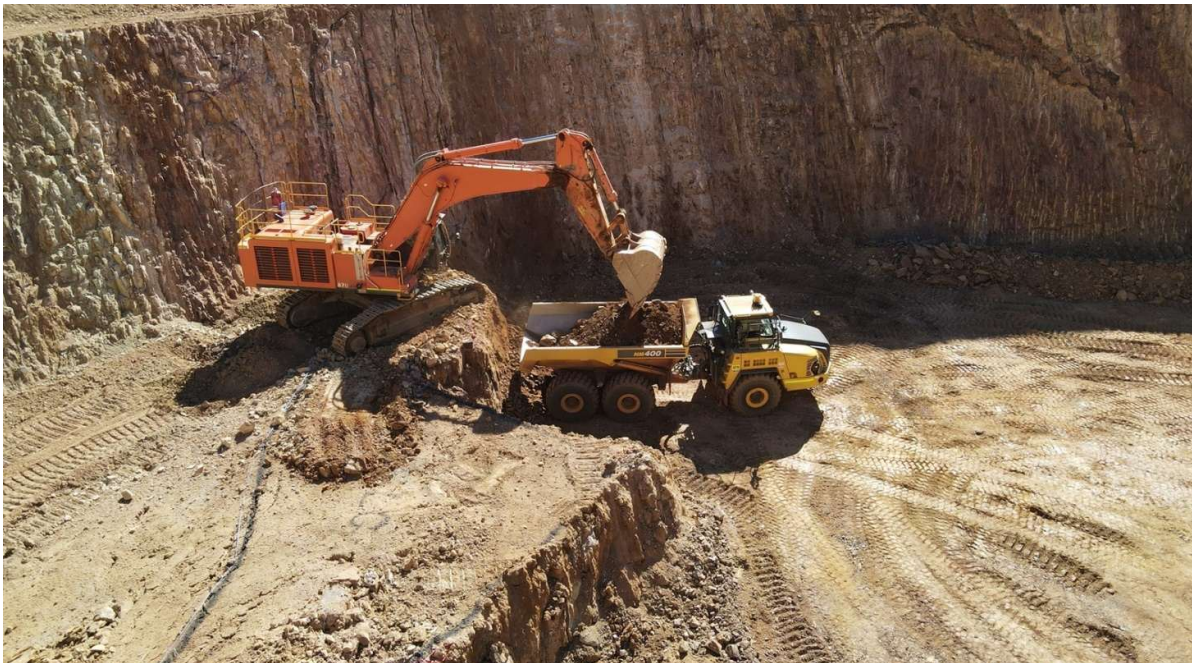


EQUIPMENT RENTAL AGREEMENT



Agreement number:

Date:

PARTIES

K2 Plant	K2 Plant Hire Pty Ltd (ACN 668 563 979) of Suite 2.05, 371 Macarthur Avenue, Hamilton QLD 4007 (“ K2 Plant ”)
Hirer	the party specified in Schedule 1 (“ Hirer ”)
Guarantor	the party specified in Schedule 1 (“ Guarantor ”)

BACKGROUND

- A. K2 Plant owns the Plant and wishes to hire the Plant to the Hirer.
- B. The Hirer has agreed to hire the Plant from K2 Plant on and subject to the terms set out in this Agreement.
- C. The Guarantor has agreed to guarantee the performance of the obligations of the Hirer under this Agreement.

AGREEMENTS

1 Definitions and Interpretations

The meanings of the terms used in this Agreement are set out below.

Agreement	this Dry Hire Agreement, including the schedules to it
Claim	in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent
Collection/Delivery Point	the specific Site location specified by the Hirer for delivery and collection of the Plant by the designated transport company
Commencement Date	the date specified as such in Schedule 2

CPI	<p>the Consumer Price Index (CPI All Groups, Weighted Average of Eight Capital Cities) published from time to time by the Australian Bureau of Statistics, and if that index is discontinued or if its basis of assessment is changed so that it no longer accurately reflects changes in the prevailing levels of prices substantially in the same manner as it did prior to the change in basis, then such other index in substitution for that index:</p> <ul style="list-style-type: none">(a) as may be provided by the Australian Bureau of Statistics;(b) if no index is provided by the Australian Bureau of Statistics, as may be reasonably determined by K2 Plant, <p>which is the nearest equivalent index to the Consumer Price Index (CPI All Groups, Weighted Average of Eight Capital Cities).</p>
End Date	the date specified in Schedule 2
Force Majeure	<p>any cause, event or circumstance, or combination of causes, events or circumstances, which:</p> <ul style="list-style-type: none">(a) is beyond the reasonable control of the affected party;(b) was not directly or indirectly caused, or contributed to, by the affected party; and(c) was not reasonably able to be prevented or overcome by the exercise of due diligence by the affected party, <p>and includes, provided paragraphs (a), (b) and (c) are satisfied:</p>
Force Majeure (cont'd)	<ul style="list-style-type: none">(a) any act of God;(b) compliance with the requirements of any Law or an order of any court (other than where that requirement or order results from any act or omission of the affected party);(c) war, terrorism, sabotage, blockade, civil war, rebellion, revolution, insurrection, riot or civil commotion; and(d) epidemic or quarantine restriction.
GST	the same meaning as in the GST Act
GST Act	the <i>A New Tax System (Plant and Services Tax) Act 1999 (Cth)</i>
Insolvent	<ul style="list-style-type: none">(a) in the case of a person, they are, state that they are or take any step that results or may result in their becoming an insolvent under administration as defined in section 9 of the <i>Corporations Act</i>(b) in the case of a corporation, it is, states that it is or takes any step that results or may result in it becoming a Chapter 5 body corporate as defined in section 9 of the <i>Corporations Act</i>
Loss	includes losses, costs, damages, expenses and liabilities.

Minimum Hours	for an item of Plant, the number of hours specified as such in Schedule 2 for that item of Plant.
OEM	in relation to the specified Plant, the original equipment manufacturer of that item of Plant
OEM Guidance and Requirements	in relation to the specified Plant, all specifications, requirements, recommendations and guidelines in relation to that Plant issued by the OEM of that Plant from time to time
Personnel	in respect of a person, its officers, employees, agents, contractors and subcontractors (or any tier)
Plant	the items of equipment specified in Schedule 2
Plant Condition Report	in relation to the hired Plant, the report recording the result of an inspection of the condition of that Good by K2 Plant in accordance with clause 6
PPSA or PPS Act	the <i>Personal Property Securities Act 2009</i> (Cth)
Rates Schedule	the schedule of hire rates for Plant set out in Schedule 2
Site	the site specified in Schedule 2
Term	the term of the hire specified in Schedule 2

2 Interpretations

2.1 In this Agreement:

- (a) words in the singular include the plural and vice versa;
- (b) words indicating any gender indicate the appropriate gender;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) a reference to a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;
- (e) references to any document (including this Agreement) include references to the document as amended, consolidated, supplemented, novated or replaced;
- (f) a reference to a statute includes a reference to all enactments amending or consolidating the statute and to an enactment substituted for the statute and any subordinate legislation, including regulations;
- (g) monetary references are references to Australian currency;
- (h) the Schedules form part of this Agreement;
- (i) headings are included for convenience only and do not affect interpretation of this Agreement; and
- (j) no provision will be construed adversely to a party solely on the grounds that the party was responsible for the preparation of this Agreement or that provision.

3 Hire of Plant

K2 Plant hires the Plant to the Hirer for the Term, commencing on the Commencement Date.

4 Delivery of the Plant

- 4.1 K2 Plant will deliver the Plant to the Delivery Point on or before the Commencement Date. The Hirer will ensure K2 Plant and/or its designated transport company has full access to deliver the Plant to the Delivery point. If K2 Plant is prevented from delivering the Plant to the Delivery Point, then K2 Plant may treat the booking as cancelled and clause 4.2 will apply as if the Hirer had cancelled the booking.
- 4.2 If the Hirer cancels a booking for the hire of Plant and gives K2 Plant 48 hours or less notice of such cancellation, the Hirer will be liable to pay 100% of the mobilisation fee for the Plant.

5 Charges

- 5.1 The Hirer will pay to K2 Plant, free of any set-off, counterclaim, withholding or deduction whatsoever:
- (a) the hire charge calculated in accordance with hourly rate set out in Schedule 2 unless the actual hours are less than the Minimum Hours, in which case the Minimum Hours will be charged;
 - (b) where the Plant are delivered at the Hirer's request, a delivery charge as specified in Schedule 2;
 - (c) where the Plant are returned and are damaged, a charge for remedying or fixing the damage to the Plant, calculated and notified by K2 Plant to the Hirer;
 - (d) where the Plant are returned and are not full of fuel (if applicable), a charge for refuelling the Plant;
 - (e) any cancellation charges due under clause 4; and
 - (f) any other amounts due under this Agreement.
- 5.2 Hire charges will commence on the Commencement Date.
- 5.3 K2 Plant will issue a tax invoice monthly to the Hirer and such tax invoice must be paid by the Hirer within 30 days of the date of the invoice.
- 5.4 The Hirer will pay interest to K2 Plant for any overdue rental fees or charges, calculated on a daily basis from the due date for payment until the date such payment is received by K2 Plant, at the rate of 12% per annum.
- 5.5 K2 Plant can revise the hourly rate on an annual basis based on CPI, by giving not less than one month's notice in writing to the Hirer.

6 K2 Plant inspection of the Plant

Prior to delivering the Plant to the Hirer at the Site in accordance with clause 4, K2 Plant must conduct an inspection of the condition of the Plant and record the result of that inspection in a Plant Condition Report setting out a proper and reasonable indication of the condition of the Plant, including:

- (a) the remaining utilisation hours for major componentry and sub-components of the Plant;
- (b) a reasonable estimate of the life remaining in the Plant (expressed as a percentage);
- (c) any existing defects in the Plant;
- (d) the maintenance and service requirements for the Plant; and
- (e) details of all attachments, accessories, tools and supporting manuals and documentation for the Plant.

7 Hirer inspection of the Plant

- 7.1 Upon the delivery of the Plant to the Site:

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- (a) K2 Plant will provide a copy of the Plant Condition Report to the Hirer; and
 - (b) the Hirer may conduct an inspection of the Plant to determine (acting reasonably and in good faith) whether the Plant are in accordance with the Plant Condition Report.
- 7.2 If the Hirer determines as a result of an inspection under clause 7.1(b) that the Plant are in accordance with this Agreement and the Plant Condition Report, the Hirer must sign the Plant Condition Report.
- 7.3 If the Hirer determines that the Plant are not in accordance with this Agreement and the Plant Condition Report, the Hirer must either:
- (a) request K2 Plant to amend the Plant Condition Report to reflect the condition of the Plant determined by the Hirer following its inspection under clause 7.1(b) and, if K2 Plant agrees to amend the Plant Condition Report as requested, the Hirer must sign the Plant Condition Report as amended; or
 - (b) notify K2 Plant that it rejects the Plant (specifying its reasons for rejecting the Plant).
- 7.4 If the Plant are rejected by the Hirer in accordance with clause 7.3(b), then the Company may, at its option, in its absolute discretion:
- (a) replace the rejected Plant; or
 - (b) terminate this Agreement.
- 7.5 If K2 Plant terminates this Agreement under clause 7.4(b), then:
- (a) each party is released from all of its obligations and liabilities; and
 - (b) K2 Plant will have no liability to the Hirer, and the Hirer must not bring any claim against K2 Plant,
- under or in connection with this Agreement.

8 Use and maintenance

- 8.1 The Hirer will at all times use the Plant in a proper and skilful manner and will permit the Plant to be used only by skilled, competent and appropriately licensed employees of the Hirer or by such other persons as have been authorised by K2 Plant.
- 8.2 The Hirer warrants that the Plant will not be used for any purpose or use other than that for which the Plant were designed and hired, and the Hirer must observe and comply with the provisions of all applicable laws and regulations and any directions or instructions given by K2 Plant in relation to the use of the Plant.
- 8.3 The Hirer agrees that, unless K2 Plant consents in writing (which may be refused at K2 Plant's sole discretion and without reason), the Plant must only be used or operated at the Site.
- 8.4 The Hirer agrees to:
- (a) at its own cost, keep the Plant in good order, repair, condition and working order;
 - (b) at its own cost, properly maintain and service the Plant in accordance with the directions of K2 Plant;

- (c) ensure that the Plant are not overloaded;
 - (d) carry out daily water, oil and grease checks and to provide the necessary oil, grease, water and fuel to allow the safe operation of the Plant;
 - (e) immediately inform K2 Plant should the Plant break down or the Plant or any part of the Plant become unsafe, damaged or require repair;
 - (f) ensure that all safety and operating instructions for the Plant are observed;
 - (g) ensure that the Plant are maintained in accordance with OEM guidance and requirements;
 - (h) ensure that any person operating the Plant wear suitable clothing and any protective equipment recommended by the manufacturer's safety or operating instructions; and
 - (i) in the event that K2 Plant has provided a list of maintenance tasks per the Responsibility Matrix included at Schedule 2 that are to be attended to by the Hirer before returning the Plant to K2 Plant at the end of the Term, to complete all tasks listed on the check point list.
- 8.5 The Hirer will be responsible for any loss or damage to the Plant or to any part of the Plant caused or contributed to by:
- (a) the Plant being used notwithstanding that the Hirer was aware or should have been aware that the Plant or any part of the Plant required repairs or maintenance;
 - (b) overloading;
 - (c) improper use or negligent or wilful misuse of the Plant or any part of the Plant; or
 - (d) failure to maintain fluid, fuel or oil levels at the recommended level.
- 8.6 The Hirer must ensure that only appropriate qualified / experienced personnel effect any adjustments or repairs to the Plant.
- 8.7 K2 Plant may, on reasonable notice, inspect the Plant during normal working hours and submit the Plant to such mechanical or other test as may be required to enable the Plant to be properly serviced and maintained.

9 Risk

- 9.1 During the course of transport to the Delivery Point and from the Collection Point, the Plant will be at K2 Plant's risk in all respects, unless this Agreement specifies that the Hirer is responsible for the transport of the Plant.
- 9.2 During the course of the hire of the Plant, the Plant will be at the Hirer's risk in all respects.
- 9.3 The Hirer:
- (a) assumes all risks and liabilities for and in respect of the Plant and for injuries to or death of persons and damage to property and any Claim arising from the possession, use, maintenance, repair or repossession of the Plant; and

- (b) assumes full responsibility, including without limitation civil, criminal and financial liability, for all acts undertaken by persons in control of the Plant, including all offences in relation to the conduct and control of the Plant.

10 Insurance

- 10.1 The Hirer shall, at its own expense, obtain and keep in force throughout the Term in relation to the Plant, the following insurance policies:
 - (a) plant and machinery insurance for the insurance value of the Plant as advised by K2 Plant (**Insurance Value**) and the policy of insurance shall jointly insure the respective interests of K2 Plant and the Hirer and contain a waiver of subrogation in respect of claims against K2 Plant;
 - (b) workers' compensation insurance for all employees of the Hirer operating or maintaining the Plant; and
 - (c) public liability insurance to the value of \$20,000,000.
- 10.2 A certificate of currency confirming the insurance set out in clause 10.1 shall be given by the Hirer to K2 Plant prior to the Commencement Date.
- 10.3 If the Hirer fails to obtain insurance for the Plant in accordance with this clause 10, K2 Plant reserves the right to obtain and keep the relevant insurance and the cost of doing so will be a debt due and immediately payable by the Hirer.
- 10.4 The Hirer must not do any act or thing, or permit any act or thing, that might in anyway invalidate or prejudice any insurance policy required by clause 10.1 or any claim thereunder by K2 Plant.

11 Personal Property Securities Act

- 11.1 Unless defined otherwise in this Agreement, capitalised terms in this clause 11 take their meaning as defined under the PPS Act.
- 11.2 This Agreement constitutes a Security Agreement for the purposes of the PPS Act and creates a Security Interest (that is a PPS Lease) in all the Plant currently provided by K2 Plant to the Hirer and all further Plant provided by K2 Plant to the Hirer.
- 11.3 The Hirer agrees to implement, maintain and comply in all material respects with procedures for the perfection of K2 Plant's Security Interests as set out in clause 11.2
- 11.4 The Hirer must do all things necessary to assist K2 Plant to continuously perfect any Security Interest arising under this Agreement, including signing any documents or providing any information that K2 Plant reasonably requests for the purposes of protecting its interest under the PPS Act.
- 11.5 K2 Plant's Security Interest constitutes a Purchase Money Security Interest (**PMSI**).
- 11.6 The PMSI will continue for any replacement Plant or for the Proceeds from the sale of the Plant.

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- 11.7 The Hirer will not permit any Security Interest to be created in the Plant without K2 Plant's written consent.
- 11.8 If the Plant supplied by K2 Plant to the Hirer are commingled with any other property, K2 Plant will have a Security Interest in those commingled Plant including the Plant supplied under this Agreement.
- 11.9 The Hirer must not lodge or permit the lodgement of a Financing Change Statement or an Amendment Demand in respect of the Plant without K2 Plant's consent.
- 11.10 The Hirer must immediately notify K2 Plant in writing of any change in the Hirer's name or other identifying characteristics of the Hirer or the Plant in which K2 Plant holds any Security Interest.
- 11.11 The parties contract out of each provision which sections 115(1) and 115(7) of the PPSA permits them to contract out.
- 11.12 The Hirer waives each right to receive a notice which section 144 or 157(3) of the PPSA permits it to waive.
- 11.13 For the purposes of section 275(1) of the PPSA the Hirer and K2 Plant agree not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances required by sections 275(7)(b) to (e) of the PPSA. The Hirer agrees that it will only authorise the disclosure of information under section 275(7)(c) of the PPSA or request information under section 275(7)(d) of the PPSA, if K2 Plant approves. Nothing in this clause 11 will prevent any disclosure by K2 Plant that it believes necessary to comply with its obligations at law.

12 Warranties and limitation of liability

- 12.1 Subject to clause 12.2:
- (a) all express or implied warranties, representations, statements, terms and conditions relating to this Agreement that are not contained in this Agreement, are excluded to the maximum extent permitted by law; and
 - (b) the Hirer agrees and acknowledges that it has conducted its own enquiries and relies on its own skill and judgment regarding the fitness for purpose, adequacy, safety, suitability, condition and conformity with description and applicable regulations of the Plant and the Hirer's decision to enter into this Agreement.
- 12.2 Nothing in this Agreement excludes, restricts or modifies any term, condition, warranty, right or remedy implied or imposed by any statute or regulation that cannot lawfully be excluded, restricted or modified, which may include the *Competition and Consumer Act 2010* (Cth) and corresponding Australian state or territory legislation, which contain provisions including implied conditions and warranties that operate to protect the purchasers of Plant and services in various circumstances (**Implied Terms**).
- 12.3 If there are any Implied Terms in this Agreement and K2 Plant can limit the Hirer's remedy for a breach of such a term, condition or warranty, then K2 Plant's liability for breach of the term, condition or warranty is limited to one or more of the following at K2 Plant's option:
- (a) the replacement of the Plant;

- (b) the repair of the Plant;
 - (c) a refund of the hire charges for the relevant period;
 - (d) the payment of the cost of replacing the Plant for hire; or
 - (e) the payment of the cost of having the Plant repaired for hire.
- 12.4 To the maximum extent permitted by law, K2 Plant's maximum aggregate liability for all Claims under or relating to this Agreement, whether in contract, tort (including negligence), in equity, under statute, under an indemnity, based on breach or on any other basis, is limited to the amount paid to K2 Plant for the hire of the Plant.
- 12.5 In consideration of K2 Plant entering into this Agreement and agreeing to hire the Plant to the Hirer as requested by the Hirer, the Hirer:
- (a) releases K2 Plant from all Claims, demands and causes of action by and liability for any Loss and damages, (including loss of profits, loss of use, cost of replacement Plant, loss of production and loss of bargain) of any kind and whether in contract, tort (including negligence), under statute or otherwise; and
 - (b) without limiting clause 18, indemnifies and shall keep K2 Plant indemnified against all Claims by and liabilities to the Hirer and any third party,
- for or arising out of transportation, possession, use and operation of the Plant by the Hirer, the condition of the Plant and the supply of the Plant by K2 Plant.
- 12.6 In addition to and notwithstanding any insurances that the Hirer is compelled to maintain hereunder the Hirer shall bear the entire risk of and costs associated with and indemnify K2 Plant against any loss, theft, destruction, compulsory acquisition (including lawful confiscation) of or damage to the Plant whilst on hire to the Hirer (**Loss or Damage**) and subject to clause 12.7 no such Loss or Damage shall relieve the Hirer of the obligation for payment of hire or other charges or of any other obligation under this Agreement.
- 12.7 The Hirer shall immediately notify K2 Plant of such Loss or Damage and at the option of K2 Plant:
- (a) the Hirer shall at its cost repair and renovate the Plant to the condition to which it is expected to be maintained; or
 - (b) K2 Plant may terminate this Agreement in which case clause 17.1 will apply.

13 Alterations, attachment or defacement

- 13.1 The Hirer must not make any alterations or additions to the Plant or install any accessories, equipment or device without K2 Plant's prior written consent (and then only in accordance with any requirements or conditions stipulated by K2 Plant) and will, immediately upon request by K2 Plant, remove any such alterations, additions, installations, accessories, equipment or devices whether or not made or installed with K2 Plant's consent, and restore the Plant to their original condition.
- 13.2 The Hirer acknowledges that the property in any accessory or modification installed on the Plant that is not removed upon request will pass to and vest in K2 Plant.

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- 13.3 The Hirer must not remove, deface or cover up any marks of identification or ownership or any safety signs appearing on the Plant.
 - 13.4 The Hirer must ensure that any safety signs supplied with the Plant are displayed so that they are clearly visible.
 - 13.5 K2 Plant, in its sole discretion, may affix any sign or advertising device or identification mark to the Plant.

14 Property in the Plant

- 14.1 During the Term, K2 Plant retains full title to the Plant notwithstanding:
 - (a) the delivery of the Plant to the Hirer;
 - (b) the possession and use of the Plant by the Hirer; and
 - (c) any temporary attachment of the Plant to any land or building to facilitate use of the Plant,and the rights of the Hirer in respect of the Plant are as a mere bailee only with the right to possess and use the Plant in accordance with and under this Agreement.
- 14.2 The Hirer acknowledges and agrees that title to the Plant supplied by K2 Plant does not pass to the Hirer at any point during the Term.
- 14.3 The Hirer must not purport to assign any interest in the Plant to any other person nor to deal with the Plant in any respect nor permit or suffer to be done any act, including creating any lien, charge, security or any encumbrance that may prejudice K2 Plant's rights to the Plant in any way whatsoever.

15 Return of the Plant

- 15.1 Upon the expiration of the Term or upon the earlier termination of this Agreement, the hirer or K2 Plant will arrange for collection of the Plant from the Collection Point to a nominated location as per K2 agreement.
- 15.2 Where the Plant are not returned upon the expiration of the Term or upon the earlier termination of this Agreement, the Hirer must pay K2 Plant additional hire charges in accordance with hourly rate and Minimum Hours until the Plant are returned.
- 15.3 The Plant must be returned to K2 Plant in good order and condition and with all accessories and other in the same condition as they were at the date of execution of this Agreement, fair wear and tear excepted.
- 15.4 The Hirer must return the Plant with a full fuel tank at its cost (where the Plant are capable of being fuelled) and if the Hirer fails to do so, K2 Plant may fill the fuel tank at the Hirer's cost in accordance with clause 5.1(d).
- 15.5 If the Hirer fails to make the Plant available for collection upon this Agreement terminating, K2 Plant may enter (using such force as is necessary in the circumstances) into any premises in

which it reasonably suspects the Plant to be located and re-possess the Plant. The Hirer must use its best endeavours to assist K2 Plant with access to those premises to recover the Plant.

16 Guarantee and Indemnity

- 16.1 In consideration of K2 Plant agreeing to hire the Plant to the Hirer, the Guarantor unconditionally and irrevocably guarantees that the Hirer will pay all amounts payable under this Agreement when they are due. If the Hirer does not pay any amount under this Agreement on time and in accordance with this Agreement, then the Guarantor agrees to pay that amount to K2 Plant immediately on demand from K2 Plant (whether or not K2 Plant has made demand on the Hirer).
- 16.2 The Guarantor unconditionally and irrevocably indemnifies K2 Plant against, and the Guarantor must pay K2 Plant on demand, any and all Loss K2 Plant suffers or incurs if:
- (a) the Hirer does not, is not obliged to, or is unable to, pay K2 Plant in accordance with this Agreement; or
 - (b) the Hirer does not comply on time with all its obligations under this Agreement; or
 - (c) K2 Plant is obliged, or agrees, to pay an amount to a trustee in bankruptcy or liquidator (or bankrupt person or insolvent company) in connection with a payment by the Guarantor or the Hirer.
- 16.3 The Guarantor as principal debtor unconditionally and irrevocably agrees to pay K2 Plant immediately on demand a sum equal to the amount of any such Loss without any counter-claim, deduction, set-off, withholding whatsoever.
- 16.4 The indemnity in clause 16.2 is a continuing obligation, separate and independent from the Guarantor's other obligations. It is not necessary for K2 Plant to incur expense or make payment before enforcing a right of indemnity in clause 16.2.
- 16.5 The rights and powers of K2 Plant under this clause 16 are not affected if:
- (a) K2 Plant is negligent in exercising or not exercising any of its rights or powers;
 - (b) K2 Plant delays exercising any of its rights or powers;
 - (c) K2 Plant compromises, waives, releases or deals with any of K2 Plant's rights or powers against any person or property; or
 - (d) this Agreement is varied or altered, even if such a variation or alteration has the effect of increasing the Guarantor's liability under this clause 16.
- 16.6 The Guarantor acknowledges and warrants that the Guarantor has agreed the terms of clause 16 voluntarily, has read it and understood its true nature and effect (including but not limited to this Agreement) and is aware of its rights to obtain independent legal and/or financial advice.
- 16.7 This clause 16 will survive the expiration or termination of this Agreement.

17 Default

- 17.1 If at any time:

- (a) the Hirer does not pay any hire charge or any other money payable under this Agreement within 7 days after the charges have become due, or fails to observe or perform any other provision or term of this Agreement;
- (b) the Hirer becomes Insolvent;
- (c) there is a material adverse change in the business or financial condition of the Hirer that could adversely affect the ability of the Hirer to meet its obligations under this Agreement;
- (d) any distress or execution or other legal process is threatened or levied upon or against the Plant or the Plant are claimed or seized; or
- (e) Loss or Damage occurs to the Plant and K2 Plant elects to terminate this Agreement under clause 12.7(b);

then K2 Plant may, notwithstanding any delay or previous waiver of its rights to proceed pursuant to this clause 17, by notice to the Hirer terminate this Agreement with immediate effect and the Hirer must pay to K2 Plant by way of liquidated damages:

- (f) the amount of the hire charge and other charges then due;
- (g) a sum equal to the hire charge and other charges that would otherwise have been payable in respect of the Plant during the balance of the Term had K2 Plant not terminated this Agreement; and
- (h) any other money payable pursuant to this Agreement.

- 17.2 K2 Plant and the Hirer agree that the amount of liquidated damages calculated in accordance with clauses 17.1(f) – 17.1(h) is a genuine and reasonable pre-estimate of K2 Plant’s Loss in the circumstances arising under clauses 17.1(a) –17.1(e).
- 17.3 K2 Plant may otherwise terminate this Agreement by giving the Hirer two months’ notice.
- 17.4 Upon termination of this Agreement K2 Plant will recover and collect the Plant. If the Hirer does not comply with K2 Plant’s directions in assisting in recovering and collecting the Plant, K2 Plant may enter (using such force as is necessary in the circumstances) into any premises in which it reasonably suspects the Plant to be located and to re-take possession of the Plant.
- 17.5 The Hirer will pay on demand to K2 Plant all costs and expenses (on an indemnity basis) incurred by K2 Plant in exercising or attempting to exercise any rights under this Agreement.
- 17.6 In addition to, and without limitation of, clauses 17.1 to 17.5 if this Agreement is terminated due to the Hirer’s default, the Hirer must pay to K2 Plant the amount of any costs, expenses or any loss of hire charges in respect of the Plant incurred by K2 Plant arising out of the termination of the Agreement.

18 Indemnities

- 18.1 The Hirer indemnifies K2 Plant, its servants, contractors and agents (“Personnel”) against any Claim or legal proceedings by any person arising in any way out of repossession or attempted repossession of the Plant pursuant to this Agreement.

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- 18.2 The Hirer indemnifies K2 Plant and its Personnel from and against any and all Loss suffered or incurred by K2 Plant or its Personnel arising out of, or in connection with:
- (a) the hire, use and operation of the Plant by the Hirer;
 - (b) any Claims whatsoever arising out of or in any way connected with the breach by the Hirer of this Agreement or any part of it;
 - (c) loss of, theft of, or damage to, or destruction of, the Plant (however caused);
 - (d) the death of, or injury to, any person;
 - (e) loss of, theft of, or damage to, or destruction of, any real or personal property of any person;
 - (f) the failure of the Hirer or its Personnel to comply with any Law or the lawful requirements of any government authority;
- 18.3 K2 Plant may recover from the Hirer as a debt due and owing to K2 Plant, any amounts covered by an indemnity under this Agreement.
- 18.4 An indemnity under this Agreement is a continuing obligation, separate and independent from the indemnifying party's other obligations.
- 18.5 It is not necessary for K2 Plant or its Personnel to incur expense or make payment before enforcing an indemnity under this Agreement.
- 18.6 This clause 18 will survive the expiration or termination of this Agreement.

19 Force majeure

- 19.1 Neither party is in breach of this Agreement or is liable to the other party for any Loss incurred by that other party as a direct result of a party (**Affected Party**) becoming subject to Force Majeure
- 19.2 If Force Majeure occurs, the Affected Party must take all reasonable steps to minimise the effect of the Force Majeure and must notify the other party (**Non-affected Party**) in writing as soon as practicable and that notice must state the particulars of the Force Majeure and the anticipated delay.
- 19.3 The performance of the affected obligations must be resumed as soon as practicable after such Force Majeure is removed or has ceased.
- 19.4 If the delay due to the Force Majeure continues for two months, the Non-affected Party may terminate this Agreement immediately on providing written notice to the Affected Party.

20 Notices

- 20.1 All notices given under this Agreement must be in writing and may be delivered in person or by mail or by the medium specified in the address for service stated in Schedule 1.
- 20.2 A party may change its particulars for service by notice in writing to the other party.
- 20.3 A notice sent by post will be deemed:

- (a) given on the day it is posted; and
 - (b) received six days after posting.
- 20.4 A notice sent by email will be deemed received at the time and on the date that it is sent, unless the sender receives notification that the delivery of the email was unsuccessful, in which case the email will not be deemed to have been received.
- 20.5 For the purposes of clause 20.4, 'delivery' of an email means the time that an email reaches the recipient's server.

21 General

Governing law

- 21.1 This Agreement will be construed in accordance with the laws in force in Queensland and the parties submit to the jurisdiction of the courts of Queensland.

Reference to a party

- 21.2 Any reference to a party in this Agreement includes, and any obligation or benefit under this Agreement will bind or take effect for the benefit of, that party's executors, administrators, successors in title and assigns.

Legal fees

- 21.3 Each party will bear its own legal and other costs and expenses relating to the preparation and execution of this Agreement.

Entire agreement

- 21.4 This Agreement represents the entire agreement between the parties on its subject matter and supersedes all prior representations, agreements, statements and understandings between the parties on its subject matter.

Severability

- 21.5 If any part of this Agreement is invalid or unenforceable, that part will (if possible) be read down to the extent necessary to avoid the invalidity or unenforceability, or alternatively will be deemed deleted; and this Agreement will remain otherwise in full force.

Amendments to be in writing

- 21.6 No amendment to this Agreement has any force unless it is in writing and signed by both Parties.

Further assurances

- 21.7 Each party will sign and complete all further documents and do anything else that may be reasonably necessary to effect, perfect or complete the provisions of this Agreement and the transactions to which it relates.

Waiver

- 21.8 The failure of a party to this Agreement to enforce a provision or the granting of any time or indulgence will not be construed as a waiver of the provision nor of a waiver of the right of the party at a later time to enforce the provision.

No merger

21.9 The rights and obligations of the parties contained in this Agreement will not be extinguished by or upon completion.

Assignment

21.10 The Hirer will not, except with the prior written consent of K2 Plant, assign or purport to assign any of its rights under this Agreement. This clause 21.10 will also apply *mutatis mutandis* to any change in Control (as defined in the *Corporations Act 2001* (Cth)) of the Hirer.

21.11 K2 Plant may, in its discretion, assign to any person any of its rights under this Agreement or its interests or any part in the Plant and the Hirer will do everything necessary on its part to give effect to such assignment upon request by K2 Plant.

SCHEDULE 1 – DETAILS

K2 Plant details

Name K2 Plant Hire Pty Ltd

ABN 43 668 563 979

Address Suite 2.5, 371 Macarthur Avenue, Hamilton QLD 4007

Contact Nick Harwood

Email address nick@k2plant.com.au

Hirer details

Name

ABN

Address

Contact

Email address

Guarantor details

Name

ABN

Address

Contact

Email address

SCHEDULE 2 – HIRE DETAILS

Project details

Site

Delivery / Collection Point

Commencement date

End date

Term

Equipment

Asset ID	Asset Description	Serial Number	Hire Period	Hourly Rate	Minimum Hours

**Stand down notices to be notified to K2 Plant by 9am on day of. Anything after this is at K2 Plant discretion.*

Asset ID	Mobilisation fee	Demobilisation fee	Insurance Value

Maintenance Responsibilities	K2 Plant	Customer
Daily Servicing (Fuels, Oils, Lubricants, Coolant, Water & Adblue).		x
Oils, Lubricants, Coolant for PM Services and Component repairs including waste disposal.	x	
Wear Packages - GET, Bucket wear items, Side cutters, Breaker etc.		x
All Damage to Tracks, Trays, Buckets, Blades, Mouldboards etc.		x
Basic Maintenance Facilities on site including but not limited to IT Carriers, Jacks, Cranes etc.		x
Preventive Maintenance Services incl. Labour, PM Kits and Samples.	x	
Minor Repairs (Labour & Parts) up to \$3,500 per event. Not caused by damage.	x	
Major Repairs (Labour & Parts) greater than \$3,500 per event. Not caused by damage.	x	
Insurances (Replacement value per machine).		x
Ripper/blade/body damage repair costs.		x
Measure in/out of Tyres, all damage and excessive wear. Normal wear & tear is responsibility / cost to K2 Plant		x
Cleaning and refuelling prior to demobilisation.		x
Accident damage.		x
<p>If machine is AdBlue then use the following AdBlue shutdown procedure</p> <ul style="list-style-type: none"> • DO NOT isolate machine while system still in operation you can check it with system operating lamp still on. System will still be in operation after key OFF to purge AdBlue in lines and injector back to tank. • Failure to shutdown machine properly will incur a call out fee to rectify the issue. Please follow shutdown procedure properly to avoid such costs. • If in doubt please refer to operating manual. 		x

Mobilisation, Transport and Commissioning	K2 Plant	Customer
Mobilisation Transport to Site		x
Commission and Assembly on Site incl. Labour		x
Mobilisation Cranes and Lifting Apparatus		x
Demobilisation Transport to Site		x
Decommission and Disassembly on Site incl. Labour		x
Demobilisation Cranes and Lifting Apparatus		x

Delivery and Return Conditions	K2 Plant	Customer
Repair to OEM standard all Damage		x
Return Fuel to Full status		x
Cleaning of machine removing excess grease, oils, material and dirt		x
All systems in fully functional order		x
All decal stickers of Customer removed. A fee will be incurred if K2 Plant stickers have been removed.		x
Plant keys must be returned' failure to do so will incur a key replacement fee.		x



SIGNING PAGE

Signed as a deed on the date the last party signed this document

Signed sealed and delivered by **K2 Plant Hire Pty Ltd**
in accordance with S127 of the Corporations Act

Sole director/Sole secretary

Name

Signed sealed and delivered by
in accordance with S127 of the Corporations Act

Director

Director/Secretary/Sole director

Name

Name

Signed sealed and delivered by **the Guarantor**

Guarantor Name

Witness name