

Hire Contract Terms and Conditions

Notice to all Customer –GSS reserves the right to amend these Hire Contract Terms and Conditions without notice from time to time

Interpretation of Words in this Agreement;

Agreement	Means this document including the Credit Application for a Business Account, the Acknowledgement and Authorisation and the Guarantee and Indemnity as set out above, the Hire Schedule and any special terms of credit referred to in the ‘Payments’ clause below.
Commencement	Means the date that the Customer takes possession of the Equipment.
Customer	Means the applicant described on the front page of this Agreement.
Equipment	Means all goods including but not limited to any kind of equipment, vehicles (including trucks) or trench boxes including but not limited to the following kinds of goods or goods suitable for the following kinds of uses: earthmoving; generation and power distribution; ground equipment and shoring; pumps; traffic management including road barriers, and including all parts and accessories for any of the foregoing, which is hired by GSS to, or at the request of, the Customer, and includes any replacement, alteration or addition to the Equipment.
GSS	Means Mary Donald Nominees Pty Ltd (ACN 008 804 368) as trustee for the DJ MacCormick Family Trust (ABN 96 126 176 094) trading as GROUND SUPPORT SYSTEMS (AUST).
Guarantor	Means each person or entity named as a guarantor in the Guarantee and Indemnity as set out above.
Hire Charge	Means the amounts shown on the Hire Schedule payable by the Customer to hire the Equipment.
Hire Period	Means from Commencement until the end of the period shown on the Hire Schedule. The Hire Period may only be extended for one or more definite periods and in each case this can only be done if the Customer requests it and if GSS agrees (in its sole discretion). GSS may issue and require the Customer to sign an amended Hire Schedule for any extension of the Hire Period.
Hire Schedule	Means a document which GSS may require the Customer to sign (or accept in a way GSS requires) including particulars of the Equipment and the Hire Period and such other information as GSS may decide to require.
Insolvency Event	Means, in relation to the Customer or a Guarantor (in each case, relevant party): <ul style="list-style-type: none">A. a receiver, receiver and manager, administrator, liquidator, provisional liquidator, or similar officer is appointed to the relevant party or any of its assets or if an application is made to a court for an order to appoint such a person and that application is not permanently stayed, withdrawn or dismissed within 14 days;B. the relevant party enters into, or resolves to enter into, a deed of company arrangement, scheme of arrangement, compromise or composition with any class of creditors;C. a resolution is passed or an application to a court is taken or an order is made for the winding up, dissolution, official management or administration of the relevant party;D. the relevant party ceases to (or is unable to) pay its creditors (or any class of them) in the ordinary course of business, or announces its intention not to pay its creditors;E. the relevant party is (or states that it is) insolvent or is deemed to be insolvent under the <i>Corporations Act 2001</i> (Cth);F. the relevant party commits an act of bankruptcy as defined under section 40 of the <i>Bankruptcy Act 1966</i> (Cth) or is declared bankrupt;G. the relevant party enters into a personal insolvency arrangement or a debt agreement under the <i>Bankruptcy Act 1966</i> (Cth); orH. anything having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Terms and Conditions

- Hire:** GSS will hire the Equipment to the Customer for the Hire Period, and the Customer agrees to take on hire the Equipment from GSS for the Hire Period, in accordance with the terms and conditions of this Agreement.
- Title:** The Customer has no interest in the Equipment other than as bailee and acknowledges that GSS owns the Equipment and in all circumstances GSS retains title to the Equipment.
- Affixation:** The Customer must not at any time attach, affix, or secure the Equipment upon any property without GSS's prior written consent. Even though the Equipment may be fixed or attached to any place, the parties record their intention that as between themselves, the Equipment is intended to be treated as personal property and not a fixture and GSS can remove it in accordance with its rights under this Agreement.
- Risk and expense:**
- A. Risk in the Equipment passes from GSS to the Customer upon the Customer taking possession of the Equipment.
 - B. The Customer must:
 - (i) use and keep the Equipment; and
 - (ii) comply with its obligations under this Agreement, at its sole risk and expense.
- Stand Downs:** Must be notified before 10am on the day with hour meter reading. A minimum of 4 hours will be charged at full rate if operator stood down without notice. No stand downs on weekly rates.
- Off hire #:** Off hired Equipment must receive an off hire number from GSS with hour meter readings, or full charges will apply until back in yard.
- Hour Meter:** Hour Meter Readings must be advised in writing to GSS for the duration of the hire.
- Equipment:** The Customer acknowledges that:
- A. it is satisfied that the Equipment is:
 - (i) safe and fit for the purpose it is to be used for;
 - (ii) in clean condition; and
 - (iii) in good and substantial working order, repair and condition; and
 - B. it is aware of the proper use for which the Equipment is designed.
- Damages and repair of Equipment:**
- A. Subject to its daily servicing obligations under subclause A. of the 'Responsibility' clause below, the Customer must not undertake, or cause to undertake, any repairs to the Equipment without the prior written consent of GSS.
 - B. The Customer must immediately notify GSS if:
 - (i) the Equipment becomes in any way out of order or repair, including but not limited to any problems discovered through the Customer's daily servicing obligations under the 'Responsibility' clause below; or
 - (ii) the Equipment is damaged (howsoever caused), and upon such notice the Customer must make arrangements for GSS to assess the Equipment.
 - C. GSS will be required to check the Equipment (to establish any unseen damage or disrepair) before the Equipment can be returned to the Customer.
 - D. GSS will not be liable for any loss suffered whatsoever by the Customer as a result of any assessment or delay occasioned by it. Any damage or disrepair to the Equipment not assessed by GSS will be charged to the Customer's account upon return of the Equipment to GSS.
 - E. If the Equipment is damaged (for whatever reason), then the Customer must continue to pay the Hire Charge until the Equipment is repaired and returned to the Customer.
- Agreement to Continue:**
- This Agreement will not terminate, nor will the respective obligations of GSS or the Customer or the Guarantor be affected, by reason of:
- A. any defect in or damage to the Equipment or the Equipment's condition, design, operation or fitness for use; or
 - B. any prohibition or interruption of or other restriction against the Customer's use, operation or possession of the Equipment for any reason whatever, or the interference with that use, operation or possession by any person or entity.
- Fuel:** All Equipment is delivered with a full tank of fuel. Any fuel required to refill the tank when the hire ceases will be charged to the Customer's account.

Use of
Equipment:

The Customer must:

- A. only operate and maintain the Equipment in accordance with recognised methods and standards for equipment of its type and only by competent and (where appropriate) properly qualified, trained and licensed personnel and by appropriate methods and standards of operation;
- B. ensure that it and/or the operator of the Equipment (as applicable):
 - (i) is the holder of all relevant licenses, permits and/or tickets; and
 - (ii) complies in all respects with all applicable laws, regulations, requirements and rules, with respect to the use, possession, maintenance and safe operation of the Equipment;
- C. not use the Equipment, or cause or permit the Equipment to be used, other than for the purpose for which the Equipment is designed; and
- D. without limiting the generality of this 'Use of Equipment' clause, the Customer must comply in all respects with the instructions and recommendations of GSS relating to the use, possession, maintenance and safe operation of the Equipment.

Responsibility

THE CUSTOMER IS RESPONSIBLE FOR:

- A. SECURITY of the Equipment (any vandal and/or weather damage caused to the Equipment will be charged to the Customer's account);
- B. DAILY SERVICING of the Equipment, including but not limited to checking all fluid levels, greasing, air cleaner checks and loose bolts or components and/or fluid leaks;
- C. the cleanliness and appearance of the Equipment (all cleaning costs are charged to the Customer's account); and
- D. directing and monitoring the operator as to the work done when using the Equipment. Any damage to property caused by the use of the Equipment is the Customer's responsibility.

Inspection of
Equipment:

- A. At all reasonable times upon GSS giving the Customer reasonable notice and without unduly interfering with the Customer's operations, the Customer grants GSS the right to:
 - (i) enter with any experts upon or into the place where the Equipment is located;
 - (ii) inspect the state of repair of the Equipment;
 - (iii) observe the use of the Equipment;
 - (iv) inspect any maintenance records in respect of the Equipment;
 - (v) do any act, manner or thing which may be required to be done to give proper effect to the terms of this Agreement or to protect GSS's rights in the Equipment.
- B. In the case of an emergency, in GSS's reasonable opinion, no notice will be required to be given by GSS to the Customer under subclause A. of this clause and the prohibition in subclause A. of this clause on GSS unduly interfering with the Customer's operations does not apply.

Insurance:

- A. Subject to subclause F of this 'Insurance' clause, the Customer must effect and maintain at all times during the Hire Period the following insurances:
 - (i) insurance of the Equipment for its full replacement value against (a) damage or destruction caused by theft or accident of any kind; and (b) any insurable risk commonly insured against in regard to equipment of a similar nature to the Equipment; and
 - (ii) insurance against all third party risks including liability for damage or injury of any kind to any property or person and also against other risks to the full extent required by law for no less than \$10,000,000.
- B. The insurances required by subclause A. of this 'Insurance' clause must be taken out in the names of GSS and the Customer for their respective rights and interests. The insurances required by subclause A.(i) of this 'Insurance' clause must include a first loss payee clause in favour of GSS.
- C. The Customer must not, without the prior written consent of GSS, permit any reduction in limits or coverage in any insurance policy affecting or relating to the Equipment or this Agreement.
- D. The Customer must promptly deliver to GSS, prior to the Commencement and then on or about each anniversary date of the Commencement, a copy of each certificate of currency in respect of each of the insurances required in subclause A. of this 'Insurance' clause.
- E. The insurance proceeds will be applied at the option of GSS towards replacing or repairing the Equipment or repaying any monies that the Customer owes to GSS under this Agreement.
- F. GSS may agree (in its discretion) in writing to effect and maintain insurance of the Equipment on behalf of the Customer. If GSS has effected insurance on behalf of the Customer under this clause, then:
 - (i) any glass breakage, graffiti or minor damages are not included in the applicable 12% insurance surcharge payable by the Customer and any of these damages will be charged to the Customer's account; and
 - (ii) the Customer agrees to observe the terms and conditions of the relevant insurance policy (or policies), a copy (or copies) of which has been supplied to the Customer upon request.

Liability: The Customer is liable to GSS for any loss suffered by GSS and caused by the Customer's failure to meet its responsibilities in accordance with this Agreement. The Customer is also liable to GSS for any costs of repairing the Equipment or loss or damage to the Equipment, howsoever arising, caused during the Hire Period or any extension thereof.

Tyres: Repairing or replacing flat tyres are for the account of the Customer. Excess wear and tear or damaged tyres will be charged to the Customer's account on a pro rata basis including transport and fittings. The Hire Charge will continue to be charged during any period of time when the Equipment is having its tyres repaired or replaced.

**Return of
Equipment:**

- A. Upon the expiry of the Hire Period, or upon earlier termination of this Agreement, the Customer must immediately deliver the Equipment, at the Customer's cost, to the location directed by GSS in a good serviceable condition and in proper working order and in substantial repair.
- B. If the Equipment is not returned to GSS in a good serviceable condition and in proper working order and in substantial repair, then the Customer must continue to pay the Hire Charge to GSS until GSS repairs the Equipment and the Equipment is available again for hire.
- C. If the Equipment is not returned to GSS as and when required in accordance with subclause A. above, then at the Customer's cost:
 - (i) GSS may retake possession of the Equipment;
 - (ii) GSS may, without notice, liability or legal process, enter upon or into the place where the Equipment is located and may break open any gate, door or fastening and detach or dismantle the Equipment from any part of the place where the Equipment is located to which the Equipment has been affixed; and
 - (iii) the Hire Amount will continue to be charged on a daily basis from the final day of the Hire Period to the actual date that the Equipment is returned to GSS.
- D. GSS will not be liable for any damage or loss caused to any person or property in exercising its rights under this clause.

Indemnity: The Customer indemnifies GSS and must keep GSS indemnified against all claims, actions, suits, demands, costs, expenses and losses whatsoever (including, without limitation, all legal costs on a solicitor and client basis) in any way arising out of any or all of the following:

- A. use of the Equipment by the Customer or its servants or agents or any other person whatsoever during the Hire Period or any extensions thereof;
- B. Inspecting or reporting on the Equipment;
- C. any amendment of or waiver or consent given under this Agreement;
- D. any breach by the Customer of any warranties or terms of this Agreement;
- E. an Event of Default under this Agreement; and
- F. the exercise or attempted exercise of any right, power, privilege, authority or remedy of GSS under or by virtue of this Agreement including all amounts incurred in preparation and service of a notice under this Agreement and in repossessing the Equipment from the Customer under the terms of this Agreement and in enforcing this Agreement generally against the Customer or the Guarantor.

Payments:

- A. Subject to any special terms of credit agreed by the Customer and GSS in writing, the Customer must pay to GSS all Hire Charges / rates in the manner specified in this Agreement and, if no manner is specified, the Customer must pay all Hire Charges / rates 30 days from the date of the tax invoice.
- B. The Customer acknowledges and agrees that the Customer's obligation to pay the Hire Charge and the rights of GSS in and to the Hire Charge:
 - (i) is absolute and unconditional; and
 - (ii) is not subject to any abatement, reduction, set off, defence, counterclaim or recoupment whatever,it being the intention of the parties that the Hire Charge will continue to be payable in all events and in the manner and at the times stipulated unless the obligation to pay is terminated under the express provisions of this Agreement.

Event of Default:

- A. Each of the following is an 'Event of Default':
- (i) if the Customer or the Guarantor defaults on making any payment due under this Agreement and that default continues for more than 3 days;
 - (ii) if the Customer does not comply with an obligation under the 'Insurance', 'PPS Law', 'On supply' or 'Assignment' clauses set out below;
 - (iii) if the Customer does not comply with any of the obligations under this Agreement (other than those specified in subclauses (i) and (ii) above) and, if the failure is capable of remedy, it continues unremedied for 10 days (or such longer period agreed by GSS in writing) after the earlier of receipt by the Customer of a notice from GSS identifying the failure to comply or GSS becoming aware of the failure to comply;
 - (iv) if the Customer or the Guarantor suffers an Insolvency Event;
 - (v) if the Customer ceases to carry on its business;
 - (vi) if any insurer in respect of the Equipment cancels any insurance or disclaims liability by reason of misstatement in any proposal for insurance or for any other reason and as a result the Equipment or any part of them is uninsurable for any period; and
 - (vii) if GSS ascertains that the Customer or the Guarantor has made any false, inaccurate or misleading statement having a material effect in relation to the making of this Agreement or any related or collateral document.
- B. If an Event of Default occurs, then:
- (i) GSS may immediately terminate this Agreement and all amounts owing to GSS under this Agreement will become immediately due and payable;
 - (ii) GSS has an immediate right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any Equipment, and the Customer agrees that GSS may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence; and
 - (iii) the Customer, irrevocably and to the full extent permitted by law, authorises GSS to (without prior notice) do everything necessary to re-take possession of the Equipment (including, without limitation, enter any property at which GSS reasonably believes the Equipment to be located).
- C. If this Agreement is terminated by GSS due to an Event of Default by the Customer, then:
- (i) GSS will be entitled to retain all amounts previously paid by the Customer or the Guarantor pursuant to this Agreement; and
 - (ii) GSS may recover from the Customer or the Guarantor any loss or damage occasioned by it as a result of the termination.
- D. GSS is not liable to the Customer for any loss whatsoever suffered by the Customer as a result of GSS exercising its right to re-take possession of the Equipment. Further, the Customer indemnifies GSS for any loss or liability whatsoever incurred by GSS in exercising that right (including, without limitation, any liability to any third party for trespass or damage to property occasioned by GSS exercising the right).

Interest The Customer must pay interest on all monies due but unpaid under this Agreement at the current bank overdraft interest rate plus 2.5% per annum, calculated daily from the date on which the payment became due until the date on which the payment is made.

PPS Law

- A. This clause applies to the extent that this Agreement provides for a 'security interest' for the purposes of the *Personal Property Securities Act 2009* (Cth) ("PPS Law"). References to PPS Law in this Agreement include references to amended, replacement and successor provisions or legislation. Terms used in this Agreement that are defined in the PPS Law have the same meaning as in the PPS Law unless the context indicates otherwise.
- B. If GSS does not have at Commencement a PPS Law registration ensuring a perfected first priority security interest in the Equipment, the Hire Period, (including any extension of the Hire Period or the aggregate of consecutive Hire Periods during which the Customer has substantially uninterrupted possession) may not despite anything else in this document or any Hire Schedule be longer than:
- (i) 90 days in the case of Equipment which may or must be described by serial number in a PPS Law registration; or
 - (ii) a year in any other case.
- C. The Customer undertakes not to lodge a financing change statement or make an amendment demand pursuant to section 178 of the PPS Law in respect of such registration.
- D. GSS may register any interest it has arising under or in respect of this Agreement which constitutes a security interest under the PPS Law, which is capable of registration. The Customer must do anything (such as obtaining consents and signing documents) which GSS requires for the purposes of:
- (i) ensuring that GSS's security interest is enforceable, perfected and
 - (ii) otherwise effective under the PPS Law;

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- (iii) enabling GSS to gain first priority (or any other priority
 - (iv) agreed to by GSS in writing) for its security interest; and
 - (v) enabling GSS to exercise rights in connection with the
 - (vi) security interest.
- E. The rights of GSS under this document are in addition to and not in substitution for GSS's rights under other law (including the PPS Law) and GSS may choose whether to exercise rights under this document, and/or under such other law, as it sees fit. To avoid any doubt about it, GSS's security interest will attach to proceeds.
 - F. To the extent that Chapter 4 of the PPS Law applies to any security interest under this Agreement, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of this Agreement in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires GSS to give a notice to the Customer); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires GSS to give a notice to the Customer); section 129(2) and 129(3); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 142 (redemption of collateral); and section 143 (re-instatement of security agreement).
 - G. The following provisions of the PPS Law: section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral) confer rights on GSS. If GSS is served a notice under section 64 of the PPS Law, then GSS shall have the same rights outlined under subclauses B.(ii) and B.(iii) of the 'Event of Default' clause above.
 - H. The Customer waives its rights to receive a notice under section 135 of the PPS Law and a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.
 - I. GSS and the Customer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to GSS the benefit of section 275(6)(a) and GSS shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this sub-clause.
 - J. The Customer must not dispose or purport to dispose of, or create or purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the Equipment other than with the express written consent of GSS.
 - K. The Customer agrees to notify GSS in writing of any change to the Customer's details set out in this Agreement, within 5 days from the date of such change.

On supply:

- A. The Customer must not sell, lease, hire, bail or give possession ('sub-hire') of the Equipment to anyone else unless GSS (in its absolute discretion) first consents in writing (upon such conditions as it thinks fit). Any such sub-hire must be in writing in a form acceptable to GSS and must be expressed to be subject to the rights of GSS under this Agreement. The Customer may not vary that sub-hire agreement without the prior written consent of GSS (which may be withheld in its absolute discretion).
- B. The Customer must ensure that GSS 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.
- C. If the Customer makes any sub-hire of the Equipment, then the Customer must take all steps, including registration under PPS Law, as may be required to:
 - (i) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
 - (ii) enabling the Customer to gain (subject always to the rights of GSS) first priority (or any other priority agreed to by GSS in writing) for the security interest; and
 - (iii) enabling GSS and the Customer to exercise their respective rights in connection with the security interest.
- D. The Customer must provide GSS with written evidence of any registration referred to in subclause C. of this 'On supply' clause (including the relevant verification statement and token issued).

Power of attorney:

To assure performance of its obligations under this Agreement, the Customer hereby gives GSS an irrevocable power of attorney to do anything GSS considers the Customer should do under this Agreement. GSS may recover from the Customer the cost of doing anything under this clause, including registration fees. The Customer agrees to rectify and confirm whatever GSS does in exercising powers under the power of attorney contained in this clause.

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Assignment: The Customer must not dispose of or assign its rights under this Agreement unless GSS (in its absolute discretion) first consents in writing (upon such conditions as it thinks fit).

GST:

- A. Any reference in this 'GST' clause to terms defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) ("Act") is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- B. Any amount referred to in this Agreement which is relevant in determining a payment to be made by one of the parties to the other is **exclusive of any GST** unless indicated otherwise.
- C. GST is payable in respect of any taxable supply made under this Agreement.
- D. In respect of any taxable supply made under this Agreement for which:
 - (i) the consideration attributable to that taxable supply is exclusive of GST, the recipient must pay to the supplier the amount equal to the GST liability on that taxable supply at the same time as the recipient is required to pay the consideration for that taxable supply to the supplier under this Agreement. The GST liability for that taxable supply is the amount equal to the rate of GST multiplied by the consideration attributable to the taxable supply made by the supplier to the recipient; or
 - (ii) the consideration attributable to that taxable supply is inclusive of GST, the recipient is only required to pay to the supplier the consideration for that taxable supply by the date required under this Agreement. The GST liability for that taxable supply is the amount determined in accordance with the Act.
- E. If one of the parties ("Paying Party") is required to reimburse or make a payment to another party ("Receiving Party") under or in connection with this Agreement that is referable to a cost, expense or other amount ("Amount") paid or incurred by the Receiving Party, the amount of the reimbursement or payment to be made by the Paying Party will be net of any input tax credits which may be claimed by the Receiving Party or by the representative member of the GST Group in which the Receiving Party is a member in relation to the Amount.
- F. The supplier or the relevant representative member of the GST group (as applicable) must issue:
 - (i) a tax invoice to the recipient of any taxable supply in respect of that taxable supply; and
 - (ii) any relevant adjustment note to the recipient of a taxable supply in respect of any adjustment that arises from an adjustment event relating to that taxable supply.
- G. If there is an adjustment to any of the consideration payable for a taxable supply which gives rise to an adjustment event, the GST liability for that taxable supply must be recalculated in accordance with this clause based on the adjusted consideration and where applicable, an appropriate payment on account of the adjusted GST liability is to be made between the parties.

Severability: If any term or condition or part of a term or condition in this Agreement is illegal, unenforceable or invalid, then that term, condition or part is excluded from this Agreement without affecting the remaining terms and conditions.

Customer to notify of change: The Customer must notify GSS of any change in its structure or management including any sale or disposition of any part of the business of the Customer, any change in directorships, shareholders or management or change in partnership or trusteeship within 5 days of the date of any such change .

Governing law: This Agreement and any claim or dispute between GSS, the Customer or any of us shall be governed by the law applicable in the State of Western Australia and submit to the jurisdiction of the appropriate Court nearest the capital city of that State.

Indemnities:

- A. Each of the indemnities in this Agreement survives the performance of obligations relating to this Agreement and the termination of this Agreement.
- B. It is not necessary for GSS to incur expense or make payment before enforcing a right of indemnity under this Agreement.
- C. Each indemnity given under this Agreement:
 - (i) is separate and independent from any other obligation of the party giving it; and
 - (ii) is absolute, irrevocable, unconditional and payable on demand.