

This Hire Purchase Agreement comprises the Goods Schedule and these Terms and Conditions made on the date in the Goods Schedule between CNH Industrial Capital, you and any Guarantor named in the Goods Schedule.

## **1. Offer and Acceptance**

- 1.1 By completing and signing this Hire Purchase Agreement you make an irrevocable offer to hire the Goods from CNH Industrial Capital upon the terms of this Hire Purchase Agreement.
- 1.2 CNH Industrial Capital is under no obligation to accept your offer. CNH Industrial Capital may accept your offer by signing the Goods Schedule in the space provided. The Hire Purchase Agreement does not commence until and unless CNH Industrial Capital accepts the Goods Schedule.
- 1.3 CNH Industrial Capital may on or before acceptance of a Goods Schedule notify you that pre-settlement conditions or conditions precedent apply in which case no Hire Purchase Agreement will be constituted by CNH Industrial Capital's acceptance of the Goods Schedule until all such conditions have been complied with to CNH Industrial Capital's reasonable satisfaction or waived by CNH Industrial Capital expressly in writing.
- 1.4 Where there is more than one Hirer named in the Schedule, each Hirer is jointly and severally liable to pay the Rental Instalments and fulfil all other obligations to CNH Industrial Capital under this Hire Purchase Agreement.

## **2. Term**

- 2.1 The Term commences on the Commencement Date and, subject to clauses 13, 20 and 25, continues for the period specified in the Goods Schedule.

## **3. Rental Instalments**

- 3.1 Throughout the Term you will pay to CNH Industrial Capital the Rental Instalments in the manner specified in the Goods Schedule.
- 3.2 You will pay to CNH Industrial Capital all other moneys in accordance with this Hire Purchase Agreement.
- 3.3 The Rental Instalments must be paid by direct debit or in such manner as CNH Industrial Capital may from time to time direct you in writing by noon on the Payment Date in funds that are immediately available. If the date is not a

Business Day then you must pay the Rental Instalment on the preceding Business Day.

- 3.4 Your obligation to pay the Rental Instalments and other moneys under these terms and conditions is absolute and unconditional. Without limitation your payment obligations will continue notwithstanding any defect in, breakdown, accident, loss, theft or damage to the Goods. Your payment obligations are absolute and are not subject to set-off or reduction for any reason.
- 3.5 If:
  - (a) a Tax Event occurs reducing CNH Industrial Capital's effective rate of return under this Hire Purchase Agreement; and
  - (b) CNH Industrial Capital has not been indemnified in respect of that Tax Event,

CNH Industrial Capital may at its absolute discretion, vary one or more of the Rental Instalments or the Payment Dates so as to take account of the Tax Event. CNH Industrial Capital will notify you in writing of any variation.

## **4. Your Warranties**

- 4.1 You warrant to CNH Industrial Capital that:
  - (a) all the information given to CNH Industrial Capital by you in connection with this Hire Purchase Agreement is correct and is not by content or omission misleading;
  - (b) the Goods will be used exclusively for business purposes, for the purpose for which they are designed and only for the Use of Goods; and
  - (c) in entering into this Hire Purchase Agreement you have not relied upon any representation or statement made by CNH Industrial Capital or on its behalf.

## **5. Acquisition of Goods**

- 5.1 You will obtain delivery of the Goods at your expense and, if required, arrange for its installation at your expense.
- 5.2 If the Goods are delivered before this Hire Purchase Agreement is accepted by CNH Industrial Capital the delivery is provisional. If provisional delivery occurs your obligations as to insurance, care, maintenance and use of the Goods under this Hire Purchase Agreement (except as to payment of the Rental Instalments) exist as soon as you execute this Hire Purchase Agreement.

5.3 You acknowledge that:

- (a) you have examined the Goods before accepting it and satisfied yourself as to its condition and suitability for your purposes and its compliance with any prescribed safety standards;
- (b) CNH Industrial Capital has given no representation or warranty regarding the quality, fitness, safety or suitability of the Goods, and no person is authorised by CNH Industrial Capital to do so;
- (c) you will look to the supplier, and not CNH Industrial Capital, for any collateral warranty you may require in relation to the Goods; and
- (d) CNH Industrial Capital may assign to a third party its rights to certain amounts payable by you under this Hire Purchase Agreement and in such event CNH Industrial Capital will undertake to the third party not to amend this Hire Purchase Agreement or do anything which may reduce your obligations under this Hire Purchase Agreement without the consent of the third party at its discretion.

## 6. Use and Location of Goods

6.1 You will:

- (a) preserve the value of the Goods and keep the Goods in good order and repair and properly operated and serviced in accordance with the manufacturer's instructions and the recommendations supplied in any operations manual;
- (b) not attempt to sell, dispose of or encumber the Goods in any way;
- (c) not alter any identifying markings on the Goods;
- (d) not to alter the Goods or operate them for any purpose other than the Use of Goods without first obtaining CNH Industrial Capital's written consent;
- (e) allow CNH Industrial Capital to inspect the Goods at any reasonable time upon CNH Industrial Capital giving you reasonable notice; and
- (f) not garage the Goods at other than the Usual Location without CNH Industrial Capital's prior written consent.

## 7. Ownership of Goods

7.1 During the Term the Goods always remains the property of CNH Industrial Capital and you only

have a right to use it. You may terminate this Hire Purchase Agreement and purchase the Goods at any time in accordance with clause 13.

## 8. Insurance

8.1 You must:

- (a) insure and keep the Goods insured against public risk, loss, fire, accident, theft and damage or as otherwise reasonably requested by CNH Industrial Capital for an amount equal to the full replacement value of the Goods and to insure and keep insured against all liability howsoever arising in respect of any such occurrence with a reputable insurer in CNH Industrial Capital's name as owner and your name as Hirer;
- (b) hand to CNH Industrial Capital all policies of insurance, evidence of annual renewals and to pay promptly all premiums and stamp duty in respect of such policies and appoint CNH Industrial Capital as your agent to make, enforce or settle any insurance claim in respect of the Goods and to permit CNH Industrial Capital to receive all insurance moneys and execution of this Hire Purchase Agreement shall be proof of CNH Industrial Capital's authority to receive such moneys; and
- (c) not do or permit or suffer to be done anything which may prejudice any such insurance.

## 9. Loss or Damage

9.1 You must tell CNH Industrial Capital if any of the Goods are:

- (a) stolen; or
- (b) lost; or
- (c) destroyed; or
- (d) damaged or impaired to such an extent that you or the insurer decides that repair is impractical or uneconomic.

(collectively called the "Affected Goods")

9.2 If any of these events happen, and CNH Industrial Capital and you agree to the Affected Goods being replaced, the replacement goods will then be the subject of this Hire Purchase Agreement.

9.3 CNH Industrial Capital is entitled to receive all amounts which are payable to you by any insurer or other person because any of the things in clause 9.1 happens.

9.4 If within thirty (30) days after the event in clause 9.1 happens, CNH Industrial Capital and you have not agreed to a replacement, then on the next Payment Date after the thirty (30) day period, you must pay CNH Industrial Capital in addition to any Rental Instalment and other amounts due on that date:

- (a) the sum of the amounts calculated in accordance with clauses 12.2(b), (c), (d) and (e) insofar as those relate to the Affected Goods plus any applicable GST; less
- (b) any money CNH Industrial Capital has received from an insurer or other person because the event in clause 9.1 happened.

Without limiting any other clause of this Hire Purchase Agreement you must also pay on its due date any Rental Instalment or other amount that falls due during the thirty (30) day period. If, before the next Payment Date after the event in clause 9.1 happens, CNH Industrial Capital and you have agreed not to replace the Affected Goods, then on that Payment Date, you must pay in addition to any Rental Instalment or other amount due on that date, the amount referred to in (a) less the amount referred to in (b).

9.5 This Hire Purchase Agreement is terminated in relation to the Affected Goods when you make payment under clause 9.4. This Hire Purchase Agreement will continue in respect of the unaffected Goods and CNH Industrial Capital will notify you in writing of the revised Rental Instalments which are payable in respect of the unaffected Goods.

9.6 If CNH Industrial Capital receives money from the insurer or any other person after you have paid CNH Industrial Capital the amount due under clause 9.4, CNH Industrial Capital will refund to you, up to the amount you paid to CNH Industrial Capital, the amount CNH Industrial Capital received less all money then payable by you under the Hire Purchase Agreement.

## 10. Essential Terms

10.1 The following terms are fundamental and essential terms:

- (a) that you pay all Rental Instalments on time (clause 3);
- (b) that you insure the Goods (clause 8);
- (c) that you do not cease or threaten to cease carrying on business;
- (d) that you or a Guarantor do not become Insolvent;

- (e) that you do not attempt to sell, dispose of or encumber the Goods in any way (clause 6.1(b));
- (f) each of your warranties contained in clause 4 are and remain correct;
- (g) that any Guarantor executes this Hire Purchase Agreement effectively and is not discharged (clause 34);
- (h) you or a Guarantor are not in default of a Related Agreement; and
- (i) where you are a corporation (but not a Listed Corporation) no change in your control takes place without the prior written consent of CNH Industrial Capital.

10.2 You will be taken to have repudiated this Hire Purchase Agreement if you breach any of the essential terms referred to in clause 10.1.

## 11. Default

11.1 An event of default occurs if you do not perform on time any of your obligations under these terms and conditions, other than any of the essential terms referred to in clause 10.1, and fail to rectify such failure to perform within seven (7) Business Days of written notice from CNH Industrial Capital requesting its remedy.

## 12. Termination by CNH Industrial Capital

12.1 CNH Industrial Capital may give you notice terminating this Hire Purchase Agreement if:

- (a) there is a breach of any essential term specified in clause 10.1; or
- (b) you commit an event of default in accordance with clause 11.1.

12.2 If CNH Industrial Capital terminates this Hire Purchase Agreement under clause 12.1(a) or (b), you must immediately:

- (a) return the Goods to CNH Industrial Capital in good working order and condition at a place specified by CNH Industrial Capital;
- (b) pay to CNH Industrial Capital all other moneys payable under this Hire Purchase Agreement;
- (c) pay to CNH Industrial Capital on demand the amount of any loss reasonably incurred by CNH Industrial Capital in terminating the Hire Purchase Agreement;
- (d) pay to CNH Industrial Capital as liquidated damages the Termination Value; and

- (e) pay to CNH Industrial Capital the Early Termination Fee and any early break costs incurred by CNH Industrial Capital to a third party in pre-paying any funding arrangements in connection with CNH Industrial Capital purchasing the Goods and hiring the Goods to you and early termination of this Hire Purchase Agreement.
- 12.3 If you do not return the Goods as you are required to, CNH Industrial Capital may enter any premises where CNH Industrial Capital believes the Goods may be located and retake possession of the Goods. In such event you release CNH Industrial Capital from and indemnify CNH Industrial Capital against any liability or damage however arising or incurred in retaking or attempting to retake possession of the Goods.
- 12.4 After CNH Industrial Capital has taken possession of the Goods CNH Industrial Capital may sell the Goods.
- 12.5 If CNH Industrial Capital has taken possession of the Goods and sold them and the price CNH Industrial Capital gets for them is more than the money owed and paid by you to CNH Industrial Capital then CNH Industrial Capital will refund or credit to you the sale price of the Goods (less all costs and expenses CNH Industrial Capital incurs in selling or storing it). If the Goods are not returned or cannot be sold the sale price will be taken to be nil.
- 12.6 CNH Industrial Capital will apply any moneys received by us under this clause in payment of the moneys owing to CNH Industrial Capital by you in the order and manner CNH Industrial Capital thinks fit in our absolute discretion.
- 12.7 Any sale or disposal of the Goods by CNH Industrial Capital is final and you are not to challenge CNH Industrial Capital's right to sell or dispose of the Goods, nor the right of any person to acquire the Goods.
- 12.8 Any termination of this Hire Purchase Agreement or any payment by you does not affect any other rights CNH Industrial Capital has under these terms and conditions or at law or in equity.
- 12.9 Where the Goods are subject to the Goods Act 1958 (Victoria) and are repossessed by CNH Industrial Capital then clause 12.2 does not apply and CNH Industrial Capital must refund to you:
- (a) if CNH Industrial Capital sells or disposes of the Goods, an amount equal to the proceeds of the sale of the Goods; or
  - (b) if CNH Industrial Capital does not sell or dispose of the Goods or if CNH Industrial Capital fails to sell or dispose of the Goods as soon as reasonably practicable after taking possession (or such other time as agreed), an amount equal to the best price reasonably obtainable by CNH Industrial Capital for the Goods at the time CNH Industrial Capital took possession of the Goods;
- (c) less any amounts which CNH Industrial Capital is entitled to deduct from those proceeds under clause 12.10.
- 12.10 If clause 12.9 applies CNH Industrial Capital is entitled to deduct the following amounts:
- (a) all amounts owed by you under this Hire Purchase Agreement as at the date of repossession; and
  - (b) all costs and reasonable expenses CNH Industrial Capital incurs in taking possession of the Goods; and
  - (c) all costs and reasonable expenses CNH Industrial Capital incurs for storage, repair or maintenance of the Goods; and
  - (d) all costs and reasonable expenses CNH Industrial Capital incurs in selling or disposing of the Goods, whether or not CNH Industrial Capital has subsequently sold or disposed of the Goods.
- 13. Option to Purchase**
- 13.1 You may terminate this Hire Purchase Agreement and purchase the Goods from CNH Industrial Capital at any time by:
- (a) at least 10 business days before you want to purchase the Goods, telling CNH Industrial Capital in writing that you intend to purchase the Goods;
  - (b) paying to CNH Industrial Capital all Rental Instalments which are still to fall due (including the Final Payment);
  - (c) paying to CNH Industrial Capital all amounts of any loss reasonably incurred by CNH Industrial Capital in terminating this Hire Purchase Agreement including the Early Termination Fee (if applicable), any early repayment or break costs incurred by CNH Industrial Capital to a third party in pre-paying any funding arrangements in connection with CNH Industrial Capital purchasing the Goods and hiring the Goods to you and the early termination of this Hire Purchase Agreement; and
  - (d) paying to CNH Industrial Capital all other monies owed by you to CNH Industrial

Capital under the Hire Purchase Agreement.

13.2 When you pay CNH Industrial Capital the amounts specified in clause 13.1(b), (c) and (d) and provided you have done everything you should have done under this Hire Purchase Agreement, title to the Goods will pass to you on an "as-is where-is" basis and without any representation or warranty from CNH Industrial Capital in relation to title, condition, existence or any other matter.

#### **14. Exclusion of Warranties**

14.1 To the full extent permitted by law, all express and implied terms, conditions and warranties (other than those terms expressly set out in this Hire Purchase Agreement) are excluded.

14.2 CNH Industrial Capital is not liable for any damage, injury or loss to any person or property arising from the possession, operation or use of the Goods.

14.3 Whether or not the Trade Practices Act 1974 or any laws to a similar effect apply, CNH Industrial Capital's liability or anything in relation to the Goods and its use, including damage or economic loss is limited to the maximum extent permitted by law. In any event CNH Industrial Capital's liability is limited, at its option to:

- (a) the replacement or cost of replacement of the relevant Goods with the same or equivalent Goods; or
- (b) the repair or cost of repair of the relevant Goods.

#### **15. Expiry of Term and Return of Goods**

15.1 If the Term is not extended under clause 20.1 or varied under clause 25 and you have not exercised your option to purchase the Goods under clause 13 then at the end of the Term you must:

- (a) return the Goods to CNH Industrial Capital in good working order and condition at a place specified by CNH Industrial Capital; and
- (b) pay to CNH Industrial Capital all moneys then payable under this Hire Purchase Agreement; and
- (c) provided you have paid the moneys due under clause 15.1(b) CNH Industrial Capital will sell the Goods and refund or credit to you the sale price of the Goods (less all costs and expenses CNH Industrial Capital incurs in selling or storing it).

15.2 If you do not return the Goods as you are required to, CNH Industrial Capital may enter any premises where CNH Industrial Capital believes the Goods may be located and retake possession of the Goods. In such event, the provisions of clauses 12.5 to 12.10 shall apply and you release CNH Industrial Capital from and indemnify CNH Industrial Capital against any liability or damage however arising or incurred in retaking or attempting to retake possession of the Goods.

#### **16. Costs, Duties, Charges and Commissions**

16.1 You must pay or reimburse CNH Industrial Capital for:

- (a) all current and future levies and taxes (other than income tax), stamp duties and other government duties payable in connection with this Hire Purchase Agreement or any payment, receipt or other transaction arising under or contemplated by this Hire Purchase Agreement;
- (b) any expenses which CNH Industrial Capital may reasonably incur in retaking or attempting to retake possession of the Goods;
- (c) any moneys which CNH Industrial Capital may reasonably think fit to pay to make good any failure by you to comply with any of your obligations; and
- (d) any costs or expenses (including legal costs) reasonably incurred by CNH Industrial Capital in connection with the protection of the Goods or the enforcement of CNH Industrial Capital's rights under this Hire Purchase Agreement.

16.2 Without limiting clause 16.1, where CNH Industrial Capital is obliged to pay GST on any supply under this Hire Purchase Agreement, the Rental Instalments or other payments due relating to that supply will be increased to cover the amount of that GST (but only to the extent to which GST has not already been included in those instalments or payments). CNH Industrial Capital will notify you of the amount of any such increase and provide you with a tax invoice to enable you to claim an input tax credit, if you are so entitled.

16.3 You agree to CNH Industrial Capital paying commission, fees or other remuneration to any broker, agent, dealer or other person who introduces you to CNH Industrial Capital or CNH Industrial Capital to you.

## 17. Maintenance Charges

17.1 If any maintenance charges for the Goods have been included in the Rental Instalments, you acknowledge that:

- (a) you have given CNH Industrial Capital a direction to pay the maintenance provider and to include such charges in the Rental Instalments;
- (b) CNH Industrial Capital is not responsible for the maintenance of the Goods;
- (c) any failure or breach on the part of the maintenance provider will not in any way release you from the requirement for you to pay the Rental Instalments and observe your other obligations under this Hire Purchase Agreement.

## 18. Your Obligations

18.1 You shall:

- (a) use the Goods only in accordance with such instructions and recommendations relating to the care and operation of the Goods as may be issued by the manufacturer of the Goods from time to time be advised in writing; and
- (b) at your own cost ensure the Goods are maintained by qualified personnel in accordance with all instructions and recommendations issued by their manufacturer and, if necessary, repaired by qualified personnel so they remain at all times in first class condition and subject to any applicable warranty.

18.2 You:

- (a) irrevocably authorise, and must use your best endeavours to have others authorise, CNH Industrial Capital to enter upon any premises where CNH Industrial Capital reasonably believes the Goods are located to examine their state of repair and operation; and
- (b) have no authority to pledge CNH Industrial Capital's credit or create any interest or right in, or over, the Goods and you must notify all third parties of this provision before they work on the Goods.

## 19. Indemnities

19.1 You indemnify CNH Industrial Capital against:

- (a) any loss of or damage to the Goods however arising;

- (b) liability for any death, injury or damage to any person or property arising directly or indirectly from the Goods or its use;
- (c) any claim for breach of intellectual property rights arising in connection with the Goods or its use;
- (d) any loss arising from any part of this Hire Purchase Agreement being void, voidable or unenforceable for any reason;
- (e) any loss or liability incurred by CNH Industrial Capital resulting from possession, use or operation of the Goods by you;
- (f) any liability which CNH Industrial Capital may incur under any legislation by reason of the use of the Goods for any purpose other than as stated by you to CNH Industrial Capital provided that such loss, damage, claim or liability is not due to CNH Industrial Capital's negligence;
- (g) anything done by CNH Industrial Capital in exercise or purported exercise of CNH Industrial Capital's rights under this Hire Purchase Agreement;
- (h) any claim affecting CNH Industrial Capital's interest in or title to the Goods and any action taken by CNH Industrial Capital to protect such interest and title; and
- (i) any breach by you of your obligations under this Hire Purchase Agreement, the occurrence of a breach of an essential term or an event of default in accordance with clauses 10 and/or 11 of this Hire Purchase Agreement, or the repossession of the Goods or its storage.

19.2 Each Indemnity in clause 19.1 is a separate and independent obligation and continues after termination of this Hire Purchase Agreement.

## 20. Extension of Term and Holding Over

20.1 If the Term is not varied in accordance with clause 25, you have not exercised your option to purchase the Goods under clause 13 and you do not return the Goods to CNH Industrial Capital at the end of the Term:

- (a) the hire of the Goods will continue on a monthly basis as if the expiration of the Term had not occurred and this Hire Purchase Agreement had not ended;
- (b) you must continue paying Rental Instalments; and

- (c) if you return the Goods before a Rental Instalment is due you must still pay CNH Industrial Capital the whole Rental Instalment for that month.
- 20.2 The monthly hiring under clause 20.1 may be terminated:
- (a) by you exercising your option to purchase the Goods under clause 13; or
  - (b) by either party giving notice to the other at any time to return the Goods or to accept their return. Once notice is given the Goods must be returned to CNH Industrial Capital on the date for payment of the next Rental Instalment and at that time each party must comply with clause 15.1.
- 20.3 The Final Payment does not reduce because the hiring continues under clause 20.1 and you make further payments of Rental Instalments.
- 20.4 If you do not return the Goods as you are required to, CNH Industrial Capital may enter any premises where CNH Industrial Capital believes the Goods may be located and retake possession of the Goods. In such event you release CNH Industrial Capital from and indemnify CNH Industrial Capital against any liability or damage however arising or incurred in retaking or attempting to retake possession of the Goods.
- 20.5 Once you have returned the Goods or after CNH Industrial Capital has taken possession of the Goods, CNH Industrial Capital may sell the Goods, and the provisions of clauses 12.5 to 12.10 shall apply.

## **21. Overdue Payments**

- 21.1 You must pay interest calculated on daily balances on any amount which you do not pay on time for the period it is unpaid.
- 21.2 The rate of interest applying to each daily balance is the Default Rate.
- 21.3 Each month (or at any other time CNH Industrial Capital chooses) CNH Industrial Capital may add to the amount you owe CNH Industrial Capital any interest payable under clause 21.1 which is overdue (this is known as “capitalising” or “compounding” the interest). You will then be liable for interest under clause 21.1 on the total amount.
- 21.4 You must pay all interest payable under clauses 21.1 or 21.3 when CNH Industrial Capital specifies.
- 21.5 Your obligation to pay an amount on the date it becomes due is not affected by clauses 21.1 to 21.4.

- 21.6 If any amount you must pay under the Hire Purchase Agreement becomes merged in a court order, you must pay interest on that amount as a separate obligation. The interest is payable from the date CNH Industrial Capital first asks you for the amount until that amount is paid. This obligation is not affected by the court order. The rate is the rate in clause 21.2 or the rate in the court order, whichever is the higher.

- 21.7 Clauses 21.1 to 21.6 apply equally to the Guarantor. In relation to any amount owed to CNH Industrial Capital by the Guarantor, each reference to “you” in these clauses is taken to be a reference to the Guarantor.

## **22. Compliance with Statutes**

- 22.1 You must at your own cost comply and cause CNH Industrial Capital to comply with all statutes, regulations, ordinances, and by-laws and the conditions of any licence or approval relating to the Goods or their use, installation, removal, replacement, maintenance or repair.

## **23. Trusts**

- 23.1 Your liability is not limited or otherwise affected by having entered into this Hire Purchase Agreement as trustee of the trust named in the Schedule. If you have entered into this Hire Purchase Agreement as trustee of the trust you warrant to CNH Industrial Capital that:
- (a) you are the sole trustee of the trust;
  - (b) you have the authority to enter into this Hire Purchase Agreement as trustee of the trust and to do all things necessary to comply with your obligations under this Hire Purchase Agreement in accordance with the deed of trust;
  - (c) you have a right of indemnity against the trust assets and will exercise that right to enable payment of moneys due under this Hire Purchase Agreement; and
  - (d) this Hire Purchase Agreement is for the benefit of the trust;
  - (e) no action has been taken or proposed to terminate the trust;
  - (f) as a separate and independent right, authorise CNH Industrial Capital to have recourse to and satisfy any of your liability under this Hire Purchase Agreement directly out of the trust assets.

## **24. CNH Industrial Capital as your Attorney**

- 24.1 For valuable consideration you and all Guarantors each irrevocably appoint CNH Industrial Capital and each person within CNH

Industrial Capital or a Related Entity whose title includes the word “director”, “secretary”, “manager” or “executive” severally your attorneys with power (before or after acceptance):

- (a) to do anything the attorney (acting reasonably) considers desirable to give effect to this Hire Purchase Agreement;
- (b) to complete or correct any details of this Hire Purchase Agreement (including goods schedules);
- (c) to do anything you should have done under this Hire Purchase Agreement; and
- (d) after the occurrence of any breach of an essential term or event of default in accordance with clauses 10 and 11 of this Hire Purchase Agreement, to do anything the attorney considers desirable to facilitate the exercise of CNH Industrial Capital’s rights under this Hire Purchase Agreement.

24.2 You and each Guarantor must ratify all acts of its attorneys under clause 24.1. You indemnify CNH Industrial Capital and each attorney appointed by clause 24.1 against any loss, damage, cost or claim suffered or incurred as a direct or indirect consequence of the exercise of any of CNH Industrial Capital’s powers.

## **25. Variation**

25.1 Other than as provided in clauses 3.5 and 9.5, no variation of this Hire Purchase Agreement will be effective unless it is in writing and signed by both parties.

## **26. Severance**

26.1 If any provision of these terms and conditions is or becomes illegal, invalid or unenforceable, such provision shall be severed and the remaining provisions shall continue unaffected.

## **27. Governing Law**

27.1 This Hire Purchase Agreement is governed by the laws of New South Wales. You agree to submit to the non-exclusive jurisdiction of the court system of that state.

## **28. Waiver**

28.1 No waiver by CNH Industrial Capital of any default, breach or repudiation by you will affect CNH Industrial Capital’s rights in respect of any further or continuing default, breach or repudiation.

## **29. Assignment and Agency**

29.1 CNH Industrial Capital may sell or assign, either absolutely or by way of security, its rights under this Hire Purchase Agreement or to the Goods.

29.2 You are not permitted to assign any rights or obligations you may have under this Hire Purchase Agreement.

29.3 You acknowledge that CNH Industrial Capital may have entered into this Hire Purchase Agreement as the agent for some other person and that the other person has or may acquire property in the Goods.

## **30. Business Day**

30.1 If the day on which anything to be done is not a Business Day, then:

- (a) if it involves a payment other than a payment which is due on demand, it shall be done on the preceding Business Day; and
- (b) in all other cases, it shall be done no later than the next Business Day.

## **31. Notices**

31.1 Any notice to be given must be addressed to the relevant party at the address set out in the Goods Schedule to this Hire Purchase Agreement or at the address last notified by each party to the other in writing.

31.2 Notices may be hand delivered, sent by pre-paid mail, facsimile or email.

31.3 Notices sent:

- (a) by pre-paid mail will be taken to be received on the third Business Day after posting; and
- (b) by facsimile or email will be taken to be received on production of a transmission report from the transmitting machine indicating a successful transmission of the facsimile or email.

## **32. Blanks and Corrections**

32.1 You authorise CNH Industrial Capital to complete any blank spaces in the Goods Schedule relating to the Commencement Date and the serial numbers and other identification of the Goods. You also authorise CNH Industrial Capital to rectify any details in the Goods Schedule to correct any manifest errors or omissions.



### 33. Certificates

33.1 The certificate of an officer of CNH Industrial Capital will (in the absence of manifest error) be prima facie evidence of the matters stated in that certificate.

### 34. Guarantee and Indemnity

34.1 Each Guarantor acknowledges that CNH Industrial Capital enters into this Hire Purchase Agreement at the Guarantor's request and upon the basis of this guarantee and indemnity having been given.

34.2 Each Guarantor unconditionally and irrevocably guarantees the punctual performance of all of the Hirer's obligations under this Hire Purchase Agreement. Each Guarantor must immediately upon demand pay CNH Industrial Capital any amount not paid when due by the Hirer under this Hire Purchase Agreement.

34.3 Each Guarantor unconditionally and irrevocably indemnifies CNH Industrial Capital against all losses, damages, costs, charges, liabilities and expenses which CNH Industrial Capital may at any time suffer or incur because:

- (a) any of the Hirer's obligations expressed in this Hire Purchase Agreement is void, voidable or wholly or partially unenforceable;
- (b) CNH Industrial Capital has to disgorge any money paid to CNH Industrial Capital on the Hirer's account under this Hire Purchase Agreement; or
- (c) the Hirer fails to perform any obligation under this Hire Purchase Agreement.

34.4 The indemnity in clause 34.3 is a continuing obligation, separate and independent from each Guarantor's other obligations under any other Hire Purchase Agreement. It continues after those other obligations end.

34.5 Each Guarantor must pay moneys owing under this Hire Purchase Agreement in immediately available funds without any deduction and waives any right of set-off and any right to rely on any defence available to the Hirer.

34.6 The obligations and liabilities of each Guarantor and CNH Industrial Capital's rights under this Hire Purchase Agreement continue and are not affected by:

- (a) CNH Industrial Capital granting of any time or indulgence to the Hirer or another person;

(b) CNH Industrial Capital compounding or compromising with or wholly or partially releasing the Hirer or another person;

(c) laches, acquiescence, delay, acts, omissions or mistakes by CNH Industrial Capital;

(d) CNH Industrial Capital taking, varying, wholly or partially discharging or otherwise dealing with or losing or impairing any security for the Hirer's obligations under any this Hire Purchase Agreement or any such security being or becoming void, voidable or unenforceable;

(e) any person who is intended to assume liability as a Guarantor under this Hire Purchase Agreement not doing so effectively, failing to execute this Hire Purchase Agreement or being discharged;

(f) any novation, assignment, termination or variation of this Hire Purchase Agreement;

(g) the Hirer's death, mental illness or bankruptcy or the death, mental illness or bankruptcy of any individual Guarantor;

(h) if the Hirer or the Guarantor are a corporation and are Insolvent or deregistered;

(i) a Hire Purchase Agreement being constituted without reference to or consent by the Guarantor; or

(j) anything else which might otherwise have such effect at law or in equity.

34.7 (a) Each Guarantor's liability is not limited or otherwise affected by having entered into this Hire Purchase Agreement as trustee of the trust named in the Schedule.

(b) If any Guarantor has entered into this Hire Purchase Agreement as trustee of the trust, the Guarantor must exercise its right of indemnity against trust assets to enable payment of money due under this Hire Purchase Agreement and as a separate and independent right, the Guarantor authorises CNH Industrial Capital to have recourse to and satisfy any liability of the Guarantor under this Hire Purchase Agreement directly out of the trust assets.

34.8 Each Guarantor acknowledges CNH Industrial Capital may claim against the Guarantor under this Hire Purchase Agreement before CNH Industrial Capital enforces any of its rights:

(a) against the Hirer or any other person; or

(b) under another document such as a guarantee and indemnity, mortgage, charge or other security.

34.9 This guarantee and indemnity does not merge with or adversely affect:

(a) any other guarantee and indemnity, or mortgage, charge or other security, or right or remedy to which CNH Industrial Capital is entitled at any time; or

(b) a judgment or order which CNH Industrial Capital obtains against the Guarantor in respect of an amount payable under this guarantee and indemnity.

CNH Industrial Capital may still exercise its rights under the guarantee and indemnity as well as under the judgment, order, other guarantee or security.

34.10 So long as an amount payable under this Hire Purchase Agreement remains unpaid, each Guarantor may not, without CNH Industrial Capital's consent:

(a) exercise any legal rights to claim to be entitled to the benefit of another guarantee or mortgage, charge or other security given in connection with an amount payable under this Hire Purchase Agreement;

(b) claim an amount from the Hirer or another Guarantor under a right of indemnity; or

(c) claim an amount in the Hirer's or another Guarantor's insolvency.

## 35. PPSA

35.1 You agree to immediately notify CNH Industrial Capital in writing if you change your name or address or if there are any changes to any of the data relevant to a financing statement under the PPSA in respect of this Hire Purchase Agreement, including (but not restricted to), any of the information in the Goods Schedule.

35.2 CNH Industrial Capital may register any Security Interest which it considers arises out of this Hire Purchase Agreement (even before that Security Interest starts).

35.3 You agree that CNH Industrial Capital has a Security Interest in the Goods, securing the amount owing by you to CNH Industrial Capital under this Hire Purchase Agreement and that the Security Interest extends to any proceeds (as defined in the PPSA) of the Goods.

35.4 You agree to promptly do anything (for example obtaining consents, signing documents, having others sign documents, supplying information,

and entering into a subordination or priority agreement with any other secured party) which CNH Industrial Capital asks to:

(a) ensure that the Security Interest created under this Hire Purchase Agreement is perfected and otherwise effective;

(b) assist CNH Industrial Capital to exercise any right in connection with the Security Interest.

35.5 If you also acquire a Security Interest in the Goods (for example, if you sublease them, even without consent), you must take all steps necessary to:

(a) obtain the highest ranking priority possible in respect of that Security Interest (such as duly perfecting a purchase money security interest); and

(b) reduce as far as possible the risk of a third party acquiring an interest in the Goods free of CNH Industrial Capital's Security Interest or your Security Interest.

35.6 You agree that any exercise by CNH Industrial Capital of its rights to enforce any Security Interest in the Goods necessarily also involves an exercise of all intellectual property rights relating to the Goods.

35.7 You certify that the Goods will be held by you in the furtherance of an enterprise to which an Australian business number has been allocated.

35.8 You waive any right you may have at any time (including under s157 of the PPSA) to receive a copy of a verification statement or other notice contemplated in the PPSA.

35.9 You waive your right to receive anything from CNH Industrial Capital under s275 of the PPSA, and agree not to make any request of CNH Industrial Capital under that section. You agree with CNH Industrial Capital for the purposes of s275(6)(a) of the PPSA that neither it nor you will disclose any information of the kind mentioned in s275(1) of the PPSA (except as provided for in s275(7)).

35.10 You authorise and request CNH Industrial Capital pursuant to s275(7)(c) of the PPSA to obtain from the holder of any other Security Interest in the Goods any of the information referred to in s275(1) of the PPSA relevant to that Security Interest.

35.11 Pursuant to s115 of the PPSA, you and CNH Industrial Capital contract out of each provision of the PPSA which s115 permits, except sections 123, 126, 128, 134(1) and 135. (However, sections 123, 128 and 134(1) do not apply to the extent that they would derogate from a right

provided for in this Agreement on the part of CNH Industrial Capital).

35.12 To the extent permitted by law, you agree that CNH Industrial Capital owns, and you waive any rights you may have to, anything installed in or affixed to the Goods, including any rights you might otherwise have under Part 3.3 of the PPSA.

### 36. Privacy Matters

(For the purposes of this clause 36 only, a reference to “you” or “your” is also a reference to the directors of the Hirer, and/or any Guarantor of the Hirer and, where the Hirer is one or more individuals or a partnership, each and every individual or partner.)

36.1 CNH Industrial Capital may collect personal information from you either directly or indirectly. CNH Industrial Capital will use, disclose and make accessible your personal information in accordance with its Privacy Policy, the Privacy Act 1988 and the National Privacy Principles.

36.2 You authorise CNH Industrial Capital to give to and seek personal information about your credit arrangements or obtain a consumer or commercial credit report containing information about you from any credit reporting agency.

36.3 The personal information which CNH Industrial Capital may give or seek includes (where applicable):

- (a) your name, sex, date of birth, current address and last two addresses, current or last known employer and driver’s licence number;
- (b) the fact that you have entered into or propose to enter into a Hire Purchase Agreement, the value of the Goods hired or proposed to be hired under a Hire Purchase Agreement, and any obligations you may have under this Hire Purchase Agreement;
- (c) that you have drawn cheques for \$100.00 or more which have been dishonoured more than once; and
- (d) that court judgments and/or bankruptcy orders have been made against you.

36.4 You authorise CNH Industrial Capital to use the credit report, or obtain a further credit report, for the purposes of collecting overdue payments relating to credit owed by you.

36.5 You authorise CNH Industrial Capital to give to and seek credit reports and other information about your credit arrangements from:

- (a) any credit providers named in any application submitted by you; and
- (b) any credit providers that may be named in a credit report issued by a credit reporting agency.

36.6 Your authorisation entitles CNH Industrial Capital to exchange information about your credit worthiness, credit standing, credit history and credit capacity.

36.7 Your authorisation also entitles CNH Industrial Capital to give the following information to a credit reporting agency (where applicable):

- (a) that you are sixty (60) days or more overdue in making a payment to us and that steps have been taken to recover all or any part of the amount which you owe; and
- (b) that in CNH Industrial Capital’s opinion you have committed a serious credit infringement.

36.8 Credit reports and other personal information CNH Industrial Capital obtains about your credit arrangements from a credit reporting agency or a credit provider may be used by CNH Industrial Capital for the following purposes:

- (a) to assess any application submitted by you;
- (b) to collect payments that are overdue;
- (c) to notify a credit provider if you breach any obligations you may have under this Hire Purchase Agreement;
- (d) to exchange personal information with other credit providers as to the status of your account where you are in breach of a contract with a credit provider;
- (e) to assess your credit worthiness;
- (f) to allow a credit reporting agency to create a file about you;
- (g) to administer your account;
- (h) to monitor your performance or compliance under any agreement for sale or supply of goods or services connected to provision of credit by CNH Industrial Capital; and
- (i) any other purpose permitted or required by law.

36.9 You authorise CNH Industrial Capital to exchange personal information about you with:

- (a) any person or organisation named by you in an application or a Goods Schedule submitted by you or provided from time to time;
- (b) your proposed Guarantors;
- (c) CNH Industrial Capital's collection agents or unrelated debt recovery organisation if you are in breach of this Hire Purchase Agreement; or
- (d) CNH Industrial Capital's related companies and organisations which service your account and this Hire Purchase Agreement.

36.10 You also authorise your accountant to release and disclose your financial information to CNH Industrial Capital or its agents and you authorise government authorities which hold your driver's licence and/or motor vehicle registration information to confirm your address details to CNH Industrial Capital or CNH Industrial Capital's authorised agents.

36.11 You authorise CNH Industrial Capital, its agents and contractors to use your personal information for marketing, planning and product development purposes by CNH Industrial Capital or CNH Industrial Capital's related companies. You can request not to receive direct marketing communications.

36.12 You can request a copy of CNH Industrial Capital's Privacy Policy or obtain access to or update your personal information by writing to "The Privacy Officer" at CNH Industrial Capital's address in this Agreement.

36.13 If you provide personal information about another individual you agree that you will inform the individual that personal information about them has been supplied to CNH Industrial Capital, why it has been provided and that they can contact CNH Industrial Capital to obtain access to or update their personal information or get a copy of CNH Industrial Capital's Privacy Policy.

36.14 If you do not provide the information requested or do not give your authority for the use of the information CNH Industrial Capital may decline any application submitted by you.

36.15 CNH Industrial Capital may use or disclose this information before, during or after the term of this Hire Purchase Agreement.

### 37. Definitions and Interpretation

37.1 In this terms and conditions:

**Business Day** means a day in which banks are open for general banking business in the state or

territory of the Hirer's address specified in the Goods Schedule.

**Commencement Date** means the date the Hirer's offer is accepted by CNH Industrial Capital and as specified in the Goods Schedule.

**Default Rate** means the interest rate which is three percent (3%) above the interest rate implicit in this Agreement..

**Discount Rate** means the interest rate which is two percent (2%) less than the rate implicit in this Hire Purchase Agreement, as reasonably determined by us.

**Early Termination Fee** means CNH Industrial Capital's reasonable administrative costs associated with an early termination of this Hire Purchase Agreement.

**Final Payment** means the final payment specified in the Goods Schedule.

**Goods** means the equipment described in the Goods Schedule, and includes any part of that equipment, any substituted equipment and any accessories, modifications, implements, manuals, certificates of registration, licences or other items relating thereto (together the "accessories") regardless of whether such accessories were provided at the time of supply of the Goods or acquired subsequently by the Hirer.

**Goods Schedule** means the schedule entitled Goods Schedule - Tax Invoice which forms part of this Hire Purchase Agreement.

**Guarantor** means any guarantor named as such in the Goods Schedule.

**GST** has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999.

**Hire Purchase Agreement** means the agreement between CNH Industrial Capital, you and any Guarantor comprised of the Goods Schedule and these Terms and Conditions.

**Hirer**, you or your means the person named as Hirer in the Goods Schedule.

**Insolvent** means unable to pay debts when they fall due, in bankruptcy, in receivership administration, wound up, subject to any arrangements, assignment or composition with creditors or protected from any creditors under any legislation.

**Listed Corporation** has the same meaning given to that term in the Corporations Act 2001 (Cth).

**Payment Date** means each date calculated in accordance with the Rental Instalments section of the Goods Schedule.

**PPSA** means the Personal Property Securities Act 2009 (Cth) and all regulations and other subordinate legislations relating to it.

**Related Agreement** means any agreement between you and CNH Industrial Capital or any agreement between you, a Guarantor and/or Related Entity of CNH Industrial Capital.

**Related Entity** has the meaning given to it in the Corporations Act.

**Rental Instalment** means the Rental Instalments as set out in the Goods Schedule and includes the Final Payment, GST, business rental duty and any other costs and duties payable in accordance with this Hire Purchase Agreement.

**Security Interest** means a security interest for the purposes of the PPSA.

**Tax Event** means any one or more of the following events:

- (a) an imposition of, or any change in the basis of, or the interpretation, application or administration of any law or regulation imposing any taxes, (including the imposition of a GST), levies, imposts, deductions, charges, withholdings and duties (including stamp and transaction duties) together with any related interest, penalties, fines and expenses in connection with them;
- (b) without limiting the generality of (a) above, a change in the tax rate applicable to CNH Industrial Capital;
- (c) without limiting the generality of (a) above, the rate or deductibility of the depreciation available to CNH Industrial Capital in respect of the Goods, or the timing of the availability of that depreciation changes, or differs from the assumptions made by CNH Industrial Capital in calculating the Rental Instalments under this Hire Purchase Agreement;
- (d) without limiting the generality of (a) above, a change in the dates or frequency upon which tax is payable by CNH Industrial Capital; or
- (e) sections 82KJ, 82 KK, 82 KL, 51AD, Division 16D or 16E of Part III or Part IVA of the Income Assessment Tax Act, 1936 or similar provisions of the Income Tax Assessment Act 1997 or replacement Act are applied to the Motor Finance

transaction documented in this Hire Purchase Agreement.

**Term** means the hire term referred to in clause 2.1.

**Termination Value** means the present value of future Rental Instalments (including the Final Payment) payable for the balance of the Term calculated by applying the Discount Rate to each instalment plus any applicable GST (to the extent not already included).

**Use of Goods** means the use specified in the Goods Schedule.

**Usual Location of Goods** means the address specified as such in the Goods Schedule.

In these terms and conditions:

- (f) the singular includes the plural and vice versa;
- (g) "persons" includes a firm, body corporate, unincorporated association or any other body or entity;
- (h) a reference to either party includes that party's successors, legal personal representatives and permitted assigns;
- (i) any appointment, Hire Purchase Agreement, warranty, representation or obligations which binds or benefits two or more persons under this Hire Purchase Agreement binds or benefits those persons jointly and severally;
- (j) a reference to a clause is a reference to a clause of these terms and conditions;
- (k) words or definitions used in the Goods Schedule are to be read and interpreted in accordance with that definition in these terms and conditions unless a contrary intention applies;
- (l) headings are inserted for convenience only and do not affect interpretation.
- (m) a reference to a time is a reference to Australian Eastern Standard Time or Australian Eastern Daylight Time as appropriate