



PO Box 2027
South Hedland WA 6722
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ABN 37 121 960 816

Plant Hire Agreement

Between the following parties:

1. **Ronlieeh Pty Ltd T/A AK Evans Earthmoving**
ACN 121 960 816
of 4b Trig St, WEDGEFIELD. WA 6722
(Owner)
2.
ACN of
(Hirer)

1 Hire of Equipment

1.1 Hire Agreement

This document, together with:

- (a) Any Credit Application completed by the Hirer and submitted to AK Evans Earthmoving and accepted by AK Evans Earthmoving
- (b) Any Guarantee, Indemnity and Charge completed by the Hirer and submitted to AK Evans Earthmoving; and
- (c) Any Special Terms specific to the type of Equipment the Hirer has hired contained in writing and signed by both Parties.

make up the Hire Agreement between the Hirer and AK Evans Earthmoving

1.2 Hire

- (a) AK Evans Earthmoving agrees to hire the Equipment to the Hirer as per schedule at the Specified Hours, on and subject to the terms and conditions of this Hire Agreement.
- (b) Any extension of the Hire Period shall be on the same terms as contained in this Hire Agreement unless otherwise agreed in writing by the Parties.

1.3 Fee

The Hirer must pay to AK Evans Earthmoving:

- (a) the Fee in installments as per the Schedule for the duration of the Hire Period. Each installment is payable in full without deduction or set-off
- (b) the Further Fee in respect of each hour the Equipment is used by the Hirer in excess of the Specified Hours, as per schedule. For the purpose of this sub-paragraph (b), the Hirer shall take hour meter readings in respect of the Equipment on a monthly basis and report these readings to AK Evans Earthmoving; opsmanager@akevans.com.au for hours to be sent to and 0428 484 846 if they want to text. Hours have to be advised in writing not verbally.
- (c) Any taxes, duties, or charges including GST payable in respect of this Hire Agreement or arising from the supply of or the Hirer's use of the Equipment;
- (d) Any expenses and legal costs incurred by AK Evans Earthmoving in enforcing the Hire Agreement are negotiable.
- (e) All fees, charges and/or costs payable by the Hirer under the Hire Agreement no later than 30 days from when a relevant Tax invoice is issued.

1.4 AK Evans Earthmoving's right to repossession

In addition to any other rights of repossession that AK Evans Earthmoving has under this Hire Agreement if the Hirer does not make each payment as required under clause 1.3 as and when due or make suitable arrangements, the Hirer grants to AK Evans Earthmoving an absolute right to:

- (a) enter the premises where the Equipment is situated and repossess the Equipment; and
- (b) if necessary, sever the Equipment from any structure to which it is affixed without damage to the structure and at all times leaving the structure in a safe condition.

1.5 Hirer's liability for costs of repossession

The Hirer indemnifies AK Evans Earthmoving against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which AK Evans Earthmoving suffers, incurs or is liable for in respect of AK Evans Earthmoving's exercise of its rights to repossess the Equipment under this Hire Agreement except for the Owner's negligence or willful misconduct..

2 Expiry of Hire Period

2.1 Return of Equipment and refund of Deposit

Upon expiration of the Hire Period:

- (a) the Hirer must return the Equipment to AK Evans Earthmoving at the Hirer's cost within 2 Business Days, or otherwise deal with the Equipment as directed by AK Evans Earthmoving, on the Expiry Date in accordance with sub-clause (b);
- (b) the Equipment returned pursuant to clause 2.1(a) must in the reasonable opinion of AK Evans Earthmoving be in a condition equivalent to or better than the Return Condition. Failure by the Hirer to deliver the Equipment in the Return Condition shall entitle AK Evans Earthmoving to have the Equipment reinstated to the Return Condition at the sole cost of the Hirer and to retain any securities held for this purpose
- (c) If the Hirer returns the Equipment in the condition required by this clause 2.1, any securities held will be returned to the Hirer. the Hirer returns the Equipment in the condition required by this clause 2.1, 70% of the hire fee will be charged until condition of unit is repaired. Note: Enforce un-hireable condition charges.
- (d) If the hirer does not return within in 2 business days, the machine will be deemed on Standby and 70% of the full hire rate will be charged until the machine is returned to the AK Evans point of hire.
- (e) Weed and Seed will be charged at \$75 per hour to the hirer if it takes longer than 2 hours to clean the equipment on return.

3 Risk and Title

3.1 Title

The Hirer acknowledges that AK Evans Earthmoving is the beneficial owner of the Equipment and in all circumstances retains the title to the Equipment. Nothing in this Hire Agreement confers on the Hirer any right, title, ownership, obligation or interest whatsoever in or over the Equipment except as expressly provided in this Hire Agreement.

3.2 Risk

Risk in the Equipment passes to the Hirer at either of:

- (a) collection of the Equipment by the Hirer; or
- (b) delivery of the Equipment to the Hirer.

3.3 Insurance

- (a) In addition to any other insurance required to be taken out by the Hirer under this Agreement, the Hirer shall hold insurance sufficient to cover loss and damage of the Equipment.
- (b) Ensure that any insurance in respect to the Equipment is sufficient to meet any claim for loss or damage to the replacement value of the Equipment (fair wear and tear excepted), including without limitation for loss or damage arising out of failure to service the Equipment in accordance with this Hire Agreement;
- (c) Upon request, the Hirer shall provide AK Evans Earthmoving with a copy of any insurance policy or policies in respect of the Equipment prior to receipt of the Equipment by the Hirer;
- (d) The Hirer shall ensure that each policy of insurance is with a reputable insurer registered in Australia;
- (e) The Hirer must promptly pay all premiums and stamp duty in respect of such policies and to the extent that AK Evans Earthmoving is entitled to receive such amount under the Hire Agreement, permit AK Evans Earthmoving to receive all insurance monies for claims of physical damage to the Equipment;
- (f) The Hirer must not:
 - (i) do anything to prejudice insurance taken out in accordance with this Hire Agreement;
 - (ii) enforce, conduct or settle a claim without AK Evans Earthmoving's consent in respect to claim in respect to the Owner's Equipment
- (g) Where the Owner lodges a claim against the Hirer's insurance under this clause 3.3, the Hirer's liability in respect to any amount due pursuant clause to 1.3 shall cease 14 days following lodgment of the claim, or seven (7) days following receipt of an offer of settlement,

whichever event occurs earlier.

4 Obligations of the Hirer

4.1 Responsibilities

In addition to any other obligations imposed on the Hirer under this Hire Agreement, for the duration of the Hire Period, the Hirer

(a) Must provide and maintain adequate premises, facilities, equipment and vehicles and do all other things necessary to ensure that the Equipment remains in good condition and is stored, handled and transported in accordance with appropriate standards as to safety, cleanliness and efficiency;

(b) Must facilitate the inspection by a representative of AK Evans Earthmoving to determine the condition of the Hirer's premises, facilities, equipment and vehicles used for storing, handling and transporting the Equipment to ensure compliance by the Hirer with its obligations under this clause 4;

(c) Must observe all legal requirements in relation to:

(1) its possession and use of the Equipment; and

(2) Carrying out its obligations under this Hire Agreement,

including, but not limited to, obtaining and maintaining all necessary permits, licenses and registrations and, in particular, meeting all legal requirements;

(d) Must promptly inform AK Evans Earthmoving of all matters concerning the Equipment or this Hire Agreement which come to the Hirer's attention.

(e) Must not allow or authorise any other person or entity (whether or not they are a Related Party) to use, rehire or have possession of the Equipment at any time unless with the express prior written consent of AK Evans Earthmoving.

(f) Must not offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with, the Equipment in any way

(g) Must not alter the Equipment in any way or change or obscure the identification lettering or numbering on the Equipment without the prior consent of AK Evans Earthmoving. If AK Evans Earthmoving is requested to remove its signage, the hirer will be back charged the cost's to reinstate the AK Evans Earthmoving signage.

4.2 Indemnity

(a) Except for the Owner's negligence or wilful misconduct the Hirer indemnifies and shall keep indemnified AK Evans Earthmoving against any damage, loss, claim, action, liability, cost, expense, outgoing or payment, of whatever nature and however arising, suffered paid or incurred by AK Evans Earthmoving in connection with:

(1) Any failure by the Hirer to comply with its obligations under this Hire Agreement;

(2) the Hirer's possession, use, demonstration, holding or operation of the Equipment;

(3) The possession, use or operation of the Equipment by any other person during the Hire Period (whether or not authorised by the Hirer); and

(4) death or bodily injury suffered by any person arising whether directly or indirectly out of the Hirer's possession, use, demonstration, holding or operation of the Equipment, but excluding any liability arising as a direct result of any servicing carried out by AK Evans Earthmoving.

4.3 Limitation of Liabilities

Except as expressly provided to the contrary in this Hire Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Hire Agreement or its subject matter are excluded to the maximum extent permitted by law.

4.4 This clause is in direct relation to the Hirer not being responsible for any major repairs to be completed. If the Hirer is deemed to be responsible the cost related will be borne by the Hirer including transport, freight and crane hire.

5 Termination

5.1 Termination by AK Evans Earthmoving

AK Evans Earthmoving may terminate this Hire Agreement by with immediate effect by serving a written notice on the Hirer if the Hirer:

(a) commits a breach of the Hire Agreement which it does not remedy (if capable of remedy) within 7 Days of receiving written notice of breach.

(b) Suffers an Insolvency Event; or

(c) Becomes unable to lawfully perform the Hire Agreement.

5.2 Consequences of termination

(a) In the event that AK Evans Earthmoving terminates this Hire Agreement in accordance with clause 5.1, the Hirer:

(1) must return the Equipment to AK Evans Earthmoving within 48 hours of receipt of the notice under clause 5.1 in accordance with the instructions of AK Evans Earthmoving at the Hirer's cost;

(2) Must immediately pay to AK Evans Earthmoving any outstanding amounts payable in full, in cleared funds.

(b) Should the Hirer fail to return the Equipment in accordance with clause 5.2(a) the Hirer will facilitate AK Evans Earthmoving's entry to premises where the Equipment is located and remove that Equipment in accordance with this Hire Agreement.

6 Personal Property Securities Act

6.1 In this clause 6 "PPSA" means the Personal Properties Securities Act 2009 and any other legislation and regulations in respect of it and amendments to it, and the capitalised terms used in this clause shall have the same meaning as given in the PPSA:

6.2 The Hirer consents to AK Evans Earthmoving affecting and maintaining a registration on the register (in any manner AK Evans Earthmoving considers appropriate) in relation to any security interest contemplated or constituted by this Hire Agreement in the Equipment and the proceeds arising in respect of any dealing in the Equipment and the Hirer agrees to sign any documents and provide all assistance and information to AK Evans Earthmoving required to facilitate the registration and maintenance of any security interest. AK Evans Earthmoving may at any time register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest). The Hirer waives the right to receive notice of a verification statement in relation to any registration on the register of a security interest in respect of the Equipment. Under these terms AK Evans Earthmoving retains title to the materials it supplies until payment is received. This retention of title gives AK Evans Earthmoving security over the materials (their Security Interest) until they are paid for.

6.3 The Hirer undertakes to:

(a) do anything (in each case, including executing any new document or providing any information) that is required by AK Evans Earthmoving:

(i) so that AK Evans Earthmoving may acquire and maintain one or more perfected security interests under the PPSA in respect of the Equipment and any proceeds arising from any dealing with the Equipment by the Hirer;

(ii) to register a financing statement or financing change statement; and

(iii) to ensure that AK Evans Earthmoving's security position, and rights and obligations, are not adversely affected by the PPSA;

(b) not register a financing change statement in respect of a security interest contemplated or constituted by this Hire Agreement without AK Evans Earthmoving's prior written consent; and

(c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without AK Evans Earthmoving's prior written consent.

6.4 Unless otherwise disclosed in the Schedule, the Hirer warrants that the Equipment is not hired for personal, domestic or household purposes and the Hirer agrees to indemnify AK Evans Earthmoving for any breach of this warranty.

6.5 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising under or in connection with this Hire Agreement and:

(a) section 115(1) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and the Hirer will have no rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor), section 96, section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and

(b) section 115(7) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and the Hirer will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.

6.6 Unless otherwise agreed and to the extent permitted by the PPSA, the Hirer agrees not to disclose information of the kind referred to in section 275(1) of the PPSA to an interested person, or any other person requested by an interested person. The Hirer waives any right the Hirer may have, or but for this clause may have had, under section 275(7) (c) of the PPSA to authorise the disclosure of the above information.

6.7 For the purposes of section 20(2) of the PPSA, the collateral is Equipment including any Equipment provided by AK Evans Earthmoving to the Hirer from time to time. This Hire Agreement is a security agreement for the purposes of the PPSA.

6.8 AK Evans Earthmoving may apply amounts received in connection with this Hire Agreement to satisfy obligations secured by a security interest contemplated or constituted by this Hire Agreement in any way AK Evans Earthmoving determines in AK Evans Earthmoving's absolute discretion.

6.9 The Hirer agrees to notify AK Evans Earthmoving in writing of any change to the Hirer's details set out in the Credit Application and this Hire Agreement within 5 days from the date of such change.

6.10 Security Interest and Sub-Hire

(a) The Hirer must not create, purport to create or permit to be created any "security interest" (as defined in PPSA) in the Equipment other than with the express written consent of AK Evans Earthmoving.

(b) The Hirer must not lease, hire, bail or give possession ("sub-hire") of the Equipment to any third party ("third party") unless AK Evans Earthmoving (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to AK Evans Earthmoving and must be expressed to be subject to and subordinated to the rights of AK Evans Earthmoving under this Hire Agreement and the third party is made aware the sub-hire will breach AK Evans Earthmoving's security interest in the Equipment unless AK Evans Earthmoving consents to the sub-hire and the third party is bound by the terms of AK Evans Earthmoving's consent.

(c) If AK Evans Earthmoving terminates this Hire Agreement or if the Hirer repudiates this Hire Agreement:

(i) AK Evans Earthmoving may by notice to the third party terminate the sub-hire and upon such notice the third party's

right to possess and use the Equipment automatically ceases and the third party must surrender possession and control of the Equipment to AK Evans Earthmoving notwithstanding that the third party may not be in breach or default under the sub-hire;

(ii) The third party will obtain all necessary consents from the owner, occupier and other interested persons (such as any mortgagee) of any premises where the Equipment is located to enable AK Evans Earthmoving to exercise any right it has under this Agreement including but not limited to inspection or taking possession of the Equipment.

(d) If AK Evans Earthmoving request, at any time, any original sub-hire that is a chattel paper must be:

(i) permanently and prominently marked in such a way that no other person can take possession of the sub-hire without being put on notice of AK Evans Earthmoving's security interest in the sub-hire as chattel paper;

(ii) delivered to AK Evans Earthmoving and held in AK Evans Earthmoving's possession;

(iii) AK Evans Earthmoving may, at its discretion, perfect any security interest held by it against a third party in any manner it considers appropriate to protect its interest in the Equipment and the sub-hire chattel paper.

(e) The Hirer may not vary a sub-hire without the prior written consent of AK Evans Earthmoving (in its absolute discretion). (f)

The Hirer must ensure that AK Evans Earthmoving is provided at all times with up- to-date information about the sub-hire including the identity of the sub-Hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment.

(g) The Hirer must take all steps including registration on the PPS Register as may be required to:

(i) ensure that any security interest arising under or in respect of the sub-hire including where the interest is a PMSI is enforceable, perfected and otherwise effective under the PPS Law;

(ii) enabling the Hirer to gain (subject always to the rights of AK Evans Earthmoving and any other secured party as notified by AK Evans Earthmoving) first priority (or any other priority agreed to by AK Evans Earthmoving in writing) for the security interest; and

(iii) enabling AK Evans Earthmoving, the Hirer and any other secured party nominated by AK Evans Earthmoving to exercise their respective rights in connection with the security interest.

(h) AK Evans Earthmoving may recover from the Hirer the cost of doing anything under this clause including registration fees.

7 General

7.1 Assignment

The Hirer must not assign its rights under this Hire Agreement without AK Evans Earthmoving's prior written consent. AK Evans Earthmoving may give or withhold its consent in its sole discretion.

7.2 Variation of agreement

A variation of this Hire Agreement must be in writing and signed by both Parties or by persons authorised to sign for them.

7.3 Public liability

Notwithstanding any other provision of the Hire Agreement, the Hirer represents and warrants to AK Evans Earthmoving that it holds public liability insurance for not less than \$10,000.000 for any one occurrence in respect of the use of the Equipment during the Hire Period and shall provide AK Evans Earthmoving with a copy of the policy and evidence of payment of the premium upon request to do so.

7.4 Special Terms

In the event of an inconsistency between the Special Terms and the terms of the Hire Agreement the Special Terms shall prevail to the extent of the inconsistency.

7.5 Force Majeure

Subject to clause 8.5.2 neither Party will be responsible for any delays in delivery, installation or collection due to causes beyond their control including but not limited to Acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.

7.6 Severability

If any part of this Hire 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.

7.7 Entire Agreement

The Hire Agreement as defined in clause 1 comprises the entire agreement between the Parties. No additional terms and conditions (including any terms contained in any purchase order) apply to the hire of the Equipment unless agreed in writing by the Parties

7.8 Governing Law

This Hire Agreement is governed and interpreted in accordance with the Laws of Western Australia and any dispute arising under this Hire Agreement is to be heard and determined within the jurisdiction of Western Australia.

7.9 No Reliance

Subject to clauses 7.1 and 7.3, the Hirer acknowledges that neither AK Evans Earthmoving nor any person acting on AK Evans Earthmoving's behalf have made any representation or other inducement to the Hirer to enter into the Hire Agreement and the Hirer has not entered into the Hire Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those representations contained in this Hire Agreement.

7.10 No Waiver of Rights

No delay or omission by a Party to exercise any right, power or remedy available to that Party as a result of a 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 that Party's rights to take action or make a claim in respect of a continuing breach or default.

7.11 Execution

a.) The person signing any document which forms part of the Hire Agreement for and on behalf of the Hirer hereby warrants that they hold the Hirer's authority to enter into the Hire Agreement on the Hirer's behalf and grant the security interests in connection with it and is empowered to bind the Hirer to the Hire Agreement and each security interest granted in connection with it.

b.) The person signing this Hire Agreement indemnifies AK Evans Earthmoving against all losses, costs and claims incurred by AK Evans Earthmoving arising out of the person so signing this Hire Agreement not in fact having such power and/or authority.

c.) The Hirer warrants that all information provided by the Hirer and contained in this Hire Agreement is true and correct.

7.12 This Agreement shall encompass all terms and conditions agreed between the Parties. Any other terms and conditions arising prior to execution of this Agreement shall not form part of the Agreement, unless included in this Agreement.

7.13 The Owner acknowledges that the Hire Period will not commence until a signed copy of this Agreement is returned to the Hirer, the Plant is commissioned on Site and the Plant meets the Hirer's and Client's inspection criteria.

7.14 The Hire Period will cease when the Hirer advises the Owner in writing.

7.15 Hirer obtains uninterrupted use of the Plant during the Hire Period.

7.16 The Plant will be available for the Hire Period and provided in good condition and working order and fit for the intended purpose.

7.17 Where the Owner stated on the Agreement is hiring the Plant from another Supplier, the legal owner of the Plant must be disclosed prior to execution of the Agreement.

7.18 Hiring fees will commence once the equipment leaves AKE's yard and cease once returned to AKE's yard, unless otherwise agreed upon by both parties prior to mobilisation/demobilisation.

7.19 It is the Hirer's responsibility to service the item of plant they have on hire in accordance with the OEM Maintenance Planner schedule of tasks. The OEM Maintenance Planner schedule of tasks must have 100% compliance by the Hirer. Throughout the Hire Period, the Hirer must maintain the plant to OEM recommended schedules for servicing and preventative maintenance. The Hirer must not exceed the SMU hours for OEM recommended servicing interval. All servicing must be completed by a Qualified Diesel mechanic.

7.20 Prior to mobilisation, the Owner shall supply to the Hirer all completed Hirer forms (available from the Hirer on request), including the following:

- a. Minimum Site Requirements for Hire Plant and Equipment;
- b. Risk Assessment; and
- c. Weed & Seed Hygiene Certificate.

7.21 The Owner will ensure that any Plant is provided on Site with the fuel tank full on delivery. At demobilisation the Hirer will also ensure the fuel tank is full. Fuel will be charged at \$2.70 a litre to the hirer if the equipment requires fuel.

7.22 Where mobilisation and demobilisation is the responsibility of the Hirer, the Owner shall ensure that the Plant is available and ready for transport and/or available for receipt of Plant.

7.23 All Plant shall have any Owner stickers removed (or adequately covered) at the Hirer's cost prior to mobilisation to site. Removal of any Hirer and/or Client stickers to be removed at completion of the Hire Period will be at the Hirer's cost.

7.24 Both Wet and Dry plant hire will be paid on the basis of SMU hours. Labour hours will be paid based on signed site docketts. Labour hours will be paid on breakdowns where the operator is assigned to work on other plant. A 10 hour day will be paid in the event of wet days or cyclones.

7.25 Standby hours for the hired Plant will not be paid if the SMU hours exceed the agreed monthly minimum hours, where minimum hours are included on the agreement.

7.26 Where no standby rate is quoted, the standby rate shall be the hire rate less 30%.

7.27 The Hirer shall not be liable to pay for any Plant during any breakdown period and the agreed minimum hours shall be adjusted by deducting the breakdown hours. The Hirer shall only reimburse for costs associated with Operators during breakdown periods at its absolute discretion, and only if the Operator performs productive tasks at the direction of the Hirer.

7.28 The Hirer may stand-down Plant at the hire rate less 30% in circumstances where the Hirer is unable to utilise the Plant due to no fault of the Hirer. Such circumstances include, but are not limited to, inclement weather, contract suspension by the Client, Force Majeure declared by the Client or other direction of the Client. Should the stand-down exceed 7 Days, the Owner may make a request to the Hirer to demobilise the Plant from the Site.

- 7.29** The approximate hire duration is an estimate of anticipated hours and may increase or reduce. The Hirer is not obligated to hire the Plant for the full period and may cease the Hire Period with 72 Hour's Notice.
- 7.30** All Health, Safety and Environmental Requirements of the Hirer, the Site and the Client, shall be strictly complied with by the Owner, its Operators and personnel.
- 7.31** The Owner will ensure that any employees submit to any alcohol and/or drug testing in accordance with the Hirer's or its Client's policies and procedures. The Owner and its employees will be bound to comply with the Hirer's or its Client's disciplinary procedures should a non-negative result appear.
- 7.32** Where the Owner is responsible for provision of an Operator(s), they must be acceptable to the Hirer and hold the necessary tickets and competencies for the tasks to be undertaken. If the Operators are not acceptable, as determined by the Hirer at the Hirer's absolute discretion, the Owner must remove the Operator(s) and replace immediately with a suitable alternative(s) at the Owner's cost.
- 7.33** Where the Owner is responsible for provision of an Operator and the Operator is either unsuitable or unavailable, the Hirer may operate the Plant using its own Operators at the Dry Hire rate (for Dry Hire) or the Plant component of the Wet Hire rate (for Wet Hire) under this Agreement. Where the Hirer is operating the Plant, the Hirer shall operate the Plant as per the Manufacturer's Operational Guide Recommendations.
- 7.34** Hirer will supply all PPE excluding Pants and Boots. PPE for all Labour which must be worn at all times includes but may not be limited to:
- Hard Hat
 - Safety Glasses
 - Long Sleeve collared shirt
 - Long Pants
 - Steel capped lace-up safety boots
 - Reflective vest
- Failure to comply with this clause may lead to permanent removal from Site
- 7.35** Any Plant used for lifting shall include the SWL (Safe Working Load) clearly shown on the attachment with craning valves or velocity fuses installed to control the lift ram operation and the certification plate attached.
- 7.36** The Owner must undertake all repairs and maintenance that are the responsibility of the Owner, without delay.
- 7.37** The Owner acknowledges that time is of the essence for repairs and maintenance, and when the Owner cannot undertake or has not undertaken any repairs or maintenance within the Owner's Responsibility within 48 hours from advice by the Hirer, the Hirer may at its absolute discretion undertake the repair or maintenance, and back-charge the Owner the costs of undertaking the repair and/or maintenance at the rates in the Hire Details.
- 7.38** The Hirer will be responsible for minor repairs Labour and parts costs to the maximum stated in the agreement. Where costs are in excess of the maximum the Hirer will discuss costs with the Owner and has the discretion to back charge the Owner at the rates stated in the Agreement.
- 7.39** The Owner is responsible for repairing or replacing major components and transport costs of all major components to/from Site when the damage has happened at no fault of the Hirer.
- 7.40** All personnel and subcontractors' employees engaged or arranged by the Owner to carry out repairs and/or maintenance to the Plant will report to and be under the control of the Hirer's senior maintenance person. They will also comply with and follow the Hirer's and Client's safety and environmental requirements, including participation in all pre-start and toolbox meetings.
- 7.41** Where agreed between the Hirer and the Owner, undercarriage, track, G.E.T. wear shall be paid by the Hirer on a pro-rata basis and G.E.T. should have a minimum 50% usage at the start of the Hire Period.
- 7.42** Tyres on Plant must be in fair condition with no tread cuts or side wall damage and have a minimum 40% tread. The Hirer will appoint an independent company to provide a full tyre report after execution of the Agreement by the Owner and may, based on that report, require tyres to be repaired or replaced at the cost of the Owner before the Plant is transported. The cost for the initial tyre report will be shared equally between the Owner and the Hirer with subsequent reports, if required, being the Hirer's cost.
- 7.43** The Hirer will only be liable for tyre costs that are attributable to fair wear and tear or accidental damage by the Hirer unless otherwise agreed.
- 7.44** The Hirer may, at its discretion, elect to provide tyres and refit Owner's tyres on completion of the Hire Period.
- 7.45** Where replacement tyres are provided by the Hirer and those tyres remain on the Owner's machine at the end of the Hire Period, the pro-rata charge to the Owner for remaining tread will be substantiated by invoice copies from the Hirer.
- 7.46** Responsibility for the disposal of tyre carcasses will be as per the individual agreement but the Hirer is responsible for the cost of disposal of any tyres replaced during the Hire period.
- 7.47** Christmas breaks are considered standard stand-down periods of all Plant on Site. Any agreed minimum hours shall be reduced over these periods. Unless stated elsewhere, the stand-down period over Christmas is two (2) weeks (or 0.47months). All Stand down to be requested by the hirer in writing 2 weeks prior to the owner.
- 7.48** The Owner acknowledges that prior to demobilisation of the Plant off site, an Off-Hire inspection will be completed by the Hirer and that a representative of the Owner is invited to attend. Should the Owner attend, the Hirer shall pay its own costs associated with attending the inspection. Any rectification, which is the responsibility of the Hirer, shall be repaired onsite by the Hirer prior to demobilisation or where this is not practicable, the repair may be undertaken by the Owner and the reasonable costs of the repair, as agreed between the Parties, charged by the Owner to the Hirer. In cases where repairs are carried out a representatives of the Hirer and the Owner will jointly inspect and agree the scope of work to be carried out before commencement of repairs.
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7.49 Responsibility for provision of Insurances is detailed in the Hire Details. The responsible Parties' Insurances shall apply, in the first instance, when a claimable insurance event occurs. Notwithstanding the responsibility for provision of Insurances as detailed in the Hire Details, the Owner shall take out and maintain the following insurances for the duration of the Hire Period or Hire Agreement, whichever is the greater:

- a. Public Liability Insurance for an amount not less than \$20 million
 - b. Insurance of employees for worker's compensation and covering the Owner's liability for death or injury to persons employed by the Owner including liability by statute and at common law. The Owner must ensure that each of its subcontractors are similarly insured
 - c. Motor Vehicle Insurance including third party liability to cover all registered and unregistered vehicles associated in any way with the provision of Plant under this Agreement with a maximum excess of \$1,000
 - d. Transit Insurance, where transport is arranged or undertaken by the Owner
- The Owner shall provide the Hirer with Certificates of Currency before execution of the Hire Agreement.

7.50 Where the Hirer has taken out appropriate insurance to cover the Plant, damage waiver charges are not applicable and cannot be charged.

7.51 Where the Hirer requests a credit for incorrect charges or back charges for major or minor repairs, the Owner will raise a credit note within 14 calendar days. The Invoice containing the incorrect charges will only constitute a valid tax invoice once the credit note is received.

7.52 This Agreement may only be varied by written agreement between both parties using the prescribed Form

7.53 If the Owner fails or refuses to comply with any term or condition of this Agreement the Hirer may, without notice to the Owner, immediately terminate this agreement and request the Owner to remove the Plant from the Site. At any other time the Hirer may terminate this agreement by giving seven (7) days notice in writing to the Owner

7.54 Provide a copy of all incident reports relating to the machine/equipment damage on site, these reports must be sent through on completion of hire.

7.55 Oil samples and OEM service report/sheet completed need to be completed for each 250 Hour Service and results supplied to: opsmanager@akevans.com.au . Percentage of service for short term hire (pro-rata). If service history including oil samples is not provided to the owner at the time of service or end of hire it will be deemed as the service has not been carried out the hirer will be charged for the routine service intervals.

7.56 All maintenance history maintained on the plant/equipment must accompany the unit on return of the machine on off hire. If these are not received it will be deemed that the service was not completed, a "next service" will be completed and charged to the Hirer.

7.57 When the hirer, hires any plant that falls under the HVA requirements. The Hire must supply a copy of their HVA certificate, copy of there Annual letter from Main Roads Western Australia, Copy of the permits that the hirer need to obtain in relation to the item of plant (Oversize, Road Train, Overmass) and all service records, fault reporting & repairs.

8 Definitions

"**AK Evans Earthmoving**" means AK Evans Earthmoving (ACN 121 960 816)

"**Commencement**" means the date when the Hirer takes possession of the Equipment.

"**Credit Application**" means a properly completed and submitted application for credit by the Hirer to AK Evans Earthmoving which AK Evans Earthmoving has approved and accepted.

"**Hirer**" refers to the person, firm, organisation, partnership, corporation, trust or other entity hiring Equipment from AK Evans Earthmoving as named in the Credit Application or the Schedule and includes any employees, agents and contractors.

"**Equipment**" means any equipment hired by the Hirer from AK Evans Earthmoving.

"**Fee**" means the fees described in the Schedule payable by the Hirer to AK Evans Earthmoving for the hire of the Equipment.

"**Further Fee**" means the fees payable by the Hirer in addition to the Fee in accordance with clause 1.3(b).

"**GST**" has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

"**Hire Agreement**" means together the documents described in clause 1.1 of this document and includes the Schedule.

"**Schedule**" means the schedule to this Hire Agreement as may be amended from time to time in writing by the Parties.

"**Hire Period**" means the period from the Commencement until the end of the period shown in the Schedule (and any subsequent extension thereof as agreed between AK Evans Earthmoving and the Hirer) or until the Hire Agreement is terminated in accordance with its provisions (whichever is earlier).

"**Party**" means a party to this Hire Agreement and "**Parties**" has a corresponding meaning.

"**Related Party**" means a body corporate related to the Hirer under section 50 of the *Corporations Act 2001*.

"**Return Conditions**" means those conditions described in the Schedule and this Hire Agreement.

"**Specified Hours**" means the minimum hours the Hirer has agreed to hire the Equipment for nominated in the Schedule.

"**Special Terms**" means any terms specific to a particular type of Equipment or Hirer contained in the Schedule and forming part of the Hire Agreement.\

Capitalised terms in this Agreement have the same meaning as set out in the Hire Details unless otherwise defined in this clause 1.

Client means the person or entity that the Hirer has been engaged to provide services for,

Day means calendar day,

Demobilisation Period means the period from Off-Hire to date of arrival of Plant at original pick-up point,

Dry Hire means hire exclusive of Operator,

Expected Availability means the minimum availability expected under the Agreement expressed as a percentage and is calculated by dividing the actual number of working hours the equipment is able to be used in a calendar month by the total number of working hours in the calendar month,

G.E.T. means Ground Engaging Tools and refers to any bolt-on / pin-on wearing parts such as cutting edges, teeth and ripper boots, including buckets, bowls, undercarriages and tray wear.

Hire Details means the schedule of hire details at the beginning of the Agreement,

Hirer means the party identified in the Hire Details, being the person or entity hiring the Plant.

HVA Western Australian Heavy Vehicle Accreditation requirements

Labour means the person or persons operating the Plant or providing maintenance services for the Owner.

Minor Repairs means all minor running repairs to the Plant including electrical wiring, electrical switches, lights, oil leaks; daily servicing; vee belts, hydraulic hoses and the air-condition system

Major Repairs (not attributed to abuse or negligence) relates to all repairs that are not Minor Repairs and includes Power train, Engine Assembly, Transmission assembly, Radiator, Torque Converter, Differential, Wheel Ends, Bevel Gears, all Steering Components, Hydraulic Pumps, Hydraulic motors, Pump Drives, Swing Gear / Bearings, Engine Couplings, Hydraulic Cylinders, Injectors, Oil Coolers, Brakes, Major Electrics, Cab Major,

Minor/Major Repair classification will in the event of a dispute be determined by the Owner,

Mobilisation Period means the period from date of transport to date of commencement of Plant working on Site,

Off-Hire means the date of cessation of Plant working on Site,

OEM means the Original Equipment Manufacturer,

Operator means a person or persons supplied by or on behalf of the Owner to the Hirer or supplied by or on behalf of the Hirer to operate the Plant,

Owner means the party identified in the Hire Details, being the person or entity owning the Plant,

Plant means the plant and / or equipment and all associated ancillary equipment / attachments under the Agreement,

PPE means personal protective equipment,

Site means the project location where the Plant will be operating,

Site Agreement means the Industrial Agreement at the Site where the Plant is operating,

Servicing means OEM recommended tasks, procedures and schedules for servicing

SMU means Service Meter Unit,

Wet Hire means hire inclusive of Operator provided by the Owner.

Executed as an Agreement:

Signed for and on behalf of **Ronlieeh Pty Ltd T/A
AK Evans Earthmoving (ACN 121 960 816)** by its
Director or Delegate in accordance with Section 127
of the Corporations Act 2001

Signature

Name (please print)

(Position)

Date.....

by the Hirer

Signed for and on behalf of _____ by its Director
or delegate in accordance with Section 127
of the Corporations Act 2001

x _____
Signature of Director or Delegate

x _____
Name (please print)

(Position)

Date x.....
