



Fluid Dynamics Terms and Conditions

Fluid Dynamics Pty. Ltd. Standard Terms & Conditions for Hire

1. Definitions

In these Conditions:

"ACL" means the Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth) as amended;

"FD" means Fluid Dynamics Pty. Ltd. at Fluid Dynamics Trust ABN77013600;

"Conditions" means these General Conditions of Hire;

"consumer" is as defined in the ACL and in determining if the Hirer is a consumer, the determination is made if the Hirer is a consumer under the Hire Contract;

"CPI" means the Australian Consumer Price Index;

"GST" means any goods or services tax as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended ("GST Act");

"Hire Contract" means any contract for the hire of Plant by FD to the Hirer on the Conditions;

"Hire Period" means the time from when the Plant leaves FD's depot or place where last issued until received back at FD's depot or other place named by FD;

"Hirer" means a person, firm or corporation, jointly and severally if more than one, hiring Plant from FD;

"Major Damage Waiver" means FD's waiver of liability for major damage to the Plant pursuant to clause 12 if the Hirer elects that the Plant will be held at the risk of FD and the appropriate charges are paid by the Hirer to FD;

"Minor Damage Waiver" means FD's waiver of liability for minor damage to the Plant pursuant to clause 13 if the Minor Damage Waiver election has been made by the Hirer and the appropriate charges paid by the Hirer to FD;

"Plant" means all Plant, cable, cable drums, trailers, fuel tanks, batteries, machinery and accessories of whatever nature supplied by FD to the Hirer;

"Sanctions" means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time under applicable law in any jurisdiction;

"Sanctioned Person" means, at any time: (a) any person listed in any Sanctions-related list maintained by a relevant authority under applicable law; (b) any person operating, organised or

resident in a country, region or territory which is itself the subject or target of any Sanctions; or (c) any person Controlled by any such person or persons; and

“Site” means any site to which the Plant is or is to be delivered and including without limitation any ship, truck or other vehicle upon which the Plant is intended to be used by the Hirer.

2. Basis of Contract

2.1 The Conditions apply exclusively to every Hire Contract and cannot be varied or replaced by any other terms without FD's prior written consent.

2.2 Any written quotation provided by FD to the Hirer concerning the proposed hire of Plant is valid for 30 days and is an invitation only to the Hirer to place an order based upon that quotation. Any terms in FD's quotation form part of the Conditions and, if inconsistent, will prevail to the extent of the inconsistency.

2.3 The Hirer is responsible for care of the Plant pursuant to the Conditions for the Hire Period and remains bound by any continuing provisions, after return of the Plant.

2.4 FD reserves the right to charge a minimum period of hire for certain types of Plant.

3. Title

3.1 The Hirer acknowledges that FD retains title to the Plant (even if the Hirer goes into liquidation or becomes bankrupt during the Hire Period). In no circumstances will the Plant be deemed to be a fixture.

3.2 The Hirer must not offer, sell, assign, sub-let, mortgage, pledge or otherwise deal with the Plant in any way which is inconsistent with the rights of FD as owner of the Plant.

4. Credit Limit

4.1 At the time of opening an account, FD will set a limit on the total amount permitted to be outstanding at any time ("Credit Limit"). FD reserves the right to remove or disable any Plant on hire by the Hirer in the event of the Credit Limit being exceeded. It is the Hirer's duty to ensure the hire of the Plant is operated within the Credit Limit. FD is not under a duty to the Hirer to limit the Hire to the Credit Limit and if (at FD's absolute discretion) FD should continue to provide Plant over and above the Credit Limit, the full amount due to FD is payable by the Hirer notwithstanding that the Credit Limit may have been exceeded.

5. Variation & Cancellation

5.1 Changes, errors or omissions in the specifications provided by the Hirer which results in extra cost to or work by FD will be charged to the Hirer at FD's standard rates for such work where FD has disclosed such standard rates to the Hirer or provided the Hirer with means to ascertain such standard rates.

5.2 If FD is unable to provide Plant, then FD may cancel any order (even if it has been accepted) or Hire Contract by written notice to the Hirer.

5.3 No purported cancellation or suspension of an order or any part of it by the Hirer is binding on FD once the order has been accepted.

5.4 FD reserves the right to alter any specifications of the Plant and to make changes to the Plant or its specifications provided that the end performance is not prejudiced.

6. Price & Price Variation

6.1 Prices quoted are net Ex-Works prices at date of quotation.

6.2 Prices for the hire of Plant and supply of services by FD exclude any additional amounts required to be paid by FD in relation to the Plant or services, including but not limited to:

- (a) sales tax, GST, and any other taxes, duties or imposts imposed; and
- (b) any fees or levies, including such fees and levies as are payable under the Building and Construction Industry Training Fund and Levy Collection Act 1990 (WA); and
- (c) the cost of freight, insurance and other charges arising from the point of dispatch of the Plant to the Site and return.

6.3 In addition to the amount payable, the Hirer must pay to FD, any amount specified in clause 6.2 required to be paid by FD.

6.4 Prices quoted by FD reflect FD's rates for the anticipated Hire Period, including discounted rates where applicable, and as such where a Hirer terminates a Hire Contract early by returning the Plant prior to the end of the Hire Period FD reserves to adjust the rates payable by the Customer to reflect such shorter Hire Period and the Customer is liable to FD in accordance with such adjusted rates.

6.5 On the anniversary date of the commencement of a Hire Period, FD may increase the price payable by the Customer in accordance with any increase in CPI.

6.6 Where there is any change in FD's costs incurred in relation to the provision of the Plant, FD may provide the Hirer with notice of FD's intention to vary its price to take account of any such changes, in which case the Hirer may either:

- (a) accept the proposed varied price, in which case the Hire Contract continues with the varied price in place; or
- (b) reject the proposed varied price, in which case the Hire Contract continues until the day on which FD's proposed varied price was to take effect at which time the Hire Contract is terminated.

6.7 Where the Hire Contract is not for a specified period, then, on 5 days written notice:

- (a) FD may terminate the Hire Contract;
- (b) provided that the Plant has not been lost or damaged and that the Hirer is not otherwise in breach of the Conditions, the Hirer may terminate the Hire Contract;
- (c) FD may increase the previously agreed hire charge not more than every 6 months during the Hire Period;

and in the event of termination of the Hire Contract all FD's rights under the Conditions remain until fulfilled by the Hirer.

6.8 Unless otherwise agreed in writing, where a Hire Contract is terminated for any reason, the Customer remains liable to FD for any and all outstanding transport costs, installation costs, labour costs and special equipment charges already incurred as at the date termination takes effect, together with any applicable demobilization charges.

7. Invoicing & Payment

- 7.1 The Hirer must pay FD the hire charges set out in the Hire Contract.
- 7.2 The Hirer is not entitled to any discount or rebate if the Plant is not used by the Hirer for the entire Hire Period.
- 7.3 If credit is provided by FD, payment for Plant hired must be made within 30 days from the date of FD's invoice.
- 7.4 If credit is not provided by FD, payment for Plant hired must be made before the Plant is dispatched or collected.
- 7.5 Payment by cheque will only be accepted on receipt of cleared funds.

8. Delivery & Transport

- 8.1 The Hirer must pay the cost and, if required by FD, arrange transport of the Plant from the place specified by FD to the Site and return to a place specified by FD at the end of the Hire Period.
- 8.2 If the Plant requires transportation for repair or replacement then cost of transport is born by FD unless the repair or replacement is due to damage or breakdown of the Plant caused by the Hirer.
- 8.3 The Hirer must recoil any cable on the drums supplied.
- 8.4 Any period or date for delivery of the Plant stated by FD is an estimate only and not a contractual commitment.
- 8.5 If the Hirer requests that the Hire Period be delayed or postponed for any reason whatsoever, FD reserves the right to charge a fee (up to 50% of the full hire charges) for the period of delay.

9. Operation of Plant

- 9.1 Loading and Unloading: The Hirer is responsible for loading and unloading the Plant on Site. Any FD personnel supplied for loading and unloading will do so as agents of the Hirer.
- 9.2 Care of Plant: The Hirer is responsible for the following:
- (a) safekeeping of the Plant during the Hire Period;
 - (b) maintenance of the Plant in good working condition;
 - (c) operating the Plant for any intervals specified by FD and seeking FD's consent before an interval is exceeded;
 - (d) checking lubrication and cooling levels of the Plant daily and changing the lubricating oil and coolant in strict accordance with FD's instructions;
 - (e) using only fuel, oil, coolant, lubricants specified by FD;
 - (f) use of the Plant in strict conformity with FD's specifications and any other relevant laws or regulations;
 - (g) ensuring that the Plant is not operated for any purpose beyond its rated capacity or in a manner likely to result in undue wear;

- (h) inspecting the Plant and ensuring that it is not to operate if it has become defective, damaged or in a dangerous state;
- (i) ensuring that the Plant is not moved from the Site, unless in an emergency and FD is advised immediately afterwards;
- (j) complying with all relevant laws, by-laws and regulations applicable to the installation, use and operation of the Plant;
- (k) advising FD immediately the Plant breaks down or fails to operate properly; and
- (l) protecting the Plant against fire, theft, distress or seizure.

9.3 **Solid Footing:** If the Site is soft or unsuitable for the Plant to work on or travel over, the Hirer must at its cost supply and implement or install (as applicable) any and all such solid means of access, measures or structures as are necessary for the Plant to travel over, traverse or work on at the Site.

9.4 **Right of Access:** The Hirer must allow FD's servants, agents and insurers access to the Plant at all reasonable times to deliver, remove, inspect, test, adjust, maintain, repair or replace it. The Hirer is responsible for providing FD with safe and proper access for this purpose, and must not impede or prevent FD's servants, agents or insurers from accessing the Plant.

9.5 **Emergency:** Without prejudice to FD's rights under clause 9.4, in circumstances where FD reasonably deems there is an emergency the Hirer must allow FD's servants and agents access to the Plant for the purposes of switching off the Plant or taking such other steps in relation to the Plant as FD may reasonably consider necessary. The Hirer is responsible for providing FD with safe and proper access for this purpose and must not impede or prevent FD's servants or agents from accessing the Plant.

9.6 **Indemnity:** The Hirer indemnifies FD from and against any and all actions, claims, costs, damages, expenses, fees, liabilities, loss or penalties incurred, arising from or in any way relating to:

- (a) FD's servants, agents or insurers (as applicable) accessing the Plant under clauses 9.4 or 9.5; and
- (b) the Hirer's breach of, or failure to comply with its obligations under clauses 9.4 or 9.5.

9.7 **Testing and tagging:** The Hirer must identify and comply in full with any and all testing and tagging requirements relevant to the Plant during the Hire Period, and indemnifies FD from and against any and all actions, claims, costs, damages, expenses, fees, liabilities, loss or penalties incurred, arising from or in any way relating to any breach of this clause by the Hirer.

9.8 **Maintenance/Service:** The Hirer must notify FD in writing immediately once the Plant has operated for 250 hours from the date it was last serviced or from the start of the Hire Period, whichever is later.

FD will, at its cost, service the Plant within 1 week of FD advising the Hirer that it will do so. If the Hirer fails to notify FD or if FD is unable to access the Plant to service the Plant during FD's business hours within the period specified, FD may, in addition to any other rights it has, charge the Hirer for:

- (a) compensation for added wear, tear and damage to the Plant;
- (b) any overtime costs incurred by FD; and

(c) the costs of the next service and any consequential repairs.

The Hirer must not try to effect any repairs on the Plant. The Hirer is responsible for all costs associated with access to the site, including inductions whilst FD services the Plant.

9.9 Operations of the Plant: Only the Hirer or its employees or agents may operate the Plant, and must do so under the direct supervision and instructions of the Hirer and be properly qualified to operate the Plant. The Hirer is responsible for the acts and omissions of all Plant operators. The Hirer must not permit any other person to operate the Plant.

9.10 Transfer and Rehiring: The Plant or any part of it must not be lent, rehired or sub-let to any person. If FD consents in writing to a rehire or sub-lease of the Plant, the Hirer remains bound by all of the Conditions and must ensure that any sub-Hirer also complies with all terms of the Conditions relating to the use or care of the Plant.

9.11 Inspection Reports: Any reports or copies which FD is obliged by law to possess will be supplied to the Hirer on request and must be returned at the end of the Hire Period.

10. Breakdown

10.1 Subject to clause 10.2 and 10.3, breakdowns or defects in the Plant resulting from:

- (a) proper and ordinary use or fair wear and tear; or
- (b) the development of an inherent fault or a fault not ascertainable prior to commencement of the Hire Period;

may, at FD's option, either be repaired or the Plant replaced at FD's expense. No charge will apply from the date of notice of breakdown until the repair or replacement of the Plant.

10.2 If the Hirer is a consumer and the defect or breakdown cannot be remedied or is a "major failure" as defined in the ACL, then nothing in this clause limits the consumer's rights under section 259(3) of the ACL.

10.3 If the Hirer is not a consumer and the repair is impracticable and a replacement Plant is not available, FD may terminate the Hire Contract and will not have any liability whatsoever to the Hirer for such termination or any consequences of breakdown.

10.4 No relief from hire charges nor any claims will be allowed by FD for stoppages due to causes out of FD's control including, without limitation, bad weather or Site conditions.

11. Limitation & Exclusion

11.1 Except as specifically set out in the Conditions or contained in any express warranty provided with the Plant, the Hire Contract does not include by implication, any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Plant, or any contractual remedy for their failure.

11.2 If the Hirer is a consumer, nothing in these Conditions restricts, limits or modifies the Hirer's rights or remedies against FD for failure of a statutory guarantee under the ACL.

11.3 If clause 11.2 does not apply, then other than as stated in the Conditions or any written warranty statement, FD is not liable to the Hirer in any way howsoever arising under or in connection with the use of, storage or any other dealings with the Plant by the Hirer or any third party.

11.4 FD is not liable for any indirect or consequential losses or expenses suffered by the Hirer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.

11.5 FD will not be liable for any loss or damage suffered by the Hirer where FD has failed to meet any delivery date or cancels or suspends the supply of the Plant.

11.6 Nothing in the Conditions is to be interpreted as excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be so excluded, restricted or modified.

12. Insurance

12.1 The Hirer is responsible at its own cost for insuring itself, its property, third parties and third party property against all risks arising from the presence or operation of the Plant.

12.2 If the Hirer elects to hire the Plant at the Hirer's risk then the Hirer must, prior to commencement of the Hire:

- (a) insure the Plant, at its cost, with an insurer approved by FD in writing for its full replacement value and for loading, unloading, transit and all commercially insurable perils including, without limitation, damage or theft;
- (b) note the interest of FD as owner of the Plant on the insurance policy; and
- (c) provide evidence of its insurance policies to FD, including receipts for the premium payable for such insurance and a copy of the insurance policy noting the interest of FD as owner of the Plant.

12.3 If proof of insurance is not provided pursuant to 12.2(b) or the Hirer does not have insurance, then subject to clause 12.6:

- (a) the Hirer will be liable to pay to FD on demand the full replacement value on any equipment lost, damaged or stolen; and
- (b) FD may cancel or suspend any Hire Contract.

12.4 On request, the Hirer must provide FD with all assistance and information necessary to enable FD to claim under the Hirer's insurance policies.

12.5 Any insurance monies recovered by the Hirer in respect of any risks specified in clause 12.2 must be applied as reasonably directed by FD.

12.6 If the Hirer elects to hire the Plant at FD's risk the Hirer must pay to FD the Major Damage Waiver premium and accept liability to pay the excess on any claim as set out in clause 12.9. On receipt of the Major Damage Waiver premium FD will waive its rights against the Hirer in respect of any loss or damage to the Plant, including Minor Damage as described in clause 13.1, subject to the conditions and exclusions contained in clauses 12.7, 12.8 and 13.2 and payment by the Hirer of the excess in accordance with the provisions of clause 12.9. If the Hirer makes an election under this clause 12.6 the Plant shall be hired at FD's risk during the Hire Period, including delivery of Plant, notwithstanding the provisions of clauses 8 and 9.

12.7 The Major Damage Waiver does not apply unless:

- (a) the Hirer has paid the Major Damage Waiver premium up to date and in full;

- (b) the Hirer can satisfy FD that the Hirer has at all times acted reasonably and has taken adequate precautions to safeguard the Plant from the loss or damage sustained;
- (c) the Hirer has generally complied with all reasonable requests of FD in relation to the submission of information and the application for assessment of the relevant claim and where appropriate the Hirer has procured a written Police report and promptly submitted the Police report to FD; and
- (d) the Hirer is not in breach of the Hire Contract.

12.8 The Major Damage Waiver does not extend to:

- (a) damage to the Plant or any other property due to misuse, abuse or overloading of the Plant;
- (b) damage to the Plant or any other property caused by the Hirer or its servants or agents or any other person or persons lawfully or unlawfully on the Site intentionally, unintentionally, accidentally, negligently or otherwise allowing the Plant or any other property to cause damage to or by the Plant during loading, unloading, lifting or otherwise moving the Plant or any other property;
- (c) unexplained disappearance or wrongful conversion of the Plant;
- (d) loss or damage in contravention of the Conditions;
- (e) loss or damage from use in violation of any statutory laws and regulation;
- (f) loss of tools, accessories, electric cord, power cable, batteries and other similar accessories;
- (g) loss or damage resulting from lack of lubrication or other normal servicing or equivalent;
- (h) loss or damage to motors or other electric appliances or devices caused by overloading or artificial electrical current, including the use of under rated extension leads or electrical powered tools and machines including automatic voltage regulators;
- (i) damage to tyres, including punctures;
- (j) loss or damage caused by incorrectly synchronising the Plant with other plant, utility power source, main power supply or any other power supply;
- (k) loss or damage when the Plant is synchronised or otherwise connected to other plant or any other power source by any person other than an authorised agent of FD; or
- (l) Plant transported at any time during the Hire Period other than by FD or its authorised agent shall not be covered and are transported at the Hirer's risk.

12.9 Where loss or damage occurs that is covered by the Major Damage Waiver, the excess payable by the Hirer will be 20% of the replacement value of the Plant.

12.10 If the Plant is involved in any accident resulting in injury to persons or damage to the Plant or other property, the Hirer must immediately notify FD by telephone and then confirm in writing to FD's office. The Hirer must not make any admission, offer, promise, payment or indemnity without FD's prior written consent.

13. **Minor Damage Waiver**

13.1 If the Hirer pays the Minor Damage Waiver, then FD will, subject to clause 13.2, rectify at its cost the following damage to the Plant:

- (a) dints, scratches, chips or cracked glass;
- (b) blistered or discoloured paint or graffiti; or
- (c) other minor damage;

to the extent that the cost of rectification is less than 10% of the total replacement value of the Plant or \$10,000, whichever is less.

13.2 The Minor Damage Waiver will not apply to damage caused by or due to:

- (a) misuse, abuse, or overloading of the Plant;
- (b) lack of lubrication or failure to comply with FD's servicing requirements;
- (c) by overloading or artificial electrical current, use of under rated extension leads or electrical powered tools, machines or automatic voltage regulators; or
- (d) the Hirer breaching the Conditions.

13.3 If the cost of rectifying damage to the Plant is greater than the amount covered by the Minor Damage Waiver (if any), the Hirer must pay the difference and any other amount required to be paid under the Conditions, within 14 days of demand by FD.

13.4 FD will inspect the Plant upon return and will provide the Hirer with details of any damage or loss within 14 days of inspection.

14. **Responsibility & Indemnity**

14.1 The Hirer is solely responsible for all risks relating to or arising from the selection, use, storage and location of the Plant.

14.2 The Hirer must indemnify FD and keep it harmless from all costs, actions, claims, demands, loss or damage (including all legal costs on a full indemnity basis) arising from or in connection with the Plant or as a result of its use, storage or location, except where FD has failed to comply with a statutory guarantee under the ACL.

15. **Default**

15.1 If the Hirer

- (a) breaches any term of the Conditions;
- (b) allows the Plant to be damaged or lost, or the Plant is damaged or lost while under the responsibility of the Hirer;
- (c) defaults in payment by the due date of any amount payable;
- (d) is an individual and dies or becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally;
- (e) is a corporation and it enters into any scheme of arrangement, any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, has as a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Hirer; or

(f) in FD's reasonable opinion, the Hirer is likely to breach its obligations under the Contract;

FD may, subject to any applicable statutory stay of proceedings and without prejudice to any of its other accrued or contingent rights:

(g) require immediate payment of all money which would become payable by the Hirer to FD at a later date on any account, without further notice;

(h) charge the Hirer interest at 1.5% per month for the period from the due date until the date of payment in full;

(i) charge the Hirer for, and the Hirer must indemnify FD from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Conditions or to recover the Plant;

(j) charge the Hirer for the cost of repairing (subject to clause 13) or replacing any lost, damaged or destroyed Plant (subject to clause 12);

(k) charge the Hirer for subsequent lost hire charges as a result of the Plant being lost, damaged or destroyed until the Plant is repaired or replaced (subject to clause 12);

(l) claim damages from Hirer for breach of the Hire Contract

(m) cease or suspend supply of any further Plant to the Hirer; and/or

(n) by written notice to the Hirer, terminate any uncompleted Hire Contract.

15.2 On termination, the Hirer must on demand immediately return the Plant. If the Hirer does not, FD is entitled to enter any premises of the Hirer where the Plant is suspected to be to repossess the Plant. FD will not be liable for any damage caused and the Hirer must indemnify FD from any liability to it or any third party in respect of any damage, proceedings, claims, demands, costs and expenses howsoever arising.

16. **Personal Property Securities**

16.1 In this clause "PPSA" means the Personal Property Securities Act 2009 and any Regulations as amended from time to time.

16.2 For the purposes of this clause the terms used in this clause 16 have the same meaning as contained in the PPSA.

16.3 If FD determines that any Hire Contract is or contains a security interest for the purposes of the PPSA, the Hirer must, at its cost and immediately upon FD's request:

(a) do all things reasonably required (including execution of documents) to ensure FD has a continuously perfected security interest (as defined in the PPSA) created in the Plant pursuant to any Lease Agreement. This includes, but is not limited to:

(i) providing details of any item of collateral sufficient to complete registration of the security interest in accordance with the requirements of the PPS legislation;

(ii) enabling FD to apply for registration of or give any notification in relation to the security interest;

(iii) enabling FD to exercise rights in relation to the security interest;

(b) procure from any person considered by FD to be relevant to its security position, such agreements and waivers as FD may at any time require to ensure FD attains the highest-ranking security possible in respect of the security interest.

16.4 In circumstances where Hire Contract constitutes a PPS Lease, FD acknowledges that it is the grantor and FD is the secured party holder of a Purchase Money Security Interest ("PMSI") by virtue of the Hire Agreement and the PPSA.

16.5 The Hirer must not, except with FD's express written consent, allow to be, or be liable to become, perfected or attached in favour of any person, a security interest in any of the Plant, and whether to a provider of new value or otherwise.

16.6 Where permitted by the PPSA, the Hirer waives any right to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

16.7 FD and Hirer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA shall apply to the Hire Agreement.

16.8 To the extent permitted by the PPSA:

(a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Hirer or which place obligations on FD will apply only to the extent that they are mandatory or FD agrees to their application in writing;

(b) where FD has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

16.9 For the purposes of section 275(6) of the PPSA, FD and Hirer agree and undertake that the Hire Agreement and any information pertaining to the rental of the Plant and details of the Plant shall be kept confidential at all times. Neither party may disclose any information pertaining to the Hire Agreement or the rental of the Plant, except as otherwise required by law or that is already in the public domain.

16.10 The Hirer hereby consents and appoints FD to be an interested person and the Hirer's authorised representative for the purposes of section 275(9) of the PPSA.

17. **Clean Energy Legislation**

17.1 For the purposes of this clause 17:

(a) "Clean Energy Legislation" means:

- (i) the Clean Energy Act 2001 (Cth);
- (ii) the National Greenhouse and Energy Reporting Act 2007 (Cth); and
- (iii) any related legislation;

including any regulations, and as may be amended from time to time;

(b) the terms used in this clause 17 have the same meaning as contained in the Clean Energy Legislation.

17.2 The parties acknowledge and agree that:

- (a) the Plant may form, or may form part of, a facility for the purposes of the Clean Energy Legislation;
- (b) to the extent that the preceding paragraph is applicable, the Hirer acknowledges and confirms that, for the purposes of the Clean Energy Legislation:
 - (i) it has the authority to introduce and implement the operating, health and safety and environmental policies of the facility;
 - (ii) without limiting the preceding paragraph, it has operational control of the facility;
 - (iii) it or its controlling corporation may be required under the Clean Energy Legislation to register, submit reports or disclose matters in relation to the facility; and
 - (iv) it or its controlling corporation may be required to acquire or surrender carbon units, pay a unit shortfall charge, or to otherwise comply with any related obligations or mechanisms regarding the facility;
- (c) FD is not responsible for the matters referred to in the preceding paragraphs of this clause 17.2.

17.3 Notwithstanding anything else in these Conditions, the Hirer has no entitlement to, and must not in connection with these Conditions or any Hire Contract, directly or indirectly, pass on, assign or transfer to FD any cost or expense incurred or expected to be incurred by the Hirer on account of or in connection with the Clean Energy Legislation.

18. Privacy

18.1 FD is bound by the Privacy Act 1988. All personal information obtained in connection with the Hirer will be appropriately collected, stored, used, disclosed, transferred and destroyed in accordance with the Australian Privacy Principles ("APPs").

18.2 FD requires that the Hirer comply with the APPs in connection with any personal information supplied to it by FD in connection with these conditions.

19. Variation

19.1 FD may from time to time amend these Conditions and shall as soon as possible forward a copy of the amended version to the Hirer. The Hirer shall then have 21 days from the date of being sent such variations to decline the same and to terminate any Hire Contract but in the absence thereof they will be bound by such variations and shall not thereafter be entitled to dispute the same whether or not they apply or otherwise.

20. Miscellaneous

20.1 The law of Victoria, Australia from time to time governs the Conditions. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those courts.

20.2 FD's failure to enforce any of these Conditions shall not be construed as a waiver of any of the FD's rights.

20.3 If any clause is unenforceable it must be read down to be enforceable or, if it cannot be read down, the term must be severed from these Conditions, without affecting the enforceability of the remaining terms.

20.4 A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.

20.5 The Hirer represents, warrants and undertakes to FD that:

(a) none of the Hirer, the Hirer's personnel, the Hirer's affiliates (each a "Relevant Party"), is a Sanctioned Person;

(b) no Relevant Party is in breach of, nor shall breach, any Sanctions;

(c) the Plant shall not be used in any Sanctioned Country; and

(d) the Plant shall not be used directly or indirectly by, nor for the benefit of, any Sanctioned Person. The Hirer shall immediately notify FD in writing in the event of any breach of the foregoing.

If FD reasonably suspects a breach, the Hirer will provide reasonable information promptly on request to enable FD to satisfy itself. Any breach of this provision shall be a material breach of the Hire Contract.