

1. **GENERAL**
- 1.1 All rentals of machinery, plant and equipment to you (the **Renter**) from WesTrac Pty Ltd ACN 009 342 572 (**WesTrac**) are made under, in accordance with, and incorporating these terms and conditions (**Terms**).
2. **THE RENTAL AGREEMENT**
- 2.1 Any quotation, estimate or pricing prepared or represented by WesTrac and communicated to the Renter (**Quote**) is indicative only, is not an offer to contract, and may be withdrawn or varied by WesTrac at any time prior to acceptance.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 WesTrac on the basis of the terms and conditions set out in the Order and the Quote.
- 2.3 WesTrac 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:
- when WesTrac notifies the Renter that it accepts the Order;
 - when the rental Equipment is delivered to the Renter in performance of the Order; and
 - 3 days after WesTrac receives the Order and does not dispute it or any part of it.
- 2.4 Upon WesTrac accepting under clause 2.3, a binding contract comes into existence between WesTrac and the Renter incorporating the following documents (together the **Rental Agreement**):
- any Quote, invoice or other document of WesTrac whether attaching these Terms to the back of it or not;
 - any notice of acceptance provided by WesTrac in accordance with clause 2.3(a);
 - these Terms;
 - any document attached or annexed to the back of these Terms by WesTrac; and
 - 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, WesTrac shall (acting reasonably) direct the Renter as to the proper interpretation and any liability for additional costs.
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.westrac.com.au, a credit facility may, in the sole and absolute discretion of WesTrac, be made available to the Renter.
- 3.2 The Renter is not entitled to any credit or use of other funds from WesTrac until WesTrac 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 WesTrac may, acting in its sole and absolute discretion, and without being obliged to do so:
- specify the maximum amount that may be charged to the credit facility within a specified time (**Credit Limit**); and
 - regularly assess the Credit Limit and adjust it accordingly by increasing or decreasing it.
- 3.4 The Renter must not charge to the credit facility amounts that exceed the Credit Limit. To the extent that it does, WesTrac 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 WesTrac supplying the rental Equipment and a credit facility to the Renter, the guarantors jointly and severally guarantee payment to WesTrac of all money due and payable by the Renter to WesTrac 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 WesTrac 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**).
- 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
- WesTrac 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 WesTrac and pay the charges specified in the Quote (**Rental Charges**) up to the time of the return of the Equipment to WesTrac; and
 - the Renter may terminate the Rental Agreement by giving WesTrac 3 days' prior written notice and on expiry the Renter must immediately return the Equipment to WesTrac and pay the Rental Charges up to the end of the month in which the extended Rental Period expired.
5. **RENTAL CHARGES**
- 5.1 The Renter must pay the Rental Charges to WesTrac for the duration of the Rental Period.
- 5.2 The Rental Charges are based on the Equipment being used not more than the Included Monthly Hours as specified in the Quote.
- 5.3 To the extent the actual hours used in any given month exceed the Included Monthly Hours, the Renter must pay WesTrac the Excess Hours Rental Rate specified in the Quote for each additional hour of use or part thereof.
6. **EARLY CANCELLATION**
- 6.1 WesTrac and the Renter may agree in writing to cancellation of the Rental Agreement prior to expiry of the Initial Rental Period, provided that the Initial Rental Period is not less than 6 months.
- 6.2 In the event that WesTrac and the Renter agree to early cancellation in accordance with clause 6.1 above:
- 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 WesTrac or its nominated location; or
 - 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 the Equipment early.
7. **OTHER CHARGES**
- 7.1 (**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 and lubricants.
- 7.2 (**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.
- 7.3 (**Credit Card Payments**) The Renter acknowledges that WesTrac may impose a charge for accepting payments by credit card.
- 7.4 (**Delivery**) If the Renter requires WesTrac to deliver, collect or install the Equipment, the Renter shall be liable for the cost of delivery, collection or installation.
- 7.5 (**Costs and Expenses**) The Renter must pay any costs or expenses incurred by WesTrac 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 (**Date Out**) (including any cleaning costs).
8. **PAYMENT**
- 8.1 Subject to clause 8.2, the Renter must pay all Rental Charges and other amounts to WesTrac and ensure WesTrac receives such amounts in full, cleared funds and without any deduction or set off upon the date of invoice, monthly in advance with the first rental payment due on the first day of the Initial Rental Period (**Date Out**).
- 8.2 To the extent that the Renter has a WesTrac 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:
- WesTrac may issue an invoice for payment on the last day of each month on account of Equipment rented, or undertaken to be rented, in the following month;
 - if the Renter disputes the whole or any part of the invoice issued under clause 8.2(a), the Renter must, within 14 days of the invoice date, give WesTrac notice in writing with reasons why it disputes the amount claimed and provide adequate reasons; and
 - within 28 days after the date of an invoice issued under clause 8.2(a), except to the extent validly disputed under clause 8.2(b), the Renter must pay, and ensure WesTrac receives in full, cleared funds and without any deduction or set off, the amount invoiced.
- 8.3 Any invoice issued by WesTrac 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.
- 8.4 Time is of the essence in relation to payment of Rental Charges. WesTrac 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.
- 8.5 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 WesTrac. WesTrac 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 WesTrac or claimed to be so owed whether arising under or in connection with this Rental Agreement or otherwise.
9. **PURCHASE OPTION**
- 9.1 This clause will only apply if the "Purchase Option" on the Quote form has been selected and the details for the option completed.
- 9.2 At any time during the Rental Period, the Renter may, by notice in writing to WesTrac, offer to purchase the Equipment.
- 9.3 The amount offered by the Renter to WesTrac to purchase the Equipment shall be equal to:
- the purchase price stated in the Quote;
 - plus any other reasonable expense incurred by WesTrac during the Rental Period in relation to the Equipment; and
 - less the total Rental Charges including excess rental charges (excluding GST) paid during the Rental Period multiplied by the rebate percentage specified in the Quote form.
- 9.4 WesTrac may accept the Renter's offer by notice in writing.
- 9.5 From the time of payment of the amounts specified in clause 9.3 above, the [Supply Terms](#) will govern the purchase and these terms will be superseded.
10. **RENTER'S OBLIGATIONS**
- 10.1 **Possession and Use by the Renter:** Subject to clause 11, 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.
- 10.2 **Operation of Equipment:** The Renter acknowledges and agrees that WesTrac has provided the Renter with the manufacturer's specific operation and maintenance manual with respect to the Equipment (**O&M Manual**).
- 10.3 **Standards and laws:** The Renter will:
- 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;
 - operate the Equipment safely, only for its intended use and in accordance with the O&M Manual;
 - 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;
 - ensure that the Equipment is not operated by any person under the influence of alcohol and/or drugs; and
 - ensure that the Equipment is used only for the general purpose for which it was designed, in suitable terrain and in a manner which has regard to the capacity, capabilities and limitations of the Equipment.
- 10.4 **Safety:** The Renter must at all times:
- ensure that all safety information supplied with the Equipment is attached to the Equipment and conveyed to any person using the Equipment;
 - maintain any safety signs supplied by WesTrac and ensure they are clearly legible and brought to the attention of any person using the Equipment;
 - at all times ensure that all safety and operating instructions and notices are observed and not defaced or removed from the Equipment;
 - ensure that any and all persons using the Equipment wear suitable clothing and any protection required or recommended by WesTrac or the safety and operating instructions; and conduct a site hazard assessment prior to using the Equipment.
- 10.5 **Demonstrator Operator:** Any person provided by WesTrac 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 WesTrac, no other person shall operate the Equipment without WesTrac's prior written consent.
- 10.6 **Cleaning and Maintenance:** The Renter must, at its own cost, clean, fuel, lubricate and maintain the Equipment to keep it in good condition at all times in accordance with:
- WesTrac's instructions; and
 - the O&M Manual.
- 10.7 Without limiting clause 10.6, the Renter is responsible for all minor maintenance, ground engaging tool wear, and all wear and damage to Equipment undercarriage/ tyres/ bucket/ tray.
- 10.8 Without limiting clauses 10.6 and 10.7, the Renter must ensure that preventative maintenance is performed on the Equipment no less frequently than every 250 hours of use.
- 10.9 Each time the Equipment is serviced, the Renter must send a sample from each of the fluid compartments to WesTrac's Oil Analysis Lab for analysis.
- 10.10 **Storage and Location:** The Renter must ensure that the Equipment is at all times stored safely and protected from theft, loss or damage.
- 10.11 The Renter must not remove the Equipment from the Site specified in the Quote without WesTrac's prior written consent.
- 10.12 **Alteration and Identifying Marks:** The Renter must not alter, deface or erase any identifying mark, plate or number on the Equipment.
- 10.13 The Renter must not in any way alter, affix or attach any thing to, modify, tamper with, damage or repair the Equipment without WesTrac's written consent.
- 10.14 **Access and Inspection:** WesTrac 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 WesTrac and its representatives in exercising its rights under this clause.
- 10.15 **Safe Loading:** The Renter must safely secure all Equipment (or items loaded in or on the Equipment) to any vehicle

- transporting or loaded with the Equipment.
- 10.16 **Return of Equipment:** The Renter must, at its own cost, return the Equipment to WesTrac at the end of the Rental Period to the WesTrac premises from where it was collected by the Renter on the Date Out.
- 10.17 The Renter must ensure that the Equipment is returned to WesTrac in the same condition it was delivered on the Date Out (except for fair wear and tear). The Equipment must be returned with a full tank of fuel or the Renter must pay WesTrac the cost of filling that tank plus a margin of 30%.
- 10.18 The Renter indemnifies WesTrac for the cost of any renovations or repairs performed by WesTrac to return the Equipment to the required return condition.
- 10.19 If the Renter fails to return the Equipment when required by the Rental Agreement or within 24 hours of oral or written demand by WesTrac, the Renter will be deemed to be in unlawful possession of the Equipment notwithstanding clause 17.2.
- 11. SUB-RENTAL**
- 11.1 Without limitation to the indemnity provided in clause 19, the Renter may sub-rent the Equipment during the Rental Period subject to:
- the Renter providing WesTrac with the full name and ABN of the sub-renter, and details of where the Equipment will be located;
 - WesTrac providing its prior written consent to the sub-rental; and
 - the agreement for sub-rental being on the same terms as this Rental Agreement.
- 11.2 Notwithstanding the other provisions of this clause 11, the Renter is liable for and indemnifies WesTrac against any costs, loss or expense arising from or in connection with, the defaults, acts and omissions of the sub-renter (including its employees and agents) as if they were those of the Renter.
- 11.3 The Renter must terminate the sub-rental agreement and repossess the Equipment at WesTrac's direction if WesTrac has reasonable cause to believe that the sub-renter is in default under clause 16.1.
- 12. WARRANTY**
- 12.1 As far as the law permits, WesTrac excludes all warranties, conditions, rights and remedies the Renter would otherwise be entitled to by law.
- 12.2 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.
- 12.3 The Renter acknowledges and agrees that it has not relied on WesTrac's skill or judgment or any representation by or on behalf of WesTrac in connection with the Equipment, including in connection with its purpose, suitability, condition, use or performance.
- 12.4 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.
- 12.5 The Renter must notify WesTrac promptly if it becomes aware of a defect or issue with the Equipment to which the manufacturer's warranty may correspond, which will be dealt with in accordance with WesTrac's warranty claims process as applicable at the relevant time.
- 13. EQUIPMENT BREAKDOWN**
- 13.1 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.
- 13.2 The Renter must not repair or attempt to repair the Equipment without WesTrac's prior written consent.
- 13.3 The Renter must immediately notify and provide full details to WesTrac of any loss, theft, breakdown or damage to the Equipment.
- 13.4 After receiving such notification WesTrac will use reasonable endeavours to repair or replace the Equipment at WesTrac's discretion and at the Renter's expense.
- 14. RISK AND TITLE**
- 14.1 The Renter acknowledges that in all circumstances WesTrac 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.
- 14.2 Subject to clause 11, 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 WesTrac as owner of the Equipment.
- 14.3 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 WesTrac.
- 14.4 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.
- 14.5 A Security Interest or Security Interests may be registered by WesTrac 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 WesTrac considers appropriate).
- 14.6 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.
- 14.7 WesTrac shall have a lien over any of the Renter's other goods under WesTrac's control for all Rental Charges claimed due and payable to WesTrac until payment is received in full, cleared funds without deduction or set-off.
- 14.8 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.
- 15. TERMINATION OF CREDIT**
- 15.1 WesTrac 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.
- 15.2 WesTrac is not liable for any loss, damage or delay whatsoever arising from the refusal, suspension, withdrawal or cancellation by WesTrac to provide credit.
- 15.3 If WesTrac terminates a credit facility pursuant to clause 15.1, WesTrac may, without limitation, exercise its entitlements under clauses 16.3 and 16.4 of these Terms.
- 16. TERMINATION FOR CAUSE**
- 16.1 WesTrac 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:
- the Renter fails to pay the Rental Charges as required and by the time required by the Rental Agreement;
 - any execution or other process of any Court or authority is issued against the Renter or the Renter's assets;
 - the Renter ceases or threatens to cease to carry on its business;
 - any insurance renewal or insurance proposal made by the Renter in respect of the Equipment is declined;
 - any insurance policy in respect of the Equipment lapses or is cancelled;
 - the Renter fails to comply with the requirements of clause 10; or
 - a representation or statement made or taken to be made by or on behalf of the Renter to WesTrac in connection with the Rental Agreement is incorrect or misleading in a material respect.
- 16.2 Either party may terminate the Rental Agreement, or any part of it, effective immediately, if the other party:
- commits a material breach which is not remedied within fourteen (14) days after written notice from the other party;
 - 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 2001* (Cth) following a statutory demand; or (v) circumstances occur which, in WesTrac's sole discretion, indicate the Renter's inability to pay.
- 16.3 If either party terminates under clause 15 of these Terms or this clause 16, its rights will be as if the other party had repudiated and the first party elected to treat the Rental Agreement as at an end, and in the case of WesTrac terminating:
- any deposits, slot fees and any other advanced payments paid, or required to be paid, will be forfeited to WesTrac;
 - all amounts owing to WesTrac or already invoiced by WesTrac to the Renter, shall immediately become due and payable; and
 - WesTrac shall immediately be entitled to retake possession of all rental Equipment in the possession or under the control of the Renter.
- 16.4 For the purpose of enabling WesTrac to retake possession of the rental Equipment under clause 16.3, the Renter irrevocably:
- authorises WesTrac, 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
 - appoints WesTrac, its employees, officers and appointed subcontractors as the Renter's agent to enter any site or premises in which rental Equipment may be located.
- 16.5 On demand by WesTrac, the Renter must pay WesTrac all costs and expenses incurred or to be incurred by WesTrac in connection with WesTrac exercising its rights under this clause 16.
- 17. END OF RENTAL PERIOD**
- 17.1 The Renter must at its own expense return the Equipment to WesTrac before 5 pm on the last day of the Rental Period. WesTrac may take all steps necessary (including legal action) to enforce this clause, including entering the Renter's premises to repossess the Equipment.
- 17.2 Where the Renter fails to return the Equipment in accordance with clause 17.1, the Renter will continue to incur additional Rental Charges at the daily rate (or pro-rated where a weekly rate applies) until the date the Equipment is returned to WesTrac.
- 17.3 WesTrac shall be entitled to recover from the Renter on demand:
- any Rental Charges or other monies payable to WesTrac under the Rental Agreement (including interest on unpaid amounts and other indemnified amounts);
 - the cost of any renovations or repairs performed by WesTrac to return the Equipment to the condition on the Date Out, subject to fair wear and tear;
- all costs incurred by WesTrac in re-taking possession of the Equipment; and
 - any transportation costs in respect of the re-possession of the Equipment.
- 17.4 Where the Rental Agreement is terminated under clause 16.1 or the Renter is taken to have repudiated the Rental Agreement, WesTrac will also be entitled to recover:
- any storage costs in respect of the Equipment; and
 - any Rental Charges which would accrue had the Rental Agreement not been terminated,
- until the date the Equipment is re-hired to a third party or the end of the Initial Rental Period, whichever occurs earlier.
- 17.5 The Renter acknowledges that WesTrac 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 WesTrac.
- 18. CLAIMS AND PROCESSING**
- 18.1 Where use of the Equipment by the Renter results in any claim, accident, damage or loss, the Renter:
- 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 WesTrac;
 - will not, without WesTrac's written consent, make or give any offer, promise of payment, settlement, waiver, release, indemnity or admission of liability without WesTrac's prior written consent;
 - agrees that WesTrac or its insurer may at its own cost bring, defend, enforce, or settle any legal proceedings against third parties; and
 - will as soon as is practicable complete and return WesTrac's accident report and furnish to WesTrac any statements, information or assistance which WesTrac or its insurer may reasonably require, including attending at lawyer's offices and at court to give evidence.
- 19. INDEMNITY**
- 19.1 The Renter is liable for and indemnifies WesTrac against all liability, loss, costs (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) and expenses (including legal fees, costs and disbursements) arising from or in connection with (a) any damage or destruction of property, personal injury, illness, disease or death, and (b) any act, omission or breach by the Renter of this Rental Agreement, except to the extent caused by WesTrac's negligence.
- 20. INSURANCE**
- 20.1 The Renter agrees to insure and keep the Equipment insured with a reputable and solvent insurer in the names of WesTrac and the Renter for the full new replacement value against fire, accident, theft, damage and transport and such other risks as WesTrac may require, and maintain policies of insurance for third party and public liability indemnity cover of not less than \$10 million.
- 20.2 The Renter will pay promptly all premiums and stamp duty in respect of such policy of insurance and irrevocably authorises WesTrac 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.
- 20.3 The Renter will promptly following a request by WesTrac to provide to WesTrac certificates of currency or other evidence acceptable to WesTrac (which may include full copies of the relevant insurance policy) that the required insurance is in place.
- 21. LIMITATION AND LIABILITY**
- 21.1 **(Overall cap)** To the extent permitted by law, the liability of WesTrac, 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 WesTrac:
- to a refund of the Rental Charges;
 - to the supply of the Equipment again; or
 - 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.
- 21.2 **(Mutual time limit)** Subject to clause 18, each party must notify the other of any claim whatsoever arising under or in connection with this Rental Agreement within 12 months of the earlier of when the party was aware or ought reasonably to have been aware of the basis for the claim, and any failure to do so releases the other party from all liability in connection with the claim and its subject matter.
- 21.3 **(Exceptions)** Subject to clause 21.5, the limitations in clause 21.1 do not apply in relation to a liability by one party to the other party for the destruction of any property (including third party property), injury, illness, disease or death or breach of intellectual property rights.
- 21.4 **(Consequential loss)** WesTrac 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.
- 21.5 **(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 \$50,000,000.
- 22. NOTICES**

- 22.1 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.
- 22.2 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.
- 23. GOODS AND SERVICES TAX**
- 23.1 Unless otherwise stated expressly all prices are exclusive of GST and the Renter must on demand pay to WesTrac all GST payable in respect of the supply of the Equipment to the Renter.
- 24. ENTIRE AGREEMENT**
- 24.1 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.
- 25. CONFIDENTIALITY AND PRIVACY**
- 25.1 WesTrac respects the privacy of personal information including personal and contact information, such as an individual's name, street, postal and email addresses and telephone and fax numbers, professional information, financial and bank account details and consumer credit information (**Personal Information**).
- 25.2 The Renter acknowledges, accepts and agrees:
- to WesTrac's terms and conditions of privacy at <http://www.westrac.com.au/terms>;
 - to WesTrac's data governance statement at <https://www.westrac.com.au/terms>;
 - that WesTrac may use Personal Information and other data in accordance with its privacy statement and data governance statement; and
 - without using such information, WesTrac may not be able to supply the Equipment.
- 25.3 For the sole purpose of assessing the creditworthiness of the Renter in connection with a credit facility, the Renter undertakes to provide signed written authorities to any third party on request by WesTrac, and authorises WesTrac to make relevant enquiries including:
- reviewing any existing credit facility, obtain credit information or any report containing information about the Renter's commercial activities or credit worthiness, from a credit reporting agency, or any business which provides information about the credit worthiness of a person or an entity in relation to credit provided by WesTrac;
 - use, disclose or exchange with credit providers named in the Credit Application, credit providers that may be named in a credit report issued by a credit reporting agency, credit reporting agencies, and/or any collection agent of WesTrac or its related parties, information about the Renter's credit arrangements, including any information about the Renter's credit worthiness, credit standing, credit history or credit capacity; and
 - disclose a credit report, any information contained in it, and any information about the Renter's credit arrangements to WesTrac's Business Partners, agent or professional advisor involved in assessing the Application or the Renter's ongoing credit worthiness, or collecting payments overdue.
- 25.4 Subject to clause 25.5 neither party may disclose, or allow any person to disclose, confidential information to third parties including:
- the subject matter, correspondence in respect of, and contents of this Rental Agreement (but not its actual existence);
 - the subject matter and the existence of any dispute or difference; and
 - the Rental Charges, the purchase price (if applicable) and any discounts, rebates or cost saving measures.
- 25.5 The obligations to maintain confidentiality under clause 25.4 apply except for a disclosure:
- permitted with the prior written consent of the other party;
 - permitted in accordance with WesTrac's data governance statement;
 - required by law, any stock exchange or court order; or
 - required as is reasonably necessary to professional advisers.
- 25.6 WesTrac may collect, store, use and disclose confidential information and Personal Information to WesTrac's affiliates, Caterpillar Inc (USA) and its subsidiaries, affiliates and related parties.
- 26. MISCELLANEOUS**
- 26.1 The Rental Agreement is governed by the laws of the States or Territories of Australia in which it is signed.
- 26.2 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.
- 26.3 WesTrac may only waive a requirement or breach of the Rental Agreement 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).
- 26.4 WesTrac may assign or subcontract all or any of its rights under the Rental Agreement. The Renter must not assign or

sub- contract all or any of its right under the Rental Agreement.

- 26.5 No delay or omission to exercise any right, power or remedy accruing to WesTrac 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 WesTrac to take action or make a claim in respect of a continuing breach or default or to be acquiescence to it.

The Terms and Conditions for Rentals from WesTrac v1.0 are accepted by a duly authorised representative on behalf of the Customer below:

Renter Name: _____

Renter ABN No: _____