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Dealers Licence: 13494

TERMS AND CONDITIONS OF HIRE

1. AGREEMENT TO HIRE

The Hirer agrees to hire a vehicle or vehicle from the Company, from time to time, on the terms and conditions of the Agreement (as amended under clause 28(g)).

2. HIRE SCHEDULE

- (a) Before the Company hires any vehicle to the Hirer, the Hirer must complete and sign a Hire Schedule for the vehicle. The Hire Schedule can be found at www.semitrailersales.com.au/rentalschedule and at the end of these terms and conditions.
- (b) A Hire Schedule submitted by the Hirer only becomes binding on the Company if it confirms in writing that it has accepted it.
- (c) The Company is not required to accept a Hire Schedule submitted by the Hirer.
- (d) When the Hirer receives confirmation that the Company has accepted a Hire Schedule a separate hire agreement comes into effect in relation to that Vehicle (**Hire Vehicle**) in that Hire Schedule (a **Hire Contract**).
- (e) Each Hire Contract incorporates these terms and conditions and the terms contained in the relevant Hire Schedule.

3. HIRE PERIOD

- (a) Subject to clause 3(c), the period of hire of each Hire Vehicle commences on the Commencement Date and ends on the End Date set out in the relevant Hire Schedule (**Hire Period**).
- (b) The Hire Period can only be extended by the Company in writing.
- (c) If no End Date is specified in the Hire Schedule, the Hirer agrees to hire the Hire Vehicle on the terms and conditions of the Agreement on an ongoing basis (**Ongoing Rental**). The term of the Ongoing Rental may be terminated upon either party giving the other party a Minimum Notice Period.

4. SECURITY DEPOSIT

- (a) The Hirer shall pay to the Company in full the Security Deposit and the Weekly Rental Rate for the first week of the Hire Period in advance prior to the Commencement Date.
- (b) The Hirer shall continue to pay the Weekly Rental Rate on a weekly basis, one week in advance for the Hire Period.
- (c) If the Hirer does not proceed to hire the Hire Vehicle, the Security Deposit is forfeited by the Hirer. If the Hirer breaches the terms of the Agreement and causes the Company loss, costs or damage, the Security Deposit will be applied towards satisfaction of the Company's loss, costs or damage. The Security Deposit will otherwise be refunded at the end of the Hire Period.

5. PAYMENT

- (a) The Hirer must pay to the Company on demand:



- (i) all Hire Rates and other charges that are payable under the Agreement;
 - (ii) all monies payable by the Company or the Hirer arising out of the use of all Hire Vehicles by the Hirer or imposed on the Company or on the Hirer by any Governmental or other competent authority (overloading fines, parking and traffic fines); and
 - (iii) all moneys for which the Hirer is liable to the Company under the Agreement including in respect of any breach of the Agreement or damage, loss or otherwise to a Hire Vehicle.
- (b) All Hire Rates and any other charges payable under the Agreement exclude GST unless otherwise indicated.
 - (c) Payments made by the Hirer under the Agreement must be made by cash, credit card, electronic funds transfer or direct debit, unless otherwise agreed in writing by the Company. Should the Hirer elect to make payments to the Company by credit card or direct debit, the Hirer must pay for all surcharges, dishonour fees and the Administration Fee.
 - (d) The Company will charge interest on overdue amounts payable by the Hirer (at the rate of 2% per annum above the average of the most recent prime rate, indicator rate or reference rate (however described) for business overdrafts published by Commonwealth Bank of Australia) calculated daily from the next Business Day after payment became due until the date of full and final payment of the overdue amounts. Any payment by the Hirer shall be credited first against any interest so accrued and the balance of payment, if any, shall be applied in reduction of the outstanding balance payable by the Hirer.
 - (e) The Hirer is responsible for and irrevocably authorises the Company to charge the Credit Card, the imprint of which or the number of which the Hirer shall provide to the Company when hiring a Hire Vehicle (or at any other time upon demand by the Company) in respect of all fees, deposits and amounts payable under the Agreement and in respect any rental of a Hire Vehicle under the Agreement not otherwise paid prior to the relevant Commencement Date.
 - (f) The Hirer hereby and without reservation authorises that any charge for damage to a Hire Vehicle or for liability to a third party for damage, may be debited to the Credit Card by the Company on the giving of written notice to the Hirer. The Hirer acknowledges this may occur after the relevant Hire Vehicle has been returned and as separate from the debiting of any rental charges to the Credit Card under the Agreement.
 - (g) The Hirer acknowledges it is responsible for all fees and legal costs incurred with respect to the collection of outstanding monies owed to the Company by the Hirer and that these fees and legal costs may also be charged to the Credit Card on the giving of written notice to the Hirer.

6. GST

To the extent that any supply made under or in connection with the Agreement is a taxable supply, the Hirer must pay, in addition to the consideration to be provided under the Agreement for that supply (unless it expressly includes GST) an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply, provided that the Company has first issued the Hirer a Tax Invoice (as defined in A new Tax System (Goods and Services Tax) Act 1999 (Cth)) in respect of that taxable supply.

7. HIRER ACKNOWLEDGEMENTS

The Hirer acknowledges and agrees that in hiring a Hire Vehicle:

- (a) its interest in the Hire Vehicle is as a bailee of the Company only and the Hirer agrees not to part with possession, dispose of, encumber or assign any right or interest in the Hire Vehicle and not create any lien on the Hire Vehicle for repairs or otherwise;
- (b) it obtains no option or other right to purchase a Hire Vehicle; and
- (c) the Hire Vehicle remains the Company's property at all times.

8. HIRER WARRANTIES

- (a) The Hirer warrants to the Company that:
 - (i) the Hirer shall notify the Company in writing immediately of any change of the details set out in a Hire Schedule or Customer Application Form;

- (ii) the warranties, representations and statements made by or on behalf of the Hirer, in addition to the personal particulars supplied by or on behalf of the Hirer in connection with the Agreement, including in the Customer Application Form, are true and correct in all respects and no relevant information has been withheld; and
 - (iii) the Credit Card produced to the Company in the Hire Contract under the Agreement has been legally issued to the Hirer and the Hirer is legally authorised to use such Credit Card and the Hirer (whether alone or together with another person or persons) is responsible for all amounts charged to that Credit Card.
- (b) The Hirer warrants to the Company that in respect to each Hire Vehicle hired by a Hirer under a Hire Contract, the Hirer shall:
- (i) use, handle and manage the Hire Vehicle in a proper and lawful manner and that the Hirer has the appropriate license(s) and training to use, handle and/or manage the Hire Vehicle;
 - (ii) hire the Hire Vehicle for business purposes only and not for an improper use;
 - (iii) take care of the Hire Vehicle and keep it in good repair and condition;
 - (iv) not expose the Hire Vehicle to the risk of loss, damage or destruction;
 - (v) promptly tell the Company if the Hire Vehicle is damaged, stolen or involved in an accident;
 - (vi) give the Company and the Company's Representatives access to the Hire Vehicle at any reasonable time, and ensure that anyone else gives the Company access to any premises where any Hire Vehicles are located to enable the Company to inspect them or exercise any of its rights under the Agreement (on reasonable notice);
 - (vii) not allow anything to happen that might reduce the value of the Hire Vehicle;
 - (viii) not do anything which would have the effect of voiding any insurance over the Hire Vehicle; and
 - (ix) not tamper with or do anything that damages any tracking device fitted to the Hire Vehicle by the Company.

9. INSURANCE

- (a) The Hirer must insure each Hire Vehicle for its full replacement value as set out in the relevant Hire Schedule for the relevant Hire Period (including any Ongoing Rental, if applicable) by taking out and maintaining, Trailer in Control Insurance with a reputable insurer under a comprehensive policy (**Trailer in Control Insurance**). The Hirer must ensure that the insurance policy notes the Company's interest as principal and includes an acknowledgement from the insurer that it will notify the Company not less than 30 days before cancelling the policy. Before the relevant Commencement Date in a Hire Schedule, the Hirer must provide to the Company a certificate of currency on the insurer's letterhead covering a maximum of 12 months and that certificate of currency must note the interests of the Company as principal.
- (b) The Hirer must prevent each Hire Vehicle from being at any time used, kept or otherwise situated in any manner which would, if it were lost, stolen, or damaged by fire or accident, permit the insurer of the Vehicle to decline a claim arising out of such theft, fire or accident whether under condition or an exclusion contained in any insurance policy.
- (c) If the Hirer is unable to obtain the Trailer in Control Insurance, the Company may take out that insurance for the Hirer. However, the amount paid by the Company must be repaid to the Company by the Hirer under these terms and conditions. The Company will increase the relevant Hire Rates to reflect this obligation (if required).
- (d) The Hirer irrevocably authorises the Company to receive all monies payable by the insurer of each Hire Vehicle under the relevant Trailer in Control Insurance policy or by any other person in respect of loss of or damage to the relevant Hire Vehicle and the Hirer hereby appoints the Company as the Hirer's agent to recover and/or compromise in the Company and the Hirer's names, any claim whatsoever under the relevant policy or otherwise to give effectual releases and receipts in respect of any such claim.

10. HIRER REQUIREMENTS

The Hirer acknowledges and agrees that:



- (a) unless the Company has otherwise agreed in advance in writing only the Hirer (where the Hirer is a natural person) or an Authorised Operator will use operate or tow a Hire Vehicle;
- (b) the Hirer has never been convicted of an offence relating to driving a vehicle either:
 - (i) under the influence of alcohol or drugs; or
 - (ii) with a blood alcohol level over any legal limit;
- (c) the Hirer will not enable or permit a Hire Vehicle to be used operated or towed by any person who has ever been convicted of an offence relating to driving a vehicle either:
 - (i) under the influence of alcohol or drugs; or
 - (ii) with a blood alcohol level over any legal limit;
- (d) the Hirer (where the Hirer is a natural person) and any Authorised Operator that uses operates or tows a Hire Vehicle and or any hauling unit towing a Hire Vehicle is permitted by law to do so in the jurisdiction of the place of rental and has been licenced for longer than 12 months (excluding any time under a learner's licence or equivalent) to operate the type of Hire Vehicle rented or the hauling unit towing that Hire Vehicle;
- (e) when using operating or towing a Hire Vehicle, the Hirer and/or any Authorised Operator will not refuse or fail to take any blood analysis or breath test that may be requested by the police;
- (f) the Hirer has correctly set out the Hirer's particulars in a Hire Schedule and Customer Application Form and has included all relevant information in this regard;
- (g) the Hirer and any Authorised Operator will not perform or enable the performance of any repairs or modifications to a Hire Vehicle without the prior written consent of the Company and where that consent is provided shall thereafter as soon as practicable provide the Company with all receipts in respect of any repairs to a Hire Vehicle;
- (h) each Hire Vehicle has been received in a good and clean condition, with supplied equipment, tyres, keys and accessories and with the seal of any odometer unbroken and is as shown in the pre-hire photos taken by the Company; ; and
- (i) the Hirer and any Authorised Operator will maintain the tyre pressure, fluids and fuels at the proper operating levels for each Hire Vehicle in accordance with the manufacturer's guidelines.

11. RESTRICTED PERSONS

The following persons must not use operate or tow the Hire Vehicle nor any hauling unit that is towing the Hire Vehicle:

- (a) a person who is not identified in the Agreement as either the Hirer or an Authorised Operator;
- (b) a person who is not licenced to drive the hauling unit towing the Hire Vehicle;
- (c) a person whose blood alcohol concentration exceeds the lawful percentage whilst driving the hauling unit;
- (d) a person who is driving the hauling unit under the influence of any drugs;
- (e) a person who has given or for whom the Hirer has given a false name, age, address or driver license details;
- (f) a person whose driver license has been either cancelled or suspended within the last three years;
- (g) a person who has held a driver license for any class of vehicle for less than one year; or
- (h) a person who uses or intends to use a Hire Vehicle or the haulage unit towing a Hire Vehicle for any illegal purpose including overloading and or to tow or push anything or carry loads other than that for which the Hire Vehicle was built either on public or private roads.

12. RESTRICTED USE

The Hirer must ensure that a Hire Vehicle must not be used, operated or towed:

- (a) on any unsealed roads or off-road conditions unless authorised by the Company in writing in advance;



- (b) for the carriage of any inflammable explosive or corrosive materials;
- (c) for any illegal purpose;
- (d) in a dangerous manner;
- (e) when the Hire Vehicle is damaged;
- (f) in contravention of any legislation or regulation controlling vehicular traffic;
- (g) in contravention of any load restraints laws and or laws relating to axle loading and the operation of heavy vehicles in whatever jurisdiction the Hire Vehicle is being used operated or towed;
- (h) for the purpose of quarry work or for moving or transporting industrial waste; or
- (i) for the transportation of any property or material except in compliance with all necessary approvals, permits, licenses and Government requirements (all to be obtained at the expense of the Hirer) and in accordance with the relevant Hire Vehicle manufacturer's recommendation and the Company's direction.

13. MAINTENANCE OF HIRE VEHICLES

The Hirer must:

- (a) notify the Company of any upcoming maintenance required to the Vehicle so that the Company can schedule it in advance to avoid any downtime;
- (b) conduct daily checks on the Vehicle before use;
- (c) maintain (at its cost) each Hire Vehicle to the standard in which it was in immediately before the relevant Commencement Date, in a safe operating condition and in accordance with the normal maintenance procedures and recommendations of the manufacturer of the Hire Vehicle which shall include the following services on a weekly basis:
 - (i) lubrication of all grease nipples;
 - (ii) the checking of brake hoses for leaks; and
 - (iii) the draining of air tanks and checking wheel nuts and tyre pressure;
- (d) return a Hire Vehicle immediately to the Company premises upon request by the Company for inspection, maintenance and service if the Company, acting reasonably, determines:
 - (i) the Hire Vehicle is potentially unsafe or that the continued operation of the Hire Vehicle would be unlawful;
 - (ii) the Hire Vehicle is not roadworthy or likely to become not roadworthy during the remaining Hire Period or Ongoing Rental period; or
 - (iii) it is otherwise necessary or appropriate to require the return of the Hire Vehicle.
- (e) If a Hire Vehicle is returned to the Company during the Hire Period or Ongoing Rental period for a reason that is not within the control of and/or not caused by the Hirer, the Company, in its discretion, may either:
 - (i) provide a substitute vehicle to the Hirer (provided that such substitute vehicle is the same or similar to the relevant Hire Vehicle); or
 - (ii) waive the Hire Rate for the days on which the relevant Hire Vehicle is not available to the Hirer during the Hire Period. For the purposes of calculating the Hire Rates to waive under this clause, the Company will divide the Weekly Rental Rate by 7 and apply it to each day that the Hire Vehicle is not available to the Hirer.

14. RETURN OF VEHICLE

- (a) At the End Date set out in the relevant Hire Schedule for a Hire Vehicle or on termination of a Hire Contract or the Agreement (as applicable), the Hirer shall return the relevant Hire Vehicle to the Company:



- (i) at the location the Hire Vehicle was collected from or as otherwise agreed between the parties in advance by the Company; and
 - (ii) in the same condition in every respect as the Hire Vehicle was at the Commencement Date subject to fair wear and tear as shown in the pre-hire photos taken by the Company.
- (b) If the Hirer returns a Hire Vehicle to the nominated location at a time when that location is not open for business at the time of the return, the Hire Vehicle is deemed for all purposes of the Agreement to be returned at the time when that location next opens for business and the relevant charges set out in the Hire Schedule shall continue until that time. For the avoidance of doubt, rental charges for the full day apply in respect of any incomplete 24 hour period.
- (c) If the Hirer does not return the Hire Vehicle to the Company in accordance with the Agreement and the Company elects to recover and/or collect the Hire Vehicle due to the Hirer's non-compliance, the Hirer must pay the Company a Vehicle Collection Fee.
- (d) If:
- (i) the Hirer returns a Hire Vehicle on a date and/or at a time after the end of the applicable Hire Period; or
 - (ii) any of the conditions of the Agreement are breached and as a result, the Hire Vehicle is required to be cleaned, repaired or replaced (for example, where the Hire Vehicle is not capable of being repaired or it is not commercially viable to repair the Hire Vehicle),

the Hirer shall pay the Company the Late Return Rate per day for each day after the end of the Hire Period that the relevant Hire Vehicle has not been replaced, returned or is not in the same condition in every respect as the relevant Hire Vehicle was at the Commencement Date (as the case may be). The Hirer acknowledges the Late Return Rate is a genuine pre-estimate of direct loss suffered by the Company due to the Hire Vehicle not being available for use. For the avoidance of doubt, rental charges for the full day apply in respect of any incomplete 24 hour period. This clause does not limit any other remedies available to the Company with respect to other causes of action, claims, losses, damages or costs suffered or incurred by the Company by the Hirer's actions as described in this clause.

15. TERMINATION

- (a) The Hirer may terminate the Agreement, any Hire Contract, and return any Hire Vehicles to the Company with immediate effect by notice to the Company, if the Company commits a material breach of the Agreement and fails to diligently pursue a proper course of action to remedy the breach within 14 days after receipt of a notice from the Hirer which specifies the details of the breach and requesting remedy of that breach.
- (b) The Company may either terminate the Agreement, a Hire Contract, and/or repossess a Hire Vehicle upon giving immediate notice to the Hirer the Authorised Operator or otherwise if:
- (i) the Hirer does not pay the Company on time any amounts that is due in accordance with the Agreement;
 - (ii) the Company reasonably believes that the Hirer has breached the Agreement in a material way;
 - (iii) it is likely that damage may occur to a Hire Vehicle;
 - (iv) a Hire Vehicle's use will contribute to an industrial or other dispute;
 - (v) the Company reasonably believes a Hire Vehicle is being loaded in excess of the manufacturer's ratings of the Hire Vehicle or that prescribed by state or federal laws relating to loading of vehicles including heavy vehicles;
 - (vi) the Hirer refuses to or does not disclose all public or private weigh bridge documents to the Company upon request which show clearly the registration number of the Hire Vehicle and of the hauling unit;
 - (vii) the Hirer commits or suffers an act of bankruptcy or has a winding up petition presented against it, or a resolution for its winding up, passed or proposed, or has an Administrator, Liquidator or Receiver appointed, or is deemed to be unable to pay its debts within the meaning of the Corporations Act.
- (c) If the Company terminates the Agreement or a Hire Contract under clause 15(b), the Hirer must:
- (i) pay the Company all amounts it owes under the Agreement or Hire Contract as applicable (including the Late Return Rate and Vehicle Collection Fee as applicable); and

- (ii) immediately return the relevant Hire Vehicle(s) to the Company or make the Hire Vehicle(s) available for collection.
- (d) If a Hire Vehicle is returned to the Company in an unclean condition internally and/or externally, the Hirer shall pay the Company the Cleaning Fee in addition to all costs and charges otherwise incurred under the Agreement.

16. **DAMAGE AND LOSS OF PROPERTY**

- (a) If there is any damage to a Hire Vehicle which is repairable by the Company, the Hirer must pay to the Company the Hourly Repair Rate. The Hourly Repair Rate does not include replacement parts or other disbursements which will be charged in addition to the Hourly Repair Rate.
- (b) If there is damage to a Hire Vehicle which is not repairable by the Company, the Company will pass on any costs it incurs in paying for those repairs to the Hirer. The Company will provide all supporting documentation for these costs.
- (c) The Hirer is liable for the following costs:
 - (i) the cost of rectifying any tyre damage incurred to a Hire Vehicle during the Hire Period that is not attributable to normal wear and tear;
 - (ii) the cost of replacing any tyres throughout the Hire Period which must be cleanskin tyres only and of a quality that is the same or superior to the tyres at the time the Vehicle is collected (as shown in the pre-hire photos);
 - (iii) the cost of repairing any damage to a Hire Vehicle and or to any other property which is caused deliberately, negligently or recklessly by the Hirer and or any Authorised Operator during the relevant Hire Period;
 - (iv) the cost of repairing any damage to a Hire Vehicle caused by overloading during the Hire Period;
 - (v) the cost of repairing any damage to a Hire Vehicle and to any other third party or other property arising as a result of the use, operation or towing of the Hire Vehicle in breach of any term of the Agreement or in breach of any applicable law;
 - (vi) the cost of repairing overhead damage to a Hire Vehicle caused during the relevant Hire Period by contact between the Hire Vehicle and objects overhanging or obstructing the path of the Hire Vehicle above the level of the operator's cabin of the hauling unit;
 - (vii) the cost of repairing any damage to a Hire Vehicle or its operating systems resulting from incorrect coupling and the use of incorrect or contaminated fluids in hydraulic systems during the relevant Hire Period;
 - (viii) the cost of any other repairs to a Hire Vehicle, as authorised by the Company, required due to the Hirer's breach of the Agreement or negligent use or misuse of the Hire Vehicle;
 - (ix) all parking and traffic violations and fines in respect of a Hire Vehicle or any haulage unit towing the Hire Vehicle during the relevant Hire Period;
 - (x) the cost to the Company of recovering a Hire Vehicle in the circumstances described in clause 15(a);
 - (xi) the replacement costs of any keys, equipment or parts of a Hire Vehicle which are lost during the Hire Period;
 - (xii) the costs, loss and damage incurred or suffered by the Company (over and above the direct loss to the Company arising from the non-availability of a Hire Vehicle contemplated under clause 14(b)) where the Hirer or any Authorised Operator fails to return the Hire Vehicle or any part of the Hire Vehicle in the required condition, in breach of the Agreement. For example, the Company may incur costs and expenses to repair or replace the Hire Vehicle as determined necessary by the Company and the Hirer shall be liable for:
 - (A) the cost of repairs to the Hire Vehicle or the market value of the Hire Vehicle at the time of the loss, whichever is the lesser;
 - (B) appraisal fees;

- (C) reasonable towing, storage and recovery costs;
 - (D) reasonable administrative costs incurred by the Company to repair or replace the Hire Vehicle; and
 - (E) the rental payments that the Company would have been entitled to receive pursuant to the Agreement that is terminated due to the Hire Vehicle not being available for use, provided that the total rental payments that the Hirer shall be liable for is limited to the rental payments payable for the term set out in the terminated hire agreement or a 1 month period, whichever is the lesser;
- (d) The Company will not reimburse the Hirer for any authorised repairs to a Hire Vehicle (where applicable) if written receipts in respect of those repairs are not provided on demand.
 - (e) The Hirer will notify the Company immediately in writing of:
 - (i) any traffic infringement in which a Hire Vehicle is involved, including overweight infringements or similar;
 - (ii) any part of a Hire Vehicle if it becomes unsafe or in need of repair;
 - (iii) any defect with a Hire Vehicle;
 - (iv) any sign that a Hire Vehicle is not roadworthy or is likely to become not roadworthy during the Hire Period or Ongoing Rental period.
 - (f) The Hirer is responsible for subsequent damage or consequence, should a Hire Vehicle be utilized with a known fault.

17. LIABILITY OF THE COMPANY

- (a) The Hirer may have rights under the Australian Consumer Law or other rights in relation to the Hire Vehicle hire that cannot lawfully be excluded by the Company (**Non-excludable Rights**). With the exception of Non-excludable Rights and subject to clause 17(b):
 - (i) the Company shall have no liability whatsoever to the Hirer for:
 - (A) any Consequential Loss;
 - (B) any damage to freight or goods being transported in the Vehicle;
 - (ii) all implied terms or warranties are excluded; and
 - (iii) the total aggregate liability of the Company is at all times limited to the amount equal to the price of the Hire Vehicle on hire.
- (b) The Company's liability under a Non-Excludable Right is limited to:
 - (i) replacement of the relevant Hire Vehicle or the supply of an equivalent Hire Vehicle; or
 - (ii) payment of the cost of replacing the relevant Hire Vehicle or of acquiring an equivalent product.
- (c) To the extent permitted by law, the Company disclaims all liability to the Hirer for loss, damage or injury (including death) resulting from the use of Hire Vehicle for a purpose other than its intended purpose or otherwise than in accordance with its directions for use.
- (d) The Hirer must indemnify and hold the Company and its Representatives harmless against all loss howsoever caused, arising out of or in any way connected with any breach by the Hirer of the Agreement.
- (e) The Company holds the benefit of this indemnity on trust for itself and its Representatives.
- (f) The Hirer acknowledges that it is not necessary for the Company or any of its Representatives to incur an expense or make a payment before enforcing a right of indemnity conferred by the Agreement or to mitigate its loss.

18. CLAIMS AND PROCEEDINGS



Where the use of a Hire Vehicle by the Hirer or an Authorised Operator of the Vehicle and or the hauling unit used to tow a Hire Vehicle results in any claim, accident, damage or loss, the Hirer must ensure that the Hirer or the Authorised Operator or both (as the case may be):

- (a) promptly reports any and all such incidents in writing to the Company and to the police that are local to the claim, accident, damage or loss;
- (b) does not without the prior written consent of the Company make or give any offer promise of payment settlement waiver release indemnity or admission of liability;
- (c) permits the Company and or its insurer to at its own cost to bring, defend, enforce or settle any legal proceedings against a third party;
- (d) completes and furnishes to the Company within a reasonable time any statements, information or assistance which the Company or its insurer may reasonably require including attending at lawyers offices and at Court to give evidence; and
- (e) assist the Company as required.

19. **PPSA**

- (a) Unless a contrary intention appears, words or expressions used in this clause 19 that are defined in the *Personal Property Securities Act 2009* (Cth) (**PPSA**) have the same meaning as given to them in the PPSA.
- (b) If at any time the Company determines that an Agreement (or any of the transactions contemplated by or under it) creates a security interest in its favour over any personal property, the Company may apply for any registration, or give any notification, in connection with that security interest and the Hirer must promptly, upon the Company's request, do any thing to the satisfaction of the Company (including, but not limited to, signing and producing documents, getting documents completed or signed, obtaining consents and supplying information) to:
 - (i) provide more effective security over the relevant personal property;
 - (ii) ensure that any such security interest in favour of the Company:
 - (A) is at all times enforceable, perfected (including, where applicable, by registration) and otherwise effective; and
 - (B) ranks as a first priority security interest;
 - (iii) enable the Company to prepare and register a financing statement or a financing change statement or give any notification in connection with that security interest; and
 - (iv) enable the Company to exercise any of its rights or perform any of its obligations in connection with any such security interest or under the PPSA.
- (c) All costs and expenses arising as a result of actions taken by either party pursuant to clause 19(b) are payable by the Hirer. The Hirer must pay the Company pursuant to this clause 19(c) within 5 days of a written request.
- (d) If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interest created under this agreement, the Hirer agrees that the following provisions of the PPSA will not apply:
 - (i) section 95 (notice of removal of accession), to the extent that it requires the Company to give a notice to the Hirer;
 - (ii) section 121(4) (enforcement of liquid assets – notice to grantor);
 - (iii) section 125 (obligation to dispose of or retain collateral);
 - (iv) section 130 (notice of disposal), to the extent that it requires the Company to give a notice to the Hirer;
 - (v) paragraph 132(3)(d) (contents of statement of account after disposal);
 - (vi) subsection 132(4) (statement of account if no disposal);
 - (vii) section 142 (redemption of collateral); and

- (viii) section 143 (reinstatement of security agreement).
- (e) The Company does not need to give the Hirer any notice required under the PPSA (including a notice of a verification statement under section 157 of the PPSA) unless the requirement for the notice cannot be excluded.
- (f) Neither party will disclose to a person or entity that is not a party to this agreement information of the kind mentioned in section 275(1) of the PPSA unless section 275(7) of the PPSA applies or that information is publicly available. The obligations of each party under this clause 19(f) are in addition to the any other obligations of the Hirer under or in connection with each Agreement.

20. **CONFIDENTIAL INFORMATION**

- (a) Each party must keep confidential all information (in any form or media) of the other party which is disclosed in connection with the Agreement that is identified as confidential or that is of a confidential nature (**Confidential Information**) except:
 - (i) as permitted under these terms and conditions;
 - (ii) where the information is already in the public domain (other than through breach of a confidentiality obligation);
 - (iii) with the prior written consent of the discloser; and
 - (iv) where the recipient is compelled to do so by law, provided that it gives the other party written notice prior to disclosure.
- (b) A party may disclose the Confidential Information of the other party to its recipient's agents, advisors, auditors, consultants, employees, officers, representatives as have a specific need to have access to the Confidential Information in connection with the Agreement provided that those persons are put on notice of and agree to be bound by the confidentiality provisions of this clause.

21. **AUTHORISED SIGNATORY WARRANTY**

The person signing on behalf of the Hirer warrants that such person has been duly authorised by the Hirer to sign the Agreement on behalf of the Hirer and if the person signing is not so authorised the person signing shall be personally liable in term of this Agreement as if the Hirer for payment of the Hire Rate and other amounts payable in terms of the Agreement and in respect of all obligations imposed upon the Hirer in terms of the Agreement.

22. **GUARANTEE**

Where the Hirer is a company the Hirer must ensure its directors jointly and severally guarantee each Hire Contract entered into under this Agreement in the form of the Guarantee Deed. The Guarantors in consideration of the Hirer entering into this Agreement guarantee that the Hirer will perform all of its obligations under this Agreement and must pay any amount which the Company is entitled to recover from the Hirer.

23. **VEHICLE AVAILABILITY**

The Hirer and or any Authorised Operator acknowledge that for reasons including but not limited to the non- return of vehicles, maintenance and short supply the Company may not be able to make available for hire the Hire Vehicle on the Commencement Date and the Hirer and or any Authorised Operator agree to hold the Company harmless and to make no claim for loss or damage whatsoever resulting from any non-availability of the Hire Vehicle for any reason. The Company reserves the right to provide a substitute vehicle (provided that such substitute vehicle is the same or similar to the Hire Vehicle) and/or to defer the date of delivery of the Vehicle or any substitute vehicle by up to one week from the Commencement Date.

24. **DISPUTE RESOLUTION**

- (a) Any dispute or difference between the parties arising out of or in connection with the Agreement (**Dispute**) shall be notified to the other party by written notice of that Dispute, giving details of the subject-matter of the dispute (**Notice of Dispute**).
- (b) Upon the giving of a Notice of Dispute, the following shall apply:
 - (i) the Dispute shall be submitted for negotiation by each party to a senior manager or officer of that party who has the authority to resolve the Dispute; and

- (ii) if within 21 days of the giving of the Notice of Dispute (or such further period agreed by the parties) the Dispute has not been resolved between the senior managers or officers of each party, the Dispute shall be referred to mediation by a mediator agreed to by the parties, or failing agreement by a mediator appointed by the President of the Law Institute of Victoria, or if they are unable or unwilling to appoint a mediator, the President of the LIV or by the CEO of the Resolution Institute.
 - (iii) if the dispute is not resolved at the completion of the mediation, either party may commence litigation proceedings.
- (c) Nothing in this clause prevents a party from seeking urgent relief.

25. PRIVACY

The Company has a Privacy Policy (which can be found at www.semitrailersales.com.au/privacy which sets out how the Company will use the Hirer's information.

26. NOTICES

- (a) If a party needs to send a notice or demand, it may do so in writing and deliver it by email, facsimile, personally or by pre-paid mail to the address set out in the Hire Schedule or on the Company website.
- (b) Any such notice or demand will be taken to have been received:
 - (i) if delivered by hand, on that day;
 - (ii) if sent from a place within Australia by regular post, at 9.00 am on the sixth Business Day after the date of posting;
 - (iii) if sent by facsimile to the facsimile, at the time indicated on the transmission equipment as the time that the facsimile was sent in its entirety, within four business hours (being a period of time between 9.00 am and 5.00 pm on a Business Day) of it being transmitted; and
 - (iv) if sent by email, unless a party receives a notification of delivery failure, within 24 hours of the email being sent.

27. MISCELLANEOUS

- (a) The Agreement sets out the entire understanding between the parties with respect to the subject-matter contained in it. All prior verbal and written agreements, representations, warranties, explanations and commitments expressed or implied, affecting that subject-matter are superseded by the Agreement and have no effect.
- (b) In the event of any provision of any clause or part thereof of the Agreement being or becoming invalid, illegal, or unenforceable whether due to the provisions of any statute or otherwise, then that provision shall be severed from the Agreement and the remaining provisions and clauses of the Agreement shall remain in full force and effect and be unaffected by any severance.
- (c) The Hirer shall not assign its interest in the Agreement, or any part thereof, or any payment or any other right, benefit or interest thereunder without the prior written consent of the Company. The Company shall have the unilateral right to assign its interest in the Agreement to a third party.
- (d) All clauses that are capable of surviving the expiration or earlier termination of the Contract shall do so.
- (e) The Agreement shall be construed with and be governed by the laws of the state of Victoria.
- (f) The Hirer irrevocably agrees to submit to the exclusive jurisdiction of the courts of Victoria.
- (g) The Company may amend, remove or vary the terms and conditions at any time. This will not affect any Hire Schedules submitted before the amendment is made. The Hirer should always check the terms and conditions before submitting a Hire Schedule.

28. INTERPRETATION

In these terms and conditions, unless otherwise agreed by the Parties or required by the context:



- (a) a reference to the Agreement or any other document or agreement, includes any variation, replacement or novation of them;
- (b) the use of the word "includes" or "including" shall be interpreted to mean "includes" or "including without limitation";
- (c) headings are for ease of reference only and do not affect interpretation;
- (d) the singular includes the plural and vice versa;
- (e) a reference to "\$" or "dollars" is to Australian dollars;
- (f) a reference to a party to the Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (g) a person includes a body corporate and vice versa;
- (h) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase shall have corresponding meanings; and
- (i) a reference to all or any part of a law includes that law as amended, consolidated, re-enacted or replaced from time to time.

29. DEFINITIONS

The following definitions apply within the Agreement :

- (a) "**Administration Fee**" means the administration cost payable in respect of a dishonoured credit card payment in the amount set out in the Fee Schedule (which includes any merchant dishonour fees).
- (b) "**Agreement**" means the Customer Application Form, these terms and conditions (and any modifications to them that apply at the time that the Hirer submits a Hire Schedule) together with any Hire Contracts arising under a Hire Schedule and any Guarantee Deed(s).
- (c) "**Australian Consumer Law**" means the law set out in schedule 2 of the Competition and Consumer Act 2010 (Cth).
- (d) "**Authorised Operator**" means any natural person identified in the Hire Schedule as the Hirer and if the Hirer is a company means any operator employee or officer employed by or contracted to that company authorised by that company to use, operate or tow the Vehicle or to drive the hauling unit towing the Vehicle.
- (e) "**Commencement Date**" means in respect of each Hire Vehicle, the commencement date of the Hire Period as set out in the Hire Schedule for that Hire Vehicle.
- (f) "**Consequential Loss**" means any loss, damage or costs incurred by a party that is indirect or consequential, as well as loss of revenue; loss of income; loss of business; loss of profits; loss of production; loss of or damage to goodwill or credit; loss of business reputation, future reputation or publicity; loss of use; loss of interest; losses arising from claims by third parties; loss of or damage to credit rating; loss of anticipated savings and/or loss or denial of opportunity.
- (g) "**Cleaning Fee**" means the amount the Hirer will pay the Company to clean a Hire Vehicle internally or externally if the Hire Vehicle is returned in an unclean condition as set out in the Fee Schedule.
- (h) "**Company**" means Semi Trailer Sales Pty Ltd ACN 137 730 584, its related body corporates, principals, successors and assigns.
- (i) "**Credit Card**" means the credit card relating to the credit card details set out in the Customer Application Form.
- (j) "**Customer Application Form**" means the form completed by the Hirer setting out the Hirer's details. "**End Date**" means in respect of each Hire Vehicle, the end date of the Hire Period as set out in the Hire Schedule for that Hire Vehicle.
- (k) "**Fee Schedule**" means the schedule setting out all fees and charges, apart from the Hire Rate, in respect of the Agreement attached to these terms and conditions.

- (l) **"Hire Contract"** means each Hire Schedule that is accepted by the Company in respect of a Hire Vehicle as described under clause 2(d).
- (m) **"Hire Period"** means the period between the Commencement Date and the End Date and includes any additional days thereafter until the Hirer returns the relevant Hire Vehicle to the Company in accordance with the terms of the Agreement. For the purposes of a Hire Vehicle hired under an Ongoing Rental, the Hire Period shall be the greater of 12 months from the Commencement Date or the termination date set out in a notice given under clause 3(c).
- (n) **"Hirer"** means the person, firm, corporation or other legal entity to whom a Hire Vehicle is hired as specified in the Hire Schedule, including their legal representatives, successors and permitted assigns.
- (o) **"Hire Rate"** means in respect to each Hire Vehicle, the rate applicable to the hire of a Hire Vehicle set in the applicable Hire Schedule.
- (p) **"Hire Schedule"** means the schedule attached to these terms and conditions, setting out the key hire terms for each Vehicle Hire.
- (q) **"Hire Vehicle"** means the trailer or other vehicles as described in a Hire Schedule or any substitute vehicle and includes all parts and components of the vehicle including but not limited to tyres, spares, accessories, equipment and tools.
- (r) **"Guarantee Deed"** means the deed in the form of the attachment to the Hire Schedule.
- (s) **"Hourly Repair Rate"** means the amount paid by the Hirer to the Company for any damage to a Hire Vehicle which is repairable directly by the Company charged at the rate set out in the Fee Schedule.
- (t) **"Late Return Rate"** is the rate payable by the Hirer to the Company for each day after the end of the Hire Period that a Hire Vehicle has not been replaced, returned or is not in the same condition in every respect as the Hire Vehicle was at the Commencement Date.
- (u) **"Minimum Notice Period"** means the minimum period of notice required by a party to terminate an Ongoing Rental as set out in the Hire Schedule.
- (v) **"Ongoing Rental"** has the meaning given to it in clause 3(c).
- (w) **"Representatives"** means the officers, employees, agents, representatives, contractors and subcontractors of the relevant party.
- (x) **"Security Deposit"** means the security deposit set out in the relevant Hire Schedule.
- (y) **"Total Rental Charge Payable"** means the total amount payable by the Hirer
- (z) **"Vehicle Collection Fee"** means the amount the Company charges to collect the Hire Vehicle in the event the Hirer does not return it as set out in the Fee Schedule.
- (aa) **"Weekly Rental Rate"** means the total amount payable by the Hirer per week as set out in a relevant Hire Schedule.

30. PARTNERSHIPS

If the Hire Schedule indicates that the Hirer is a partnership:

- (a) it agrees to notify the Company if a person ceases to be, or becomes, a partner in the partnership or the partnership is dissolved;
- (b) each partner is liable individually, and together with other partners liable jointly, for the obligations and liabilities of the Hirer under an Agreement (or any of the transactions contemplated by or under it);
- (c) each Agreement will continue to bind each person who is a partner at the date of that Agreement and each person who becomes a partner, despite changes in the membership of the partnership or the fact that the person is no longer a partner in the partnership; and
- (d) if requested by the Company, the Hirer agrees to do everything necessary to ensure all partners of any successor partnership are bound by this Agreement (or any of the transactions contemplated by or under it).

FEE SCHEDULE

1. Administrative Costs

The administration fee payable in respect of a dishonoured credit card payment (which includes any merchant dishonour fees) is set out below.

Type of fee	Amount (S)
Administrative fee	\$95.00 including GST

2. Hourly Repair Rate

Any damage to the Vehicle which is repairable directly by the Company will be charged per hour for labour as set out below. The Hourly Rate does not include replacement parts or other disbursements.

Type of fee	Amount (S)
Hourly repair rate	\$110.00 plus GST

3. Daily Late Return Rate

If the Hirer fails to return the vehicle at the end of the Rental Period, the Hirer must pay the Daily Late Return Rate for each day until the Vehicle has been returned in the amount set out below.

Type of fee	Amount (S)
Daily late return rate	Refer to Hire Schedule

4. Cleaning Fee

If the Hirer returns the Vehicle in an unclean condition internally and/or externally, the Hirer must pay the Company a cleaning fee in the amount set out below.

Type of fee	Amount (S)
Cleaning fee	\$299.00 plus GST

5. Vehicle collection fee

If the Hirer does not return the Vehicle to the Company and the Company elects to recover and/or collect the Vehicle the Hirer must pay the Company a Vehicle collection fee as set out below

Type of fee	Amount (S)
Vehicle collection fee	\$7.70 plus GST per kilometre