

DEFINITIONS

"ACL" means the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2000* (Cth).

"Amounts Owning" means all amounts owing by the Customer to EZ-SCAF under or in connection with the hire of Equipment.

"Business Day" means a day that is not a Saturday, Sunday or public holiday in the State or Territory in which the Hire Equipment was hired from EZ-SCAF.

"Business Hours" means 7am to 4pm on a Business Day

"Charges" means the ancillary charges which may be payable by the Customer as set out in clause 6.

"Claims" means any claim (whether actual or contingent) including a claim for loss, damages and expenses (including legal fees) arising out of tort, breach of statute, breach of warranty or guarantee or breach of this Agreement.

"Customer" refers to the person, firm, organisation, partnership, corporation or other entity (including trust or trustee) hiring the Equipment from EZ-SCAF as identified in the Credit Application or Hire Agreement.

"Customer's Premises" means the premises nominated by the Customer as the location for the delivery, use and collection of the Hire Equipment.

"Environmental Laws" means any statute, regulations or law made or issued by a regulatory or government body regulating or relating to the environment including the use or protection of the environment.

"Equipment" means all equipment including tools, buildings, vehicles, accessories and parts hired to the Customer.

"Hire Agreement" means the agreement between EZ-SCAF and Customer for the hire of Equipment which includes:

- a) any Commercial Credit Application;
- b) these Standard Terms and Conditions of Hire; and
- c) any applicable Special Conditions of Hire.

"Hire Charges" means the rates and Charges payable by the Customer for the hire of the Equipment.

"Hire Period" means the period of hire for the Hire Equipment as described in clause 2.

"Insolvency Event" means an event where a petition is presented for the winding up of the Customer, an administrator, receiver or receiver and manager is appointed, the Customer is deregistered or makes or proposes to make an arrangement with its creditors, or execution is levied upon the assets of the Customer and is not satisfied within 7 days or the Customer is unable to pay all its debts, as and when they become due and payable.

"Liability" means any liability (whether actual, contingent or prospective), loss, damage, cost and expense however arising.

"Long Distance Location" means any location in excess of 50km of the nearest EZ-SCAF local branch.

"Off-Hire Date" means the date the Customer advises EZ-SCAF the Equipment is no longer required and EZ-SCAF issues the Customer with an Off-Hire Number in accordance with clause 5.5.

"Off-Hire Number" means the number provided to the Customer by EZ-SCAF pursuant to clause 5.5 confirming Equipment is off-hired.

"EZ-SCAF" means EZ-SCAF Rental Group Operations Pty Ltd (ABN 74 126 102 485) or any of its Related Bodies Corporate (as defined in the *Corporations Act 2001* (Cth)) and is the owner of the Equipment.

"EZ-SCAF's Premises" means the premises nominated by EZ-SCAF as the location for the collection and return of the Hire Equipment by the Customer.

"Other Charges" means all other charges apart from the Hire Charges as set out in clause 6.

"PPSA" means the *Personal Property Securities Act 2009* (Cth) and where applicable includes all regulations made pursuant to it. Definitions contained in the PPSA are the same in these Terms and Conditions.

"Return Date" means the date on which the Hire Equipment is returned to the physical possession of EZ-SCAF.

"Start Date" is the earlier of (a) when the Customer takes possession of the Equipment or (b) when EZ-SCAF delivers the Equipment to the Customer's Premises.

"Unforeseen Events" means an event beyond the control of EZ-SCAF including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, orders or regulations or governments fires, floods and strikes.

1. HIRE OF EQUIPMENT

- 1.1. EZ-SCAF agrees to hire the Hire Equipment to the Customer for the Hire Period and the Customer agrees to pay the Hire Charges and Other Charges.
- 1.2. EZ-SCAF hires Equipment at its absolute discretion and may refuse to hire to the Customer.

2. HIRE PERIOD

- 2.1. The Hire Period commences on the Start Date and ends on the earlier of:
 - a) when the Customer obtains an Off-Hire number (subject to access being granted to collect the Equipment); or
 - b) when back in the possession of EZ-SCAF (irrespective of any expected Off-Hire Date).
- 2.2. The Hire Period includes weekends and public holidays and is irrespective of the time the Hire Equipment is being used.
- 2.3. Minimum Hire Periods may apply for some Equipment (such as buildings). If the Customer seeks to return the Equipment prior to the end of the Minimum Hire Period, the Customer is still required to pay the Hire Charges for the Minimum Hire Period.

3. COLLECTION AND DELIVERY OF HIRE EQUIPMENT

- 3.1. Where EZ-SCAF is delivering Equipment to or collecting Equipment from the Customer's Premises, access must be granted to enable timely delivery and collection. The Customer will be responsible for any demurrage, delay or futile deliveries or collection costs of Equipment if access is not granted.
- 3.2. Delivery times and dates are estimates only. EZ-SCAF is not responsible for the failure or delays in delivery or installation due to an Unforeseen Event.
- 3.3. EZ-SCAF will notify the Customer of any delay in delivering, collecting or installing the Hire Equipment.

4. INSPECTION OF THE HIRE EQUIPMENT

- 4.1. The Customer must inspect all Hire Equipment upon delivery and/or collection. Upon return of the Equipment to EZ-SCAF's Premises, EZ-SCAF will notify the Customer of any defect or damage which may incur Other Charges.

5. HIRE CHARGES

- 5.1. **Hire:** The Customer must pay EZ-SCAF all charges set out in any quote and/or Hire Agreement. In accordance with clause 18.14(b), EZ-SCAF will advise the Customer at least 10 Business Days in advance of any increase to the Hire Charges. Subject to this clause, EZ-SCAF reserves the right to amend the Hire Charges in accordance with any change to its standard pricing for the Hire Equipment.
- 5.2. Additional hire charges may apply if the Hire Equipment is used more than 8 hours a day or more than 48 hours per week.
- 5.3. Equipment hired for at least 5 days in a seven-day continuous period, will be charged at a weekly rate.
- 5.4. Subject to clause 11.2(b), stand downs may apply to Equipment where agreed by EZ-SCAF as follows:
 - a) Any stand down request must be made by 9.00am on the day of the stand down. Stand downs cannot be applied retrospectively;
 - b) The Customer remains responsible for the security of the Equipment and all loss or damage to equipment while it is stood down;
 - c) Stand downs do not apply to fixed plant including (but not limited to) site accommodation, caravans, containers, fencing, barriers, wired power generation, steel plates, shoring, propping and fixed or minimum term rentals;

- d) Christmas and Easter stand down periods are based on the calendar days and a maximum of two weeks for Christmas and one week for Easter applies;
 - e) Stand downs of sub-hired equipment are subject to the terms of that supplier;
 - f) Unless otherwise agreed in writing, stand downs will only apply to:
 - (i) Equipment breakdown up to 100% for duration of breakdown;
 - (ii) Inclement weather up to 50% of Hire Charge (high wind/severe wet);
 - (iii) Gazetted Public Holiday up to 50% of Hire Charge;
 - (iv) Christmas/Easter period up to 50% of Hire Charge; and
 - (v) Industry Rostered Day Off up to 50% of Hire Charge.
 - g) If the Equipment is used during a stand down (determined for instance by remote monitoring), full Hire Charges for that period will be applied; and
 - h) If a stand down request exceeds two days (except for Christmas and Easter) EZ-SCAF retains the right to have the equipment off-hired and returned to EZ-SCAF at the customer's expense.
- 5.5 **Off-hire:** When the Customer wants to off-hire the Equipment, it must obtain an Off-Hire Number by 9.00am of the Off-Hire Date and provide access for collection of the Equipment. Hire Charges are payable for the full Hire Period if the customer retains the Equipment past an expected Off Hire Date.

6. CHARGES

- 6.1 All amounts payable in the Hire Agreement are exclusive of GST unless otherwise specified).
- 6.2 In addition to the Hire Charges, the Customer agrees to pay:
- a) for any training or instruction related to the operation or hire of Equipment;
 - b) for any consumables and trade materials included but not limited to fuel charges if applicable. EZ-SCAF shall be exclusively entitled to claim fuel tax credits for any fuel it purchases for the Equipment, even if such charge is passed onto the Customer;
 - c) Tax (including GST subject to a taxable supply) and Government charges, levies or fines (including any environmental levy) in relation to the hire of the Hire Equipment;
 - d) charges for transport, installation and dismantling (if applicable); mobilisation and demobilisation (if applicable). Unless expressly specified, transport rates are based on delivery Monday – Friday (7am – 3pm) in the metro region;
 - e) any charges incurred for demurrage, delay (should time at Site exceed 30 minutes) or futile delivery;
 - f) if applicable under clause 13.1, the Loss, Theft & Damage Waiver Fee ("LTD Waiver Fee");
 - g) any amounts the Customer is responsible for under clause 10.1;
 - h) for cleaning and repair of Hire Equipment if not returned in clean, good working condition;
 - i) a charge for pumping out waste tanks or refilling of water tanks;
 - j) for any modification of Equipment that is necessary or requested by the Customer; and
 - k) the cost passed on by EZ-SCAF arising out of a change in law, code, regulations or Customer policy or guideline.

7. PAYMENT

- 7.1 All Hire Charges are payable in full within 30 days of the invoice date.
- 7.2 If payment is not made in full by the due date, EZ-SCAF may charge a late payment fee of 2% (cumulative) per month. In addition, the Customer must pay to EZ-SCAF all expenses in recovering any Amounts Owing (on a full indemnity basis).
- 7.3 EZ-SCAF may set-off any monies owing by it to the Customer against any Amounts Owing.

8. CUSTOMER'S HIRE OBLIGATIONS

- 8.1 **Possession and Use by Customer:** The Customer must not allow nor authorise any other person or entity to use, re-hire or have possession of the Hire Equipment at any time during the Hire Period without the prior written approval of EZ-SCAF.
- 8.2 The Customer remains responsible and liable to EZ-SCAF irrespective of any sub-hire agreement or arrangement entered into by the Customer.
- 8.3 The Customer is liable to EZ-SCAF for the acts and omissions of any Sub- Hirer and the employees, agents, contractors and officers of the Sub- Hirer as if they were acts or omissions of the Customer.
- 8.4 **Suitability:** Subject to clause 15, the Customer agrees that before accepting the Hire Equipment it has satisfied itself as to the suitability, condition and fitness for purpose of the Equipment without relying upon the skills or judgment of EZ-SCAF or any person purporting to act on its behalf. The Customer acknowledges that, to the extent permitted by law, EZ-SCAF has not made any representation or warranty (other than as expressly set out in writing) as to the suitability, condition and fitness for purpose of the Equipment or any other matter.
- 8.5 **Operation of Hire Equipment:** The Customer warrants it will at all times:
- a) transport, erect, install and operate Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
 - b) ensure persons transporting, erecting, installing and operating the Equipment are suitably instructed, trained and qualified (including holding a current licence to perform and/or operate the Equipment) in its safe and proper use and comply with all relevant laws and manufacturer's recommendations relating to the use of the Equipment;
 - c) without limiting any other requirement in this clause 8.5, ensure that any boomlift that can elevate over 11m in height is only operated by personnel who hold an EWP licence,
 - d) display and maintain all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Hire Equipment;
 - e) ensure all persons operating the Hire Equipment wear suitable clothing and protective equipment as required or recommended by relevant law, applicable industry standards and the manufacturer;
 - f) ensure that no persons operating the Hire Equipment are under the influence of drugs or alcohol or carry any dangerous, hazardous or illegal substances in or onto the Equipment;
 - g) conduct a job safety analysis prior to using the Hire Equipment at a site;
 - h) insure the Equipment during the Hire Period (if not electing to pay the Loss, Theft & Damage waiver fee); and
 - i) comply with all Environmental Laws applying from time to time and immediately rectify any breach of an Environmental Law caused by the use, possession or storage of the Hire Equipment.
- 8.6 **Cleaning and Maintenance:** The Customer must:
- a) clean, fuel, lubricate and maintain Hire Equipment in good condition and in accordance with the manufacturer's and EZ-SCAF's instructions at the Customer's cost;
 - b) not in any way alter, modify (including removing any identifying mark or plate), tamper with, damage or repair the Equipment without EZ-SCAF's prior written consent;
 - c) provide access to EZ-SCAF to maintain and service the Equipment and undertake statutory inspections when necessary during Business Hours, failing which additional charges for out of hours service and maintenance may apply;
 - d) arrange for the emptying of any waste tanks and water carts; and
 - e) return the Equipment to EZ-SCAF in the same good and clean condition it was in when the Customer received it, ordinary fair wear and tear excepted.
- 8.7 **Safekeeping:** The Customer must ensure that the Equipment is:

- a) stored safely and securely and is protected from theft, vandalism, seizure and damage or subject to adverse climatic or environmental conditions which may damage the Hire Equipment (ie corrosion, sea-salt and flooding); and
 - b) not exposed to any hazardous substance including asbestos without prior written consent.
- 8.8 **Hazardous substances:** The Customer must advise EZ-SCAF of any risks of hazardous substances and/or contamination to the Equipment as soon it becomes apparent (or should have become apparent). The Customer will:
- a) provide to EZ-SCAF its Asbestos Register upon request; and
 - b) decontaminate the Hire Equipment and provide to EZ-SCAF details of the process applied.
- 8.9 If the Hire Equipment has not been properly decontaminated (or not capable of being decontaminated) the Customer may be charged for new Hire Equipment.
- 8.10 **Inspections:** The Customer consents to EZ-SCAF inspecting and maintaining the Hire Equipment with reasonable notice during the Hire Period. In addition, the Customer may arrange a joint inspection with EZ-SCAF.
- 8.11 **Safe Loading and Transport:** The Customer must ensure the safe loading, securing and transporting of all Equipment in accordance with all laws, industry guidelines and manufacturer's guidelines. The Customer must, and must ensure that any transporting contractor will, observe any safety directions advised by EZ-SCAF and/or manufacturer of the Equipment for its loading and safe handling.
- 8.12 **Location:** The Customer:
- a) must not remove the Hire Equipment from the Australian State or Territory in which it was hired without EZ-SCAF's prior written consent. If consent is provided, the Equipment must be returned to the original site from where the Equipment was delivered by EZ-SCAF;
 - b) agrees to pay any costs associated with EZ-SCAF's attendance for breakdown and maintenance at Long Distance Locations; and
 - c) must not use the Hire Equipment offshore, underground, or in a mine without the prior written consent of EZ-SCAF.
- 8.13 **Electrical and Fire Suppression Equipment re-testing and re-tagging:** All Equipment supplied by EZ-SCAF is tagged and tested prior to hire. During the Hire Period, the Customer is responsible for arranging at its cost the re-testing and re-tagging of electrical equipment in accordance with the manufacturer's instructions, relevant law, applicable Australian Standards and regulatory authority requirements. Any damage caused to the Hire Equipment resulting from incorrect testing will be at the Customer's cost.
- 8.14 **Fuel:** The Customer is responsible for ensuring any Equipment is returned to EZ-SCAF with a full tank of fuel, or agrees to pay the fuel charges to refuel.
- 8.15 **Wear and Tear:** The Customer is responsible for:
- a) the cost of repairing or replacing flat or damaged tyres and for all wear and tear and damage to tyres and tracks caused by conditions which EZ-SCAF reasonably considers to be adverse or abnormal. Ordinary wear and tear is considered to be 4,000 service meter units. At all times the Customer must adhere to the manufacturer's recommended tyre pressure and track tension;
 - b) the cost of all bucket and blade wear or damage caused by conditions which EZ-SCAF considers are abnormal or adverse use; and
 - c) all wear and tear to cutting edges, bucket teeth, hardware, ripper teeth and all other ground engaging tools hired. All ground engaging tools hired by the Customer are to be returned to EZ-SCAF at the end of the Hire Period in the same condition in which they were supplied. Usage of ground engaging tools will be measured by comparing the percentage of use at the commencement of the Hire Period with the percentage of use at the end of the Hire Period.
- 8.16 See "Wear and Tear at www.EZ-SCAF.com.au for further examples and exclusions to wear and tear.

9. TITLE TO HIRE EQUIPMENT

- 9.1 The Customer acknowledges that EZ-SCAF retains title to the Hire Equipment at all times (even if the Customer goes into liquidation, external administration of any kind or becomes bankrupt during the Hire Period) and in no circumstance will the Hire Equipment be deemed to be a fixture. The Customer has no interest in the Hire Equipment of any kind other than as a bailee.
- 9.2 EZ-SCAF may hire or lease Equipment from third parties ("sub-hirers") to supply to the Customer and if this occurs title in the Equipment remains with the sub-hirer.
- 9.3 Except with the prior written consent of EZ-SCAF, the Customer will not be entitled to offer, transfer, sell, assign, sub-let, encumber, charge, mortgage, pledge or otherwise deal with the Hire Equipment in any way whatsoever.
- 9.4 **PPSA:** EZ-SCAF may register its security interest that arises under this Hire Agreement and in the Equipment and the proceeds from any dealing in the Equipment. The Customer:
- a) must do all things necessary to enable EZ-SCAF to register and perfect its security interest in the Equipment under the PPSA including enabling it to register a financing statement;
 - b) must take all steps to ensure any security interest arising under or in respect of sub-hire is enforceable, perfected and otherwise effective under PPSA;
 - c) must not register a financing change statement in respect of a security interest arising out of this Hire Agreement without EZ-SCAF's consent;
 - d) must not create a security interest in the Equipment, register or permit to be registered a financing statement in relation to the Equipment (other than in respect of sub-hire, in which case prior written consent of EZ-SCAF is required);
 - e) must notify EZ-SCAF of any change in writing of the Customer's details set out in the Credit Application;
 - f) waives all rights under s157 of the PPSA to receive a copy of the verification statement relating to security interest created under this Hire Agreement;
 - g) agrees to the extent permitted by the PPSA, the following provisions of the PPSA will not apply and are contracted out of: s95 (to the extent that it requires the secured party to give notices to the grantor); s96; s118 (to the extent that it allows a secured party to give notices to the grantor); s121(4), s125; s130; s132(3)(d); s132(4); s135; s142 an s143; and
 - h) agrees that the following provisions of the PPSA will not apply and the Customer will have no rights under them; s127; s192(2) and (3); s130(1); s132; s134(2); s135; s136(3), (4) and (5) and s137.
- 9.5 Unless otherwise agreed, EZ-SCAF and the Customer will not disclose information referenced in s275(1) of the PPSA to an interested person, or any other person requested by an interested person. The Customer waives any right it may have had under s275(7)(c) of the PPSA to authorise disclosure of that information.
- 9.6 For the purposes of s20(2) of the PPSA, the collateral is the Equipment set out in any quote and/or Hire Agreement. The Quote and/or Hire Agreement is the security agreement for the purposes of the PPSA.

10. RESPONSIBILITY FOR THE HIRE EQUIPMENT

- 10.1 The Customer is responsible for any loss, theft or damage to the Equipment (from any cause whatsoever) during the Hire Period except to the extent the loss, theft or damage is caused by EZ-SCAF.

11. EQUIPMENT BREAKDOWN

- 11.1 **Obligations of Customer:** If the Equipment breaks down or becomes unsafe to use during the Hire Period the Customer must:
- a) immediately stop using the Equipment and notify EZ-SCAF;
 - b) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
 - c) take all steps necessary to prevent any further damage to the Equipment; and
 - d) not repair or attempt to repair the Equipment without EZ-SCAF's prior written consent.

11.2 **Obligations of EZ-SCAF:** if the Equipment breaks down or becomes unsafe to use (through no act or omission of the Customer including misuse, recklessness and negligence), EZ-SCAF will:

- a) repair the Hire Equipment or provide suitable substitute Hire Equipment when reasonably possible after being notified by the Customer; and
- b) not impose Hire Charges for that portion of the Hire Period during which the Equipment could not be used, nor any costs associated with any repair or replacement of the Equipment; and

11.3 If the Equipment is broken down or becomes unsafe to use due to any act or omission of the Customer, the Customer will be liable for all costs for the repair or replacement and continuing Hire Charges while the Equipment is being repaired and/or replaced.

11.4 EZ-SCAF's liability for any expenditure, damages, losses, costs or inconvenience incurred by the Customer arising from a breakdown of the Equipment will be limited to the extent provided for in clause 15.

12. LOST, STOLEN OR DAMAGED HIRE EQUIPMENT

12.1 If the Equipment is lost, stolen or damaged, the Customer must notify EZ-SCAF in writing of the facts and circumstances giving rise to the loss, theft or damage of the Equipment within 5 Business Days of the event occurring, and the Customer will remain liable for all Hire Charges up to and including the day that EZ-SCAF is notified.

12.2 Despite any other provision in these Terms, if the Equipment is lost, stolen or damaged the Customer is responsible for:

- a) the cost of the repairs; or
- b) replacement (if it cannot be repaired) at EZ-SCAF's reasonable discretion; and
- c) continuing Hire Charges until the repair or replacement of the Equipment; and
- d) other reasonable costs and expenses associated with the repair and/or replacement of the Equipment.

12.3 If, the Customer has paid the Loss, Theft & Damage Waiver, the Customer's liability for the cost of the repairs or the replacement cost of the damaged Equipment is limited subject to clause 13 below.

13. LOSS, THEFT AND DAMAGE WAIVER

13.1 The Customer may seek to limit its liability arising out of loss, theft and damage to the Equipment by paying a fee of 12.5% which is automatically added to the customer's monthly invoice ("LTD Waiver Fee"). The LTD Waiver Fee is not insurance. In the event of a claim for damage, the customer must:

- a) notify EZ-SCAF in accordance with clause 12.1;
- b) if requested by EZ-SCAF provide a written Police report of the loss or damage to the Equipment within 5 Business Days and any other written or photographic evidence requested by EZ-SCAF (which may include sworn statements and statutory declarations); and
- c) pay to EZ-SCAF the LTD Waiver excess which is the greater of:
 - (i) \$500 per item of Equipment (if the repair or replacement cost is less than \$500); or
 - (ii) the amount equal to 15% of the cost of repair or (if beyond repair) 15% of the replacement cost.

13.2 Even if the Customer pays the LTD Waiver Fee, the Customer is still liable for all loss and damage to the Equipment if:

- a) the LTD Waiver Fee was not paid prior to any loss or damage;
- b) EZ-SCAF reasonably believes the Customer failed to take reasonable precautions to protect and secure the Equipment;
- c) the Equipment is located, used, loaded, unloaded or transported on or over water, wharves, bridges or vessels of any kind, or used in underground mines;
- d) the loss or damage is:
 - (i) to tyres and tubes, including punctures, blowouts, bursts, bruises or cuts;
 - (ii) to glass or perspex, including breakage or damage to windscreens, windows or mirrors;
 - (iii) caused by vandalism, including graffiti on the Hire Equipment;

- (iv) to paintwork;
 - (v) due to wrongful conversion of any components;
- e) the loss or damage was caused, or contributed to, by:
- (i) a breach of this Hire Agreement;
 - (ii) an act or omission of the Customer;
 - (iii) the use of the Hire Equipment was in contravention of any laws, codes, regulations or contrary to EZ-SCAF's or the manufacturer's instructions;
 - (iv) a lack of, or faulty lubrication or general servicing of the Equipment;
 - (v) the misuse, abuse, overloading or incorrect loading of the Equipment or any of its components;
 - (vi) the overloading or artificial electrical current to motors or other electrical appliances or devices, including use of under-rated or excessive length of extension leads on electrical powered tools and machines;
 - (vii) an exposure to any corrosive, caustic or toxic substance, including cyanide, asbestos, saltwater, acid or harsh environmental conditions etc; or
 - (viii) the transport of the Hire Equipment, except where transported by EZ-SCAF

13.3 The Customer does not need to pay the LTD Waiver Fee if it produces a certificate of currency evidencing that it holds a policy of insurance in accordance with clause 14 below.

13.4 If the Customer proposes to use the Equipment off-shore, over water or in underground mines or is a kind of Equipment ordinarily used off-shore, over water or in underground mines, the Customer should consider the extent of insurance which may be required under clause 14.3.

14. INSURANCE

14.1 If the Customer elects not to pay the LTD Waiver Fee, it must take out and maintain a policy of insurance that covers loss or damage to the Hire Equipment during the Hire Period for not less than the full new replacement cost of the Equipment ("Hire Equipment Insurance").

14.2 The Customer must provide a certificate of currency of the Hire Equipment Insurance upon request. The Customer will be responsible for the excess and any shortfall in repair or replacement costs from any insurance payout.

14.3 The effecting and keeping in force of insurances as required by this Agreement shall not in any way limit the responsibilities, obligations and liabilities of the Customer under any other clause of this Agreement.

14.4 **Over-Water, off-shore and underground mines:** If required by EZ-SCAF, the Customer must also take out and maintain for the Hire Period, insurance for the Equipment which will be used off-shore, over water or in underground mines.

15. INDEMNITIES AND EXCLUSION OF LIABILITIES

15.1 To the extent permitted by law (unless otherwise expressly set out in this Agreement), all terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to EZ-SCAF's obligations under the Hire Agreement are excluded.

15.2 Nothing in this Hire Agreement limits any condition, guarantee or warranty imposed by legislation, including any Consumer Guarantees that may apply pursuant to the ACL. Where EZ-SCAF cannot exclude a condition, guarantee or warranty, it can limit its liability (at EZ-SCAF's election to):

- a) In the case of goods, the repair or replacement of the Equipment (or the cost of repair or replacement);
- b) In the case of services, supplying the services again.

15.3 Subject to clause 15.2 and any legislation governing EZ-SCAF's obligations and liabilities, EZ-SCAF's liability (in tort, statute, contract, under an indemnity or however arising) is limited to the Hire Charges paid under this Hire Agreement.

15.4 Subject to clause 15.2, neither party is liable for consequential loss or damage (including but not limited to loss of actual or anticipated

revenue, business interruption, delays, loss of production or economic loss of any kind) in contract, tort, under statute or otherwise.

- 15.5 The Customer is liable for and indemnifies EZ-SCAF against all Claims arising out of or in connection with Customer's hire and use of the Equipment or breach of this Hire Agreement, including personal injury, damage to property and claims by third parties, or arising from or in connection with the Customer's failure to comply with any law or regulation.
- 15.6 Without limiting clause 8.4, the Customer agrees that EZ-SCAF does not provide professional advice or advice requiring particular skills or judgment. EZ-SCAF recommends that if the Customer requires such advice it should seek that advice from an appropriate professional. The Customer acknowledges that it has not relied on any advice or judgment of a professional nature by EZ-SCAF when entering into any Hire Agreement.

16. TERMINATION

- 16.1 Either party may terminate the Hire Agreement with 7 days' notice by serving a written notice on the other party if:
- the other party breaches the Hire Agreement and fails to remedy within 7 days of notification; or
 - the other party becomes insolvent or bankrupt, or executes a personal insolvency agreement, enters into liquidation, administration or receivership or ceases to carry on business.
- 16.2 Where EZ-SCAF determines there is an immediate and material risk to EZ-SCAF or the Equipment, EZ-SCAF may terminate the Hire Agreement at any time by giving the Customer at least 24 hours' notice. EZ-SCAF may terminate the Hire Agreement with immediate effect if necessary, to address a serious and imminent risk to health or safety.
- 16.3 The right of termination is in addition to any other rights under the Hire Agreement.

17. RECOVERY OF HIRE EQUIPMENT

- 17.1 If EZ-SCAF has terminated the Hire Agreement with the Customer pursuant to clause 16, EZ-SCAF may take all steps necessary (including legal action) to recover the Equipment, including entering any site occupied by the Customer. The Customer expressly provides EZ-SCAF consent to enter any site or premises upon of the Customer to recover Equipment.

18. MISCELLANEOUS

- 18.1 **Severability:** If any part of this Hire Agreement becomes void or unenforceable for any reason then that part will be severed in respect only 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.
- 18.2 **Governing Law and Jurisdiction:** The Hire Agreement is governed by the laws of New South Wales and each party submits to the non-exclusive jurisdiction of that jurisdiction.
- 18.3 **Disputes:** In the event there is a dispute between the parties to this Hire Agreement or the Customer wishes to make a Claim, the Customer must notify EZ-SCAF in writing (to the Branch from which the Equipment was hired) of the reasons for the dispute or details of the Claim (including reference to any invoice) within 7 Business Days from the date the Claim or dispute arose (or date of invoice).
- 18.4 The Customer acknowledges and agrees that failure to provide written notice of a Claim within 6 months of the date the Claim or dispute arose (or date of invoice) will mean the Customer is barred from raising any Claims or dispute with EZ-SCAF after that time period has passed.
- 18.5 Within 14 Business Days of notification of any dispute or Claim, representatives of both parties shall meet to endeavour to resolve the Claim or dispute.
- 18.6 If the Claim or dispute cannot be resolved, the chief executive officers of each party shall confer within 14 days of any meeting convened in accordance with clause 18.5 to endeavour to resolve the Claim or dispute.
- 18.7 If the parties fail to resolve the Claim or dispute pursuant to this clause, and prior to commencing proceedings, the Claim or dispute must first be referred to arbitration to be conducted subject to the Resolution Institute's Arbitration Rules. This clause does not apply to proceedings for injunctive or urgent declaratory relief.

- 18.8 **Security of Obligations:** As security for the obligations and liabilities of the Customer under the Hire Agreement, the Customer charge for its performance of its obligations and liabilities, all of its legal and equitable interest (both present and future) held in:
- the Equipment that is hired to the Customer under this Agreement; or
 - any other property over which the Customer has agreed to provide as security including as a condition of providing the credit to the Customer (which could include real or personal property).
- 18.9 The Customer (and any guarantors) agree, on request by EZ-SCAF, to execute any documents and do all things required by EZ-SCAF to register a mortgage security or other security interest over any real property or other asset. The Customer (and its guarantors) must indemnify EZ-SCAF against all costs and expenses incurred by EZ-SCAF in connection with the preparation and registration of any such mortgage or security documents. The Customer (and its guarantors) also consents unconditionally to EZ-SCAF lodging a caveat or caveats noting its interest in any caveatable property.
- 18.10 **Entire Agreement:** To the extent permitted by law, the Hire Agreement comprises the entire agreement between the parties. No additional terms and conditions proposed by the Customer (including in the Purchase Order) apply to the hire of the Hire Equipment unless agreed in writing by EZ-SCAF.
- 18.11 **Variation:** EZ-SCAF may at any time vary these Terms and Conditions of Hire which will come into effect 14 days after notice is given to the Customer where possible by email or otherwise by notice through EZ-SCAF's website. Any other variation of the Hire Agreement must be agreed in writing by EZ-SCAF and the Customer.
- 18.12 **Privacy:** EZ-SCAF may collect personal information about a Customer and EZ-SCAF will treat this information in accordance with Australian Privacy Principles.
- 18.13 The information may be used and disclosed to third parties to provide services to the Customer, to fulfil administrative functions associated with these services (for example assessment of credit worthiness), to enter into contracts with the Customer or third parties and for marketing and client relationship purposes. If the Customer does not provide all personal information required by EZ-SCAF, EZ-SCAF may not be able to hire the Equipment or provide the associated services to the Customer. EZ-SCAF may disclose the Customer's information to EZ-SCAF's service providers and contractors from time to time to help provide and market EZ-SCAF's services to the Customer.
- 18.14 The Customer consents to and authorises EZ-SCAF to use and disclose the Customer's personal information to third parties including any credit provider or credit reporting agency and to EZ-SCAF's service providers, contractors and affiliated companies from time to time, for the purposes outlined above.
- 18.15 **Notice to Customer:** Any document or notice under this Hire Agreement may be given by:
- In the case of a Notice to EZ-SCAF – by posting it to EZ-SCAF's registered office and branch address;
 - In the case of a Notice to the Customer – by posting to the Customer's address (as stated in the Credit Application or last notified by the Customer in writing to EZ-SCAF) or by email to the Customer's address.
- 18.16 Any Notice given by post will be deemed to have been delivered on the third Business Day after posting and if by email on the day of transmission if before 5.00pm or the following Business Day if sent after 5.00pm.
- 18.17 **No Waiver:** No delay or omission to exercise any right, power or remedy accruing to EZ-SCAF upon any continuing breach or default under the Hire Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of any right of EZ-SCAF to take action or make a claim in respect of a continuing breach or default or to be acquiescence to it.
- 18.18 **Withdrawal of Credit Accommodation:** Where EZ-SCAF determines at its sole discretion that there may be an immediate and material risk to EZ-SCAF or the Equipment, or where the Customer has failed to comply with the Agreement, any credit accommodation granted by EZ-SCAF to the Customer may be reviewed without notice and credit withdrawn. The Hire Agreement may be terminated and the Customer will owe to EZ-SCAF any outstanding amounts until the Hire Equipment is back in

Terms and Conditions of Hire

the possession of EZ-SCAF. In all other circumstances, EZ-SCAF will advise the Customer 7 days in advance of any review.

- 18.19 **Authority of Customer:** The Customer warrants and agrees that the person signing the Hire Agreement for and on behalf of the Customer has the authority of the Customer to enter into and bind the Customer to the Hire Agreement. The Customer indemnifies EZ-SCAF against all Claims arising out of a breach of the warranty contained in this clause.
- 18.20 **Previous Editions:** This edition of the Standard Terms and Conditions of Hire replaces and supersedes all previously issued EZ-SCAF Terms and Conditions of Hire.
- 18.21 **Time of the Essence:** Time is to be of the essence of all obligations of the Customer in the Hire Agreement.
- 18.22 **Survival:** Any provision of the Hire Agreement which is capable of having effect after the expiry or termination of the Hire Agreement (or any part thereof) survives and remains in full force and effect after the expiry or termination of the Hire Agreement.