



## STANDARD CONDITIONS OF HIRE

### 1. Definitions

- “Owner” is Diamond Dale Pty Ltd (ABN 38 009 416 175) (trading as Westlink Resources) and its associates.
- “Customer” is the person, firm, organisation, corporation or other entity hiring Plant from the Owner
- “Guarantor” is the person signing the Hire Agreement on behalf of the Customer.
- “Plant” means all equipment including tools, vehicles, mobile equipment, accessories and parts supplied to the Customer.
- “Hire Agreement” means the agreement between Owner and Customer provided to the Customer (whether signed or not) for the hire of Plant and shall include these Standard Conditions of Hire, any other Special Conditions (which may be changed by the Owner from time to time) and any quote given by the Owner for hire of the Plant

### 2. Title to Equipment

- 2.1 The Customer acknowledges that in all circumstances the Owner retains title to the Plant (even if the Customer goes into liquidation or becomes bankrupt during the hire period) and the Plant will not constitute a fixture. The Customer’s right to possess the Plant is as a bailee only.
- 2.2 The Customer will not be entitled to offer, sell, assign, sub-let, mortgage, pledge or otherwise deal with the Plant in any way which is inconsistent with the rights of the Owner as owner of the Plant nor will the Customer be permitted or authorised to lend or re-hire the Plant to any other person, firm, organisation, corporation or other entity

### 3. Hire Period

- 3.1 The Customer is entitled to use the Plant for the period of time specified in the Hire Agreement and shall not be varied unless the Owners agrees in writing.
- 3.2 The hire period starts when the Customer takes possession of the Plant or the Owner delivers the Plant in accordance with the Customer’s instructions. The hire period ends when the Plant is back in the Owner’s possession.
- 3.3 The Customer is to be charged from the time the Plant is delivered to the Customer (or delivered in accordance with Customer’s instructions) until the hire period ends. The period includes weekends and public holidays and is payable whether or not the Plant is being used.
- 3.4 Should the hire period be reduced by the Customer, the Owner shall be entitled to increase the hire charge to reflect the reduced hire period.

### 4. Hire and Other Charges:

- 4.1 **Hire:** The Customer will pay the Owner the hire charges set out in the Hire Agreement or quote.
- 4.2 **Other Services:** The Owner may, if requested by the Customer, but only if personnel are available, attend the site and instruct the Customer in the operation of the Plant. The Customer shall in addition to the hire charges pay the Owner for such services at rates agreed by the Owner and the Customer.
- 4.3 **Tax and Government Charges:** The Customer shall be liable for stamp/hire duty, GST and all other applicable taxes, duties, levies, penalties and any other government charges imposed on the Hire Agreement or in respect of the hire period. Where the Customer claims exemption from duty or tax the Customer must furnish appropriate exemption certificates to the Owner.
- 4.4 **Delivery:** If the Customer requires the Owner to deliver, collect or install the Plant, the Customer shall be liable for the cost of delivery, collection or installation at rates agreed by the Owner and the Customer.
- 4.5 **Payment Due Date:** The Customer is required to pay all fees, charges and costs that may become due and payable under the Hire Agreement within the agreed payment terms. If no terms are agreed, this payment shall be made before the end of the hire period. If not, the hire charge will continue to be payable until all amounts due are paid.

## 5. Customer's Hire Obligations:

- 5.1 Suitability:** The Customer is deemed to be satisfied as to the suitability, condition and fitness for purpose of the Plant. The Owner gives no warranty that the plant is suitable for the Customer's purpose.
- 5.2. Operation of Equipment:** The Customer warrants that at all time they will:
- (a) operate the Plant safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
  - (b) ensure persons operating or erecting the Plant are suitably licensed, instructed / trained in its safe and proper use and where necessary hold a current Certificate of Competency;
  - (c) return the Plant to the Owner in the same good and clean condition it was in when the Customer receives it, ordinary fair wear and tear excluded;
  - (d) display, maintain all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Plant;
  - (e) ensure all persons operating the Plant wear suitable clothing and protective equipment as required or recommended by the manufacturer or by the Owner;
  - (f) ensure that no persons operating the Plant are under the influence of drugs or alcohol;
  - (g) conduct a job safety analysis prior to using the Plant at a site;
  - (h) accept responsibility for the safe-keeping of and insuring the Plant during the hire period;
  - (i) ensure that no persons carry illegal, prohibited or dangerous substances in or on the Plant; and
  - (j) comply with all Environmental Laws from time to time and immediately rectify any breach of an Environmental Law caused by the use of the Plant. The Customer indemnifies and agrees to keep the Owner indemnified against any environmental loss, cost, damage or expense incurred or which may be incurred by the Owner arising from the use of the Plant under this Hire Agreement.
- 5.3 Operator:** If the Owner supplies an operator to operate the Plant ("Operator"), the Operator shall be under the sole direction and control of the Customer and shall during the hire period be deemed to be the employee of the Customer and the Customer shall not allow any other person to operate the Plant without the Owner's prior written consent. The Customer indemnifies and agrees to keep the Owner indemnified against any claims brought against the Owner arising out of the supply of an Operator by the Owner.
- 5.4 Cleaning, Maintenance and Service:**  
The Customer must:
- (a) clean, fuel, lubricate and maintain the Plant in good condition and in accordance with the manufacturer's and the Owner's instructions at the Customer's cost; and
  - (b) not in any way alter, modify, tamper with, damage or repair the Plant without the Owner's written consent
  - (c) at its cost, service the Plant as required by the service schedule of the Plant and supply all coolants or lubricants for these services. Servicing will be required at 250 hrs or 1000km if the plant is mobile and does not have an hour meter. The Owner will supply at no cost to the company enough filters and replacement parts required to effect these services.
- 5.5 Pre Start Checks:** The customer will conduct weekly "pre start" checks on all equipment covered under this hire agreement, enter the results of such tests on check sheet supplied by the Owner (or suitable alternative) and send these, immediately, to the Owner by fax on number 03 9408 4330.
- 5.6 Safekeeping:** The Customer must ensure that during the hire period the Plant is stored safely and securely and is protected from theft, seizure or damage.
- 5.7 Notices, Information and Identifying Marks:** The Customer must not alter, deface, remove or erase any notices, safety information, identifying mark, plate or number on the Plant.
- 5.8 Inspections:** The Customer consents to the Owner inspecting the Plant from time to time during the hire period. In addition, the Customer may arrange a joint inspection with the Owner at the end of the hire period.
- 5.9 Safe Loading and Transport:** The Customer will ensure the safe loading, securing and transporting of all Plant in accordance with all laws and manufacturers' guidelines. The Customer and any transporting contractor shall observe any safety directions given by the Owner and/or manufacturer of the Plant for its loading and safe handling.

## 6. Equipment Breakdown:

### 6.1 Obligations of Customer:

If the Plant breaks down or becomes unsafe to use during the hire period the Customer:

- (a) shall immediately stop using the Plant and notify the Owner;
- (b) shall take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Plant;
- (c) shall take all steps necessary to prevent any further damage to the Plant;
- (d) may only repair or attempt to repair the Plant with the Owner's written consent

### 6.2 Obligations of the Owner: If the Plant breaks down or becomes unsafe to use through no fault, negligence, recklessness or misuse by the Customer, the Owner will:

- (a) take all steps necessary to repair the Plant or provide parts to effect repair onsite or supply suitable substitute Plant as soon as reasonably possible after being notified by the Customer;
- (b) not impose a hire charge for that portion of the hire period for which the Plant was broken down or unsafe, nor the costs associated with any repair or replacement of the Plant.

## 7. Lost, Stolen or Damaged Equipment:

### 7.1 Damage Waiver: The Customer:-

- (a) will pay the amount for Damage Waiver referred to in the Hire agreement in addition to the Owner's Plant hire rate.
- (b) is not required to pay a Damage Waiver fee if it produces to the Owner a current Certificate of Currency for an appropriate policy of insurance that covers loss or damage to the Plant whilst on hire for an amount not less than the full new replacement cost of the Plant.

### 7.2 If the Plant is lost, stolen or damaged during the hire period (where proof of appropriate insurance has been produced), the Customer shall be liable for:

- (a) any costs incurred by the Owner in repairing or the new replacement cost of the Plant; and
- (b) any other costs whatsoever incurred by the Owner as a result of the loss, theft or damage to the Plant, including the continuation of hire charges when the damage was caused by the negligence or omission of the Customer.

### 7.3 Exclusions to waiver

The damage waiver will not apply:-

- (a) where the damage is due to wilful acts of the Customer or any person who is permitted access to the goods; and/or
- (b) the instructions for use of the goods are not strictly adhered to.

## 8. Termination:

### 8.1 The Owner may terminate the Hire Agreement immediately by notice to the Customer, if:

- (a) the Customer breaches any term of the Hire Agreement; or
- (b) the Customer becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business.

### 8.2 The Owner may terminate the Hire Agreement for any other reason by 24 hours notice. The right of termination is in addition to any other rights under the Hire Agreement and does not exclude any right or remedy under law or equity or the survival of other terms under the hire Agreement.

## 9. Recovery of Equipment:

### 9.1 If the Customer is in breach of the Hire Agreement or if the Owner has terminated the Hire Agreement with the Customer pursuant to clause 8, the Owner may take all steps necessary (including legal action) to recover the Plant, including entering the Customer's premises to do so.

## 10. Miscellaneous:

### 10.1 Severability: If any part of this agreement becomes void or unenforceable for any reason then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.

- 10.2 Governing Law and Default Recovery:** The Hire Agreement is governed by the laws and each party submits to the exclusive jurisdiction of the courts of the State of Victoria
- 10.3 Entire Agreement:** The Hire Agreement issued to the Customer, together with these Standard Conditions of Hire, comprises the entire agreement between the parties.
- 10.4 No Reliance:** The Customer acknowledges that neither the Owner nor any person acting on the Owner's behalf) has made any representation or other inducement to the Customer to enter into the Hire Agreement and that the only representations (including in relation to the use of the Plant) made are those representations contained in the Hire Agreement.
- 10.5 Variation:** The Owner may at any time vary the Hire Agreement by giving the Customer 30 day's written notice of its intention to do so. Any other variation of these terms and conditions must be agreed in writing by the Owner and the Customer.
- 10.6 Notice to Customer:** Any document which by the Hire Agreement may or must be given by the Owner may be served or given by leaving it at or posting it to the address of the Customer as stated in the Hire Agreement (or last notified by the Customer in writing to the Owner) and shall be deemed to have been served or given at the time of leaving or, if posted, on the business day following the day of postage and any notice may be signed by an officer, manager or solicitor of the Owner on behalf of the Owner.
- 10.7 No Waiver:** No delay or failure to exercise any right, power or remedy accruing to the Owner upon any continuing breach or default under the Hire Agreement shall impair any such right, power or remedy, nor shall it constitute a waiver of any right of the owner to take action or make a claim in respect of, or to have agreed to a continuing breach or default.
- 10.8 Withdrawal of Credit:** Any credit granted by the Owner to the Customer may be reviewed by the Owner at any time without notice. Credit may be withdrawn for Customers failing to make payments or use the Plant in accordance with these Standard Conditions of Hire and a statement may be issued at that time requiring payment within 7 days of any amount due and owing.
- 10.9 Authority of Customer:** The person signing the Hire Agreement for and on behalf of the Customer hereby warrants to the Owner that he or she has the authority of the Customer to make the Agreement on the Customer's behalf and to bind the Customer to the Agreement and hereby indemnifies the Owner against all losses, costs and claims incurred by the Owner arising out of the person so signing the Agreement not in fact having such power and/or authority.
- 10.10 Previous Editions:** This edition of the Standard Conditions of Hire replaces and supersedes all previously issued Conditions of Hire by the Owner.
- 10.11 Time of the Essence:** Time is to be of the essence regarding all obligations of the Customer in the Hire Agreement.

## 11. GUARANTEE AND INDEMNITY

- 11.1** In consideration of the Owner entering into the Hire Agreement at the request of the Guarantor, the Guarantor:
- (a) guarantees to the Owner the performance by the Customer of its obligations under the Hire Agreement;
  - (b) must ensure that the Customer complies with the Hire Agreement;
  - (c) indemnifies the Owner with respect to all loss and damage of every kind arising out of a breach by the Customer of the Hire Agreement; and
  - (d) must not, at any time, do anything which, if done at that time by the Customer, would be a breach by the Customer of the Hire Agreement.
- 11.2** The guarantee in Clause (a) will remain effective notwithstanding any fact, circumstance or thing which would otherwise render it void or unenforceable.
- 11.3** The Guarantor must not do anything, in relation to any debt owed by the Customer to the Guarantor, which would have the direct or indirect effect of reducing the amount the Owner is able to recover from the Customer.

## 12. HIRE OF MOTOR VEHICLES

Where the Plant hired by the Customer is a Motor Vehicle these additional Terms and Conditions also apply to the Hire Agreement.

- 12.1 Definitions:** "Motor Vehicle" means a car, truck, utility, trailer, or any other towed vehicles.

- 12.2 Insurance:** The Owner will arrange (at the Customer's cost) motor vehicle accident insurance for each Motor Vehicle to cover any damage caused through a motor vehicle accident. This insurance will not cover the Customer for the loss of the vehicle (stolen or other method other than a motor accident). (How is this to be dealt with?) If the Motor Vehicle is damaged in a motor accident then the Customer will be liable for the following additional costs:
- (a) the first \$2,500 of the cost of any damage if the driver is 25 years or over;
  - (b) the first \$3,500 of the cost of any damage if the driver is under 25 years;
  - (c) the cost of repairing damage:
    - (i) to tyres;
    - (ii) caused other than by the normal use of the Motor Vehicle;
    - (iii) caused while the Motor Vehicle is being driven on any road that is unsealed or is not a public road; or
    - (iv) caused while the Customer is in breach of any clause of the Hire Contract.
- 12.3 Operation of Motor Vehicles:**
- 12.3.1** The Customer warrants that it will not allow a person to drive a Motor Vehicle if:
- (a) the person does not hold an unrestricted licence to drive that class of Motor Vehicle;
  - (b) the person is under the age of 21 years;
  - (c) the person is affected by drugs and / or alcohol;
  - (d) the person has been convicted of any offence relating to driving a motor vehicle under the influence of drugs or more than the legally prescribed limit of alcohol; or
  - (e) the person has previously been refused motor vehicle insurance.
- and hereby indemnifies the Owner against all losses, costs and claims incurred by the Owner arising out of any breach of this warranty.
- 12.3.2** A breach of any of this agreement will render the insurance void and the Customer liable for the costs of repairs or the replacement cost of the Motor Vehicle.
- 12.4 Fines and Government Charges:** The Customer shall promptly pay all tolls, fines, penalties and other statutory or Government charges arising out of the use of the Motor Vehicle by the Customer during the hire period. If the Owner pays any such charges the Customer must reimburse the Owner within 7 days of receiving notification of the charges from the Owner.
- 12.5 Safe Loading:** The Customer warrants that no Motor Vehicle will be laden in excess of the Motor Vehicle's manufacturer's prescribed load limits at any time during the hire period.
- 12.6 Consumables:** The Customer must return the Motor Vehicle to the Owner with a full tank of fuel and tie down chains and straps or other accessories supplied with the vehicle.