

**HIRE AGREEMENT**

**REFERENCE SCHEDULE**

PARTIES		
<b>INTERNATIONAL CORROSION SERVICES PTY LTD (ACN 111 437 686) (“ICS”)</b>		
<b>Address:</b>	16 Da Vinci Way, Forrestdale WA 6112	
<b>Telephone:</b>	+61 (8) 9497 3500	
<b>Email:</b>	<a href="mailto:accounts@internationalcs.com.au">accounts@internationalcs.com.au</a>	
<b>ICS Representative:</b>	<b>Name:</b>	
	<b>Telephone:</b>	08 9 497 3500
	<b>Email:</b>	

HIRER		
<b>Name &amp; ABN:</b>		
<b>Address:</b>		
<b>Telephone:</b>		
<b>Email:</b>		
<b>Hirer’s Representative:</b>	<b>Name:</b>	
	<b>Telephone:</b>	
	<b>Email:</b>	

TERM					
<b>Commencement Date:</b>					
<b>Hire Period Start Date:</b>					
<b>Hire Period:</b>	<b>Hire Period:</b>	<i>hours / days / weeks</i>	<i>or</i>	<b>From Hire Period Start Date to:</b>	<i>insert end date</i>

DESCRIPTION OF PLANT AND EQUIPMENT						
ITEM	EQUIPMENT TYPE	START (Hours)	SERIAL NUMBER	ADDITIONAL ACCESSORIES / NOTES	HIRE REPORT AND PHOTOS	
1					YES <input type="checkbox"/>	NO <input type="checkbox"/>
2					YES <input type="checkbox"/>	NO <input type="checkbox"/>
3					YES <input type="checkbox"/>	NO <input type="checkbox"/>
4					YES <input type="checkbox"/>	NO <input type="checkbox"/>

HIRE FEES						
ITEM	WET HIRE RATE (EXCLUDING GST)		DRY HIRE RATE (EXCLUDING GST)	WHO IS RESPONSIBLE TO PERFORM MINOR REPAIRS, SERVICING AND MAINTENANCE?	MOBILISATION / DEMOBILISATION COST RESPONSIBILITY	
	Normal	Overtime				
1						
2						
3						
4						

INSURABLE VALUE			
ITEM	EQUIPMENT TYPE	PART NO	INSURABLE VALUE
1			\$
2			\$
3			\$
4			\$
5			\$
6			\$

SUPPLEMENTAL FEES	
<b>Cartage Fee:</b>	
<b>Other Supplemental Fees</b>	

TRANSPORTATION DETAILS	
<b>Mob Location:</b>	ICS 16 Da Vinci Way Forrestdale WA 6112
<b>Demob Location:</b>	ICS 16 Da Vinci Way Forrestdale WA 6112
<b>Transported by:</b>	Hirer
<b>Site:</b>	<i>(Hirer's premises address or other location where Plant and Equipment will be located)</i>

**Terms and Conditions for Hire**  
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## Terms and Conditions for Hire

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement unless the context otherwise requires:

**ADC** means the Australian Disputes Centre (ABN 87 003 042 840) or any successor dispute resolution organisation having similar objects that succeeds it.

**Agreement** means this Hire Agreement comprising the Reference Schedule (if any), the Quotation, these Terms and Conditions and any annexures or attachments.

**Breakdown** means and includes breakdown, damage, full or partial loss, loss of use, seizure, or impoundment by operation of Law or otherwise.

**Business Day** means a day which is not a Saturday, Sunday, or public holiday in Western Australia.

**Commencement Date** means the following:

- (a) the date specified in the Reference Schedule or Quotation as being the date from which this Agreement takes effect; or
- (b) if no such date is specified, the date on which this Agreement is executed by both parties.

**Confidential Information** in relation to a party means information of a confidential nature including but not limited to information about its business, operations, strategy, administration, technology, affairs, clients, customers, Personnel, or suppliers, but does not include any information which is in the public domain other than through a breach of confidence.

**Consequential Loss** means any loss of profits, loss of revenue, loss of any contract value, loss of anticipated profit or damages for lost opportunity.

**Credit Facility** means the credit facility ICS may offer to the Hirer via ICS' Credit Application Form.

**Dry Hire** means the hire of Plant and Equipment but excludes any ICS Personnel to operate such Plant and Equipment.

**Fees** mean all Hire Fees and Supplemental Fees and any other fees or charges payable by the Hirer to ICS under this Agreement.

**GST** means a goods and services tax, or a similar value added tax, levied or imposed under the GST Law.

**GST Law** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Hire Period** means the period for supplying the Services, being:

- (a) the period specified in the Purchase Order; or
- (b) the date from when the Plant and Equipment is collected by or delivered to the Hirer,

and which will include weekends and / or Public Holidays within the relevant jurisdiction and continues until the supply of the Services is completed or the Plant and Equipment is returned to ICS undamaged.

**Hire Fees** mean the fees specified as Hire Fees in the Reference Schedule (if any) or the Quotation payable by the Hirer to ICS under this Agreement for the hire of the Plant and Equipment.

**Hirer** means the entity identified as the Hirer in the Reference Schedule or Quotation.

**ICS** means International Corrosion Services Pty Ltd (ACN 111 437 686) of 16 Da Vinci Way, Forrestdale WA 6112.

**Insolvency Event** means, in respect of a party, any one or more of the following events or circumstances:

- (a) a winding up, dissolution, liquidation, provisional liquidation, administration or bankruptcy;
- (b) having a Controller or analogous person appointed to it or any of its property;
- (c) being unable to pay any of its debts as and when due and payable or being deemed to be insolvent under any provision of the *Corporations Act 2001* (Cth) or any other Law;
- (d) seeking protection from its creditors under any Law, entering into a compromise, moratorium, assignment, composition or arrangement with, or for the benefit of, any of its members or creditors; or

- (e) any analogous event or circumstance to those described in preceding sub-clauses (a) to (d) of this definition.

**Intellectual Property** includes all trademarks, patents, copyright, designs, marks, processes, know-how, methodology, concepts, models, specifications, statements, formulae, trade secrets, manner of new manufacture, drawings, artwork and data or other like property or rights owned or held by ICS. These rights include but are not limited to:

- (a) marks, logos, images, service marks, trade names, business names, internet domain names, slogans, symbols, brand names, copyright or other trade indicia; and
- (b) all rights in information, know-how, processes, procedures, compositions, devices, methods, formulae, protocols, techniques, software, designs, drawings, programs, source code, dynamic link libraries, graphical user interfaces, trade secrets or data whether or not protectable by patent application design registration, copyright, circuit layouts or otherwise, whether unregistered, registered or registrable.

**Intellectual Property Rights** means all present and future rights in relation to copyright, trademarks, designs, patents, semiconductor and circuit layout rights, trade, business, company and domain names, confidential and other proprietary rights, and any other rights to registration of such rights whether created before or after the date of this Agreement, and whether in Australia or otherwise.

**Law** means any applicable statute, regulation, by-law, ordinance, policy or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth or a local government, and includes the common law and equity as applicable from time to time, and any mandatory standards or industry codes of conduct.

**Loss or Claim** means, in relation to any person, a claim, action, proceeding, judgment, damage (including but not limited to any damages or compensation and any damage to reputation), loss, cost (including legal costs on a full indemnity basis), expense or liability incurred by or to or made or recovered by or against the person, however arising and whether present, unascertained, immediate, future or contingent.

**OEM** means the original equipment manufacturer or its representative or equivalent.

**Overtime Rates** means the additional rates charged as specified in clause 3 and as specified in the Reference Schedule or Quotation.

**Personal Information** means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion.

**Personnel** means a party's principals, officers, employees, secondees, agents, consultants, contractors and subcontractors.

**Plant and Equipment** means all plant and equipment described in this Agreement together with such accessories, machinery, tools and associated items, manuals, logbooks and ICS vehicles as accompanies such plant and equipment.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Privacy Act** means the *Privacy Act 1988* (Cth).

**Purchase Order** means any order in writing by or on behalf of the Hirer for the supply of Services by ICS.

**Quotation** means ICS' quotation for the supply of Services under this Agreement which includes the Services, Fees, Plant and Equipment and other hire details.

**Reference Schedule** means the schedule (if any) containing the contract particulars at the front of this Agreement.

**Security Agreement, Commingled Goods, Financing Statement, Financing Change Statement, Personal Property, All Present and After Acquired Property, Purchase Money Security Interest, Registration and Security Interest** have the meanings given to them in the PPSA.

**Services** means the functions or task specific outcomes which ICS has agreed to provide under this Agreement using the Plant and Equipment (including ICS Personnel in the case of a Wet Hire) and any associated

goods and services as detailed in each Purchase Order and as set out in the Reference Schedule (if any) or Quotation.

**Site** means the Hirer's site(s) or premises where the Services are being supplied and Plant and Equipment will be located.

**Supplemental Fees** mean the additional fees and charges not being Hire Fees required to be paid by the Hirer to ICS under this Agreement, including any fees or charges specified in clause 6.2 and any other fees or charges specified in this Agreement.

**Taxes** means all taxes, levies, rates, charges, imposts of any kind whatsoever, including withholding tax.

**Tax Invoice** has the meaning given in the GST Law.

**Taxable Supply** has the meaning given in the GST Law.

**Term** means the term of this Agreement pursuant to clause 3.

**Terms and Conditions** means these terms and conditions of hire.

**Wet Hire** means the hire of fully maintained Plant and Equipment combined with ICS Personnel to operate such Plant and Equipment.

## 1.2 Interpretation

In this Agreement the following rules of interpretation apply unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) 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;
- (e) "includes" means without limitation;
- (f) a reference to:
  - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
  - (ii) a party includes its successors and permitted assigns;
  - (iii) a document includes all amendments or supplements to that document;
  - (iv) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to, this Agreement;
  - (v) this Agreement includes all schedules and attachments to it;
  - (vi) an agreement other than this Agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
  - (vii) a monetary amount is in Australian dollars;
- (g) an agreement on the part of two or more persons binds them jointly and severally;
- (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day; and
- (i) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.

## 2. ACCEPTANCE OF THESE TERMS AND CONDITIONS

- 2.1 The Hirer agrees to hire the Services from ICS on these Terms and Conditions.
- 2.2 This Agreement is accepted by both parties on the earlier of:
  - (a) the Commencement Date;
  - (b) the date the parties sign this Agreement;
  - (c) the start of the Hire Period;
  - (d) the date the Quotation is accepted; or
  - (e) the date of acceptance, collection, delivery or receipt (as the case may be) by the Hirer of Plant and Equipment.

2.3 Unless otherwise stated in this Agreement, the Hirer acknowledges and agrees that on each occasion that it issues a Purchase Order to ICS for the supply of Services, and ICS accepts that Purchase Order, a separate and binding contract is made in relation to the supply of those Services in accordance with the provisions of this Agreement.

2.4 ICS shall use reasonable efforts to make the Plant and Equipment available for the Hire Period but shall not be liable for any loss or damage due to delay.

2.5 Where more than one Hirer has entered into this Agreement, each Hirer shall be jointly and severally liable for all payments of the Fees.

2.6 The Hirer shall give ICS not less than 14 days prior written notice of any proposed change of ownership of the Hirer or any change in the Hirer's name and/or any other change in the Hirer's details (including but not limited to, changes in the Hirer's address, email address, or business practice). The Hirer shall be liable for any Loss or Claim incurred by ICS as a result of the Hirer's failure to comply with this clause 2.

## 3. TERM

This Agreement commences on the date it is accepted under clause 2.2 and continues until the later of:

- (a) the expiry of the Hire Period; or
- (b) the date on which both parties complete all of the obligations under this Agreement (including the return of any repaired Plant and Equipment by the Hirer required under this Agreement),

subject to:

- (c) any written extension or renewal as agreed between the parties; and
- (d) earlier termination in accordance with this Agreement.

## 4. CREDIT FACILITY

- 4.1 The Hirer may make an application for a Credit Facility from ICS by completing ICS' Credit Application Form.
- 4.2 The Hirer is not entitled to any credit facilities from ICS until it receives a written notice from ICS that the credit facilities have been granted.
- 4.3 Until the Hirer receives a notice that a Credit Facility has been granted, all Services supplied by ICS to the Hirer must be paid in accordance with clause 6.4, or as otherwise agreed between the parties.
- 4.4 Any credit provided to the Hirer is provided solely for the purpose of allowing the Hirer to purchase Services from ICS under this Agreement.
- 4.5 ICS may from time to time place a limit on the amount of credit available to the Hirer and may also amend that limit from time to time.
- 4.6 If the Hirer orders Services which would result in the Hirer exceeding its credit limit or if the Hirer has already exceeded its credit limit, ICS, in its absolute discretion may do one or more of the following:
  - (a) refuse to supply further Services to the Hirer;
  - (b) require the Hirer to pay for all Services on a "cash on delivery" basis; or
  - (c) require the Hirer to reduce the amount owed to ICS on credit by a specified amount.

## 5. DELIVERY AND RISK

- 5.1 If ICS has agreed to transport the Plant and Equipment from the ICS depot to the Hirer's premises, risk will transfer to the Hirer at the time that the Plant and Equipment is delivered to the Hirer's premises by ICS.
- 5.2 If ICS has agreed that the Hirer is to collect and transport the Plant and Equipment to its Site, risk transfers to the Hirer from the time that possession of the Plant and Equipment is transferred to the Hirer or its Personnel.
- 5.3 Risk will transfer back to ICS when possession of the Plant and Equipment has been transferred back to ICS.
- 5.4 Any additional Hirer requirements regarding packaging, including capping, palletising and strapping, will incur additional costs to the Hirer.
- 5.5 ICS' failure to deliver up the Plant and Equipment or failure to have the Plant and Equipment available to collect will not entitle either party to treat the Agreement as repudiated.
- 5.6 ICS will not be liable to the Hirer for any Loss or Claim resulting from late delivery of, or delayed availability to collect, the Plant and Equipment for

any reason (including but not limited to changes to the Hirer's requirements or variations to the Agreement).

## 6. FEES, PAYMENT AND INVOICING

### 6.1 Hire Fees

The Hirer will pay ICS:

- (a) for hire of the Plant and Equipment, and ICS Personnel (in the case of a Wet Hire), at the rates agreed in the Reference Schedule or Quotation.
- (b) Overtime Rates (in the case of a Wet Hire) as specified in the Reference Schedule or Quotation as reasonable compensation to ICS for staff supplied for the operation of the Plant and Equipment.:

### 6.2 Supplemental Fees

In addition to the Hire Fees, the Hirer shall pay ICS the following Supplemental Fees:

- (a) Mobilisation and demobilisation cartage charges (shown in the Reference Schedule or Quotation) when ICS is required to transport the Plant and Equipment to and from the ICS depot.
- (b) Rates in respect of ICS Personnel (in the case of a Wet Hire) are subject to additional charges for loadings, penalties and allowances as applicable to ICS Personnel pursuant to their terms of engagement including, standby, meals, travel and accommodation.
- (c) An administration fee of 10% of the Hire Fees amount will be charged (plus any secondary cartage costs) where the Hirer requires changes to the hire arrangements:
  - (i) within 24 hours of advising ICS of such request;
  - (ii) after 4.00pm on Friday for weekend shifts; and
  - (iii) after 4.00pm on a weekday preceding a Public Holiday.
- (d) All decontamination costs pursuant to clause 11(b)(ii), such costs to be paid by the Hirer to ICS within 14 days of the relevant Tax Invoice date.
- (e) A late cancellation fee if the Hirer cancels a hire order under this Agreement:
  - (i) by giving less than 24 hours' notice to ICS of such cancellation;
  - (ii) after 4.00pm on Friday for weekend shifts; or
  - (iii) after 4.00pm on a weekday preceding a Public Holiday.
- (f) ICS reserves the right to:
  - (i) charge an additional cost per hour during periods of inclement weather and will advise the Hirer of such allowance in advance;
  - (ii) charge additional delivery charges if extra attachments are required for hired Plant and Equipment; and
  - (iii) add a site allowance cost to the Hire Charges and will advise the Hirer of such allowance in advance,
 and in each case will advise the Hirer of such costs, charges or allowances in advance.

### 6.3 Changes in Hire Fees and other charges

- (a) The Hire Fees and other charges are subject to change at ICS' discretion and upon written notice to the Hirer.
- (b) The Hirer may terminate this Agreement without penalty by written notice to ICS if the increase between the Hire Fees and other charges (in each the increase being non-cumulative as to each of the Hire fees and each other charge) are greater than 15%.
- (c) Subject to this clause 6.3, the revised Hire Fees and other charges apply from the date of written advice to the Hirer.

### 6.4 Invoicing and payment

- (a) ICS, in its absolute discretion, may invoice the Hirer by providing a Tax Invoice:
  - (i) weekly;
  - (ii) monthly; or
  - (iii) at the completion of the Hire Period.
- (b) ICS reserves the right to not enter into any recipient created Tax Invoice arrangements with the Hirer.

- (c) Save where a shorter period is specified (such as for clauses 6.2(d) and 11(b)(ii)), the Hirer agrees to pay each Tax Invoice in full within 30 days of the Tax Invoice date. No claims for credit will be recognised by ICS after 7 days following the date of the Tax Invoice.
- (d) The Hirer shall not set-off any amounts due under the Tax Invoice in respect of a request for credit or other disputed amount.
- (e) If either Party is required to pay or reimburse a part or all of a cost, expense or charge ("Expense") incurred by the other, then the Expense shall be reduced by the credit or refund of GST to which the Party which first incurred the Expense is entitled to claim in respect of the Expense.
- (f) ICS reserves the right to charge interest to the Hirer on amounts which remain unpaid after the due date for payment. Interest will be calculated at 2% per month or part thereof on the unpaid amount, compounded daily. Without limiting the above, the Hirer hereby indemnifies ICS for all costs and expenses (including commissions payable to commercial or mercantile agents, legal costs and filing fees) incurred by ICS in recovering amounts which remain unpaid after the due date.

### 6.5 Disputed Invoices

- (a) If the Hirer disputes the amount of any invoice, the Hirer may, on written notice to ICS, withhold or suspend payment of any disputed part of the invoice until the dispute is resolved.
- (b) ICS must continue to perform its obligations under this Agreement in the event of a dispute about an invoice, while that dispute is resolved.
- (c) The Hirer must:
  - (i) pay any non-disputed amounts in accordance with clause 6; and
  - (ii) promptly pay any disputed amounts that are subsequently found to be correctly payable.

## 7. GST

7.1 The Fees are exclusive of GST.

7.2 If any supply under this Agreement is a Taxable Supply, then the party making the supply may, at the same time that an invoice is rendered for the agreed consideration for the Taxable Supply, recover the amount of GST payable on that Taxable Supply, subject to the issue of a valid Tax Invoice.

## 8. BREAKDOWN OF PLANT AND EQUIPMENT

8.1 In the event of a Breakdown to Plant and Equipment, the Hirer shall immediately notify ICS. In the case of a Wet Hire, if ICS Personnel are present, advising such ICS Personnel of a Breakdown shall be considered sufficient notice.

8.2 Upon notifying ICS of a Breakdown, the Hirer must secure and safeguard the Plant and Equipment, comply with all Laws, cease using the Plant and Equipment in any way and take all reasonable steps to prevent injury to any persons or damage to any property as a result of the condition of the Plant and Equipment. ICS does not accept liability for expenses incurred in such prevention or safeguarding activities. The Hirer remains responsible for the security of the Plant and Equipment until such time as the Plant and Equipment is returned to ICS' physical possession or depot.

8.3 Subject to clause 8.4, from the date on which Hirer gives the notice in clause 8.1, the Hire Fees shall be suspended in full until the Plant and Equipment is replaced (at ICS' election) or returned to operating condition.

8.4 If the Hirer or its Personnel materially contributed to or caused the Breakdown, (including by directions given to ICS Personnel), through:

- (a) the misuse of the Plant and Equipment;
- (b) accident;
- (c) negligence;
- (d) fraud;
- (e) misconduct;
- (f) breach of this Agreement;
- (g) failure to comply with Laws;
- (h) failure to observe warning signs or directions; or

(i) failure to observe safety systems or OEM operational procedures, then the Hirer will continue to pay the Hire Fees until the Plant and Equipment is fit for return to service and in addition shall pay the reasonable costs of repair or replacement incurred by ICS or its appointed agent.

8.5 The Hirer must continue to pay all Supplemental Fees as required under this Agreement during any period of Breakdown.

8.6 Under no circumstances shall the Hirer commence any works to repair the Plant and Equipment without the written consent of ICS.

8.7 ICS shall without delay take all reasonable steps to replace the Plant and Equipment the subject of the Breakdown with Plant and Equipment of a similar type or capacity, but is under no obligation to do so.

8.8 ICS shall not be liable for any direct, indirect or Consequential Losses, damages suffered by Hirer or third parties in relation to a Breakdown.

## 9. SAFETY AND OPERATIONS

9.1 The Hirer must ensure that all Laws and safety standards relating to the safe use and handling of the Plant and Equipment are complied with during the Hire Period and that the Plant and Equipment during the Hire Period does not place the public, the community or the environment at risk of death, injury, illness or damage.

9.2 The Hirer agrees to the following:

(a) If the hire is Wet Hire:

- (i) ICS Personnel shall work under the direction of the Hirer who must consult with and fully brief ICS Personnel on the proposed task, the Site, Site conditions, matters affecting the health and safety of persons in respect of the task to be performed and other relevant matters including information requested by ICS Personnel. The Hirer accepts that ICS Personnel may require further information or clarification to complete tasks to be performed, or additional risk assessments or controls to be implemented prior to commencing the task and may refuse to operate the Plant and Equipment if they believe any directions or control requested by the Hirer may affect the safety of people, property, Plant or Equipment; and
- (ii) the Hirer will not allow any person other than ICS Personnel to operate the Plant and Equipment without the prior written consent of ICS.

(b) If the hire is a Dry Hire, the Hirer will ensure that its Personnel who operate the Plant and Equipment are fully qualified and trained and possess current licenses to operate the Plant and Equipment.

(c) The Hirer shall do all things reasonably practicable to ensure its Personnel, ICS Personnel (in the case of a Wet Hire) and other persons working under its direction or control shall:

- (i) take active steps including review of operating manuals to ensure they are familiar with the safe operation and operating parameters of the Plant and Equipment;
- (ii) be fit for duty and not under the influence of drugs or alcohol;
- (iii) be appropriately briefed by Hirer as to the Site, safe work systems, control / restricted zones and any applicable lift plans or studies;
- (iv) wear suitable protective equipment and high visibility clothing when working with, on or around the Plant and Equipment, and
- (v) operate the Plant and Equipment to a standard of skill, knowledge and competence of an experienced and professional operator of the assigned tasks in compliance with all Laws.

(d) The Hirer must obtain and furnish any necessary permits, consents, approvals or notices required for the use or transport of the Plant and Equipment during the Hire Period and comply with any Laws and industry standards or protocols whilst in possession of the Plant and Equipment.

(e) The Hirer shall pay all fines and penalties incurred while the Plant and Equipment is in the possession of the Hirer.

(f) The Hirer will consult and co-operate with ICS in respect of matters relating to the safe use and handling of the Plant and Equipment.

(g) The Hirer must immediately notify ICS of any incident, near miss, safety breach, fine, penalty or investigation by a regulator during the Hire Period which involves the Hirer, its Personnel, ICS Personnel or the Plant and Equipment.

9.3 ICS agrees to the following:

(a) ICS will ensure that ICS Personnel who operate the Plant and Equipment are suitably qualified and trained and possess current licenses to operate the Plant and Equipment.

(b) ICS shall do all things reasonably practicable to ensure its Personnel working under its direction or controls shall:

- (i) take active steps including review of operating manuals to ensure they are familiar with the safe operation and operating parameters of the Plant and Equipment;
- (ii) be fit for duty and not under the influence of drugs or alcohol;
- (iii) be appropriately briefed by the Hirer as to the Site, safe work systems, control/restricted zones and any applicable lift plans or studies;
- (iv) wear suitable protective equipment and high visibility clothing when working with, on or around the Plant and Equipment; and
- (v) operate the Plant and Equipment to a standard of skill, knowledge and competence of an experienced and professional operator of the assigned tasks in compliance with all Laws.

## 10. MAINTENANCE, SAFEKEEPING AND RETURN

10.1 ICS is responsible for and must complete regular maintenance and servicing of the Plant and Equipment in accordance with OEM maintenance manuals including to calibrate, clean, maintain, lubricate and fuel the Plant and Equipment to the standard and level specified in the relevant manual or as otherwise specified by ICS and record such checks in the logbook provided.

10.2 The Hirer agrees to the following:

- (a) The Hirer shall secure and protect the Plant and Equipment throughout the Hire Period. The Hirer will not part with possession, remove or allow the Plant and Equipment to be removed from the Site without ICS' written approval.
- (b) The Hirer shall indemnify and hold harmless ICS against all costs, losses or liabilities due to damage, loss or incident relating to the Plant and Equipment during the Term including the Hirer's breach of this Agreement, loss of possession, theft, vandalism, negligence, legal process or otherwise.
- (c) The Hirer will permit and grant access to ICS to any location or premises where the Plant and Equipment is located for the purposes of periodic inspection of the Plant and Equipment by ICS or for audit purposes and the Hirer will indemnify ICS in respect of any claims, damages or expenses arising out of any action taken pursuant to this condition.

## 11. HAZARDOUS MATERIALS

If during the Hire Period the Hirer wishes to use the Plant and Equipment to lift, transport or otherwise come into contact with materials that are designated controlled waste, noxious, inflammable, hazardous, dangerous or explosive in nature ("Hazardous Materials") the Hirer:

- (a) must first give written notice to ICS requesting ICS' consent to use the Plant and Equipment to lift, transport or otherwise come into contact with Hazardous Materials, which written consent may be withheld at ICS' absolute discretion;
- (b) if granted such written permission by ICS under clause 11(a) and if the Plant and Equipment has been contaminated with Hazardous Materials, the Hirer:
  - (i) must inform ICS in writing with full details of the nature and type of such contamination; and
  - (ii) acknowledges and agrees that it will be fully responsible for all decontamination costs which will be charged by ICS to the Hirer, such costs to be payable within 14 days of the relevant Tax Invoice date; and
- (c) acknowledges and agrees that it must comply with all Laws applicable to the Hazardous Materials and the Hirer's interaction



with Hazardous Materials (including lifting and transportation) at all times during the Hire Period.

## 12. ICS' WARRANTIES

### 12.1 Warranties

ICS warrants, and it is a condition of this Agreement, that:

- (a) it will supply the Services in a good, proper and workmanlike manner and to the best practice and standard of care, skill, judgment and diligence expected of a contractor experienced in supplying the same or similar services;
- (b) it will comply with all Laws relating to the supply of the Services, and obtain all necessary consents and approvals to supply the Services;
- (c) all Wet Hire Services will be performed by suitably qualified and experienced Personnel;
- (d) the supply of Services will not:
  - (i) contravene any Laws; or
  - (ii) infringe the rights of a third party (including any Intellectual Property Rights); and
- (e) it will ensure that the Hirer will obtain the benefit of all warranties given by all manufacturers, subcontractors, contractors and other relevant third parties in relation to the Services.

### 12.2 Exclusions

Notwithstanding the provisions of clause 12.1, ICS has no obligation under the warranties it gives in these Terms and Conditions for defects or non-conformance to the extent that the defect or non-conformance is caused by or occurs because of:

- (a) misuse of, an accident to, improper storage of, or negligent or wrongful use of, the Plant and Equipment;
- (b) inadequate or insufficient maintenance of the Plant and Equipment;
- (c) failure by the Hirer to conduct normal maintenance on the Plant and Equipment, including regular inspections;
- (d) incorrect handling of material as applied to the Plant and Equipment;
- (e) prior repairs or maintenance to the Plant and Equipment where those repairs or maintenance were performed by a person other than ICS;
- (f) modifications, alterations or welded additions to the Plant and Equipment;
- (g) the base metal properties or other materials used in the manufacture of the Plant and Equipment; or
- (h) damage or corrosion to the Plant and Equipment resulting from a deficiency in design, use, materials or workmanship, normal wear and tear, installation or placement in an incompatible corrosive environment, or repairs or maintenance by third parties.

## 13. HIRER'S WARRANTIES

- 13.1 The Hirer warrants that it will comply with all applicable Laws in storing, operating or using the Plant and Equipment, including without limitation any relevant equipment operating codes, work, health and safety Laws, or software licence requirements, and that it will comply with all applicable equipment operating standards, good equipment operating practice and the manufacturer's manual.
- 13.2 The Hirer declares and warrants that the information contained in the Application for Credit is true, complete and correct.
- 13.3 The Hirer will indemnify ICS and hold it harmless in respect of any Loss or Claim which ICS may incur or suffer arising out of any failure or default in respect of the Hirer's obligations under this clause 13 including without limitation any remedial or rectification action in respect of improper or unlawful storage, operation, or installation of the Plant and Equipment.
- 13.4 Where the Hirer is a trustee, the Hirer:
  - (a) warrants that it has full power and authority for the benefit purposes and objects of the trust to enter the Agreement on behalf of the trust and that it shall be bound by these Terms and Conditions both personally and as trustee; and

- (b) confirms that the trustee shall be liable for the account and that in addition the assets of the trust shall be available to meet payment of the Fees.

- 13.5 The Hirer warrants that it has full authority to permit delivery to, storage, installation and operation of the Plant and Equipment and the performance by ICS of the Services at the Site and authorises ICS or its Personnel full and unrestricted access to the Site during reasonable hours to deliver, store, install, operate and otherwise deal with the Plant and Equipment, to perform the Services, and for Site inspections, documentation, delivery and service connections and agrees to assist ICS in carrying out these tasks.

## 14. PARTIES' OBLIGATIONS

### 14.1 ICS' Obligations

- (a) ICS will, subject to clause 14.3 below:
  - (i) use its best endeavours to ensure that the Plant and Equipment is in good working order at the commencement of the Hire Period and is promptly delivered or supplied to the Hirer in accordance with this Agreement; and
  - (ii) perform the Services where specified in this Agreement to the standard of skill and care of an experienced and professional operator of the assigned tasks in compliance with Laws and industry standards.
  - (iii) be responsible for providing, arranging and all costs in relation to the following:
    - (A) inspection of all Plant and Equipment at commencement of hire; and
    - (B) provision of routine servicing and preventative maintenance of all Plant and Equipment.
  - (iv) mobilisation and demobilisation of all Plant and Equipment (only if included in the Quotation);
- (b) ICS will not be responsible for:
  - (i) cleaning the Site; or
  - (ii) managing access to or use of the Site by other persons.

### 14.2 Hirer's Obligations

The Hirer will:

- (a) pay all Fees to ICS when they are due and owing;
- (b) be responsible for providing, arranging and all costs in relation to the following:
  - (i) staging, loading, unloading and secure storage of all Plant and Equipment;
  - (ii) mobilisation and demobilisation of all Plant and Equipment;
  - (iii) modification for Site conformance / preparation of Site for Plant and Equipment;
  - (iv) fuel for and transport of all Plant and Equipment;
  - (v) Plant and Equipment operators (if a Dry Hire);
  - (vi) pre-start inspection of all Plant and Equipment at the start of each shift;
  - (vii) emergency call out for any unscheduled repairs or breakdown of all Plant and Equipment;
  - (viii) replacement of lost or stolen Plant and Equipment;
  - (ix) accidental damage repair and/or replacement of all Plant and Equipment (including damage to Plant and Equipment that is found after the Hire Period has ended or the Term has expired);
  - (x) deliberate damage, repair and/or replacement of all Plant and Equipment (including damage to Plant and Equipment that is found after the Hire Period has ended or the Term has expired); and
  - (xi) cleaning of all Plant and Equipment.

For the purposes of clauses 14.2(b)(ix) and (x), "damage" does not include fair wear and tear.

- (c) within 24 hours after commencement of the Hire Period, advise ICS of any Plant and Equipment that is damaged or not functioning correctly (otherwise the Plant and Equipment will be deemed to be in an undamaged, clean, safe and good working condition and accepted as such by the Hirer.
- (d) not deliberately, negligently or recklessly expose any ICS Personnel to any hazards or unreasonable dangers; or harass or be discourteous to any of those persons;
- (e) not interfere with the delivery of the Services in any manner, nor allow anyone else to do so;
- (f) provide all relevant and necessary information required by ICS to successfully supply the Services, and ensure that such information is complete, correct and not misleading in any respect;
- (g) provide access to the Site at all times necessary for the successful delivery of Services (where applicable) and to comply with its other obligations under this Agreement, including clause 10.2(c);
- (h) ensure that the Site is clean and suitable for the delivery of Services at all relevant times;
- (i) take reasonable steps to prevent loss or theft of the Plant and Equipment while they are present at the Site;
- (j) when the Services are being supplied and while any ICS Personnel are present on the Site, ensure that the Site is in a safe condition at all times and maintain the Site as a safe working environment, in accordance with all applicable work, health and safety Laws;
- (k) where the services of third-party contractors or suppliers are required before ICS can supply the Services, procure those third parties' services, at the Hirer's own cost;
- (l) if the Hirer alleges that any improper damage has been sustained at the Site as a result of the acts or omissions of ICS' Personnel, report that loss or damage to ICS as soon as reasonably possible after the event, and provide all reasonable assistance that may be necessary for ICS to make an insurance claim in relation to that loss or damage;
- (m) ensure that the Site is adequately secured during any period when Plant and Equipment is left unattended at the Site, including that the relevant part of the Site must be capable of being locked properly;
- (n) ensure that its Personnel understand, and comply with, all warning labels, plates or signs attached to any Plant and Equipment by its Personnel during the supply of Services;
- (o) ensure that no person, in particular any of its Personnel, interferes with or removes any warning labels, tags, or other notifications from any Plant and Equipment; and
- (p)

#### 14.3 Suspension of Services

The parties agree that:

- (a) ICS may suspend the whole or part of the Services because:
  - (i) of a personal accident, serious illness or death of any ICS Personnel or Hirer Personnel associated with the supply of Services;
  - (ii) there is, in ICS' sole opinion, circumstances which present actual or potential risk of life or serious injury at the Site;
  - (iii) in ICS' sole opinion, the condition of the Site is not adequate for the supply of Services;
  - (iv) of the acts or omissions of any third party that materially affect the supply of Services;
  - (v) a breach has occurred which requires notification under the *Work Health and Safety Act 2020* (WA) or any other applicable health and safety Law; or
  - (vi) a dispute has arisen between the parties regarding Intellectual Property, Confidential Information or the supply of Services; and
- (b) in such circumstances, except where the suspension is attributable to ICS' gross negligence, ICS will not be liable to pay the Hirer any compensation, besides refunding any relevant part of the Fees in the sole discretion of ICS, and the Hirer hereby releases ICS from liability for any Loss or Claim that the Hirer may experience as a result of such suspension.

#### 14.4 Post-hire obligations

- (a) At the conclusion of the Hire Period and upon return of the Plant and Equipment to ICS, ICS shall conduct inspection [{"Off-Hire Inspection"}] of the Plant and Equipment to ascertain the condition of the Plant and Equipment following the Hire Period.
- (b) The Hirer shall be liable to ICS for all reasonable costs, loss, expense and damages incurred by ICS for the repair to or the reinstatement or replacement of the Plant and Equipment, or any part of the Plant and Equipment, to an undamaged, clean, safe and good working condition.

#### 15. SUBCONTRACTING

- 15.1 ICS may subcontract any of its rights or obligations under this Agreement providing such subcontractor has the requisite skills, knowledge, Personnel, authorisations and licences to supply the Services.
- 15.2 ICS must ensure that its subcontractors comply with all Laws and all standards, and have all requisite skills, knowledge, Personnel, authorisations and licences applicable to the performance of ICS' obligations under this Agreement.
- 15.3 To the extent that ICS subcontracts any of its obligations under this Agreement to a third party, ICS will remain liable to the Hirer for each act and omission of that third party (including its Personnel) in connection with the performance of such obligations as if it were an act or omission of ICS.

#### 16. NON-SOLICITATION AND NON-COMPETE

- 16.1 In consideration of this Agreement, the Hirer expressly agrees and undertakes to ICS that, for any breach of the non-solicitation and non-compete provisions in this clause 16, damages alone may not be an adequate remedy. Therefore, the Hirer, in addition to any claims for Loss or damages on a full indemnity basis for any breach of this clause 16, consents to and indemnifies ICS in obtaining any injunctions, specific performance and any other remedies available at Law and in equity.
- 16.2 During the Term and after this Agreement ceases for any reason, the Hirer agrees that:
  - (a) within the areas of:
    - (i) Australia, but if a Court deems that unenforceable then;
    - (ii) Western Australia, but if a Court deems that unenforceable then;
    - (iii) 500 km radius from the Hirer's business premises (and any other then-premises of the Hirer), but if a Court deems that unenforceable then;
    - (iv) 100 km radius from the parties' business premises (and any other then-premises of the parties), but if a Court deems that unenforceable then;
    - (v) the Perth metropolitan area,
  - (b) for the periods from the Commencement Date of this Agreement until:
    - (i) 2 years after the expiry of the Term, but if a Court deems that unenforceable then;
    - (ii) 12 months after the expiry of the Term, but if a Court deems that unenforceable then;
    - (iii) 6 months after the expiry of the Term,
  - (c) the Hirer will not:
    - (i) solicit, canvass, induce or encourage any ICS Personnel to leave the employment of ICS;
    - (ii) solicit, canvass, approach any person or entity who is/was a client, customer or patron of ICS, with a view to establishing a relationship with or obtaining the custom of that person or entity in a business which carries on a business similar to ICS' business; or
    - (iii) interfere or seek to interfere, directly or indirectly, with the relationship between ICS' business and its Personnel or clients in the conduct of its business,

without ICS' prior written consent (which may be held in its absolute discretion).

- 16.3 Clause 16.2 is construed and has effect as if it were a number of separate sub-clauses which results from combining each such sub-clause with each other sub-clause and each combination being severable from the others. If any such separate sub-clause is invalid or unenforceable for any reason, such invalidity or unenforceability does not in any way affect the validity or enforceability of other such related sub-clauses.
- 17. TITLE TO PLANT AND EQUIPMENT AND THE PPSA**
- 17.1 The rights of the Hirer to use and take possession of the Plant and Equipment are as bailee only.
- 17.2 The Hirer shall not offer, sell, assign, sub-let, pledge, mortgage or otherwise deal with or part with possession of the Plant and Equipment in any way which is inconsistent with the rights of ICS as owner of the Plant and Equipment, whether or not ICS is owner, lessee, hirer or otherwise of the Plant and Equipment. The Hirer shall not deface or cover any name or registration plate on the Plant and Equipment.
- 17.3 If payment of Fees is not received as and when due, ICS reserves the right to enter the place where the Plant and Equipment are stored without further notice and remove and repossess the Plant and Equipment (even if they have been installed). ICS is entitled to recover, in addition to any other damages, the costs of so doing from the Hirer.
- 17.4 Where ICS has other enforcement rights in addition to the enforcement rights provided for in the PPSA, those other enforcement rights will continue to apply.
- 17.5 The Hirer must ensure that any Security Interest created is enforceable, that ICS' priority is preserved and any defect in the Security Interest, including registration on the PPSR, is overcome, including by promptly executing any documents and do anything reasonably required by ICS.
- 17.6 The Hirer must not, without ICS' written consent, sell, lease, dispose of, create a security interest in, mortgage or part with possession of the Plant and Equipment or any interest in it (or purport or attempt to purport to do such thing) or permit any lien over it. The Hirer may only disclose information or documents, including information of a kind referred to in section 275(1) of the PPSA, if ICS has given its prior written consent.
- 17.7 The Hirer accepts, acknowledges and agrees that:
- this Agreement creates a registrable Security Interest in the Plant and Equipment and any proceeds;
  - neither party has agreed to postpone the time for attachment of the Security Interest;
  - value has been given for the creation of the Security Interest;
  - ICS can, without notice to the Hirer, affect and maintain a Registration (in any manner that ICS considers appropriate) of its Security Interest on the PPSR in relation to any Security Interest contemplated or constituted by the Agreement including but not limited to the Plant and Equipment, ICS' goods, Services, contract rights or Intellectual Property; and
  - Pursuant to section 275(6) of the PPSA, the Hirer agrees ICS is not required to disclose to an interested person information pertaining to ICS' Security Interest unless required to do so pursuant to the PPSA or at Law generally.
- 17.8 The Hirer will:
- sign any documents and/or provide any further information (which information the Hirer warrants to be complete, accurate and up to date in all respects) and/or assistance which ICS may reasonably require to enable perfection of its Security Interest or Registration of a Financing Statement or Financing Change Statement on the PPSR;
  - not register a Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the Plant and Equipment, including any Services, without the prior written consent of ICS;
  - give ICS not less than 14 days' written notice of any proposed change in their name and/or any other changes in their details (including but not limited to, changes in their address, facsimile number, email address, trading name or business activities);
  - indemnify ICS against any costs ICS incurs in perfecting and maintaining its perfected Security Interest in the Plant and Equipment or such other Personal Property under the PPSA and any costs ICS may incur in the course of enforcing any of its rights under this Agreement, the PPSA or at Law generally; and
- procure from any persons considered by ICS to be relevant to its security position, such agreement and waivers as ICS may at any time reasonably require.
- 17.9 The Hirer undertakes not to register, or permit to be registered, a Financing Statement or a Financing Change Statement in respect of a Security Interest contemplated or constituted by this Agreement in favour of a third party without ICS' prior written consent.
- 17.10 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest arising in connection with this Agreement to which these Terms and Conditions apply, the Hirer agrees that the following provisions of the PPSA will not apply to the enforcement of the Agreement:
- Section 95 (notice of removal of accession), to the extent that it requires ICS to give a notice to the Hirer;
  - Section 96 (when a person with an interest in the whole may retain an accession);
  - Subsection 121(4) (enforcement of liquid assets – notice to grantor);
  - Section 125 (obligation to dispose of or retain collateral);
  - Section 129 (disposal by purchase);
  - Section 130 (notice of disposal of collateral), to the extent that it requires ICS to give a notice to the Hirer;
  - Section 132(3)(d) (contents of statement of account after disposal);
  - Section 132(4) (statement of account if no disposal);
  - Section 135 (notice of retention of collateral);
  - Section 142 (redemption of collateral); and
  - Section 143 (reinstatement of security agreement).
- 17.11 Notices or documents required or permitted to be given to ICS for the purposes of the PPSA must be given in accordance with the PPSA.
- 18. INTELLECTUAL PROPERTY**
- 18.1 The Hirer expressly agrees and acknowledges that:
- any Intellectual Property in the Services (whether unregistered, registered or registrable) is ICS' property and not the Hirer's property; and
  - nothing in the Agreement is intended to provide the Hirer with any interest in the Intellectual Property in the Services.
- 18.2 The Hirer agrees that it must not copy, alter, modify or in any other way interfere with (including but not limited to reverse engineering) the Plant and Equipment, the Services, or the Intellectual Property in the Plant and Equipment or Services. The Hirer must not do anything that may infringe on ICS' Intellectual Property Rights.
- 19. CONFIDENTIALITY**
- 19.1 Each party ("**Recipient**") must keep confidential, and not disclose, any Confidential Information of the other party ("**Discloser**") except:
- as permitted under this Agreement;
  - with the prior written consent of the Discloser;
  - to the Recipient's Personnel, auditors and insurers; or
  - where the Recipient is compelled to do so by Law, provided that it gives the other party written notice prior to disclosure.
- 19.2 The Recipient must only use the Confidential Information of the Discloser for the purpose for which it was disclosed in connection with this Agreement.
- 19.3 The Recipient must:
- maintain effective security measures to protect all Confidential Information in the possession or control of the Recipient from unauthorised access, use, copying or disclosure;
  - notify the Discloser immediately in writing if the Recipient becomes aware of any anticipated, suspected or actual breach of this Agreement by the Recipient and take all reasonable steps required to prevent or stop that breach, at the Recipient's expense; and
  - reasonably assist the Discloser in connection with any action or investigation by the Discloser regarding any anticipated, suspected

or actual unauthorised disclosure or misuse of the Confidential Information by the Recipient.

19.4 The following are exceptions to clauses 19.1 and 19.2:

- (a) that at the time of disclosure, the information is in the public domain;
- (b) information that is required by Law to be communicated to a person who is authorised by law to receive it;
- (c) disclosure to a court, arbitrator, expert, board of enquiry or administrative tribunal in the course of proceedings or determinations by before him or it;
- (d) disclosure to any person who is required or authorised by this Agreement to perform any function under this Agreement;
- (e) information that is necessary to be disclosed to any bank or other financial institution in connection with the organisation of that party's financial affairs;
- (f) information that is necessary to be disclosed to any legal counsel, accountant or other professional adviser in connection with the party's affairs provided that the disclosee is bound by an obligation of confidentiality in regard to the information disclosed; or
- (g) information that is necessary to be disclosed to the party's Personnel, auditors, insurers and other persons for the purpose of all or any of the matters pertaining to this Agreement.

19.5 All records, documents (electronic or otherwise) and other papers (and any copies or extracts and including, but not limited to Confidential Information) made or acquired by the Hirer in relation to ICS is and remains the sole property of ICS. These items must be delivered-up to ICS when the Agreement is terminated.

## 20. SECURITY FOR PAYMENT

As security for the Hirer's obligations and liabilities under this Agreement:

- (a) the Hirer charges for the due and punctual payment and performance of those obligations and liabilities, all of its legal and equitable interest (both present and future) of whatsoever nature held in any and all real and personal property;
- (b) without limiting the generality of the charge in this clause, the Hirer agrees, on ICS' request, to execute any documents and do all things necessary required by ICS to register a mortgage, absolute caveat, Security Interest or other instrument of charge over any real property or personal property, or both, and against the event the Hirer fails to do so within a reasonable time of being so requested, the Hirer irrevocably and by way of security, appoints any credit manager or solicitor engaged by ICS to be the Hirer's true and lawful attorney to execute and register such instruments; and
- (c) the Hirer will indemnify ICS on a full indemnity basis against all costs and expenses incurred by ICS in connection with the preparation and registration of any such security interest, charge, caveat or mortgage document.

## 21. PRIVACY AND PERSONAL INFORMATION

21.1 The Hirer must:

- (a) in relation to the discharge of its obligations under this Agreement, comply with the relevant provisions of the Privacy Act;
- (b) ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
- (c) not use Personal Information other than for the purpose of performing its obligations under this Agreement, unless required or authorised by Law;
- (d) not disclose Personal Information without the prior written consent of ICS, unless required or authorised by Law;
- (e) not transfer any Personal Information outside of Australia without the prior written consent of ICS;
- (f) ensure that access to Personal Information is restricted to those of its Personnel who require access in order to perform their duties under this Agreement;
- (g) ensure that its Personnel are aware of the Hirer's obligations under this clause 20 and comply with the same obligations imposed on the Hirer under this clause;

- (h) fully cooperate with ICS to enable ICS to respond to applications for access to, or amendment of, a document containing a person's Personal Information and to privacy complaints;
- (i) immediately notify ICS if the Hirer becomes aware that a disclosure of Personal Information is or may be required or authorised by Law; and
- (j) comply with such other privacy and security measures as ICS reasonably advises the Hirer in writing from time to time.

21.2 The Hirer agrees for ICS to obtain from a credit reporting agency a credit report containing credit information and Personal Information about the Hirer in relation to the Credit Facility.

21.3 The Hirer agrees that ICS may exchange information about the Hirer with those credit providers either named as trade referees by the Hirer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess any application for a Credit Facility by the Hirer; and/or
- (b) to notify other credit providers of a default by the Hirer; and/or
- (c) to exchange information with other credit providers as to the status of the Credit Facility, where the Hirer is in default with other credit providers; and/or
- (d) to assess the credit worthiness of the Hirer.

21.4 The Hirer consents to ICS being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) of the Privacy Act).

21.5 The Hirer agrees that credit information and Personal Information provided may be used and retained by ICS for the following purposes and for other purposes as shall be agreed between the Hirer and ICS or required by law from time to time:

- (a) provision of Services; and/or
- (b) marketing of Services by ICS, its agents or distributors in relation to the Services; and/or
- (c) analysing, verifying and/or checking the Hirer's credit, payment and/or status in relation to provision of Services; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Hirer; and/or
- (e) enabling the daily operation of Hirer's account and/or the collection of amounts outstanding in the Hirer's account in relation to the Services.

21.6 ICS may give information about the Hirer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Hirer; and/or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Hirer.

21.7 The Hirer must immediately notify ICS upon becoming aware of a breach of this clause 21.

21.8 Nothing in this clause 21 is intended to limit any obligation of the Hirer under the Privacy Act, that the Hirer may have as an organisation with respect to Personal Information.

## 22. INDEMNITY

The Hirer continually indemnifies ICS and its Personnel from and against any Claim or proceeding that is made, threatened or commenced, and against any Loss or Claim, liability, expense or damage (including commissions payable to commercial agents, mercantile agents or debt collectors to pursue or recover outstanding monies pursuant to this Agreement and the liability to pay this commission arises at the time the recovery is placed in the hands of such agents or debt collectors; and legal costs on a full indemnity basis including legal proceedings for enforcement) any of ICS or its Personnel incurs or suffers, as a direct or indirect result of any of the following:

- (a) any breach of this Agreement by the Hirer;
- (b) the death or personal injury of any person to the extent caused or contributed to by any act or omission of the Hirer or its Personnel;
- (c) loss of, or damage to, any property to the extent caused or contributed to by any act or omission of the Hirer or its Personnel;

- (d) any breach of Law by the Hirer or its Personnel;
- (e) any infringement, or alleged infringement, of a third party's rights (including Intellectual Property Rights); and
- (f) any act or omission of fraud, dishonesty, reckless or wilful misconduct or misrepresentation by the Hirer or its Personnel.

## 23. LIABILITY

- 23.1 To the maximum extent permitted by Law and save for the limitation in clause 23.2, ICS maximum aggregate liability to the Hirer (whether under contract, tort, statute or in equity) arising out of or in connection with this Agreement is limited to the total amount of the Fees paid under this Agreement.
- 23.2 Notwithstanding clause 23.1, to the maximum extent permitted by Law, ICS maximum aggregate liability to the Hirer (whether under contract, tort, statute or in equity) for any loss, theft, damage or destruction to the Hirer's property that is stored or held at ICS' premises is limited to \$100,000.
- 23.3 This clause 23 will apply regardless of the form of Loss or Claim whether in contract, statute or tort (including without limitation to negligence) or otherwise.
- 23.4 Neither party will be liable to the other party for any Consequential Loss suffered or incurred by the other party arising out of or in connection with this Agreement, whether arising under contract, in tort (including negligence) or otherwise.
- 23.5 The Hirer acknowledges, understands and agrees that, notwithstanding any other provision of this Agreement:
- (a) ICS is not responsible for any plant, equipment, material or item treated using ICS' products or Services;
  - (b) ICS is not a metallurgist and the Hirer warrants that the steel provided for the purpose of the Services is stainless steel;
  - (c) it must ensure and accepts responsibility for the compatibility of the stainless steel supplied and the stainless steel reaction with the chemical, electro-chemical, laser or mechanical metal treatment products ICS uses for supplying the Services;
  - (d) the Services relating to the treatment of stainless steel is an imprecise process and the quality of the result cannot be guaranteed;
  - (e) ICS provides no warranties concerning the Services or the treatments used for the Services and there is no defects warranty period, as the Service is a cleaning process and brings the stainless steel back to its original property, and to that extent, ICS cannot warrant the base metal performance or the cleanliness of the stainless steel once the Services are complete, as ICS cannot control the environment, care of handling or cleanliness; and
  - (f) the collection, storage and provision of data on local and remote servers presents inherent security risks and risk of loss. It agrees that it will not hold ICS liable for any loss, theft or corruption of any data collected, stored or provided by ICS or any damage that the Plant and Equipment and/or Services may cause to any of the Hirer's existing infrastructure that does not directly result from ICS' gross negligence.

## 24. INSURANCE

- 24.1 Each party must effect and maintain the following insurances in the form or forms appropriate to the other party's activities and with insurers approved by the Australian Prudential Regulation Authority:
- (a) public and product liability insurance of [\$10 million] for any one occurrence, and in the annual aggregate in respect of product liability only;
  - (b) motor vehicle third party property damage insurance of [\$10 million] for any one occurrence; and
  - (c) workers' compensation as required by Law, or as otherwise specified in the Quotation.
- 24.2 The Hirer must effect and maintain at all times insurance covering the Plant and Equipment to fair market value.
- 24.3 Product and public liability and Plant and Equipment insurances held by the Hirer must note ICS as an insured party with the full right of entitlement to claim under the insurance and the insurer shall waive all

rights of subrogation against ICS and ICS' insurers. The deductible or excess payable in respect of a claim shall be at the Hirer's cost.

*NOTE: It is a condition of this Agreement that, before any Plant and Equipment is provided to the Hirer by ICS, the Hirer must provide ICS with the requisite certificates of currency in respect of all required insurances under this Agreement.*

- 24.4 Each party must, if so required:

- (a) effect the workers' compensation and public liability insurance before the Hire Period and maintain them until this Agreement is terminated or expired; and
- (b) effect the professional indemnity insurance before the Hire Period and maintain it for not less than 3 years after this Agreement is terminated or expired.

- 24.5 ICS is not a "common carrier" and is not responsible for any loss or damage to the Hirer's property or goods in transit. Responsibility and risk for insurance of goods in transit rests with the Hirer.

## 25. DISPUTE RESOLUTION

- 25.1 If any dispute arises out of or in connection with this Agreement or the interpretation of its terms (a "Dispute"), a party may not commence any court proceedings relating to the Dispute unless this clause 25 has first been complied with, except where that party seeks urgent interlocutory relief.
- 25.2 The parties must attempt to resolve any Dispute as follows:
- (a) Either party may notify the other party in writing of the occurrence of a Dispute and the parties must meet within 7 days or such other time as agreed to discuss and attempt to resolve the Dispute.
  - (b) On receipt of the notice specified in clause 25.2(a), the parties must use their reasonable efforts to expeditiously resolve the Dispute.
  - (c) If the parties cannot resolve the Dispute within 14 days after the first meeting between the parties specified in clause 25.2(a), or any further period as the parties may agree to in writing, the Dispute must (at the instigation of any party) go to mediation.
  - (d) The mediation is to be conducted in accordance with the ADC's Mediation Guidelines with a mediator as agreed by the parties or, failing agreement, as appointed by the ADC or its nominee.
  - (e) The mediation will be confidential, and the parties must equally bear the mediator's costs to the Dispute, and each party must also bear their own legal costs.
  - (f) If the Dispute is not resolved at mediation within 14 days of the first mediation meeting then any party is at liberty to claim their costs against the other parties, including the costs referred to in clause 25.2(e), and either party may commence legal proceedings.
- 25.3 The parties must continue to perform their obligations under this Agreement, including the payment of any Fees, while any Dispute is being resolved in accordance with this clause 25.

## 26. DEFAULT AND CONSEQUENCES

- 26.1 Neither party shall take any action (including legal action) against the other party for a default of the Agreement without first giving the defaulting party written notice specifying the default and providing the defaulting party with 7 days to rectify such.
- 26.2 Interest on overdue payments of any invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of 12% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
- 26.3 If the Hirer defaults in payment (including by way of dishonoured cheque) of any invoice when due, the Hirer will indemnify ICS from and against all costs and disbursements incurred by ICS in pursuing the debt including legal costs (on a solicitor and own Hirer basis) and ICS' debt recovery costs.
- 26.4 Without prejudice to any other remedies ICS may have, if at any time the Hirer is in breach of any obligation (including those relating to payment), ICS may suspend or terminate the supply of Services to the Hirer and any of its other obligations under these Terms and Conditions. ICS will not be liable to the Hirer for any Loss or Claim the Hirer suffers because ICS has exercised its rights under this clause.

- 26.5 Without prejudice to ICS' other remedies at Law, ICS is entitled to cancel all or any part of any order of the Hirer which remains unfulfilled and all amounts owing to ICS shall, whether or not due for payment, become immediately payable in the event that:
- any money payable to ICS becomes overdue, or in ICS' opinion the Hirer will be unable to meet its payments as they fall due; or
  - the Hirer is the subject of an Insolvency Event.
- 27. TERMINATION**
- 27.1 For convenience**
- ICS may terminate this Agreement without reason or for convenience by giving the Hirer not less than 24 hours' written notice.
  - The Hirer may terminate this Agreement without reason or for convenience by giving ICS not less than 30 days' written notice.
- 27.2 Default by the Hirer**
- ICS may terminate this Agreement immediately by written notice to the Hirer if the Hirer:
- does anything that materially damages or is likely to materially damage ICS' brand or reputation;
  - breaches this Agreement and does not remedy the breach within 14 days of receipt of written notice from ICS specifying the breach and requiring it to be remedied;
  - commits a breach of this Agreement which is incapable of remedy;
  - or its Personnel commit any act of fraud or dishonesty in relation to this Agreement; or
  - is the subject of an Insolvency Event.
- 27.3 Default by ICS**
- The Hirer may terminate this Agreement immediately by written notice to ICS if ICS:
- ceases to hold any applicable licence relating to the class of Services it provides to the Hirer, or has conditions or restrictions imposed on such licence or licences which are unacceptable to the Hirer, acting reasonably;
  - does anything that materially damages or is likely to materially damage the Hirer's brand or reputation;
  - breaches this Agreement and does not remedy the breach within 14 days of receipt of written notice from the Hirer specifying the breach and requiring it to be remedied;
  - commits a breach of this Agreement which is incapable of remedy;
  - or its Personnel commit any act of fraud or dishonesty in relation to this Agreement; or
  - is the subject of an Insolvency Event.
- 27.4 Credit Facility**
- ICS may terminate the Credit Facility at its discretion for any reason by giving the Hirer not less than 24 hours' written notice.
  - Upon the Credit Facility terminating:
    - all amounts owing under the Credit Facility now or in the future become immediately due and payable and recoverable as a debt payable by the Hirer to ICS; and
    - ICS may retake possession of all the Plant and Equipment and any other goods that have been delivered which are in the Hirer's possession.
- 27.5 This clause 26 does not limit ICS' rights to receive its Fee for all Services provided by ICS to the Hirer up to the date of termination for any reason.
- 28. CONSEQUENCES OF TERMINATION**
- 28.1** As soon as practicable after expiry or termination of this Agreement, each party (the "First Party") must:
- return to the other party to the original point of collection all the other party's equipment, records, documents, and materials provided by the First Party for the purposes of this Agreement, including any security passes and keys; and
  - return to the other party all copies of all Confidential Information and Personal Information of the other party in the First Party's possession or control.
- 28.2 Clauses 14.2(b), 14.4, 16, 17, 18, 22, 23, 24, 25, 28 and 31 survive and continue after termination or expiry of this Agreement.
- 29. REPORTING AND CONTRACT MANAGEMENT**
- 29.1** Each party appoints its contract representative specified in the Reference Schedule, Purchase Order, Quotation, or as otherwise communicated by a party to the other party to manage the relationship between the parties under this Agreement.
- 29.2** The parties will ensure that the contract representatives meet at the times and places as required by mutual agreement between the parties to discuss performance of, and any issues arising under, this Agreement.
- 30. NOTICES**
- 30.1** Notices under this Agreement may be delivered by hand, by mail or by email to:
- ICS at the address or email address shown on the Quotation; and
  - the Hirer at the addresses it nominates in writing to ICS.
- 30.2** Notices will be deemed to be served:
- upon delivery – if delivered by hand;
  - on the fourth Business Day after the date on which it was posted – if sent by ordinary pre-paid or registered post addressed to a party;
  - on the day it was sent – if sent by email transmission before or during normal business hours on a Business Day; or
  - on the next Business Day following the day on which it was sent – if it is sent by email transmission after 4.00 pm on a Business Day or on a day other than a Business Day.
- 30.3** Each party must promptly notify the other party of any change to their addresses (including email addresses), or any other such information supplied by them.
- 31. FORCE MAJEURE**
- 31.1** In this clause, "Force Majeure Event" means an event which is beyond the reasonable control of a party and includes but is not limited to the following types of events:
- an act of God;
  - war or other state of armed hostilities, insurrection, riot, civil commotion, act of public enemies, acts of terrorism, national emergency (whether in fact or in Law) or martial law;
  - weather sufficiently inclement to prevent a party from performing an obligation under this Agreement;
  - natural catastrophes, fire, earthquake, lightning or explosions;
  - pandemic, epidemic or quarantine (including any government-mandated 'lockdown' or imposition of stay-at-home orders; or restrictions on travel, social interaction, or access to public spaces);
  - strikes, lock outs, slowdowns, stoppages, and restraints of labour;
  - lawful restraints;
  - prolonged energy shortages, prolonged embargoes, or prolonged lack of availability of raw materials;
  - changes in Laws; and
  - action or inaction by, or orders, judgments, rulings, decisions, or enforcement actions of, any government, governmental authority or court of competent jurisdiction whether local, State or Federal (including denial, refusal or failure to grant any permit, authorisation, licence, approval or acknowledgment despite timely endeavours to obtain same),
- but does not include:
- financial distress nor the inability of either party to make a profit or avoid a financial loss;
  - changes in market prices or conditions; or
  - a party's financial inability to perform its obligations under this Agreement.

31.2 If ICS is delayed, hindered, or otherwise prevented from complying with its obligations under this Agreement by reason of events or circumstances beyond the reasonable control of ICS including by reason of a Force Majeure Event, or any other circumstances affecting the supply of Services, ICS is not liable to the Hirer for any loss or damage which is or may be suffered by the Hirer whether as a direct or indirect result of any such events or circumstances.

## **32. GENERAL**

### **32.1 Governing Law**

This Agreement is governed by the laws of Western Australia and each party submits to the exclusive jurisdiction of the courts of Western Australia.

### **32.2 Assignment**

Neither party may assign any of its rights or obligations under this Agreement without the other party's prior written consent.

### **32.3 Relationship**

Nothing in this Agreement gives rise to any relationship of agency, partnership, employment or otherwise between the parties.

### **32.4 Set Off**

- (a) The Hirer shall not be entitled to set off against or deduct from the Fees any sums owed or claimed to be owed to the Hirer by ICS.
- (b) ICS may by notice in writing set off against or deduct from any amounts owing to the Hirer under this Agreement by any fee, credit, rebate, or other amount which is payable to ICS under or in connection with this Agreement.

### **32.5 Entire Agreement**

This Agreement constitutes the entire agreement between the parties in connection with their respective subject matter and supersedes all previous agreements or understandings between the parties in connection with the relevant subject matter.

### **32.6 Further Assurance**

Each party must promptly do whatever any other party reasonably requires of it to give effect to this Agreement and to perform its obligations under this Agreement.

### **32.7 Inconsistency**

In the event of any inconsistency between:

- (a) the Reference Schedule (if any);
- (b) the Quotation;
- (c) these Terms and Conditions; and

- (d) any schedules, annexures, or other attachments to this Agreement (if any),

the document listed first in this clause 32.7 will prevail to the extent of the inconsistency.

### **32.8 Severability**

If any provision of this Agreement at any time is or becomes void or voidable or unenforceable, the remaining provisions, if any, will continue in full force and effect and any void, voidable or unenforceable provision will be replaced by a lawful and enforceable provision which, so far as possible achieves the same economic and other benefits for the Hirer and ICS, as the void, unlawful or unenforceable provision, was intended to achieve.

### **32.9 Conflict**

Where any conflict occurs between the provisions contained in these Terms and Conditions, such provisions will be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions will be severed from these Terms and Conditions without otherwise diminishing the enforceability of the remaining provisions of these Terms and Conditions.

### **32.10 Limitation and Breach**

In the event of any breach of the Agreement or any of these Terms and Conditions by ICS the remedies of the Hirer shall be limited to damages which under no circumstances shall exceed the Fees.

### **32.11 Waiver**

No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting it.

### **32.12 Variation**

No variation of this Agreement is effective unless made in writing and signed by each party.

### **32.13 No Representations or Warranties**

The Hirer acknowledges ICS does not make under this Agreement, or these Terms and Conditions, or outside of them, any representations or warranties regarding goods and services or any matter (including but not limited to descriptions, illustrations and performance contained in any ICS' catalogues, price lists or any other advertising or marketing materials) which is or might be relevant to the Hirer hiring, buying or selling goods and services other than the representations or warranties expressed here.

### **32.14 Counterparts**

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

**EXECUTION PAGE**

**HIRER**

**Signed for and on behalf of the Hirer by its duly Authorised Representative:**

.....

Authorised Representative

.....

Name of Authorised Representative (PLEASE PRINT)

.....

Date

**INTERNATIONAL CORROSION SERVICES PTY LTD**

**Signed for and on behalf of International Corrosion Services Pty Ltd by its duly Authorised Representative:**

.....

Authorised Representative

.....

Name of Authorised Representative (PLEASE PRINT)

.....

Date