

# Asset Disposal Form



Buyer's details	
Name:	ABN:
Address:	
Telephone (day):	Fax: <i>[insert]</i>
Contact Person:	

Asset disposal details																																							
Assets:	<table border="1"> <tr> <td><b>MAKE:</b></td> <td>Volvo</td> </tr> <tr> <td><b>MODEL:</b></td> <td>G930 grader</td> </tr> <tr> <td><b>PLANT AVAILABLE FROM:</b></td> <td>TBC</td> </tr> <tr> <td><b>CURRENT OWNER:</b></td> <td>Shire of Perenjori</td> </tr> <tr> <td><b>ORIGINAL DELIVERY DATE OR YEAR OF MANUFACTURE:</b></td> <td>2010</td> </tr> <tr> <td><b>VIN NUMBER:</b></td> <td>VCE0G930C00501835</td> </tr> <tr> <td><b>ENGINE NUMBER:</b></td> <td>10917728</td> </tr> <tr> <td><b>REGISTRATION NUMBER:</b></td> <td>Currently PJ4578</td> </tr> <tr> <td><b>REGISTRATION EXPIRY:</b></td> <td>30<sup>th</sup> June 2020</td> </tr> <tr> <td><b>ODOMETER / HOUR METER READING:</b></td> <td>9477HRS as at 17/11/20</td> </tr> <tr> <td><b>COLOUR:</b></td> <td>yellow</td> </tr> <tr> <td><b>TYRE CONDITION:</b></td> <td>average</td> </tr> <tr> <td><b>ENGINE SIZE:</b></td> <td></td> </tr> <tr> <td><b>HORSEPOWER RATING:</b></td> <td>175</td> </tr> <tr> <td><b>FUEL TYPE:</b></td> <td>diesel</td> </tr> <tr> <td><b>TARE:</b></td> <td>15800kg</td> </tr> <tr> <td><b>INCLUDED ADDED OPTIONS:</b></td> <td></td> </tr> <tr> <td><b>ANTICIPATED AVAILABILITY DATE :</b></td> <td>TBC</td> </tr> <tr> <td><b>OTHER DETAILS:</b></td> <td></td> </tr> </table>	<b>MAKE:</b>	Volvo	<b>MODEL:</b>	G930 grader	<b>PLANT AVAILABLE FROM:</b>	TBC	<b>CURRENT OWNER:</b>	Shire of Perenjori	<b>ORIGINAL DELIVERY DATE OR YEAR OF MANUFACTURE:</b>	2010	<b>VIN NUMBER:</b>	VCE0G930C00501835	<b>ENGINE NUMBER:</b>	10917728	<b>REGISTRATION NUMBER:</b>	Currently PJ4578	<b>REGISTRATION EXPIRY:</b>	30 <sup>th</sup> June 2020	<b>ODOMETER / HOUR METER READING:</b>	9477HRS as at 17/11/20	<b>COLOUR:</b>	yellow	<b>TYRE CONDITION:</b>	average	<b>ENGINE SIZE:</b>		<b>HORSEPOWER RATING:</b>	175	<b>FUEL TYPE:</b>	diesel	<b>TARE:</b>	15800kg	<b>INCLUDED ADDED OPTIONS:</b>		<b>ANTICIPATED AVAILABILITY DATE :</b>	TBC	<b>OTHER DETAILS:</b>	
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\*Capitalised terms used in this Asset Disposal Form have the meaning given in the Conditions of Contract.

Purchase Price:	\$ (excluding GST)
Deposit:	N/A
Completion Date:	<i>If no date is stated, the Completion Date will be 5 Business Days after the date the last party signs this form.</i>
Location:	Shire of Perenjori <i>If no Location is stated, the Location will be as notified by the Seller to the Buyer in writing.</i>
Rate:	N/A

# Asset Disposal Form

## Buyer acceptance

I, the authorised person named below, acknowledge and agree that:

- (a) I have read and understood the terms of both this Asset Disposal Form and the Conditions of Contract (a copy of which is attached);
- (b) I am authorised to sign this Asset Disposal Form for and on behalf of the Buyer; and
- (c) upon execution of this Asset Disposal Form by both the Buyer and the Seller, there will be a legal agreement between them comprised of this Asset Disposal Form and the Conditions of Contract.

\_\_\_\_\_  
Signature of Buyer Authorised Person

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Buyer Authorised Person (please print)

\_\_\_\_\_  
Name of Witness (please print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Seller acceptance

Shire of Perenjori ABN 68 267 899 822(**Seller**) agrees to the disposal of the Assets to the Buyer, subject to, and in accordance with, the Contract.

\_\_\_\_\_  
Signature of Seller Authorised Person

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Seller Authorised Person (please print)

# GENERAL CONDITIONS OF CONTRACT FOR THE SALE AND PURCHASE OF ASSETS

## 1 SALE AND PURCHASE

### 1.1 Sale

The Seller agrees to sell, and the Buyer agrees to purchase, the Assets free and clear of all encumbrances, in consideration for the Buyer paying the Purchase Price, in accordance with the Contract.

### 1.2 Consideration

The consideration for the sale of the Assets is the payment by the Buyer of the Purchase Price.

### 1.3 Deposit

- (a) On signing the Contract, the Buyer must pay the Deposit (if any) to the Seller in Immediately Available Funds without counter claim or set off.
- (b) If Completion occurs, the Seller is entitled to the Deposit at Completion. If the Seller exercises a right to terminate the Contract under clauses 6.1 or otherwise at law due to the Buyer's default, the Seller is entitled to the Deposit on termination of the Contract in accordance with clause 6.1(b)(1). Otherwise, the Buyer is entitled to the Deposit.

### 1.4 Payment at Completion

The Buyer must pay the Purchase Price (less any Deposit paid by the Buyer in accordance with clause 1.3(a)) to the Seller in Immediately Available Funds without counter claim or set off by no later than the Completion Date.

### 1.5 Additional costs

In addition to the Purchase Price, the Buyer is responsible for and must pay:

- (a) any costs associated with the performance of the Buyer's covenants and obligations under the Contract, including taxes, tariffs and fees;
- (b) any costs associated with the inspection of the Assets by the Buyer; and
- (c) all costs associated with the Assets on and from Completion, including the cost of:
  - (1) transporting or relocating the Assets from the Location at Completion; and
  - (2) transferring, registering and insuring the Assets on and from Completion.

### 1.6 Title and risk

Title to and risk in the Assets pass to the Buyer on Completion.

## 2 COMPLETION

### 2.1 Time and place

Completion will take place on the Completion Date at the Location or such other place nominated by the Seller.

### 2.2 Seller's obligations

At Completion, subject to the payment of the Purchase Price (less any Deposit paid by the Buyer in accordance with clause 1.3(a)) and any accrued interest by the Buyer to the Seller in accordance with clause 3.1(b), the Seller must make available to the Buyer:

- (a) the Assets;
- (b) all registration papers and instruments of title (if issued) and keys (if applicable) to the Assets; and
- (c) any other document reasonably required by the Buyer to vest ownership of the Assets in the Buyer,

at the Location.

### 2.3 Buyer's obligations

- (a) At Completion, subject to the Seller's performance of its obligations under clause 2.2, the Buyer must:
  - (1) take delivery of the Assets at the Location; and
  - (2) remove the Assets from the Location at the Buyer's own cost, expense and risk.

- (b) The Buyer agrees that, when collecting the Assets from the Location in accordance with clause 2.3(a), the Buyer:

- (1) enters the Location at its own risk; and
- (2) must not disrupt any activities at the Location and must comply with any reasonable direction of the Seller's Personnel or the controller of the Location.

## 3 DELAY IN COMPLETION

### 3.1 Interest on unpaid Purchase Price

- (a) If on the Completion Date:
  - (1) for any reason not attributable to the Seller, Completion is not effected; and
  - (2) the Seller is ready, willing and able to complete the sale of the Assets,the Buyer must pay interest at the Rate on the unpaid amount of the Purchase Price.
- (b) The interest payable under clause 3.1(a):
  - (1) accrues from day to day from and including the Completion Date up to the actual date the Purchase Price has been paid by the Buyer in full; and
  - (2) must be paid by the Buyer to the Seller at Completion.

### 3.2 No effect on other rights

This clause 3 does not limit or prejudice any other rights or remedies the Seller may have against the Buyer for delayed Completion, including the Seller's rights under clause 6.

## 4 REPRESENTATIONS AND WARRANTIES

### 4.1 Mutual warranties

Each party represents and warrants to the other party that:

- (a) **(no legal impediment)**: the execution, delivery and performance of the Contract does not constitute a breach of any law, or cause or result in default under any agreement or encumbrance, by which it is bound and which would prevent it from entering into and performing its obligations under the Contract;
- (b) **(corporate authorisations)**: all necessary actions to authorise the execution, delivery and performance of the Contract in accordance with its terms have been obtained;
- (c) **(power and capacity)**: it has full power and capacity to enter into and perform its obligations under the Contract; and
- (d) **(enforceability)**: its obligations under the Contract are enforceable in accordance with its terms.

### 4.2 Seller warranties

The Seller represents and warrants to the Buyer that:

- (a) the Seller is the owner of the Assets;
- (b) the Seller has the right and good title to sell the Assets; and
- (c) the Assets will be free from any encumbrance at Completion.

### 4.3 Buyer warranties

The Buyer:

- (a) acknowledges and agrees that the Assets are not new, have been used by the Seller and are sold to the Buyer "as is" and "where is", in the existing state of repair and condition of the Assets with all of the faults and defects and characteristics on collection, whether or not those faults, defects and characteristics are apparent on inspection; and
- (b) represents and warrants to the Seller that:

- (1) in making the decision to purchase the Assets, it has relied solely on its own investigations and judgement; and
- (2) in entering into the Contract, it does not rely on any statement, representation, warranty, information, condition or other conduct which may have been made by or on behalf of the Seller, including in particular the physical condition of the Assets, unless expressed in the Contract.

#### 4.4 General

- (a) Each of the warranties in clauses 4.1, 4.2 and 4.3 is given at the date of the Contract and will be deemed to be repeated immediately before Completion.
- (b) Each of the warranties in clauses 4.1, 4.2 and 4.3 are to be construed independently of the others and are not limited by reference to any other warranty.
- (c) Each of the parties acknowledge that the other party has entered into the Contract and will complete the Contract in reliance on the warranties in clauses 4.1, 4.2 and 4.3.

### 5 INDEMNITY

- (a) On and from Completion, the Buyer indemnifies the Seller and the Seller's Personnel (each, an **Indemnified Person**) against all Loss suffered or incurred by the Indemnified Persons arising from or in connection with the Assets and relating to or arising from events or circumstances that occurred after Completion.
- (b) The Buyer's liability to indemnify an Indemnified Person is reduced to the extent that the Loss suffered or incurred by an Indemnified Person results from:
  - (1) a breach by the Seller of the Contract; or
  - (2) any negligent act or omission of any Indemnified Person (other than any act or omission of an Indemnified Person which occurred or was subsisting prior to Completion).
- (c) For clarity, the indemnity under clause 5(a) does not apply to any Loss suffered or incurred by an Indemnified Person arising from or in connection with the Assets and relating to or arising from events or circumstances that occurred prior to Completion.

### 6 BUYER'S DEFAULT

#### 6.1 Termination for Buyer's default

- (a) The Seller may terminate the Contract on written notice to the Buyer if the Buyer breaches any term or condition of the Contract and that breach is not remedied by the Buyer within 10 Business Days of written notice from the Seller.
- (b) If the Seller terminates the Contract in accordance with clause 6.1(a), the Seller may:
  - (1) retain any money paid by the Buyer to the Seller under the Contract to satisfy any Loss which the Seller incurs, or reasonably considers it will incur, as a consequence of the Buyer's breach or the termination of the Contract (or both);
  - (2) sue the Buyer for damages for breach of contract; and
  - (3) if the Assets are still in possession of the Seller, without further notice to the Buyer re sell the Assets in such manner as the Seller thinks fit and retain the whole of the proceeds of such sale.

### 6.2 Seller's other rights on Buyer's default

If the Buyer breaches any term or condition of the Contract the Seller may, without excluding any other right the Seller may have:

- (a) affirm the sale of the Assets and sue the Buyer for damages for breach of contract; or
- (b) sue the Buyer for specific performance of the agreement evidenced by the Contract.

### 6.3 Seller's costs and expenses

The Buyer must on demand pay the Seller on a full indemnity basis all of the Seller's Loss of and incidental to each breach by the Buyer of the Buyer's warranties or obligations (or both) under the Contract.

## 7 LIMIT ON CLAIMS

### 7.1 Seller's maximum liability

Subject to clause 8, the maximum aggregate amount that the Seller is required to pay in respect of all Claims whenever made is limited to the Purchase Price received by the Seller under the Contract.

### 7.2 Time limit on Claims

The Seller is not liable under a Claim if:

- (a) the Buyer does not notify the Seller of the Claim within 1 year after Completion; and
- (b) within 6 months (or such longer period as may be agreed) of the date the Buyer is required to notify the Seller of the Claim:
  - (1) the Claim has not been agreed, compromised or settled; and
  - (2) the Buyer has not issued or served legal proceedings against the Seller in respect of the Claim.

## 8 APPLICATION OF AUSTRALIAN CONSUMER LAW

- (a) Nothing in the Contract (including clauses 4 or 7) is to be construed as excluding, restricting or modifying the application of any liability of the Seller to the extent that it cannot by operation of law (including the operation of the ACL) be excluded, restricted or modified.
- (b) If the Buyer is a Consumer:
  - (1) clause 7 does not apply to any liability of the Buyer for failure to comply with a Consumer Guarantee;
  - (2) subject to clause 8(b)(3), unless the Assets are Excluded Goods, the liability of the Seller for Loss, however caused (including by the negligence of Seller), suffered or incurred by the Buyer because of a failure to comply with a Consumer Guarantee is limited to the Buyer (at its election):
    - (A) replacing the Assets or supplying equivalent goods;
    - (B) repairing the Assets;
    - (C) paying the cost of replacing the Assets or of acquiring equivalent goods; or
    - (D) paying the cost of having the Assets repaired.
  - (3) Clause 8(b)(3) does not apply in relation to a Title Guarantee or if it is not Fair or Reasonable for the Seller to rely on it.

## 9 GOODS AND SERVICES TAX

- (a) Any reference in this clause 9 to a term defined or used in the GST Act is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.

- (b) Unless expressly included, the consideration for any supply made under or in connection with the Contract does not include an amount on account of GST in respect of the supply (**GST Exclusive Consideration**) except as provided under this clause 9.
- (c) Any amount referred to in the Contract (other than an amount referred to in clause 9(h) which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- (d) To the extent that GST is payable in respect of any supply made by a party (**Supplier**) under or in connection with the Contract, the consideration to be provided under the Contract for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- (e) The recipient must pay the additional amount payable under clause 9(d) to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- (f) The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under clause 9(d) or at such other time as the parties agree.
- (g) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with the Contract the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under clause 9(e), the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (h) If one of the parties to the Contract is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with the Contract, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 9(d).

## 10 NOTICES

- (a) Any notice or other communication from a party to the other party (**Notice**) in connection with the Contract must be given or made in writing in English, signed by the sender or its agent, and either hand delivered, sent by pre-paid post or faxed to the other party at the address or fax number nominated in the Contract (or any alternative details nominated to the sending party by Notice).
- (b) Any Notice or other communication to or by a party to the Contract is regarded as being given by the sender and received by the addressee:
  - (1) if by delivery in person, when delivered to the addressee;
  - (2) if by post, 3 Business Days from and including the date of postage;
  - (3) if by facsimile transmission, when a facsimile confirmation receipt is received indicating successful delivery,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day.

- (c) The Seller's address and facsimile details for Notices under the Contract is the address and facsimile details of the Seller's main administration office or place of business, as set out on the Seller's official website from time to time. A Notice to the Seller must be addressed to the 'Seller Authorised Person' named on the relevant Asset Disposal Form.
- (d) A Notice must not be given by email or other electronic means of communication (other than fax as permitted in this clause 10).

## 11 GENERAL

- (a) (**Governing law**): The Contract is governed by the law in force in Western Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of the State of Western Australia.
- (b) (**Variation**): A variation of any term of the Contract must be in writing and signed by the parties.
- (c) (**Duty**): The Buyer must pay any stamp duty and transfer and registration fees and duty in respect of the execution, delivery, registration and performance of the Contract or of any agreement or document entered into in order to effect the transactions contemplated by the Contract.
- (d) (**Costs and expenses**):
  - (1) Subject to clause 11(c), each party must pay its own costs and expenses in respect of the negotiation, preparation, execution, delivery and performance of the Contract.
  - (2) Any action to be taken by the Buyer or the Seller in performing its obligations under the Contract must be taken at its own cost and expense unless otherwise provided in the Contract.
- (e) (**Waiver**):
  - (1) Waiver of any right arising from a breach of the Contract or of any right, power, authority, discretion or remedy arising upon a breach or default under the Contract must be in writing and signed by the party granting the waiver.
  - (2) This clause 11(e) may not itself be waived except in writing.
- (f) (**Assignment**):
  - (1) Subject to clause 11(f)(2), rights arising out of or under the Contract are not assignable by a party without the prior written consent of the other party.
  - (2) If the Seller is restructured by law, then the rights and obligations of the Seller under the Contract are novated to and assumed by the appropriate legal entity as determined by the Seller or the successors of the Seller under the restructure.
- (g) (**Counterparts**): The Contract may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A party may execute the Contract by signing any counterpart.
- (h) (**Severability**): Any provision of the Contract which is illegal, void or unenforceable will be ineffective to the extent only of that illegality, voidness or unenforceability without invalidating the remaining provisions.
- (i) (**Further assurances**): Each party must do all things and execute all further documents necessary to give full effect to the Contract.
- (j) (**Entire agreement**): The Contract states all the express terms of the agreement between the parties in respect of its subject matter. Except in relation to any Express Warranty, it supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

## 12 DEFINITIONS AND INTERPRETATION

The meanings of the terms used in the Contract are set out below.

**Assets** means the 'Assets' described in the Asset Disposal Form.

**Asset Disposal Form** means the 'Asset Disposal Form' which accompanies these Conditions of Contract.

**Australian Consumer Law** or **ACL** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the *Fair Trading Act 2010* (WA).

**Business Day** means a day on which banks are open for business in Perth, Western Australia, excluding a Saturday, Sunday or public holiday in Perth.

**Buyer** means the 'Buyer' described in the Asset Disposal Form.

**Claim** includes any suit, claim, action, demand, proceeding, penalty or fine (except to the extent contrary to public policy or law), order or adverse judgement (at common law or in equity or under statute) under, arising out of, or in any way in connection with, the Contract.

**Completion** means completion of the sale and purchase of the Assets under clause 2.

**Completion Date** means the 'Completion Date' set out in the Asset Disposal Form.

**Conditions of Contract** means these general conditions of contract for the sale and purchase of assets pursuant to an Asset Disposal Form.

**Consumer** has the same meaning as in section 3 of the Australian Consumer Law.

**Consumer Guarantee** means a Consumer Guarantee applicable to the Contract under the Australian Consumer Law, including any Express Warranty.

**Contract** means the Conditions of Contract and the relevant Asset Disposal Form.

**Deposit** means the 'Deposit' (if any) set out in the Asset Disposal Form.

**Excluded Goods** means 'goods of a kind ordinarily acquired for personal, domestic or household use or consumption', as that expression is used in section 3 of the Australian Consumer Law.

**Express Warranty** has the same meaning as in section 2(1) of the Australian Consumer Law.

**Fair or Reasonable** means 'fair or reasonable' for the purposes of section 64A of the Australian Consumer Law.

**GST** has the meaning given in the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Immediately Available Funds** means cash, bank cheque or telegraphic or other electronic means of transfer of cleared funds into a bank account nominated in advance by the Seller.

**Location** means the 'Location' described in the Asset Disposal Form.

**Loss** means losses, liabilities, damages, costs, charges and expenses including legal costs on a solicitor own client basis.

**Purchase Price** means the 'Purchase Price' specified in the Asset Disposal Form.

**Rate** means the 'Rate' set out in the Asset Disposal Form.

**Seller** means the 'Seller' described in the Asset Disposal Form.

**Seller's Personnel** means the officers (including the councillors and the mayor, president and chief executive officer), employees and agents of the Seller.

**Title Guarantee** a guarantee pursuant to any of sections 51, 52 or 53 of the Australian Consumer Law.

### 12.1 Interpretation

In the Contract, unless the context otherwise requires:

- (a) headings and bold type are for convenience only and do not affect the interpretation of the Contract;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a reference to a clause or party of the Contract is a reference to a clause of, and a party to, the Contract;
- (d) a reference to legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (e) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (f) if an act prescribed under the Contract is to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (g) a reference to a party to a document includes that party's successors and permitted assigns;
- (h) no provision of the Contract will be construed adversely to a party solely on the ground that the party was responsible for the preparation of the Contract or that provision;
- (i) a covenant or agreement on the part of two or more persons binds them jointly and severally;
- (j) specifying anything in the Contract after the words "includes", "including" or "for example" or any similar expression does not limit what else is included unless there is express wording to the contrary;
- (k) a reference to time is a reference to time in Perth, Western Australia; and
- (l) the Contract includes any Annexures.