



64 Norseman Road, Esperance, Western Australia
 Phone: 08 9071 1133 Fax: 08 9071 1232

Hire Agreement SCHEDULE

Customer Name		Credit approved (Y/N)	
Customer ACN (if Company)		Job Site contact person and email	
Customer ABN		Job Site phone and fax	
Customer contact person and email		Job site address	
Customer office phone and fax			

	Equipment description	Equipment Make	Engine Hours		Rotor Hours		Base Hire Charge	Serial No.	Start Date	End Date
			Start	Finish	Start	Finish				
1										
2										
3										

Minimum Hire Charge	\$
Less upfront payment	\$
Total hire charge	\$
Balance payable	\$

This Agreement is made between College Investments Pty Ltd (ACN 008 977 759) as trustee for the Neil Staines Family Investment Trust and Woody Island Pty Ltd (ACN 165 377 499) together trading as Staines Esperance (ABN 81 437 131 820) of 64 Norseman Road, Esperance, Western Australia (**Staines**) and the entity named above as the **Customer**. Staines agrees hire the Equipment to the Customer and the Customer agrees to accept the hire of the Equipment for the hire period upon and subject to Staines Hire Agreement. The Customer agrees that it has received a copy of Staines Hire Agreement. The Customer agrees that all items specified in this Schedule are correct and binding on the Customer.

Signed for and on behalf of Staines by its duly authorised representative: Signed: _____ Name: _____ Position: _____ Date: _____	
Execution by Customer if it is a company or corporate trustee EXECUTED by the Customer in accordance with Section 127 of the Corporations Act 2001 by authority of its directors: If executed in capacity as a corporate trustee: _____ Name of trustee and trust _____ Signature of Director of company/corporate trustee _____ Name of Director	Execution by Customer if it is an individual, partnership, individual trustee SIGNED by the Customer _____ Signature of Customer In the presence of: Witness signature: _____ Witness name: _____ Witness address: _____ Witness occupation: _____

Terms and Conditions of Hire

1. AGREEMENT

- a. The legal agreement between You and Us (the **Agreement**) is always comprised of: (a) this Agreement (b) each Schedule provided to You by Us (whether signed or not by You) and (c) the Credit Account Agreement that You partially or fully completed and submitted to Us.
- b. This Agreement does not include any terms or conditions of Yours (including on any purchase order of Yours) unless We agree so in writing.
- c. You agree that this Agreement applies each time We hire Equipment to You, even if You and We exchange only a Schedule each time.
- d. By signing a Schedule and/or taking possession of any Equipment You Agree to be bound by this Agreement.

2. DEFINED TERMS

In this Agreement:

Claims means actions, suits, proceedings, judgements, orders, claims, demands, costs, damages, losses and all liability whatsoever, including all legal costs on a solicitor and own client basis.

Credit Account Agreement means the document provided by Us to You titled "Credit Account Agreement".

Equipment means the equipment described in the Schedule.

Job Site means the site at which You will use the Equipment as stated in the Schedule.

PPSA means the Personal Property Securities Act 2009 and any other legislation and regulations in respect of it and the following words in this Agreement have the meanings given to them in the PPSA: financing change statement, financing statement, interested person, purchase money security interest, register, registration, security agreement, security interest and verification statement.

Rate means the Reference Rate for business finance published by the Australia and New Zealand Banking Group Ltd.

Return Address means 64 Norseman Road, Esperance, Western Australia.

Schedule means the document provided by Us to You titled "Schedule".

Us/Our/We means Staines.

You/Your means the person, organisation, partnership, corporation, trust or other entity hiring Equipment from Us, named as the Customer in the Schedule.

3. HIRE

- a. We agree to hire the Equipment to You for Your exclusive use during the Hire Period. We agree that the Equipment will be in good working order when We hire it to You.
- b. The **Hire Period** commences on the Start Date and expires on the End Date unless the hire is ended earlier in the manner permitted in this Agreement. The **Start Date** means the start date stated in the Schedule. The **End Date** means the end date stated in the Schedule. If no End Date is specified, the Hire Period is for an indefinite term unless the hire is ended earlier in the manner permitted in this Agreement.

4. CHARGES

You agree to pay Us:

- a. all charges stated in this Agreement (including the Schedule), including monthly hire charges, mobilisation and demobilisation charges and service visits, at the rates set out in the Schedule;
- b. all charges, fines and penalties arising out of Your possession or use of the Equipment; and
- c. all GST, transfer duty, registration fees and other levies or fees payable by Us as a result of this Agreement.

5. PAYMENT TERMS

- a. You must pay to Us all charges and sums payable under this Agreement:
 - i. in advance for all cash accounts; or
 - ii. within 30 days of the date of the invoice provided to You by Us.
- b. If We have agreed to provide You with credit We will invoice You on a monthly basis. Our invoices shall be deemed correct unless disputed in writing by You within 14 days of the date of the invoice.
- c. If You do not pay Our invoices in full by the payment due date We reserve the right to charge You, in addition to any other costs recoverable under this Agreement interest on the total monies owed to Us, calculated daily the Rate and any costs and expenses (including any commission payable to any commercial or mercantile agents and all legal costs on a full indemnity basis) incurred by Us in recovering any unpaid amounts under this Agreement.

6. DELIVERY

We will transport the Equipment to and from the Job Site. You must pay the mobilisation and demobilisation charges specified in the Schedule.

7. RISK

Risk in the Equipment passes:

- a. to You when the Equipment has been delivered to the Job Site, or, if You collect the Equipment, when the Equipment leaves the Return Address; and
- b. to us when the Equipment has been returned to the Return Address.

8. USE, POSSESSION AND OPERATION OF THE EQUIPMENT

You agree to:

- a. not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time. You may not cross hire the Equipment without Our prior written permission;
- b. use and store the Equipment safely and securely and protected from theft, loss or damage;
- c. use the Equipment in compliance with all applicable laws;
- d. complete at Your cost all required testing and tagging during the Hire Period;
- e. ensure the Equipment is not contaminated with any hazardous substances;
- f. obtain all necessary approvals, permits and licenses relating to using the Equipment;
- g. only use the Equipment for a purpose for which it is designed to be used and in accordance with the manufacturer's instructions;
- h. ensure that operators of the Equipment have the required training and qualifications for safe operation of the Equipment;
- i. supply all required personal protection equipment for operators of the Equipment;
- j. not alter the Equipment or deface or obscure any identifying number or mark or safety instruction on the Equipment; and
- k. service the Equipment in accordance with the terms of the operations manual for that Equipment.

9. DAMAGE

- a. You agree that the Equipment was hired to You in good working condition.
- b. You agree to return the Equipment to Us clean and in the condition We hired it to You except for Fair Wear and Tear.
- c. **Fair Wear and Tear** means wear and tear which would be normal for similar equipment mobilised to a similar environment and includes superficial scratches and scuffing to bodywork of the Equipment. It does not include wear to parts of the Equipment which are sacrificial, dents or other impact damage, damage to instrumentation or damage from collision or abuse.

- d. **Your strict liability:** You agree that You are strictly liable for and must pay Us for all loss, theft, destruction or damage to or of the Equipment during the Hire Period as well as all associated loss or expenses suffered by Us, including damage or loss caused by third parties, Our lost hire fees, Our insurance excesses, Our legal costs (on a full indemnity basis) and Our costs of repairing or replacing the Equipment.
- e. **What You must do if damage or loss occurs:** If the Equipment is damaged or loss occurs during the Hire Period You must stop using the Equipment and immediately inform Us by telephone and in writing and You must also take all steps necessary to prevent further damage or loss to the Equipment. You must also take photographic evidence as We require and cooperate with Us and provide information as We require.

10. INDEMNITY AND RELEASE AND LIMIT ON LIABILITY

- a. You indemnify Us and Our directors, officers and employees (**Indemnified Persons**) from and against all Claims which may be brought against or suffered by an Indemnified Person arising out of or in relation to:
 - i. You using or possessing the Equipment;
 - ii. any act, neglect, default or omission of any operator of the Equipment during the Hire Period;
 - iii. Your breach of this Agreement; or
 - iv. any accident, incident, damage or delay caused during the Hire Period involving the Equipment, including for loss of life or any loss, damage or injury suffered by any third party or operator of the Equipment.
- b. To the full extent permitted by law You release each Indemnified Person from all Claims You may have arising out of or in relation to any of the matters referred to in clauses 10a.i, a.ii, a.iii or a.iv.
- c. The release and indemnity in this clause 10 does not apply to the extent an Indemnified Person is guilty of fraudulent acts or omissions or a breach of this Agreement.
- d. You agree that each Indemnified Person shall not under any circumstances be liable to You or any third party (including Your customers) in respect of any indirect, consequential or special losses (including loss of profit, loss of opportunity or payment of liquidated sums or damages under any other agreement).
- e. You agree that the maximum aggregate liability of the Indemnified Persons for all Claims under or relating to this Agreement or its subject matter, whether in contract, tort (including negligence), in equity, under statute, under an indemnity or on any other basis, is limited to the charges paid by You under this Agreement.
- f. Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Agreement. It is not necessary for Us to incur expense or make any payment before enforcing a right of indemnity in this Agreement.

11. WARRANTIES

- a. We warrant that the Equipment will be in working order on the date the Equipment is hired to You.
- b. Other than as set out in clause 11.a, to the maximum extent permitted by law the Equipment is provided without any warranties or guarantees of any kind, either express or implied, and any warranty which is implied by law or statute which can be excluded is excluded.

12. ACCESS TO YOUR ADDRESS AND JOB SITE

You grant Us an irrevocable license to enter on any premises where We believe the Equipment is located, including the Job Site, at all reasonable times and upon reasonable notice for the purpose of performing Our obligations under this Agreement, for inspecting or testing the Equipment, for conducting incident investigations or audits or for serving any notice in relation to the Equipment and at any time for the purpose of repossessing the Equipment if You are in breach of this Agreement or if it has been terminated or has expired.

13. AUSTRALIAN CONSUMER LAW RIGHTS

- a. The Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth) provides consumer rights and remedies that may not be contracted out of, in part or wholly. Where those consumer rights and remedies apply to the hire of Equipment by Us to You and cannot be contracted out of, they apply and override any inconsistent provisions in this Agreement but only to the extent of the inconsistency.
- b. Where You are entitled to a statutory right or term that We are not able to exclude but We are entitled to limit Your remedy for a breach of that right or term, then Our liability for breach of that right or term is limited to (at Our election):
 - i. in the case of goods We supply, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or
 - ii. in the case of services We supply, the supplying of the services again, or the payment of the cost of having the services supplied again.

14. TITLE TO EQUIPMENT

- a. You acknowledge that We own the Equipment and in all circumstances We retain title to the Equipment (even if You go into liquidation, receivership or administration or become bankrupt during the Hire Period).
- b. Your rights to use the Equipment are as a lessee only, and no circumstances will the Equipment be deemed a fixture.
- c. You 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.
- d. You acknowledge that in some circumstances a person other than Us may be the legal owner of the Equipment (the **Owner**) and We may have entered into an agreement to use the Equipment with the Owner. The exercise of any rights by the Owner under that agreement will not constitute a breach or default under this Agreement by Us.

15. PPSA

- a. If We consider that this Agreement is a security agreement for the purposes of the PPSA the provisions of this clause 15 will apply.
- b. You consent to Us effecting and maintaining a registration on the register in any manner We consider appropriate in relation to any security interest granted in or constituted by this Agreement:
 - i. in Your present and after acquired personal property and the proceeds arising in respect of any dealing in such property; and/or
 - ii. in the Equipment and the proceeds arising in respect of any dealing in the Equipment.
- c. You agree that We may at any time register a financing statement or financing change statement in respect of such a security interest (including any purchase money security interest). You waive the right to receive notice of a verification statement in relation to any registration by Us on the register of such a security interest.
- d. You agree to do anything and sign any documents and provide all assistance and information required by Us to facilitate the registration and maintenance by Us of any security interest on the register, acquire and maintain a perfected security interest under the PPSA in respect of Your present and after acquired personal property and/or the Equipment and the proceeds arising in respect of any dealing in such property and ensure that Our rights and Our security and priority position are not adversely affected by the PPSA.
- e. You agree to not register or permit to be registered a financing change statement in respect of a security interest granted in or constituted by this Agreement (including in relation to the Equipment) without Our prior written consent.
- f. If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest granted in or constituted by this Agreement and:

Terms and Conditions of Hire

- i. 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 You 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
 - ii. 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 You 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.
- g. You and We agree not to disclose information of the kind referred to in section 275(1) of the PPSA to any other person, to the extent permitted by the PPSA.

16. WHEN THIS AGREEMENT ENDS

- a. You may terminate this Agreement immediately by giving notice to Us, if:
 - i. we breach any term of this Agreement and fail to remedy the breach within 7 days of written notification of the breach; or
 - ii. we cease to carry on business, become insolvent or have an external controller appointed.
- b. **Event of Default** means You breach this Agreement, and, if such breach is capable of remedy, fail to remedy the breach within seven (7) days of receipt of notice from Us requiring You to do so.
- c. If You:
 - i. commit an Event of Default; or
 - ii. are subject to an Insolvency Event;then We may, without prejudice to any other remedy available to Us:
 - iii. recover the Equipment from You;
 - iv. require immediate payment of all fees and moneys owed by You to Us;
 - v. charge You for all costs and expenses (including without limitation all legal costs and expenses on a full indemnity basis) incurred enforcing compliance with this Agreement and/or recovering the Equipment;
 - vi. claim damages from You for breach of this Agreement;
 - vii. cease to or suspend hire of any further Equipment to the Customer; and/or
 - viii. terminate this Agreement by notice to the Customer.
- d. These rights of termination are in addition to any other rights We have under this Agreement or at law or in equity.

17. OTHER

- a. You must not assign or transfer any obligation under this Agreement without Our written consent.
- b. If any provision or part provision of this Agreement is invalid, unenforceable or illegal then it shall be deemed to not operate until it is valid, enforceable and legal.
- c. This Agreement is governed by the law in force in Western Australia. You and We irrevocably submit to the jurisdiction of the courts of Western Australia with respect to any Claim relating in any way to this Agreement.
- d. You agree that We may vary this Agreement with 30 days prior written notice to You explaining the variation. If You believe such variations will prejudice Your rights You can terminate this Agreement within 14 days of such notice without penalty.
- e. Any omission by Us to enforce any of Our rights in this Agreement shall not operate as a waiver by Us and will not prejudice Our rights to enforce any of the provisions.