

MARSDEN HIRE

MARSDEN HIRE FORM	
Marsden Hire	Name: Said Group Pty Ltd ABN 73 636 961 441 operating under the registered business name Marsden Hire Address: 50 Farm Road Marsden Park NSW 2765 Contact Email: michael@marsdenhire.com.au 0431549202
Remote Site	A 'Remote Site' is a job site located 60 kms or more from Marsden Hire's Address
Remote Area Charges	(a) \$[] per kilometre travelled by Marsden Hire; and (b) if applicable, any direct travelling and accommodation costs reasonably incurred by Marsden Hire and/or its Personnel
Off Hire Rates	Weekends and Rain Days allowed only, Must be notified by 9am.
Fuel Refill Rate	\$5 per litre
Fees	Hire Rate: Attachments: \$ Delivery Fee: \$ Collection Fee: \$ Cleaning Fee: \$150 (If Machine is brought back Dirty) Due date: On the Start Date
Late Charge	
Fee Payment Method	EFT, Cash or Credit Card
Special Conditions	

The term of this Hire Form, Credit Card Information Form (where applicable) and the Hire Terms (together, this '**Agreement**') will commence on the Start Date and continue until the Equipment has been returned in accordance with this Agreement and the referable Fees have been paid, plus any additional period agreed by the Customer and Marsden Hire in writing (**Hire Term**). By signing below, the Customer agrees to the terms and conditions of this Hire Form and the Hire Terms attached.

Executed as an agreement on _____

HIRE TERMS

These Hire Terms, together with any Hire Form (defined in clause 1(a)) set out the agreement (this **Agreement**) under the terms of which you or Marsden Hire which you represent (the **Customer, you**) will rent the Equipment from Said Group Pty Ltd ABN 73 636 961 441 operating under the registered business name Marsden Hire (**Marsden Hire, we, us, our**).

1 HIRE FORM, THIS AGREEMENT

- (a) These Hire Terms will apply to all of the Customer's dealings with Marsden Hire, including being incorporated in all agreements, quotations or orders under which Marsden Hire is to rent Equipment and/or provide services to the Customer (each a '**Hire Form**') together with any additional terms included in such a Hire Form (provided such additional terms are recorded in writing).
- (b) The Customer will be taken to have accepted this Agreement if the Customer accepts a Hire Form, or if the Customer orders, accepts or pays for any Equipment and/or services provided by Marsden Hire after receiving or becoming aware of this Agreement or these Hire Terms.
- (c) The parties agree that this Agreement may be executed electronically. Each party agrees that any electronic signature or execution in form of an electronic record shall be valid and binding on itself and each of the other parties to the same extent as a manual, original signature.
- (d) In the event of any inconsistency between these Hire Terms and any Hire Form, the clauses of these Hire Terms will prevail to the extent of such inconsistency, except that any "Special Conditions" (being terms described as such in a Hire Form) will prevail over these Hire Terms to the extent of any inconsistency.

2 HIRE

Marsden Hire provides to the Customer and the Customer accepts from Marsden Hire the hire of the Equipment upon and subject to the provisions of this Agreement.

3 PRE HIRE

The Customer warrants that they:

- (a) will provide Marsden Hire with a copy of a valid form of photo identification, such as a driver's licence, passport or identity card, within 24 hours of confirming the booking;
- (b) have read and understood any instructional materials or completed an induction session provided by Marsden Hire;
- (c) will obtain up to date information from relevant authorities, (for example, by using the "Dial Before You Dig" service), about any infrastructure networks at the site where the Equipment will be used; and
- (d) ensure that any person collecting or taking delivery of the Equipment on behalf of the Customer is authorised by the Customer to do so and the Customer will not allege that any such person is not so authorised.

4 EQUIPMENT USE

4.1 USE

- (a) The Customer must ensure that the Equipment is only used:
 - (i) in accordance with the Equipment manufacturer's requirements, recommendations and instructional materials provided to the Customer;
 - (ii) while wearing the appropriate personal protective equipment; and
 - (iii) in accordance with all laws, rules and regulations applicable to the Equipment.
- (b) The Customer must not, and must not allow any personnel or third party to:
 - (i) operate the Equipment without a valid drivers licence;
 - (ii) tow trailered Equipment with an unsuitable or unroadworthy vehicle or on unsealed roads;
 - (iii) tow trailered Equipment, if the driver is not the holder of a valid driver licence;
 - (iv) tow trailered Equipment without an electric brake wired vehicle or a portable brake controller;
 - (v) use the Equipment for any dangerous or illegal purpose;

- (vi) use or allow the Equipment to be used to carry passengers for payment of any kind and/or for racing;
- (vii) make any alterations to the Equipment, including by unauthorised repair or any modification to the registration plates;
- (viii) use or allow the Equipment to be used while the operator is under the influence of alcohol or drugs;
- (ix) use the Equipment when it is damaged or unsafe;
- (x) affix or install any accessories, Equipment or device on or to the Equipment (other than the Included Attachments set out in the Hire Form) without Marsden Hire's prior written consent;
- (xi) move the Equipment further than 60 kms away from Marsden Hire's Address; and
- (xii) sub-hire the Equipment.

4.2 MAINTENANCE

- (a) The Customer must, when the Equipment is unattended, always keep it locked and keep the keys under their control.
- (b) If the Hire Term is longer than 24 hours, the Customer is responsible for the performance and cost of daily maintenance and care of all Equipment in its possession, including:
 - (i) daily checking of all fluids (fuel, oil, water, battery levels, etc.);
 - (ii) general tightening of any loose nuts, bolts, belts or fittings; and
 - (iii) the lubrication of all grease points every day the Machine has been used.
- (c) If instructed by Marsden Hire, the Customer must cover the Equipment with waterproof material in wet weather conditions.

4.3 OPERATING THE EQUIPMENT

The Customer agrees that:

- (a) prior to using the Equipment, they have satisfied themselves to the suitability of the Equipment for their

needs, including whether it is safe for its intended purpose;

- (b) they are responsible for ensuring they, and any other operator they allow to use the Equipment, comply with all occupational health and safety laws and wear the appropriate personal protective equipment; and
- (c) they are responsible for the acts and omissions of any other person they allow to use the Equipment.

4.4 SECURITY

If the Hire Term is longer than 24 hours, the Customer must ensure that the Equipment is stored in a secure facility overnight.

4.5 GPS TRACKING

- (a) Marsden Hire continuously monitors the location of the Equipment through GPS tracking and includes but is not limited to usage, speed or distance travelled of any Equipment at any point (**GPS Tracking**).
- (b) By accepting the terms of this Agreement, the Customer, including any person it allows to operate the Equipment, consents to the GPS Tracking at all times during the Hire Term and must not, or allow any third party to, remove, uninstall, unplug or otherwise any functionality of, or any Equipment used for, the GPS Tracking.
- (c) The Customer acknowledges that:
 - (i) any data from the GPS Tracking may be controlled and stored by a third party service provider;
 - (ii) the third party service provider may notify Marsden Hire of any misuse of the Equipment;
 - (iii) Marsden Hire may rely on the information given by that third party for the purpose of this Agreement and that the reliance is a material term of this Agreement; and
 - (iv) Marsden Hire may be required to provide the data to third parties such as law enforcement and insurance providers in relation to accidents, damages or other issues without obtaining the Customer's prior consent.

- (d) If any data received from the GPS Tracking shows evidence of misuse or other prohibited operation of the Equipment, or any other form of non-compliance with this Agreement, the Customer will be liable to pay Marsden Fee for any damages (including any deduction from the Security Deposit).

Address in the same condition as it was in at the Start Time on the Start Date.

- (b) If the Delivery Instructions state that Marsden Hire is to deliver or collect the Equipment, Marsden Hire will use its best endeavours to have the Equipment delivered or collected on time however Marsden Hire is not responsible for any loss or damage suffered by the Customer in connection with:

- (i) late or non-delivery or late collection. All timeframes for delivery and collection provided are estimates only; and
- (ii) Marsden Hire leaving the Equipment at the Pick Up Address.

- (c) If the Customer does not return the Equipment to the Return Address before the Return Time on the Return Date, the Customer must pay the Late Charge for each 24 hour period after the Return Time on the Return Date during which the Equipment has not been returned Marsden Hire.

4.6 FUEL

The Customer must:

- (a) ensure that the Equipment has a full tank of fuel when it is returned to Marsden Hire, unless specified otherwise in the Hire Form;
- (b) only fill the Equipment with fuel of a type that meets the Equipment's specifications; and
- (c) If the Customer fails to comply with clause 4.6(a), promptly pay to Marsden Hire the costs of refuelling the Equipment, at the Fuel Refill Rate for each litre of fuel required to refill the Equipment's tank.

4.7 PERSONAL PROPERTY

Marsden Hire is not liable to any person for any loss of, or damage to, personal property that is left in the Equipment after its return to Marsden Hire or stolen from the Equipment or otherwise lost during the Hire Term.

4.8 CLEANING

The Customer acknowledges that the Equipment is rented out in a clean condition. The Customer must return the Equipment in the same state of cleanliness it was in on the Start Date (**Clean**). If the Equipment is not Clean upon return, a cleaning fee, as set out in the Hire Form or as otherwise agreed in writing, covering the total cost to Marsden Hire to clean the Equipment will apply.

5 DELIVERY AND RETURN

- (a) Unless the Delivery Instructions state that Marsden Hire is to deliver the Equipment:
 - (i) Marsden Hire will leave the Equipment at the Pick Up Address at the Start Time on the Start Date; and
 - (ii) subject to clause 6, the Customer must, before the Return Time on the Return Date, return the Equipment to Marsden Hire at the Return

6 OFF HIRE

This clause only applies to Equipment for which off hire discount rates apply, as set out in the Hire Form. For Equipment this clause 6 applies to, Marsden Hire will apply the off hire discount rate set out in the Hire Form in respect of that Equipment and for a particular date, subject to the following:

- (a) the Equipment not being subject to a rent to buy arrangement; and
- (b) Marsden Hire receiving a written notice from the Customer before 9AM on the relevant date, requesting an off hire rate on the grounds that the Customer will not be using that Equipment on that date.

7 EARLY RETURN

- (a) If the Customer returns the Equipment before the Return Date, the Customer will be liable for the full Fees as if the Equipment was in its possession from the Start Date until the Return Date, notwithstanding any early return of the Equipment.
- (b) Notwithstanding any other clause in this Agreement, Marsden Hire may demand the early return of the Equipment to the Return Address, or

retake possession of the Equipment, if Marsden Hire reasonably suspects that:

- (i) damage to the Equipment or injury to any person in connection with the Equipment is reasonably likely; or
- (ii) the Equipment may be used for an unlawful purpose.

8 REMOTE HIRE

Where the Customer hires Equipment and/or the Services are to be provided in a Remote Site, the Customer will pay the Remote Area Charges specified in the Hire Form.

9 FAULTY EQUIPMENT

- (a) If the Equipment is faulty, breaks down or becomes unsafe to use during the Hire Term (**Breakdown**), the Customer must immediately:
 - (i) notify Marsden Hire;
 - (ii) stop using the Equipment;
 - (iii) take all steps necessary to prevent injuries from occurring to any person or property as a result of the condition of the Equipment;
 - (iv) take all steps necessary to prevent the Equipment from sustaining any further damage;
 - (v) not repair or attempt to repair the Equipment without Marsden Hire's written consent; and
 - (vi) comply with Marsden Hire's directions in relation to the return of the Equipment.
- (b) Subject to clause 9(a), if, upon inspection of the Equipment, Marsden Hire determines that a Breakdown was:
 - (i) caused by a fault in the Equipment (not caused or contributed to by the Customer) (**Equipment Fault**) then Marsden Hire will provide the Customer with a pro-rata refund of any Fees paid for the period of the Hire Term during which the Breakdown persisted; or
 - (ii) not caused by an Equipment Fault, then the Customer will still be required to pay Fees in accordance with the Hire Form,

as well as any cost required for a licenced mechanic to inspect the Equipment.

- (c) Clause 9(a) does not limit:

- (i) any of the Customer's rights under the *Competition and Consumer Act 2010* (Cth); or
- (ii) any rights or remedies Marsden Hire may have access to in relation to a Breakdown, under this Agreement or otherwise.

10 LOSS AND DAMAGE

The Customer will be fully liable to Marsden Hire for:

- (a) any loss or damage to the Equipment or any part of the Equipment (whether due to accident, theft or otherwise) during the Hire Term, or otherwise when the Equipment is in the Customer's possession, and must give reasonable notice to Marsden Hire in writing of any such loss or damage; and
- (b) all damage to the property of any person which is caused or contributed to by the Equipment during the Hire Term, or otherwise when the Equipment is in the Customer's possession.

11 INCIDENTS AND INSURANCE

11.1 INSURANCE

- (a) The Customer acknowledges that Marsden Hire may, in its discretion, hold insurances in relation to the Equipment but such insurances may not cover the Customer or the Customer's use of the Equipment and Marsden Hire will have no obligation or requirement to insure the Customer's use of the Equipment under this Agreement. The Customer is strongly encouraged to take out adequate insurance to cover all potential liabilities that could arise from their use of the Equipment.
- (b) If Marsden Hire notifies the Customer that it holds insurance in relation to the Equipment, the Customer must not do or permit anything to be done which may make Marsden Hire's insurance invalid or able to be cancelled or which may increase Marsden Hire's insurance premiums.

- (c) Marsden Hire reserves the right to apply any insurance policy it does hold in respect of the Equipment during the Hire Term, to damage or loss caused or contributed to by the Customer, however Marsden Hire is under no obligation to. If Marsden Hire chooses to make a claim under an applicable insurance policy in accordance with this clause in respect of any damage or loss during the Hire Term, the Customer will be required to pay any excess payable by Marsden Hire in respect of such a claim.

11.2 INCIDENTS, LOSS AND DAMAGE

- (a) Subject to any Marsden Hire insurance policy that covers the Customer and Marsden Hire confirming in writing that it will claim against such insurance to cover the Customer, if the Equipment is lost, damaged, destroyed or stolen during the Hire Term, or otherwise while the Equipment is in the Customer's possession, the Customer must compensate Marsden Hire for any costs of repair or replacement.
- (b) If the Equipment is involved in an accident or claim, damaged, destroyed, stolen or if damage or loss is sustained to the property of any third party in connection with the Equipment during the Hire Term, or otherwise when the Equipment is in the Customer's possession **(Incident)**, the Customer:
 - (i) must promptly report the Incident to the local police (if required by Law);
 - (ii) must report the Incident to Marsden Hire in writing within one Business Day;
 - (iii) must, if such damage, destruction or theft is covered by and compensated to Marsden Hire under an insurance policy, pay the relevant excess amount to Marsden Hire, as well as any other reasonable costs that Marsden Hire incurs in relation to such damage, destruction or theft;
 - (iv) must not, without Marsden Hire's prior written consent, make or give any offer, promise of payment, settlement, waiver, release or admission of liability

in relation to the Incident, except as required by Law;

- (v) must, if requested, permit Marsden Hire or its insurer bring, defend, enforce or settle any legal proceedings in the Customer's name in relation to the Incident; and
- (vi) must, if requested, provide to Marsden Hire, within a reasonable time, any statement, information or assistance which Marsden Hire or its insurer requests, including by attending a lawyer's office or a court to give evidence.

11.3 EXCESS REDUCTION

- (a) If an Excess Reduction Fee is set out in the Hire Form, and the Customer pays this amount to Marsden Hire before the Start Date, then the excess payable under clause 11.1(c) will be limited, per incident, to the Reduced Excess amount set out in the Hire Form, subject to the terms of this Agreement.
- (b) The Customer's liability in relation to the Equipment will only be reduced to the Reduced Excess amount set out in the Hire Form, if:
 - (i) the liability was not caused or contributed to by any unlawful act or omission (including any unlawful use of the Equipment), or a breach of this Agreement; and
 - (ii) Marsden Hire's relevant insurance policy covers that liability.
- (c) The Customer's liability in relation to the Equipment will not be reduced to the Reduced Excess amount set out in the Hire Form, even if the Customer has paid the Excess Reduction Fee, if the loss or damage is:
 - (i) occasioned by the Customer failing to take reasonable care of the Equipment;
 - (ii) caused to the Equipment as a result of any illegal activity, misappropriation or wrongful conversion of the Equipment by the Customer;
 - (iii) caused by the Customer's misuse, abuse, overloading, exceeding the rated capacity or

- improper servicing or repairs of the Equipment;
- (iv) caused by the exposure of the Equipment to corrosive substances, salt water or toxic materials;
- (v) to the Included Attachments and/or tools, accessories, parts, grease guns, hoses, electrical cords, lights, light globes and other similar accessories, ground engaging tools, tracks, tyres and glass;
- (vi) occurred while the Equipment was in transit, including during loading and unloading; and
- (VII) arising in circumstances where a claim has been made by or against a third party

12 PAYMENT

12.1 FEES

The Customer must pay the Fees to Marsden Hire in the amounts and at the times set out in the Hire Form or as otherwise agreed in writing.

12.2 PAYMENT METHOD

The Customer must pay Fees using the payment method specified in the Hire Form.

12.3 GST

Unless otherwise indicated, amounts stated in a Hire Form do not include GST. In relation to any GST payable for a taxable supply by Marsden Hire, the Customer must promptly pay the GST subject to Marsden Hire providing a tax invoice.

12.4 CARD SURCHARGES

Marsden Hire reserves the right to charge credit card surcharges in the event payments are made using a credit, debit or charge card (including Visa, MasterCard or American Express).

12.5 SECURITY DEPOSIT

- (a) To hire the Equipment, we require the payment of a Security Deposit as set out in the Hire Form or as otherwise specified by us, to cover any fees, damage or issues with the Equipment (**Security Deposit**).
- (b) Upon return of the Equipment, we may claim the Security Deposit

against any amount owed by the Customer to us under this Agreement.

12.6 PAYMENTS OTHER THAN FEES

Immediately on request by Marsden Hire, the Customer will pay:

- (a) the price of any Equipment which is for whatever reason not returned to Marsden Hire;
- (b) the full cost of repairing any damage to the Equipment caused or contributed to by the Customer;
- (c) all costs incurred by Marsden Hire in delivering and recovering possession of the Equipment; and
- (d) any expenses and legal costs (including commission payable to a commercial agent) incurred by Marsden Hire in enforcing this Agreement due to the Customers default.

13 OWNERSHIP, POSSESSION AND TITLE

13.1 OWNERSHIP

- (a) The Equipment is and will at all times remain the property of Marsden Hire, notwithstanding delivery of the Equipment to the Customer or the possession and use of the Equipment by the Customer.
- (b) The Customer will not have any right, title or interest in or to the Equipment except as expressly set out in this Agreement.

13.2 POSSESSION

The Customer must not, without Marsden Hire's prior written consent, part with possession of the Equipment during the Hire Term.

13.3 ENCUMBRANCES

The Customer must not allow any security interest, encumbrance, charge or lien of any kind to arise or remain in relation to the Equipment, including a repairer's lien.

14 PERSONAL PROPERTY SECURITIES

(Definitions) In this clause:

- (a) **PPSA** means the *Personal Property Securities Act 2009* (Cth) and its regulations as amended and in force from time to time;

- (b) **PPS Register** means the Personal Property Securities Register established under the PPSA; and
 - (c) a term used in this clause 14 is taken to have the meaning defined under the PPSA.
- The Customer acknowledges and agrees that notwithstanding any other provision of this Agreement:
- (d) the PPSA applies to any supply of Equipment by Marsden Hire to the Customer;
 - (e) any Equipment the Customer is receiving from Marsden Hire in connection with this Agreement is not to be used as inventory;
 - (f) if requested by Marsden Hire, the Customer must immediately sign any documents, provide all necessary information and do anything else required by Marsden Hire to ensure that the security interest created in Marsden Hire's favour is a perfected security interest, including registering the Equipment on the PPS Register;
 - (g) the Customer must not grant any other security interest or other encumbrance in the Equipment under the PPSA or any other law in favour of any party unless it has obtained the prior written consent of Marsden Hire, which Marsden Hire may refuse to provide or grant in its absolute and unfettered discretion. Marsden Hire may request and the Customer must provide any information that Marsden Hire requires, acting reasonably, in order to fully consider whether to grant its consent;
 - (h) the Customer acknowledges that this Agreement constitutes a security agreement for the purposes of the PPSA and the Customer will do all things necessary to enable a security interest to be registered under the PPSA, and will comply with all requirements of the PPSA; and
 - (i) for the purpose of this clause and other relevant clauses in this Agreement, the expressions "accession", "collateral", "financing statement", "financing change statement", "security agreement", "security interest", "perfected security interest" and "verification statement" have the meanings given to them under, or in the context of the PPSA.

15 LIABILITY, WARRANTIES AND INDEMNITIES

15.1 LIABILITY

To the maximum extent permitted by Law, Marsden Hire's liability for all claims in aggregate (whether those claims be for breach of contract, negligence or otherwise, and whether those claims are for economic loss, or for personal injury or other damage) arising under or in connection with this Agreement:

- (a) is totally excluded, to the extent it concerns liability for indirect, special and consequential damages, and damages (whether direct or indirect) reflecting loss of revenue, loss of profits and loss of goodwill (except to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth)); and
- (b) is limited, insofar as it concerns other liability, to the total money paid to Marsden Hire under this Agreement as at the date the event giving rise to the relevant liability occurred (or, where there are multiple events, the date of the first such event).

15.2 WARRANTIES

- (a) To the maximum extent permitted by applicable Law, all express or implied representations and warranties (whether relating to fitness for purpose or performance, or otherwise) not expressly stated in this Agreement are excluded.
- (b) Nothing in this Agreement is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**). Under the ACL, the Customer may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services provided.

15.3 INDEMNITIES

The Customer indemnifies Marsden Hire from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of:

- (a) the casual maintenance, use, storage or operation of the Equipment during the Hire Term or otherwise when the Equipment is in the Customer's possession;
- (b) injuries to or deaths of persons and damage to property in connection with

the Equipment during the Hire Term or otherwise when the Equipment is in the Customer's possession;

- (c) any breach of this Agreement by the Customer; or
- (d) any negligent, fraudulent or criminal act or omission of the Customer or its personnel.

16 TERMINATION

16.1 TERMINATION BY MARSDEN HIRE

Marsden Hire may terminate this Agreement in whole or in part immediately by written notice to the Customer, if the Customer is in breach of any term of this Agreement.

16.2 TERMINATION BY THE CUSTOMER

- (a) The Customer may terminate this Agreement in whole or in part by written notice to Marsden Hire.
- (b) If the notice under clause 16.2(a) is:
 - (i) 24 hours or more prior to the Start Date, Marsden Hire will provide the Customer with a full refund of any Fees paid;
 - (ii) less than 24 hours prior to the Start Date, Marsden Hire will provide the Customer with a full refund of the Fees paid, minus a 50% cancellation fee
 - (iii) after the Start Date, the Customer will not be entitled to any refund subject to clause 4.1(a) or unless the Equipment is not of an acceptable quality in accordance with the ACL.

16.3 EFFECT OF TERMINATION

Upon termination of this Agreement, the Customer must promptly:

- (a) pay any payments required by Marsden Hire in respect of the period of the Hire Term prior to the date of termination; and
- (b) subject to any contrary direction given by Marsden Hire, deliver the Equipment and any other goods included in a Hire Form to the Return Address.

16.4 SURVIVAL

Any clause that by its nature would reasonably be expected to be performed after the termination or expiry of this

Agreement will survive and be enforceable after such termination or expiry.

17 DISPUTE RESOLUTION

- (a) A party claiming that a dispute has arisen under or in connection with this Agreement must not commence court proceedings arising from or relating to the dispute, other than a claim for urgent interlocutory relief, unless that party has complied with the requirements of this clause.
- (b) A party that requires resolution of a dispute which arises under or in connection with this Agreement must give the other party or parties to the dispute written notice containing reasonable details of the dispute and requiring its resolution under this clause.
- (c) Once the dispute notice has been given, each party to the dispute must then use its best efforts to resolve the dispute in good faith. If the dispute is not resolved within a period of 14 days (or such other period as agreed by the parties in writing) after the date of the notice, any party to the dispute may take legal proceedings to resolve the dispute.

18 NOTICES

- (a) A notice or other communication to a party under this Agreement must be:
 - (i) in writing and in English; and
 - (ii) delivered via email to the other party, to the email address specified in this Agreement, or if no email address is specified in this Agreement, then the email address most regularly used by the parties to correspond regarding the subject matter of this Agreement as at the date of this Agreement (**Email Address**). The parties may update their Email Address by notice to the other party.
- (b) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:
 - (i) 24 hours after the email was sent, unless that falls on a Saturday, Sunday or a public holiday in the state or territory

- whose laws govern this Agreement, in which case the notice will be taken to be given on the next occurring business day in that state or territory; or
- (ii) when replied to by the other party,
- whichever is earlier.

19 GENERAL

19.1 GOVERNING LAW AND JURISDICTION

This Agreement is governed by the law applying in New South Wales, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

19.2 AMENDMENTS

This Agreement may only be amended in accordance with a written agreement between the parties.

19.3 WAIVER

No party to this Agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

19.4 SEVERANCE

Any term of this Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this Agreement is not limited or otherwise affected.

19.5 JOINT AND SEVERAL LIABILITY

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

19.6 ASSIGNMENT

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other party.

19.7 ENTIRE AGREEMENT

This Agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this Agreement.

19.8 INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (c) **(this Agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- (d) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (e) **(includes)** the word “includes” and similar words in any form is not a word of limitation; and
- (f) **(adverse interpretation)** no provision of this Agreement will be interpreted adversely to a party because that party was responsible for the preparation of this Agreement or that provision.