

TERMS AND CONDITIONS OF HIRE

1. HIRE AGREEMENT

1.1 These Terms of Hire, together with:

- (a) Any Credit Application completed by the Customer and submitted to the Company and accepted by the Company;
 - (b) Any Guarantee relating to a hire provided in favour of the Company;
 - (c) Each Hire Schedule provided by the Customer to the Company, whether signed or not;
 - (d) Any Purchase Order submitted by the Customer to the Company and accepted by the Company;
 - (e) Any other documents provided by the Company and intended to form part of the Hire Agreement;
- make up the hire agreement between the Customer and the Company ("Hire Agreement").

2. ACCEPTANCE

- 2.1 The provision or acceptance of a Hire Schedule shall not form a separate agreement between the Customer and the Company, but shall constitute part of this Hire Agreement.
- 2.2 The Company may in its absolute discretion decline to hire Equipment to the Customer at any time.
- 2.3 By accepting Equipment from the Company the Customer agrees to be bound by these Terms of Hire (as amended from time to time).

3. MODIFICATIONS

- 3.1 These Terms of Hire may be amended by the Company from time to time by the Company giving 30 days written notice of the amendment to the Customer.
- 3.2 Notice is deemed given (whether or not actually received) when the Company sends notice of the amendment to the Customer at any address (including an email address) supplied by the Customer and the Customer's continued use of the Equipment after notice of the amended terms has been given will be deemed an acceptance of the amended terms by the Customer.

4. DEFINITIONS AND INTERPRETATION

4.1 In these Terms of Hire:

"Accessories" means any accessories to the Equipment including without limitation tools, spare parts, or other property acquired for use with the Equipment whether contained in, attached to, carried on or temporarily removed from the Equipment.

"Australian Consumer Law" means the Australian Consumer Law set out in Schedule 2 of the Competition and Consumer Act 2010.

"Commencement" means the date when the Customer takes possession of the Equipment.

"Company" means FRC Group Pty Ltd (ACN 106 825 843) its successors and assigns

"Credit Account" means a properly completed and submitted Credit Application to the Company which the Company has approved and accepted.

"Customer" refers to the person, firm, organisation, partnership, corporation, trust or other entity hiring Equipment from the Company and includes any employees, agents and contractors of the Customer and includes the term 'Hirer'.

"Equipment" means any equipment hired by the Customer from the Company (including any Accessories) from time to time.

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

"Customer Charges" means the hire charges shown in the Hire Schedule payable by the Customer to hire the Equipment.

"Hire Agreement" has the meaning provided for in clause 1.1

"Hire Period" means the period from the Commencement until the end of the period shown on the Hire Schedule and any subsequent extension thereof as agreed between the Company and the Customer.

"Hire Schedule" means a document which the Company may require the Customer to sign (or accept in a way the Company requires) including (without limitation) particulars of the Equipment and the Hire Period and such other information which the Company may decide to require.

"Manufacturer/s" means the manufacturer/s of the Equipment.

"Minimum Hire Period" means the minimum hours per week, month or year for which the Customer shall be liable to pay for hire of the Equipment regardless of the actual length of hire nominated in the Hire Schedule.

"Party" means a party to this Hire Agreement and **"Parties"** has a corresponding meaning.

"Related Party" means a body corporate related to the Customer under section 50 of the *Corporations Act 2001*.

"Site" The site at which the Equipment is held and used during the Hire Period as nominated in the Hire Schedule or as otherwise agreed in writing by the Company.

“**Terms of Hire**” means these terms of hire as may be amended by the Company from time to time in accordance with clause 3.

5. HIRE PERIOD

- 5.1 The Company agrees to hire the Equipment to the Customer and the Customer accepts the hire of the Equipment for the Hire Period upon the terms and conditions of the Hire Agreement unless otherwise agreed in writing by the Parties.
- 5.2 The Hire Period may only be extended by agreement in writing by the Parties.
- 5.3 The Company may, at its discretion, issue and require the Customer to sign an amended Hire Schedule for any extension of the Hire Period and additional Hire Charges.
- 5.4 For Equipment in which a timing device is installed the hire period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Customer’s possession.
- 5.5 Where the Equipment does not have a timing device installed hire charges shall commence from the time the Equipment is collected by the Company from the Company’s premises or delivered to the Customer by the Company and will continue until return of the Equipment to the Company’s premises and or until the expiry of the Minimum Hire Period, whichever last occurs.
- 5.6 If the Company agrees with the Customer to deliver and/or collect the Equipment. Hire Charges shall commence from the time the Equipment leaves the Company’s premises and continue until the Customer notifies the Company that the Equipment is available for collection.
- 5.7 No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless the Company confirms prior special arrangements in writing in the event of Equipment breakdown provided the Customer notifies the Company immediately, Hire Charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Customer.

6. INVOICING AND PAYMENT

- 6.1 The Company will issue an invoice to the Customer for the Hire Charges and any other fees payable by the Customer in accordance with the Hire Agreement at the periods nominated in the Hire Schedule or invoice and if there is none then every thirty (30) days;
- 6.2 All invoices are payable by the date nominated on the invoice and if none then seven (7) days from the date of the invoice.
- 6.3 The Customer agrees to pay:
- (a) the Hire Charges;
 - (b) all other fees, charges and costs that become due and payable by the Customer under this Hire Agreement no later than thirty (30) days from the when the relevant invoice is issued, unless otherwise agreed in writing by the Company;
 - (c) any stamp duty, GST and any other taxes, duties, tolls, fines, penalties, levies or charges payable in respect of this Hire Agreement or arising from the Company’s supply of or the Customer’s use of the Equipment;
 - (d) all costs incurred by the Company in delivering and recovering possession of the Equipment in accordance with this Hire Agreement;
 - (e) a late payment fee at the rate of 2.5% calculated daily on all amounts owing by the Customer to the Company not paid on time including any costs incurred by the Company in recovering any unpaid amounts under this Hire Agreement accruing from the date the payment is due until it is paid in full;
 - (f) any expenses and legal costs incurred by the Company in enforcing this Hire Agreement;
 - (g) all payments shall be made directly to the Company’s nominated bank account and confirmation of payment is to be faxed or emailed to the Company as soon as payment is processed;
 - (h) all invoices must be paid in full without deduction or set-off;
 - (i) all transport costs;
 - (j) the cost of all fuel, oil, grease and other consumables provided by the Company and used by the Customer; and
 - (k) the cost of repairing any damage to the Equipment howsoever caused.
 - (l) continue to pay the hire rate until the damaged plant or equipment is fully repaired to as was condition or replaced and ready for hire.
- 6.4 The date of termination or expiration of the Hire Period shall constitute a full day’s hire.
- 6.5 The Customer will be held responsible for ongoing Hire Charges until such time as the Equipment is returned to the Company and is in a good condition, fit for further hire, as determined by the Company.
- 6.5 The Company reserves the right to apply or reapply any payment received by the Customer towards any invoice or hire even where payment has already been allocated to a particular invoice or hire.

7. DELIVERY

- 7.1 All transport costs are the responsibility of the Customer; including but not limited to transport of the Equipment to and from Site, general road & air freight of Equipment parts to and from Site. Transportation will be charged at cost + 10% mark up and 5% admin.
- 7.2 At the Company's sole discretion delivery of the Equipment shall take place when:
- (a) the Customer takes possession of the Equipment at the Company's address; or
 - (b) the Customer takes possession of the Equipment at the Customers nominated address; or
 - (c) the Company's nominated carrier takes possession of the Equipment in which event the carrier shall be deemed to be the Company's agent and risk for the Equipment does not pass the Customer takes possession of the Equipment at the Customer's address; or
 - (d) the Customer's nominated carrier takes possession of the Equipment in which event the carrier shall be deemed to be the Customer's agent.
- 7.3 The Customer shall make all arrangements necessary to take delivery of the Equipment whenever it is tendered for delivery. In the event that the Customer is unable to take delivery of the Equipment as arranged then the Company shall be entitled to charge a reasonable fee for redelivery.
- 7.4 At the Company's sole discretion delivery of the Equipment shall take place when:
- (a) the Customer takes possession of the Equipment at the Company's address; or
 - (b) the Customer takes possession of the Equipment at the Customers nominated address; or
 - (c) the Company's nominated carrier takes possession of the Equipment in which event the carrier shall be deemed to be the Company's agent and risk for the Equipment does not pass the Customer takes possession of the Equipment at the Customer's address; or
 - (d) the Customer's nominated carrier takes possession of the Equipment in which event the carrier shall be deemed to be the Customer's agent.
- 7.5 The Customer shall inspect the Equipment on delivery and shall within forty eight (48) hours notify the Company of any alleged defect, damage or failure to comply with the description or quote. The Customer shall afford the Company an opportunity to inspect the Equipment and verify the claim within a reasonable time following notification if the Customer believes the Equipment is defective in any way. If the Customer shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. If the Company agrees the Equipment was defective or damaged at delivery the Company shall replace the Equipment at its cost which shall be the limit of the Company's liability.

8. OBLIGATIONS OF THE CUSTOMER

8.1 Possession, Title and Risk

- (a) The Customer acknowledges that the Company owns the Equipment and in all circumstances retains title to the Equipment (even if the Customer goes into liquidation or becomes bankrupt during the Hire Period). The Customer's rights to use the Equipment are as a bailee only and the Customer does not have any right interest or claim in or over the Equipment except as expressly provided in this Hire Agreement.
- (b) Notwithstanding clause 8.1 (a) all risk associated with the Equipment passes to the Customer on delivery or once picked up if the customer supplies transportation.
- (c) The Customer is not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over or otherwise deal with the Equipment in any way without the express prior written consent of the Company.
- (d) In no circumstances will the Equipment be deemed to be a fixture.
- (e) The Customer must not alter the Equipment in any way or change or obscure the identification lettering and numbering on the Equipment.

8.2 Insurance

- (a) Unless otherwise agreed in writing or stated in the Hire Schedule the Customer must at all times during the Hire Period:

- (i) maintain the following policies of insurance from the commencement of the Hire Agreement until the Equipment is returned to the point of original hire as directed by the Company and any other insurance as reasonably requested by the Company during the Hire Period:
 - A. Direct physical loss and / or damage to the Equipment for the full replacement value.
 - B. Public liability insurance for a minimum \$20,000,000 including the interests of the Company as an additional insured;
 - (ii) ensure that each policy of insurance is with a reputable insurer and notes the interest of the Company;
 - (iii) provide Certificates of Currency for the above insurances prior to taking possession of the Equipment and will name the Company as the owner of the Equipment. The Certificate of Currency must be emailed to the Company;
 - (iv) promptly pay all premiums and stamp duty in respect of such policies and, to the extent the Company is entitled to receive such amounts under this Hire Agreement, permit the Company to receive all insurance monies for claims for physical damage to the Equipment.
- (b) The Customer must not:
- (i) do, permit or suffer to be done anything which might prejudice such insurance;
 - (ii) enforce, conduct, settle or compromise any claim without the Company's consent.

8.3 Location of Equipment

- (a) The Customer must not attach the Equipment to any property without the Company's consent.
- (b) The Customer must not move the Equipment from the designated Site without the Company's prior written consent.

8.4 Use and Maintenance

- (a) The Customer must use the Equipment only in its business operations and for the purposes for which they are designed. The Customer must ensure that:
 - (i) it complies with all applicable laws, regulations, approvals, licences or permits relating to the use and possession of the Equipment;
 - (ii) it keeps the Equipment clean, properly serviced, in proper working order and condition and in good and substantial repair (fair wear and tear excepted) and is responsible for those maintenance jobs nominated in the Hire Schedule;
 - (iii) it uses, operates and possesses the Equipment in accordance with the supplier's or manufacturer's specifications and with best safety practices;
 - (iv) it uses, operates and possesses the Equipment in accordance with any specific directions provided by the Company;
 - (v) the Equipment is only operated by suitably qualified and trained operators;
 - (vi) the Equipment is kept safe and secure.
- (b) The Customer agrees to use, operate and possess the Equipment at the Customer's risk. Without limiting clause 8.4 (a) the Customer:
 - (i) releases and discharges the Company from all claims and demands on the Company and any loss or damage whatsoever and whenever caused to the Customer of any other person of any nature or kind; and
 - (ii) indemnifies and holds the Company harmless from and against all liabilities, losses, damages, costs or expenses incurred or suffered by the Company and from and against all actions, proceedings, claims or demands made against the Company.

- (c) The Customer must keep all maintenance records, log books and all other records relating to the inspection, commissioning and use of the Equipment and make these records available to the Company on request.

8.5 Condition of Equipment

- (a) If the Equipment becomes unsafe or in a state of disrepair, the Customer agrees to immediately discontinue use of the Equipment and to notify the Company immediately. The Customer must:
 - (i) on no account attempt to repair the Equipment without the consent of the Company;
 - (ii) take all steps necessary to prevent any injury, damage or loss occurring to any property or person as a result of the condition of the Equipment;
 - (iii) take all necessary steps to prevent further damage or loss to the Equipment; and
 - (iv) immediately return the Equipment to the Company's premises if required to do so by the Company.
- (b) Without limiting clauses 8.5 (a) or 8.6, if the failure is caused by reasonable wear and tear and for no other reason including the Customer's negligence or misuse, the Company agrees, in its discretion, to:
 - (i) repair the Equipment within a reasonable time; or
 - (ii) make similar Equipment available; or
 - (iii) adjust the Hire Charges.

8.6 Loss or Damage

- (a) The Customer must protect the Equipment from loss or damage.
- (b) The Customer must notify the Company as soon as possible if any Equipment are lost, stolen, destroyed, confiscated or damaged in whole or in part.
- (c) If any of the things in clause (b) occur and subject to clause 8.5 the Customer must:
 - (i) at the Company's election and in the Company's sole discretion either:
 - A. at the Customer's cost, repair the Equipment to the satisfaction of the Company or replace the affected Equipment with like Equipment approved by the Company which have at least the same relative value; or
 - B. pay the Company on demand any costs incurred by the Company in repairing or replacing the Equipment; and
 - (ii) pay the Company on demand any costs, liabilities or expenses incurred or to be incurred by the Company as a consequence of the occurrence of the event in clause (b).

8.7 Public Road Operations

It is the Customer's responsibility to make itself aware of the relevant road and traffic legislation requirements that apply to the use of the Equipment during the Hire Period. The Equipment must be operated in accordance with the relevant road legislation that applies in the jurisdiction in which the Equipment is being operated.

8.8 Equipment Operator

- (a) The Customer shall ensure that the Equipment is operated by a suitably experienced and qualified person, and that this person will operate the Equipment strictly in accordance with the Manufacturers' recommendations (whether supplied by the Company or posted on the Equipment) and the law and only for its intended use.
- (b) The Customer agrees that the Equipment operator will operate the Equipment in a safe and prudent manner having regard to operational conditions.

8.9 End of the Term and return of Equipment

- (a) The Customer must, on or before the last day of the Hire Period (or such other time as agreed between the Customer and the Company):

- (i) return the Equipment to the Company, at the Customer's expense, in good working order, a clean condition and in good repair (fair wear and tear excepted) at a place nominated by the Company;
 - (ii) give the Company any certificates of registration, insurance certificates, warranties, log books, instructions and service manuals and other documents relating to them and a signed transfer of all such documents in favour of the Company (or such other person the company nominates); and
 - (iii) pay an amount owing to the Company.
- (b) Without limiting any other clause in these Terms of Hire, if the Company terminates any hire pursuant to clause 11 the Hire Period shall immediately expire and the Customer must return the Equipment in accordance with clauses 8.9 (a).
- (c) If the Company does not receive the Equipment in the state required pursuant to clause 8.9 (a), the Company may, without limiting any of its other rights following a breach of the Hire Agreement or these Terms of Hire, take such steps as the Company considers necessary, at the Customer's cost, to ensure that the Equipment is in good working order, a clean condition and in good repair (fair wear and tear excepted).
- (d) Without limiting the Company's rights following a breach of clause 8.9 (a), if the Customer retains the Equipment with the consent of the Company after the end of the Hire Period and the Customer has not entered into a new rental agreement with the Company with respect to the Equipment:
- (i) the Customer must continue paying Hire Charges as if the last date of the Hire Period had not occurred and the Hire Agreement had not ended;
 - (ii) these Terms of Hire continue to apply; and
 - (iii) the Company can give notice to the Customer at any time after the end of the Hire Period to return the Equipment. If the Customer gives the Company notice under this clause 8.9(d)(iii), the Customer must return the Equipment in accordance with clauses 8.9 (a).

8.10 Site Access and Repossession

- (a) The Customer grants to the Company an absolute right to enter the Site or other location wheresoever the Equipment is situated for the purpose of inspecting the Equipment from time to time.
- (b) If the Equipment is located at a Site, with the permission of the Company, not operated by the Customer it is the responsibility of the Customer to ensure the Company will have the right to enter such Site for the purposes of inspecting the Equipment from time to time and to repossess the Equipment in accordance with this Hire Agreement.
- (c) The Company will give the Customer notice prior to any Site visits and all Site rules and regulations will be adhered to.
- (d) Without limiting any other rights of the Company under this Hire Agreement if the Company, in its absolute discretion is of the opinion that the Equipment is being used in a manner which it considers adverse or abnormal it will give the Customer a written warning. If after a written warning the Equipment is still being used in a condition which the Company considers adverse or abnormal the Company, in its sole discretion, has the right to take repossession of the Equipment with all relevant costs being charged to the Customer's account.
- (e) If the Customer is in breach of the Hire Agreement or if the Hire Agreement has been terminated in accordance with clause 11 the Company may take steps necessary (including legal action) to recover the Equipment, including entering the Site where the Equipment is held to recover the Equipment and the Customer expressly consents to the Company entering the Site for this purpose.

8.11 The Customer must not

- (a) Tamper with, damage or repair the Equipment unless authorised in writing to do so by the Company;
- (b) lose or part possession with the Equipment;
- (c) rely on any representation relating to the Equipment or its operation other than those contained in the Hire Agreement.

9. PERSONAL PROPERTY SECURITIES ACT

9.1 In this clause 9 "PPSA" means *Personal Properties Securities Act 2009* and any other legislation and regulations in respect of it and amendments to it, and the following terms used in this clause shall have the same meaning as given in the PPSA:

collateral, financing statement, financing change statement, purchase money security interest, PPS Register, security Agreement, security interest, verification statement, guarantor.

9.2 The Customer consents to the Company affecting and maintaining a registration on the PPS register (in any manner the Company considers appropriate) in relation to any security interest contemplated or constituted by this Hire Agreement in the Equipment and the proceeds arising in respect of any dealing in the Equipment and the Customer agrees to sign any documents and provide all assistance and information to the Company required to facilitate the registration and maintenance of any security interest.

9.3 The Company may at any time register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest). The Customer waives the right to receive notice of a verification statement in relation to any registration on the register of a security interest in respect of the Equipment.

9.4 The Customer undertakes to:

- (a) do anything (in each case, including executing any new document or providing any information) that is required by the Company:
 - (i) so that the Company may acquire and maintain one or more perfected security interests under the PPSA in respect of the Equipment and its proceeds;
 - (ii) to register a financing statement or financing change statement; and
 - (iii) to ensure that the Company's security position, and rights and obligations, are not adversely affected by the PPSA;
- (b) not register a financing change statement in respect of a security interest contemplated or constituted by this Hire Agreement without the Company's prior written consent; and
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without the Company's prior written consent.

9.5 The Customer warrants that the Equipment is not hired for personal, domestic or household purposes and the Customer agrees to indemnify the Company for any breach of this warranty.

9.6 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising under or in connection with this Hire Agreement and:

- (a) section 115(1) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and the Customer will have no rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor), section 96, section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and
- (b) section 115(7) of the PPSA allows for the contracting out of provisions of the PPSA, the following provisions of the PPSA will not apply and the Customer will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.

9.7 Unless otherwise agreed and to the extent permitted by the PPSA, the Customer and the Company agree not to disclose information of the kind referred to in section 275(1) of the PPSA to an interested person, or any other person requested by an interested person. The Customer waives any right the Customer may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.

9.8 For the purposes of section 20(2) of the PPSA, the collateral is Equipment including any Equipment which is described in any Hire Schedule provided by the Company to the Customer from time to time. This Hire Agreement is a security agreement for the purposes of the PPSA.

9.8 The Company may apply amounts received in connection with this Hire Agreement to satisfy obligations secured by a security interest contemplated or constituted by this Hire Agreement in any way the Company determines in the Company's absolute discretion.

9.9 The Customer agrees to notify the Company in writing of any change to the Customer's details set out in the Credit Application or if none then as otherwise advised in writing by the Customer, within 5 days from the date of such change.

10. Security Interest and Sub-Hire

10.1 The Customer must not create, purport to create or permit to be created any "security interest" (as defined in PPSA) in the Equipment other than with the express written consent of the Company.

10.2 The Customer must not lease, hire, bail or give possession ("sub-hire") of the Equipment to any third party ("third party") unless the Company (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to the Company and must be expressed to be subject to and subordinated to the rights of the Company under this Hire Agreement and the third party is made aware the sub-hire will breach the Company's security interest in the Equipment unless the Company consents to the sub-hire and the third party is bound by the terms of the Company's consent.

10.3 If the Company terminates this Hire Agreement or if the Customer repudiates this Hire Agreement:

- (a) The Company may by notice to the third party terminate the sub-hire and upon such notice the third party's right to possess and use the Equipment automatically ceases and the third party must surrender possession and control of the Equipment to the Company notwithstanding that the third party may not be in breach or default under the sub-hire.
- (b) The Company may enter the premises where any Equipment is located to exercise its rights under this Hire Agreement.
- (c) The third party will obtain all necessary consents from the owner, occupier and other interested persons (such as any mortgagee) of the relevant premises where the Equipment is located to enable the Company to inspect or take possession of the Equipment.
- (d) If the Company request, at any time, any original sub-hire that is a chattel paper must be:
 - (i) permanently and prominently marked in such a way that no other person can take possession of the sub-hire without being put on notice of the Company's security interest in the sub-hire as chattel paper;
 - (ii) delivered to the Company and held in the Company's possession;
 - (iii) the Company may, at its discretion, perfect any security interest held by it against a third party in any manner it considers appropriate to protect its interest in the Equipment and the sub-hire chattel paper.
- (e) The Customer may not vary a sub-hire without the prior written consent of the Company (in its absolute discretion).
- (f) If requested by the Company, the Customer must produce any sub-hire agreement or terms and conditions it intends to use for a sub-hire and agrees that if these are not the satisfaction of the Company then Customer will use a sub-agreement prepared by the Company.
- (g) The Customer must ensure that the Company is provided at all times with up-to-date information about the sub-hire including the identity of the sub-Customer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment.
- (h) The Customer must take all steps including registration on the PPS Register as may be required to:
 - (i) ensure that any security interest arising under or in respect of the sub-hire including where the interest is a PMSI is enforceable, perfected and otherwise effective under the PPSA;
 - (ii) enabling the Customer to gain (subject always to the rights of the Company and any other secured party as notified by the Company) first priority (or any other priority agreed to by the Company in writing) for the security interest; and

- (iii) enabling the Company, the Customer and any other secured party nominated by the Company to exercise their respective rights in connection with the security interest.
- (i) The Company may recover from the Customer the cost of doing anything under this clause including registration fees.
- (j) Notwithstanding the aforementioned and without limiting any other provision of these Terms of Hire the Company may choose, at its absolute discretion, to register the Customer's interest under any sub-agreement on the PPS Register on behalf of the Customer at the Customer's cost which will be added to the Hire Charges.

11. TERMINATION

11.1 The Company may do any of the following:

- (a) terminate this Hire Agreement and any Hire Period immediately by giving written notice to the Customer; and/or
- (b) sue for recovery of all monies owing by the Customer for damages suffered by the Company as a result of the breach; and/or
- (c) repossess the Equipment (and is authorised to enter any premises where the Equipment is located to do so) if:
 - (i) the Customer breaches a term of the Hire Agreement (that is not an essential term) and fails to remedy such breach (that is capable of remedy) within seven (7) days of written notification of the breach; or
 - (ii) the Customer becomes bankrupt or insolvent, executes a personal insolvency agreement, receivership or ceases to carry on a business; or
 - (iii) the Customer breaches an essential term of the Hire Agreement.

11.2 For the purposes of this clause 11 an essential term of this Hire Agreement includes (without limitation):

- (a) payment of the Hire Charges and any other fees and charges payable by the Customer under the Hire Agreement;
- (b) the Customer's obligations set out in clause 8;
- (c) clauses 9 and 10 (PPSA).

11.3 These rights of termination in this clause 11 are in addition to any other rights the Company has under the Hire Agreement and does not exclude any right or remedy under law or equity.

12. INDEMNITIES AND LIMITATION OF LIABILITIES

12.1 Except as expressly provided to the contrary in this Hire Agreement, all guarantees, terms conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Hire Agreement or its subject matter are excluded to the maximum extent permitted by law.

12.2 Nothing in this Hire Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Australian Consumer Law, which contains guarantees that protect the purchasers of Equipment and services in certain circumstances.

12.3 Where any legislation implies or imposes a guarantee, term, condition, warranty, undertaking, inducement or representation in relation to this Hire Agreement and the Company is not able to exclude that guarantee, term, condition, warranty, undertaking, inducement or representation ("Non-Excludable Provision"), and the Company is able to limit the Customer remedy for a breach of the Non-Excludable Provision, then the Company's liability for breach of the Non-Excludable Provision is limited to (at the Company's election) the repair or replacement of the Equipment or the supply or substitute of Equipment (or the cost of doing so).

12.4 Subject to the Company's obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, the Company's maximum aggregate liability for all claims under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an

indemnity, based on fundamental breach or breach of an essential term or on any other basis, is limited to an amount equal to the fees paid by the Customer under this Hire Agreement, in calculating the Company's aggregate liability under this clause, the parties must include any amounts paid or the value of any Equipment or services replaced, repaired or supplied by the Company for a breach of any Non-Excludable Provisions.

- 12.5 Subject to clauses 12.3 and 12.4, the Company will not be liable to the Customer for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs the Customer has incurred, amounts that the Customer is liable to its customers for or any loss suffered by third parties under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of an essential term or on any other basis, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.
- 12.6 The Customer is liable for and agrees to indemnify the Company against all liability, claims, damage, loss, costs and expenses (including without limitation, legal fees, costs and disbursements on a full indemnity basis) whether incurred or awarded against the Company in respect of:
- (a) loss or damage to the Equipment (which includes a payment of any deductible on an insurance policy maintained in respect of the Equipment); or
 - (b) death, injury or damage to any person or property arising directly or indirectly from the Equipment or its use by the Customer, its directors, offices, employees, contractors, licences or customers;
 - (c) a claim by a third party;
 - (d) the possession, use or operation of the Equipment by the Customer;
 - (e) the Customer not complying with its obligations under this Hire Agreement;
 - (f) any GST or other tax payable in respect of the Equipment or this Hire Agreement.
- 12.7 The Customer's liability under this clause 12.7 is diminished to the extent that liability or loss results from any negligence, wilful misconduct or breach of the Hire Agreement by the Company.
- 12.8 Each indemnity in this Hire Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of the Hire Agreement and it is not necessary for the Company to incur expense or to make a payment before it is able to enforce a right of indemnity against the Customer.

13. Privacy

- 13.1 The Company takes the Customer's privacy seriously and the Company will comply with the *Privacy Act 1988* in all dealings with the Customer's personal information.
- (a) The Company may need to collect personal information about the Customer, including but not limited to, the Customer's full name and address, drivers licence, credit card details, date of birth, credit or business history and other personal information. The Customer consents to the Company using its personal information in order to:
 - (i) fulfill functions associated with the hire of Equipment to the Customer, including but not limited to assessing the Customer's credit worthiness;
 - (ii) provide services to the Customer;
 - (iii) prevent theft of the Equipment;
 - (iv) enter into contracts with the Customer or third parties; and
 - (v) to market to the Customer and maintain a client relationship with the Customer.
 - (b) The Customer also consents to the Company disclosing its personal information:
 - (i) to any credit provider or credit reporting agency for the purpose of obtaining information about the Customer's consumer or commercial credit or business history or its commercial activities or credit worthiness; and

(ii) the Company service providers, contractors and affiliated companies from time to time to help improve and market the Company's services to the Customer.

(c) The Customer has the right to access the personal information the Company holds about the Customer by written request to the Company.

14. Force Majeure

14.1 Neither Party will be liable for any failure to carry an obligation under this Hire Agreement due to causes beyond its control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.

15. Severability

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

16. Entire Agreement

The Hire Agreement as defined in clause 1.1 comprises the entire agreement between the Parties concerning its subject matter. No additional terms and conditions apply to the hire of the Equipment unless agreed in writing by the Parties.

17. Governing Law

This Agreement is governed and interpreted in accordance with the Laws of Western Australia and any dispute arising under this Agreement is to be heard and determined with in the jurisdiction of Western Australia.

18. No Waiver of Rights

No delay or omission by a Party to exercise any right, power or remedy available to that Party under the Hire Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of that Party's rights to take action or make a claim in respect of a continuing breach or default. A Party may only waive a right under this Hire Agreement in writing.

19. Review of Credit Approval

- (a) From time to time the Company may review any Credit Account the Company has granted to the Customer without notice.
- (b) The Company may, at the Company's discretion, decide to withdraw credit for any reason, including but not limited to if the Customer circumstances change, the Customer fails to make payments on time or the Customer fail to use the Equipment in accordance with the terms of the Hire Agreement.
- (c) If the Company withdraws credit you may terminate this Hire Agreement immediately by giving the Company written notice. However, the Customer does so the Customer must:
 - (i) pay amounts that were subject to credit in accordance with the terms on which that credit was provided; and
 - (ii) still pay all amounts due to the Company under this Hire Agreement, including hire charges until the Equipment is back in the Company's custody and possession.

20. Signing the Hire Agreement

- (a) The person signing any document which forms part of the Hire Agreement for and on behalf of the Customer hereby warrants that he or she has the Customer's authority to enter into the Hire Agreement on the Customer behalf and grant the security interests in connection with it and is empowered to bind the Customer to the Hire Agreement and each security interest granted in connection with it.
- (b) The person signing this Hire Agreement indemnifies the Company against all losses, costs and claims incurred by the Company arising out of the person so signing this Hire Agreement not in fact having such power and/or authority.

21. Previous Editions

This edition of the Terms of Hire replaces and supersedes any terms and conditions previously provided by the Company in respect of the hire of Equipment and any previous editions of these Terms of Hire the Company has issued.

22. Notices

All notices required to be given under this Hire Agreement must be in writing and sent via ordinary post or via email to the address of the recipient nominated in this Hire Agreement or such other address by that Party as nominated in writing.

23. Attorney

23.1 The Customer irrevocably appoints the Company its attorney with the right:

(a) at any time to:

- (i) comply with the obligations of the Customer under the Hire Agreement including (without limitation) clauses 9 and 10;
- (ii) do everything that in the Attorney's reasonable opinion is necessary or expedient to enable the exercise of any right of the Company in relation to tis Hire Agreement.