the Equipment;
- (c) at all times ensure that all safety and operating instructions and notices are observed and not defaced or removed from the Equipment;
- (d) ensure that any and all persons using the Equipment wear suitable clothing and any protection required or recommended by the Owner or the safety and operating instructions; and
- (e) conduct a site hazard assessment prior to using the Equipment.

9.5 Demonstrator Operator: Any person provided by the Owner to demonstrate the operation of the Equipment shall be under the sole direction and control of the Renter. The Renter is responsible for any and all claims, loss or damages whatsoever arising in connection with the operation of the Equipment by that person. Where a demonstrator operator is provided by The Owner, no other person shall operate the Equipment without Owners prior written consent.

9.6 Cleaning and Maintenance: The Renter must conduct the daily maintenance, and its own cost, clean, fuel, lubricate and maintain the Equipment to keep it in good condition at all times in accordance with:

- (a) the Owners instructions; and
- (b) the O&M Manual.

9.7 The Renter is responsible for all minor maintenance, breakdowns and all wear and damage to the equipment external panels, undercarriage, tyres and drawbar. Rental Rates exclude major components including replacement of motors, coolers, controllers and air ends. Any major components expenditure can be paid for directly by the renter or will be added to the written down value of the equipment and recognised in the Purchase Option Price.

9.8 Without limiting clauses 9.6 and 9.7, the Renter must ensure that preventative maintenance is performed on the Equipment with less frequently than every 250 hours (Diesel Engines) of use and every 2,000 hours (Electric Air Compressors) of use.

9.9 Storage and Location: The Renter must ensure that the Equipment is at all times stored safely and protected from theft, loss or damage.

The Renter must ensure that the Equipment is at all times stored in an environment deemed safe and reasonable for the machinery by CAPS at the time of commissioning. The Renter cannot move the equipment into another environment without the written consent of CAPS.

The Renter cannot transport equipment into a different state from which the equipment was collected from, without the written consent of CAPS. If equipment is transported without written consent, equipment must be transported back to the CAPS branch where it was collected within 3 business days. Any and all transport damage will be charged to the Renter.

9.10 The Renter must not remove the Equipment from the Site specified in the Quote without the Owners prior written consent.

9.11 Alteration and Identifying Marks: The Renter must not alter, deface or erase any identifying mark, plate or number on the Equipment.

9.12 The Renter must not in any way alter, affix or attach anything to, modify, tamper with, damage or repair the Equipment without the Owners written consent.

9.13 Access and Inspection: The Owner and its representatives have the right to enter the Site at any time upon giving prior reasonable notice to inspect, maintain and/or repair the Equipment. The Renter must assist the Owners and its representatives in exercising its rights under this clause.

9.14 Safe Loading:

9.15 The Renter must safely secure all Equipment (or items loaded in or on the Equipment) to any vehicle transporting or loaded with the Equipment.

9.16 Return of Equipment: The Renter must, at its own cost, return the Equipment to Owner at the end of the Rental Period.

9.17 The Renter must return the Equipment to the Owners premises from where it was collected by the Renter on the Date Out, unless otherwise agreed between the parties upon receipt of the notice to return. The Owner may take all steps necessary (including legal action) to enforce this clause, including entering the Renter's premises to repossess the Equipment.

9.18 Wear and Tear: The Renter must ensure that the Equipment is returned to the Owners in the same condition it was delivered on the Date Out (except for fair wear and tear, Fair wear and tear meaning the level of deterioration of the Owners Equipment over the Rental Period when used, operated and maintained by the Renter in accordance with the quote that may be reasonably expected. This shall include superficial scratching or scuffing, chipping to paintwork and wear to parts that would normally be expected to wear, but does not include dents or other impact damage, damage to glass or instruments, panel damage, structural damage, excessive rust and corrosion or damage to drive systems). Fair wear & tear return conditions are applicable on all equipment. For the avoidance of doubt, any repairs required at the end of term to return the equipment to full working order will be charged back to the Renter. If applicable; The Equipment must be returned with a full tank of fuel or the Renter must pay the Owner the cost of filling that tank at \$2.50 litre.

9.19 The Renter indemnifies the Owner for the cost of any renovations or repairs performed by the Owner to return the Equipment to the required return condition.

10. WARRANTY

10.1 As far as the law permits, the Owner excludes all warranties, conditions, rights and remedies the Renter would otherwise be entitled to by law.

10.2 The Renter is deemed to be satisfied that the Equipment is in good working order and as to the suitability, condition and fitness for purpose of the Equipment.

10.3 The Renter acknowledges and agrees that it has not relied on the Owners skill or judgment or any representation by or on behalf of the Owner in connection with the Equipment, including in connection with its purpose, suitability, condition, use or performance.

10.4 The Renter's obligation to repair the Equipment shall be reduced to the extent that any manufacturer's warranty with respect to the Equipment may apply during the Rental Period provided that the Renter is not in default under the Rental Agreement.

10.5 The Renter must notify the Owner promptly if it becomes aware of a defect or issue with the Equipment to which the manufacturer's warranty may respond, which will be dealt with in accordance with Owners warranty claims process as applicable at the relevant time.

11. EQUIPMENT BREAKDOWN

11.1 If the Equipment breaks down or becomes unsafe to operate, the Renter shall immediately stop using the Equipment, ensure it does not sustain any further damage and prevent the Equipment from causing injury, loss or damage to any person or property.

11.2 The Renter must not repair or attempt to repair the Equipment without the Owner's prior written consent.

11.3 The Renter must immediately notify and provide full details to the Owner of any loss, theft, breakdown or damage to the Equipment.

11.4 After receiving such notification the Owner will (in our absolute discretion): (i) repair or replace it; or (ii) terminate the Agreement and refund any rental fees paid in advance, less any amounts that you owe us.

11.5 Where the plant breakdown is due to the negligence or misuse on the part or attributable to the Renter of the Plant, the Owner will continue to charge rental until the Plant has been repaired or replaced at the Renters expense, such repairs or replacement being expressly authorised by the Owner.

12. RISK AND TITLE

12.1 The Renter acknowledges that in all circumstances the Owner retains legal and equitable title to the Equipment. The rights of the Renter to use the Equipment are as a Bailee only unless and until title in the Equipment passes to the Renter.

12.2 The Renter must not offer, sell, assign, sub-let, mortgage, encumber, pledge or otherwise deal with the Equipment or any interest in the Equipment in any way that is inconsistent with the rights of The Owner as owner of the Equipment.

12.3 Risk in the Equipment passes to the Renter upon collection or delivery of the Equipment and remains with the Renter until the Equipment is collected by or returned to the Owner.

12.4 Capitalised terms in this clause, that are not otherwise defined elsewhere in the Rental Agreement, have the same meaning as set out in the Personal Property Securities Act 2009 (Cth) (PPSA) unless the context otherwise requires.

12.5 A Security Interest or Security Interests may be registered by the Owner in relation to the Equipment and the Proceeds arising in respect of any dealing in the Equipment in accordance with the PPSA (and in any other manner the Owner considers appropriate).

12.6 The Renter waives its rights to receive a copy of any Verification Statement after the registration of a Financing Statement or Financing Change Statement in respect of the Security Interest(s) created by the Rental Agreement.

12.7 The Owner shall have a lien over any of the Renter's other goods under The Owner's control for all Rental Charges claimed due and payable to The Owner until payment is received in full, cleared funds without deduction or set-off.

12.8 Neither party may register, sell, dispose of or otherwise deal in any Security Interest in the Equipment or proceeds from any such interest other than as permitted by this clause.

13. TERMINATION OF CREDIT

13.1 The Owner reserves the right, in its sole and absolute discretion and without any obligation or duty to do so, to suspend, withdraw or cancel the credit facility at any time with or without notice.

13.2 The Owner is not liable for any loss, damage or delay whatsoever arising from the refusal, suspension, withdrawal or cancellation by the Owner to provide credit.

13.3 If the Owner terminates a credit facility pursuant to clause 13.1, the Owner may, without limitation, exercise its entitlements under clauses 14.3 and 14.4 of these Terms.

14. TERMINATION FOR CAUSE

14.1 The Owner may terminate the Rental Agreement by written notice to the Renter if the Renter commits a default and fails to remedy that default within 7 days of receiving notice requiring the Renter to do so. The Renter is in default where during the Rental Period:

- (a) the Renter fails to pay the Rental Charges as required and by the time required by the Rental Agreement;
- (b) any execution or other process of any Court or authority is issued against the Renter or the Renter's assets;
- (c) the Renter ceases or threatens to cease to carry on its business;
- (d) any insurance renewal or insurance proposal made by the Renter in respect of the Equipment is declined;
- (e) any insurance policy in respect of the Equipment lapses or is cancelled; or
- (f) a representation or statement made or taken to be made by or on behalf of the Renter to The Owner in connection with the Rental Agreement is incorrect or misleading in a material respect.

14.2 Either party may terminate the Contract, or any part of it, effective immediately, if the other party:

- (a) commits a material breach which is not remedied within fourteen (14) days after written notice from the other party;
- (b) is the subject of an insolvency event meaning:
 - (i) the party becomes insolvent or is otherwise unable to pay its debts as and when they fall due;
 - (ii) proceedings are commenced to appoint an external administrator or liquidator to the party;
 - (iii) the party is placed under official management or administration;
 - (iv) the party is presumed to be insolvent under the Corporations Act following a statutory demand; or
 - (v) circumstances occur which, in The Owner's sole discretion, indicate the Renter's inability to pay.

14.3 If either party terminates under clause 13 of these Terms or this clause 14, its rights will be as if the other party had repudiated and the first party elected to treat the Contract as at an end, and in the case of The Owner terminating:

- (a) any deposits, slot fees and any other advanced payments paid, or required to be paid, will be forfeited to the Owner;
 - (b) all amounts owing to the Owner or already invoiced by the Owner to the Renter, shall immediately become due and payable;
- and

(c) The Owner shall immediately be entitled to retake possession of all rental Equipment in the possession or under the control of the Renter.

14.4 For the purpose of enabling the Owner to retake possession of the rental Equipment under clause 14.3, the Renter irrevocably:

- (a) authorises the Owner, its employees, officers and appointed subcontractors to enter any of the Renter's sites or premises in which the rental Equipment may be located; and
- (b) appoints the Owner, its employees, officers and appointed subcontractors as the Renter's agent to enter any site or premises in which rental Equipment may be located.

14.5 On demand by the Owner, the Renter must pay the Owner all costs and expenses incurred or to be incurred by the Owner in connection with the Owner exercising its rights under this clause 14.

15. END OF RENTAL PERIOD

15.1 At the expiration of the Rental Period, the Renter shall at its own expense forthwith return the Equipment to the Owner. The Owner may take all steps necessary (including legal action) to enforce this clause, including entering the Renters premises to repossess the Equipment.

15.2 The Owner shall be entitled to recover from the Renter on demand:

- (a) any Rental Charges or other monies payable to the Owner under the Rental Agreement (including interest on unpaid amounts and other indemnified amounts);
- (b) the cost of any renovations or repairs performed by the Owner to return the Equipment to the condition specified in clause 9.18;
- (c) all costs incurred by the Owner in re-taking possession of the Equipment; and
- (d) any transportation costs in respect of the re-possession of the Equipment.

15.3 Where the Rental Agreement is terminated under clause 15.1,

The Owner will also be entitled to recover:

- (a) any storage costs in respect of the Equipment; and
- (b) any Rental Charges which would accrue had the Rental Agreement not been terminated, until the end of the Rental Period, had the Rental Agreement not been terminated under 15.1, or the date the Equipment is rented to a third party, whichever occurs earlier.

15.4 The Renter acknowledges that the Owner shall not be required to mitigate its loss by sale of the Equipment or account to the Renter for any proceeds of sale in the event the Equipment is sold by the Owner.

16. CLAIMS AND PROCEEDINGS

16.1 Where use of the Equipment by the Renter results in any claim, accident, damage or loss, the Renter:

- (a) will as soon as is practicable, and in any event within 5 days, report such incident to the relevant authority (where required to do so) and in writing to the Owner;
- (b) will not, without the Owner's written consent, make or give any offer, promise of payment, settlement, waiver, release, indemnity or admission of liability without the Owner's prior written consent;
- (c) agrees that the Owner or its insurer may at its own cost bring, defend, enforce, or settle any legal proceedings against third parties; and
- (d) will as soon as is practicable complete and return the Owner's accident report and furnish to the Owner any statements, information or assistance which the Owner or its insurer may reasonably require, including attending at lawyer's offices and at court to give evidence.

17. CONDITION REPORTS

17.1 One business day prior to the renter taking possession of the owner's equipment, the owner will complete an opening condition report that documents the general condition of the rental equipment (On-Rental Report). This will include any attached tools, accessories or documentation. This may be made available to the Renter if required. If the General condition of the Rental Equipment is made available to the Renter and the Renter reports the condition differs from the description of the general condition, the Renter may require the Owner to correct the general condition of the rental equipment (On-Rental Report).

17.2 When the owner retakes possession of the rented equipment, the owner will complete a closing condition report that documents the general condition of the rental equipment (Off-Rental Report). If the Closing Condition Report compared with the Starting Condition Report reveals that the Owners Equipment has suffered damage during the Rental Period (excluding Fair Wear and Tear, as described in 9.18), the Renter will be responsible for that damage and invoiced for the repair. The Renter will be responsible for all direct and verifiable costs and expenses incurred by the Owners in implementing repair of equipment, which will be immediately payable on demand by the Owner.

18. INDEMNITY

18.1 The Renter is liable for and indemnifies the Owner against all liability, loss, costs and expenses (including legal fees, costs and disbursements) in connection with any damage or destruction of property, personal injury, illness, disease or death, and to the extent that a credit facility applies, any act or omission or breach by the Renter of these Terms, except to the extent caused by the Owner's negligence, including the cost of repairing or replacing the Equipment at the full new replacement cost, salvage costs and Rental Charges while the Equipment is repaired or replaced.

19. INSURANCE

19.1 The Renter agrees to insure and keep the Equipment insured with a reputable and solvent insurer in the names of the Owner and the Renter for the full new replacement value as specified in the Quote against fire, accident, theft, damage and transport and such other risks as the Owner may require, and maintain policies of insurance for third party and public liability indemnity cover of not less than 10 million dollars.

19.2 The Renter will pay promptly all premiums and stamp duty in respect of such policy of insurance and irrevocably authorizes the Owner to receive all insurance monies, and will not do, and not fail to do, or permit or allow to be done anything which might or could prejudice any insurance of the Equipment or allow the insurer to refuse or reduce a claim.

19.3 The Renter will promptly following a request by the Owner to provide to the Owner certificates of currency or other evidence acceptable to the Owner (which may include full copies of the relevant insurance policy) that the required insurance is in place.

20. LIMITATION OF LIABILITY

20.1 (Overall cap) To the extent permitted by law, the liability of the Owner, if any, arising out of or in connection with this Rental Agreement including in negligence, under any indemnity and any other right of action whatsoever, is limited at the option of and in the (reasonable) discretion of the Owner:

(a) to a refund of the Rental Charges;

(b) to the supply of the Equipment again; or

(c) to payment for the cost of having the Equipment supplied again, and in any event and notwithstanding any other provision of this Rental Agreement, to an amount in aggregate up to a limit of 10% of the total Rental Charges.

20.4 (Consequential loss) The Owner shall not be liable to the Renter for any consequential, indirect or incidental loss, loss of profits, lost production, loss of anticipated savings, loss of opportunity, business reputation or damage to goodwill arising from or in connection with its rental of Equipment.

20.5 (Insurable losses) Notwithstanding any other provision of this Rental Agreement, the total liability of each party to the other arising out of or in connection with any destruction of property (including third party property), death, injury, illness or disease is limited to amounts recoverable, or that should have been recoverable, under insurance policies required by the Contract.

21. NOTICES

21.1 Any notice may be given by posting the notice to the address of the parties specified in the Rental Agreement and shall be deemed received 3 days after posting by ordinary prepaid post.

21.2 Any notice may be given by email to the address of the parties specified in the Rental Agreement and shall be deemed received on the earlier of actual receipt, a reply, or a period of 3 days after issue without the issuer having received notice of a non-receipt or failed delivery.

22. GOODS AND SERVICES TAX

22.1 Unless otherwise stated expressly all prices are exclusive of GST and the Renter must on demand pay to the Owner all GST payable in respect of the supply of the Equipment to the Renter.

23. ENTIRE AGREEMENT

23.1 This agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, Memoranda or commitment about the subject matter of this agreement are merged in this agreement and are of no further effect.

24. CONFIDENTIALITY AND PRIVACY

24.1 The Owner recognizes that your privacy is very important to you and that you have a right to control your personal information. We know that you care how information about you is used and shared and we appreciate your trust that we will do so carefully and sensibly. This notice describes our privacy policy. By visiting our web site you are accepting the practices described in this Privacy Notice.

25. MISCELLANEOUS

25.1 The Rental Agreement is governed by the laws of the States or Territories of Australia in which it is signed.

25.2 If any part of the Rental Agreement becomes void or unenforceable for any reason then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.

25.3 The Owner may only waive a requirement or breach of the Contract in writing signed by it, and any such waiver is limited to the instance referred to (or if no instance is referred to in the waiver, to a past breach only).

25.4 The Owner may assign or subcontract all or any of its rights under the Rental Agreement. The Renter must not assign or subcontract all or any of its right under the Rental Agreement.

25.5 No delay or omission to exercise any right, power or remedy accruing to the Owner upon any continuing breach or default under the Rental Agreement shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any right of The Owner to take action or make a claim in respect of a continuing breach or default or to be acquiescence to it.

25.6 The Owner collects Machine Data. Machine Data is any data generated by, collected by, stored in, or sent from/to your equipment or any hardware or device interfacing with your equipment. Machine Data may include data used for a variety of different purposes including, but not limited to, machine health, and performance monitoring, and logistics coordination and location.