

STANDARD TERMS AND CONDITIONS FOR THE COMMERCIAL HIRE OF GOODS AND EQUIPMENT

1. DEFINITIONS

In these Terms these words and phrases have the following meanings:

"Account Application" means the application by the Customer to the Owner to open a Credit Account (if any), in the form approved by the Owner.

"Additional Equipment" means the Owner's goods, tools, consumables, accessories or Equipment that the Customer may, outside the scope of the Quotation, hire on the Terms and subject to any further terms and conditions that the Owner (in its absolute discretion) thinks fit.

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

"Certificate of Currency" means a certificate of currency evidencing to the satisfaction of the Owner that the Customer has insurance cover sufficient to cover loss, damage to or destruction of the Equipment.

"Commencement Date" means the date:

- (a) where the Customer is collecting the Equipment, when the Customer collects the Equipment from the Owner's Premises; or
- (b) where the Owner is delivering the Equipment, when the Owner loads the Equipment onto any vehicle for delivery to the Site.

"Contract" means the contract between the Owner and the Customer for the hiring of the Equipment and provision of the Services, subject to the Terms.

"Credit Account" means a credit account that the Customer has with the Owner for the provision of credit, which account the Owner has approved and opened following the Customer completing and submitting to the Owner an Account Application.

"Customer" means the addressee or applicant (as the case may be) named in the Quotation or Account Application.

"Damage Waiver Fee" means the loss and damage waiver fee set out in the Quotation, and if no such fee is set out, then a fee equal to 12% of the total Hire Charge for the Period of Hire.

"Day" means a calendar day commencing immediately on midnight and finishing immediately before the next midnight.

"Default Event" means an event of default set out in clause 9.1 of these Standard Terms and Conditions.

"Deposit" means the sum (if any) stated in the Quotation as a deposit required to be paid by the Customer prior to commencement of the hire.

"Environmental Laws" means any legislation, statutes, laws or regulations relating to the use or protection of the environment.

"Equipment" means collectively all the goods, tools, consumables, accessories and Equipment described in the Quotation and separately each item of the goods and equipment designated in the Quotation, and all Additional Equipment, to be hired to the Customer by the Owner.

"Facilities" means all earthworks, electrical services, scaffolding, lighting, awnings, components, lifting/cranes and other requirements necessary in order to facilitate the proper and safe installation and use of the Equipment on the Site during the Period of Hire. **"GST"** means Goods and Services Tax as defined in A New Tax Act (Goods and Services) 1999 (Cth).

"Hire Charge" means the fee exclusive of GST which is payable by the Customer to the Owner for the hire of the Equipment for the Period of Hire as set out in the Quotation.

"Loss" means any claim, action, damage, loss, liability, cost, charge or expense a party suffers, incurs or is liable for.

"Manufacturer" means in respect of each item of Equipment the identified manufacturer of that item of Equipment.

"Occupational Health and Safety Laws" means any legislation, statutes, laws or regulations relating to the occupational health and safety of workers.

"Other Charges" means the charges set out in clause 4.3.

"Order Confirmation" means a document issued by the Owner in response to an order placed by the Customer for the hire of Equipment or the provision of Services, confirming and accepting the Customer's order.

"Owner" means Embeca Pty Ltd t/as Cape Industrial Service and Supply ACN 110 769 938 or, if the Quotation is addressed from Embeca Pty Ltd or its subsidiary, subsidiaries, related company, or related companies, the addressor or addressors (as the case may be) named in the Quotation.

"Owner's Agents" means the Owner's employee, agents, contractors, lawful successors and assignees.

"Owner's IP" means the intellectual property rights (including any application to apply for such rights) in the Equipment and the Services its design, product requirements and other technical details including without limitation all design, development, customisation, engineering, technical drawings, know-how, trade secrets, patents and copyright, and any improvements to any of them, and any document, matter or thing prepared or written for the Contract by the Owner for the supply of the Equipment or the provision of the Services.

"Owner's Premises" means the premises which the Owner may designate (from time to time) for the collection or return of any Equipment.

"Period of Hire" means the period or term for which the Equipment is hired by the Customer from the Owner, as set out in clause 3.7.

"PPSA" means the Personal Property Securities Act 2009 (Cth).

"Privacy Policy" means the Owner's privacy policy available at www.nationalpump.com.au.

"Quotation" means the document provided by the Owner to the Customer which sets out the quotation, proposal or details for the hire of Equipment by, or provision of Services to, the Customer.

"Regulatory Authority" means any public authority or government agency responsible for regulating electrical works.

"Services" means the provision of labour by the Owner or the Owner's Agents

including but not limited to labour for preliminary site visits, production planning, engineering and design, testing, Equipment mobilisation, installation, commissioning, operation, servicing, decommissioning and demobilisation, and all associated travel costs, set out in the Quotation or otherwise agreed between the parties.

"Services Fee" means the fees for the Services as set out in the Quotation or otherwise agreed in writing by the Owner and the Customer.

"Site" means the site, place, or location specified in the Quotation at which the Equipment and any Additional Equipment is, or is to be, located during the Period of Hire or any holding over period.

"Special Conditions" means the special conditions (if any) as set out in the Quotation.

"Terms" means all of the terms and conditions of and incorporated in the Contract, being the terms and conditions set out in these Standard Terms and Conditions, the Quotation (including any Special Conditions) and the Account Application.

"Total Charges" means all of the charges set out in clause 4.1, 4.2 and 4.3.

"Uncertified Design" means any design, specification, drawing, sketch or calculation that the Owner has provided to the Customer without a certificate from an engineer or agent employed or engaged by the Owner.

"Waiver Excess" means the amount payable by the Customer to the Owner as set out in clause 7.6.

2. INTERPRETATION

2.1 In these Terms, unless the context requires otherwise:

- (a) a reference to a statute, rule, legislation or regulation to that statute, rule, legislation or regulation as amended, re-enacted or modified from time to time;
- (b) the headings are for convenience only and do not affect their construction or interpretation;
- (c) a reference to any party includes a permitted assign of that party;
- (d) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal entity, and any executor, administrator or successor;
- (e) a singular word includes the plural and vice versa;
- (f) a word which suggests one gender includes the other.

3. HIRE OF EQUIPMENT

3.1 **Quotation:** Any Quotation or estimate of price is not an offer to sell or contract by the Owner and until the Owner has issued an Order Confirmation, the Owner may at any time withdraw the Quotation by email, facsimile or letter to the Customer to that effect. No order for the hire of goods or provision of services following a Quotation or estimate will bind the Owner until it is accepted by the Owner issuing an Order Confirmation.

3.2 The Owner has no obligation to the Customer to supply the Equipment or provide the Services until the Owner has issued an Order Confirmation.

3.3 **Entire Agreement:** These Standard Terms and Conditions together with the Quotation and Account Application (if applicable), whether signed or not, set out the terms of the agreement between the Owner and the Customer for the hire of the Equipment and the provision of the Services and, together constitute the entire agreement between the parties.

3.4 **Terms:** The Owner hires the Equipment and provides the Services to the Customer on the Terms for the Period of Hire.

3.5 The Terms supersede and replace any terms and conditions of the Customer for the hire of the Equipment and the provision of the Services. The terms and conditions contained in any other document supplied by the Customer, including any terms on the Customer's purchase order, are not valid or binding and do not form part of the Contract.

3.6 **Authority:** The Customer represents and warrants that any person who, with apparent authority, places an order for the hire of the Equipment or the provision of the Services on the Customer's behalf:

- (a) has the authority to make the Contract on the Customer's behalf;
- (b) is empowered by the Customer to bind the Customer to the Contract; and hereby indemnifies the Owner against all losses and costs incurred by the Owner arising out of the person entering into the Contract failing to have such power or authority.

3.7 **Period of Hire:** The Period of Hire commences on the Commencement Date and ends on the later of:

- (a) the date for termination of the hire stated in the Quotation or Order Confirmation;
- (b) where the Owner is collecting the Equipment, when the Owner or Owner's Agents collect the Equipment from the Site; or
- (c) where the Customer is returning the Equipment, when the Equipment is back in possession of the Owner at the Owner's Premises.

4. FEES AND PAYMENT

4.1 **Deposit:** The Owner may, as set out in the Quotation, require the Customer to pay to the Owner the Deposit. The Customer must pay the Deposit to the Owner within five days after receiving an Order Confirmation.

4.2 **Charges:** The Customer must pay to the Owner the Hire Charge and Services Fee for the Period of Hire.

4.3 In addition to the Hire Charge and Services Fee, the Customer agrees to pay the following Other Charges, unless stated otherwise in the Quotation:

- (a) any consumables, trade materials, lubricants or fuel to operate the Equipment;
- (b) costs of delivery, collection and installation of the Equipment;
- (c) charges for payments under the Contract made by credit card;
- (d) charges for cleaning and repair of the Equipment if it is not returned in clean and good working condition;

(e) charges for pumping out or refilling pumps, water, fuel, oil or waste tanks and any associated waste or water disposal costs incurred by the Owner;

(f) any taxes, levies, fines, penalties or government charges arising out of the Contract;

(g) any fees for operational or engineering guidance, training or instruction provided by the Owner at the rates agreed between the parties including any reasonable costs incurred for meals, travel and accommodation;

(h) any costs incurred by the Owner associated with the Owner gaining access to the Site where necessary to perform its obligations under the Contract, such as attending inductions and undergoing medical tests;

(i) if applicable, the Damage Waiver Fee.

4.4 Payment Details: The Total Charges are payable on the dates as set out in the Quotation, and if no such dates are set out, then at the end of each month during the Period of Hire.

4.5 The Owner will provide a tax invoice in \$AUD to the Customer for the Total Charges. The Customer will pay the Total Charges to the Owner in accordance with the payment terms as stated in the Quotation or, if no payment terms are set out in the Quotation, within 30 Days of the date of the tax invoice. The Customer must also pay the GST as stated on the tax invoice when paying the Total Charges to the Owner.

4.6 Time is of the essence in relation to payments by the Customer to the Owner under the Contract.

4.7 Additional Equipment Charges: If the Customer hires any Additional Equipment from the Owner, the Customer will pay the hire charges for the Additional Equipment as agreed between the Customer and the Owner. The Owner will include such additional fees in the tax invoice referred to in clause 4.5.

4.8 Changes: The Customer acknowledges and agrees that the Owner may, in its absolute discretion, amend any of the Hire Charge, Service Fees or Other Charges, including introducing additional charges or fees, with such amendment taking effect upon the Owner providing written notice to the Customer.

4.9 Minimum Period: The Owner may charge for a minimum Period of Hire ("Minimum Hire Period") for certain types of equipment ("Minimum Equipment") as set out in the Quotation. If the Equipment constitutes Minimum Equipment and it is returned before the expiration of the Minimum Hire Period, the Customer must pay all of the Total Charges which would have been payable for the Minimum Hire Period.

4.10 Payment and Disputes: The Customer must pay all amounts due under the Contract in \$AUD, in full, without any set-off or deduction. The Owner may apply amounts received from the Customer in connection with the Contract to satisfy obligations under the Contract in any way the Owner determines in its absolute discretion.

4.11 The Customer must notify the Owner in writing within seven days of receipt of any disputed invoice whether in whole or in part. Failure to notify the Owner of any dispute within this period will render the invoice irrevocable and payment will be due and payable in accordance with clause 4.5.

4.12 Without prejudice to any other rights or remedies available to the Owner, if the Customer fails to pay any invoice in full within the period specified in Clause

4.5, the Customer must pay to the Owner on demand, in addition to any other costs recoverable under the Contract, interest on the amount outstanding from the Day payment was due until the Day it is paid at the maximum overdraft rate of the Owner's principal bankers plus 3%, accruing daily and reimburse the Owner for any costs (including legal fees or commissions) incurred by the Owner in recovering any unpaid amounts.

4.13 The Owner may from time to time review any Credit Account and, at the Owner's absolute discretion, stop or suspend the Credit Account of the Customer for any reason, including, but not limited to, the Customer's failure to make payments in accordance with Clause 4.5 or failure to use the Equipment in accordance with the Contract. If the Owner withdraws credit, the Owner may immediately terminate the Contract and the Customer must immediately pay all amounts due to the Owner under the Contract up to the date of termination.

4.14 The Owner may set-off against any monies owed to the Customer any amount owed to the Owner by the Customer.

4.15 Withholding Tax: If the Customer is required by law to deduct or withhold any taxes from a payment to the Owner, then the Customer may make those deductions or withholdings (or both), provided that the Customer gives the Owner an official receipt for each payment and increases the payment to the Owner by the amount necessary to ensure the Owner receives the full amount which it would have received if no deduction or withholding had been made.

5. THE EQUIPMENT

5.1 Delivery: Unless the Quotation provides otherwise, the Customer is responsible for collecting the Equipment from, and returning the Equipment to, the Owner's Premises and must bear all costs associated with insuring the Equipment during transit, loading, transporting and unloading the Equipment. Where the Customer requires the Owner to arrange delivery or collection of the Equipment:

(a) the Customer must reimburse the Owner for all transportation and insurance costs incurred by the Owner for transporting the Equipment to or from the Customer; and

(b) the Customer is responsible for instructing the Owner where to position the Equipment on the Site and the Owner may refuse instructions if the Owner is of the reasonable opinion that the position on the Site is

unsuitable for the Equipment.

5.2 Upon delivery or collection of the Equipment, the Customer must inspect the Equipment to determine whether the Equipment complies with the Contract and is in good order and condition. Unless the Customer otherwise notifies the Owner in writing within one day of delivery or collection, then the Equipment will be deemed to comply with the Contract and be in good order and condition.

5.3 Risk: Risk in the Equipment passes to the Customer upon loading on a vehicle for delivery to the Site or collection of the Equipment by the Customer (or the Customer's agent) from the Owner's Premises, whichever is the earlier.

5.4 No warranties: Any warranties as to suitability, fitness for purpose or merchantability are hereby expressly excluded to the full extent permitted by law. The Customer acknowledges that it has satisfied itself as to the suitability, condition and fitness for purpose of the Equipment without relying on any representations or warranties of the Owner or any person purporting to act on its behalf.

5.5 Operation of Equipment: The Customer will:

(a) at all times operate the Equipment safely in accordance with all laws, its intended use and in accordance with the Manufacturer's specifications;

(b) ensure that any users of the Equipment:

(i) are not under the influence of drugs or alcohol;

(ii) wear suitable clothing and protective Equipment;

(iii) are suitably trained and qualified to use the Equipment and hold all necessary licences, permits and approvals necessary to operate the Equipment;

(iv) understand and follow all relevant safety rules and precautions (including conducting a job safety analysis prior to using the Equipment);

(v) do not carry any illegal, prohibited or dangerous substances in or on the Equipment; and

(vi) display and follow all safety signs and instructions as required by law.

(c) clean, lubricate and fuel the Equipment and keep it in good condition in accordance with the Manufacturer's instructions at the Customer's cost and provide scheduled oil samples as directed by the Owner;

(d) arrange at the Customer's expense the testing and tagging of electrical Equipment provided by the Owner in accordance with the Manufacturer's instructions and the applicable Australian Standard(s) and Regulatory Authority requirements. Any damage caused to the Equipment resulting from incorrect testing will be at the Customer's cost;

(e) ensure safe loading, securing and transporting of the Equipment at all times in accordance with all laws, the Manufacturer's guidelines and the directions of the Owner;

(f) not tamper, modify or in any way interfere with, or repair or attempt to repair or alter or dismantle the Equipment without the prior written consent of the Owner;

(g) ensure that the Equipment is secure at all times and where being stored in an unlocked Site, supply such security measures to ensure that the Equipment is safe and secure from theft, seizure, loss or damage at all times during the Period of Hire;

(h) at no time during the Period of Hire remove, vary or deface any label, Manufacturer's serial numbers or other marks identifying the Equipment or the Owner's ownership of the Equipment or in any way deal with it in a manner inconsistent with the rights of the Owner as owner;

(i) not permit any person to improperly use the Equipment;

(j) not allow the Equipment to be moved from the Site without the Owner's prior written consent;

(k) ensure that the Site is not used for any purpose which may put the whole or any part of the Equipment at risk of being lost, damaged or destroyed;

(l) not allow or authorise another person or entity to use, rehire or have possession of the Equipment, without the written permission of the Owner;

(m) comply with all Environmental Laws and immediately rectify any breach of an Environmental Law caused by using the Equipment;

(n) keep the Equipment free from contamination or hazardous substances and advise the Owner of any risk of hazardous substance contamination as soon as they become apparent. If the Equipment becomes contaminated the Customer must thoroughly decontaminate and clean the Equipment and provide a written report to the Owner of the processes applied. If the Owner is not reasonably satisfied that the Equipment has been or can be decontaminated and cleaned, the Owner may charge the Customer for the new replacement cost of the Equipment; and

(o) allow the Owner to enter the Site to inspect and maintain the Equipment as requested by the Owner upon providing prior reasonable notice.

5.6 Breakdown: During the Period of Hire, if the Equipment breaks down or becomes unsafe to use, the Customer must immediately cease using the Equipment and notify the Owner, taking all necessary steps to prevent injury to any persons or property, or further damage to the Equipment itself. The Customer must not tamper, modify or in any way interfere with, or repair or attempt to repair or alter the Equipment without the prior consent of the Owner.

5.7 Except if clause 7.2 applies, upon receiving notification from the Customer under clause 5.6, the Owner will take all reasonable steps to repair the Equipment or provide suitable substitute Equipment if the Owner determines that repair is not possible, as soon as reasonably practicable after being notified by the Customer.

5.8 Except if clause 7.2 applies, the Hire Charge will not be payable during the period the Equipment is not working pursuant to clause 5.6.

5.9 Return of Equipment: Where the Customer has responsibility to return the Equipment to the Owner's Premises; it must return it in good order and condition and fully fuelled to the Owner's Premises. Prior to return of the Equipment, the Customer must clean and fresh water flush the Equipment of

any fluids in the Equipment. The Equipment remains on hire and the Hire Charge is payable until returned to the Owner's Premises and the Owner may charge for fuel not returned and a fee to cover cleaning and waste disposal should the Equipment be returned in an unsatisfactory condition in accordance with clause 4.3(d) and (e).

5.10 Where the Owner has agreed to collect the Equipment from the Site, the Customer must make it available for collection in good order and condition and fully fuelled at the Site. The Customer must keep the Equipment safe and protect the Equipment from loss, damage or destruction until collected by the Owner. Prior to collection of the Equipment by the Owner, the Customer must clean and fresh water flush the Equipment of any fluids in the Equipment. The Equipment remains on hire and the Hire Charge is payable until the Equipment arrives at the Owner's Premises. The Owner may charge for fuel not returned and a fee to cover cleaning and waste disposal should the Equipment be in an unsatisfactory condition in accordance with clause 4.3(d) and (e).

5.11 **Uncertified Designs:** The Owner is not responsible for the accuracy of any Uncertified Design and the Customer acknowledges and agrees that the Owner is not liable for any loss or damage arising from the use of any Uncertified Design. The Customer acknowledges that any Uncertified Design is indicative only and is prepared for the purpose of assisting the Customer in assessing options.

5.12 The Customer agrees to obtain its own independent advice from a qualified and accredited professional in relation to the proper design, installation and use of the Equipment for the Customer's required purpose.

6. INSURANCE

6.1 Subject to clause 7, the Customer will:

- (a) take out and maintain a policy of insurance that is sufficient to cover loss or damage to or destruction of the Equipment during the Period of Hire (and such other risks as the Owner may require in the Quotation) for not less than the full new replacement cost of the Equipment;
- (b) before the Period of Hire, provide a Certificate of Currency from a reputable insurer acceptable to the Owner for the policy in clause 6.1(a) which also includes a waiver of subrogation in favour of the Owner;
- (c) be responsible for:
 - (i) any excess and any other costs associated with this insurance; and
 - (ii) any shortfall in repair or replacement of the Equipment following any amount received under the insurance, including any loss the Owner may suffer as a result of not being able to hire the Equipment;
 - (iii) pay promptly all premiums in respect of such insurance policy; and
 - (iv) not do or permit or allow to be done anything which could prejudice any insurance of the Equipment.

6.2 The Customer will maintain policies of insurance for third party and public liability indemnity cover of not less than \$20 million, or such other amounts as set out in the Quotation.

7. LOSS AND DAMAGE

7.1 **Loss or Damage:** The Customer is responsible for all loss, theft or damage to the Equipment from any event whatsoever and howsoever caused except where such loss, theft or damage was caused by the Owner.

7.2 In the event the Equipment has broken down or becomes unsafe to use as a result of the Customer's acts or omissions (or the acts or omissions of any of the Customer's employees, agents or contractors) or if or any part of the Equipment is lost, stolen or damaged during the Period of Hire, the Customer will be liable to the Owner and will indemnify it for:

- (a) the cost and expenses incurred by the Owner to recover and repair or replace the Equipment (as determined by the Owner in its sole discretion); and
- (b) the Hire Charge for that portion of the Period of Hire during which the Equipment is being recovered and repaired or replaced, except where the Customer has paid the Damage Waiver Fee, in which case the Customer's liability is subject to clauses 7.3 to 7.7 below.

7.3 **Damage Waiver Fee:** Subject to clause 7.4 the Damage Waiver Fee will automatically be payable by the Customer in addition to the Total Charges as set out in the Quotation, and will be included in the tax invoice referred to in clause 4.5.

7.4 The Customer may elect not to pay the Damage Waiver Fee if the Customer obtains their own insurance cover for the Equipment during the Period of Hire as set out in clause 6.1(a) and provides a Certificate of Currency as set out in clause 6.1(b).

7.5 Subject to clause 7.7, where the Customer has paid the Damage Waiver Fee, the Owner will waive its right to claim against the Customer for loss, theft, damage to or destruction of the Equipment provided that the Customer has:

- (a) taken adequate precautions to reasonably safeguard the Equipment;
- (b) where applicable, promptly reported the incident to the police and provided a copy of the police report to the Owner;
- (c) fully cooperated with the Owner and provided their own written report detailing the incident, including photographs and statutory declarations where required by the Owner;
- (d) paid the Damage Waiver Fee prior to the loss, theft, damage to or destruction of the Equipment occurring; and
- (e) paid to the Owner the Waiver Excess referred to in Clause 7.6.

7.6 The Waiver Excess for each item of the Equipment is an amount equal to:

- (a) where the Equipment is partially damaged and can be repaired - 15% of the full repair costs for the Equipment;
- (b) where the Equipment cannot be repaired or is lost or stolen - 15% of the full new replacement cost of the Equipment.

7.7 Even if the Customer has paid the Damage Waiver Fee, the Owner will not waive its rights to claim against the Customer, and the Customer is liable for and indemnifies the Owner for loss, theft, damage to or destruction of the Equipment where such event:

- (a) has resulted from a negligent act, omission or failure to act by the Customer;
- (b) has been caused by a breach of this Contract by the Customer;
- (c) has occurred due to the incorrect installation or connection of the Equipment by the Customer;
- (d) was caused during transport of the Equipment (unless transported by the Owner);
- (e) occurs due to misuse, abuse or overloading of the Equipment in contravention of the Owner's or Manufacturer's instructions or any laws;
- (f) was caused by the unauthorised modification, repair or conversion of the Equipment by the Customer;
- (g) results from the Customer failing to adequately service or maintain the been caused by exposure to corrosive or abrasive substances such as caustic, cyanide, acid, salt water etc;
- (h) occurs where the Equipment is used on oil rigs, or is otherwise located or being transported over water;
- (i) occurs in relation to pumping Equipment which has been submerged in open shafts, open pits, underground or in bores.

8. SERVICES

8.1. **Site:** Where the Owner provides Services for a Customer at a Site, the Customer must:

- (a) allow the Owner and the Owner's Agents to access the Site at any time upon giving prior reasonable notice to enable the Owner and the Owner's Agents to provide the Services and to dismantle and remove the Equipment from the Site at the termination of the Period of Hire;
- (b) do all such things as are necessary to comply with the Customer's obligations under all applicable Occupational Health and Safety Laws and Environmental Laws to ensure that the Site and the Equipment as installed are safe and free from defects and dangerous conditions;
- (c) ensure that where the Equipment is being installed on any structure or held in place by any structure that the structure is capable of holding the weight of the Equipment and that the structure is properly erected so as to be safe and so as to take the loads involved in holding the Equipment;
- (d) ensure that the Site is safe for the provision of the Services and the installation and use of the Equipment; and
- (e) ensure that for the Period of Hire all required Facilities are available, in place, safe and in good working order.

8.2. **Operator:** Where the Owner is requested by the Customer to provide an operator to operate the Equipment ("**Operator**"), the Operator will be under the direction and control of the Customer. The Owner will not be liable for any acts or omissions of the Operator where they are acting under the direction and control of the Customer during the Period of Hire. The Customer indemnifies the Owner against any Loss arising from or incurred in connection with such acts or omissions. The Customer will not allow another person to operate the Equipment without the prior written consent of the Owner.

8.3 **Delay:** The Customer acknowledges that the Owner may, in providing the Equipment and the Services, be dependent upon other contractors or the Customer in providing the Equipment or preparing the Site for the Equipment or its installation. The Owner will not be liable for any delay in providing or installing the Equipment or in providing the Services where such delay is a consequence of any act or omission on the part of the Customer or such external contractors.

9. DEFAULT EVENTS AND TERMINATION

9.1. **Default Events:** The Customer will be in default under the Contract if:

- (a) it breaches any of its obligations under this Contract and fails to remedy such breach within seven (7) Days of being requested by the Owner to do so;
- (b) where the Customer being a corporation becomes insolvent, is woundup or goes into liquidation or proceedings are commenced for the appointment of a liquidator, trustee, administrator or receiver of the Customer or the Customer's assets;
- (c) where the Customer is a natural person, he or she is or becomes insolvent or makes an assignment for the benefit of his or her creditors or commits an act of bankruptcy under the Bankruptcy Act 1966 (Cth) or is declared bankrupt;
- (d) the Customer closes or disposes of all or a substantial part of its business; or there is a change of control of the Customer, for the purposes of the Corporations Act 2001.

9.2. **Consequences of Default:** Without limiting any other rights the Owner may have, the Customer must immediately return the Equipment to the Owner on the Owner's request if:

(a) a Default Event occurs; or
 (b) the Owner reasonably believes that a default event has occurred or will occur and notifies the Customer of the grounds for belief.

9.3 If a Default Event occurs the Owner is entitled to immediately:

- (a) terminate the Contract;
- (b) re-take possession of the Equipment;
- (c) enter any Site, or any property at which the Owner reasonably believes the Equipment to be located, for the purpose of doing anything reasonably necessary to:
 - (i) remove the Equipment from the Site property; or
 - (ii) to re-take possession of the Equipment; and
- (d) sue for recovery of all monies owing by the Customer under the Contract

9.4 The Customer indemnifies the Owner, and must keep the Owner indemnified,

against any Loss which might be incurred by the Owner in exercising its rights under clause 9.3. This indemnity covers (without limitation) any liability to any third party for trespass or for damage to any property occasioned by the Owner exercising its rights under clause 9.3(c).

9.5 Termination: The Owner may terminate the Contract for any reason by providing the Customer with 5 Days' notice in writing.

9.6 The rights of termination are in addition to any other rights under the Contract and do not exclude any right or remedy under law or equity.

10. WARRANTIES AND LIABILITY

10.1. **Non-excludable Obligations:** Nothing in this Contract operates to exclude, restrict or modify the application of any implied condition, warranty, provision, the exercise of any right or remedy, or the imposition of any liability under then Australian Consumer Law or any other statute if to do so would contravene the statute or cause any of these terms to be void ("**Non-excludable Obligation**").

10.2. The Owner's liability for a failure to comply with any Non-Excludable Obligation is limited to:

- (a) in the case of services, the cost (or payment of the cost) of supplying the services again; and
- (b) in the case of goods, the cost (or payment of the cost) of replacing the goods, supplying equivalent goods or having the goods repaired.

10.3 **Other Obligations:** Except in relation to Non-excludable Obligations, and any warranty expressly included in the Quotation, all conditions, warranties, guarantees, rights, remedies, representations and undertakings, whether express or implied, or other terms that may be implied by custom, under the general law or by statute, are expressly excluded under the Contract.

10.4 **Liability:** Except in relation to Non-Excludable Obligations, the Owner's liability arising directly or indirectly in connection with the Contract and whether arising under any indemnity, statute, in tort (for negligence or otherwise) or on any other basis in law or equity is limited as follows:

- (a) the Owner is not liable to the Customer for any Loss which the Customer suffers, incurs or is liable for in connection with the hire or use of the Equipment or the provision of the Services under the Contract, including without limitation, any Loss arising from the delay in delivery of the Equipment or damage to the Site or the Facilities during installation, commissioning or use of the Equipment or the provision of the Services;
- (b) the Owner is not liable for any indirect or consequential losses or any loss of revenue, loss of profit, loss of business opportunity or production, business interruption, wasted costs incurred, economic loss, loss of data or systems, loss of use, payment of liquidated sums, penalties or damages under any agreement sustained by the Customer or any other person arising from or in connection with the Contract; and
- (c) the Owner's total aggregate liability under or in any way connected with the Contract is otherwise limited to 10% of the total Hire Charges.

10.5 **Indemnity:** The Customer is liable for and indemnifies the Owner, its directors, officers and Owner's Agents ("**Indemnified Persons**") and must keep them indemnified, against any Loss an Indemnified Person suffers, incurs or is liable for arising from or in connection with the Customer's hire and use of the Equipment, use or reliance on any Uncertified Design or breach of the Contract. The Customer indemnifies the Indemnified Persons against any liability to any third party who suffers death, injury, loss or damage where such death, injury, loss or damage arises from or in connection with the Customer's hire and use of the Equipment, use or reliance on any Uncertified Design or breach of the Contract.

10.6 Each indemnity in this Contract is a continuing obligation and survives the termination, expiration or completion of the Contract. It is not necessary for the Owner to incur any expense or make any payment before enforcing a right of indemnity under this Contract. The Customer must pay on demand any amount it must pay under an indemnity in the Contract.

11. NO SALE AND ACKNOWLEDGEMENT OF OWNERSHIP

11.1 **Ownership:** The Customer acknowledges that the Owner is the sole exclusive owner of the Equipment and the Additional Equipment. The relationship

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between the Owner and the Customer is limited (upon delivery of the Equipment) to a relationship of owner and bailee in respect of the Equipment.

11.2 The Owner retains its full interest in, title to, and ownership of the Equipment at all times, including during a Default Event as set out in Clause 9.

11.3 In no circumstances will the Equipment be deemed to be a fixture.

11.4 **No Sale:** Except as detailed in Clause 12, the Customer is not entitled to offer, sell, sub-let, assign, pledge, mortgage, create any form of security interest over, or otherwise deal with the Equipment.

11.5 Nothing in this Contract confers any option on the Customer to purchase the Equipment or any part thereof unless expressly stated within the Quotation.

12. PPSA

12.1. **General:** Words and phrases used in this clause 12 that have defined meanings in the PPSA have the same meaning as in the PPSA unless the context indicates otherwise.

12.2 **Registration:** The Customer consents to the Owner affecting and maintaining a registration on the register in relation to any security interest contemplated or constituted by the Contract in the Equipment and the proceeds arising in respect of any dealing in the Equipment. The Customer agrees to do all things (including, without limitation, sign any documents and provide all assistance and information to the Owner) as the Owner reasonably requires to:

- (a) ensure the security interest is enforceable, perfected and effective;
- (b) enable the Owner to apply for registration, complete any financing statement, financing change statement or give any notification in connection with the security interest so the Owner has the priority required by it; or
- (c) enable the Owner to exercise rights in connection with the security interest.

12.3 **Notices:** The Customer waives its right:

- (a) under section 157 of the PPSA to receive a verification statement relating to a security interest created under the Contract; and
- (b) to receive any other notice under the PPSA, unless the PPSA requires the notice to be given and the obligation cannot be excluded.

12.4 **Collateral:** For the purpose of section 20(2) of the PPSA, the collateral covered by the Contract (being a security agreement) is the Equipment.

12.5. **Possession:** Notwithstanding any other provision of the Contract, the Customer is not entitled to obtain possession of the Equipment until after the Owner's security interest in the Equipment (as contemplated by the Contract) is perfected by registration on the register. The Owner may refuse to transfer to the Customer possession of any Equipment unless the Customer provides the Owner with all details and data that the Owner reasonably requires to register a financing statement under the PPSA with respect to any security interest the subject of the Contract.

12.6 **Payments:** If the Customer makes any payment to the Owner, the Owner may apply the payment to satisfy any obligation of the Customer to the Owner (whether the obligation is unsecured, secured by security interest, or secured by purchase money security interest). The Owner may:

- (a) apply the payment in any order or manner that it (in its absolute discretion)
- (b) thinks fit; and
- (c) amend or re-apply any application made.

12.7 **Customer's Dealings:** The Customer undertakes not to grant or create a security interest in respect of the Equipment and not to register or permit to be registered a financing statement or a financing change statement in respect of the Equipment or any security interest the subject of this Contract in favour of a third party, without the prior written consent of the Owner.

12.8 The Customer must not lease, sub/cross-hire, bail or otherwise give possession ("**Rehire**") of the Equipment to any third party without the prior written consent of the Owner (which may be withheld at the Owner's absolute discretion). Any Rehire agreement must be subject to any terms and conditions that the Owner

(in its absolute discretion) thinks fit. Any Rehire agreement must also be:

- (a) in writing;
- (b) expressly subject to the rights of the Owner under this Contract; and
- (c) expressly incapable of variation or alteration in any way without the prior written consent of the Owner.

12.9 The Customer must keep the Owner fully informed about the Rehire including the identity of the Customer, the terms and conditions of the Rehire and the location and condition of the Equipment.

12.10 In addition to the requirements of clause 12.2, where a Rehire is in effect, the Customer agrees to do anything reasonably required by the Owner: (a) to enable the Customer to gain (subject to the rights of the Owner) first priority for the security interest (or any other priority agreed to in writing by the Owner);

- (b) to enable the Owner and the Customer to exercise their respective rights in connection with their respective security interests;
- (c) to enforce these Terms against the Customer.

12.11 **Disclosure:** Unless otherwise agreed, the Customer and the Owner agree to the extent permitted by the PPSA not to disclose information of the kind referred to in section 275 (1) of the PPSA to an interested person or any other person. The Customer will not authorise, and will ensure that no other party authorises, disclosure of such information.

12.12 **Excluded Provisions:** The Owner and the Customer agree that the

following provisions of the PPSA will not apply and are excluded to the extent that they may be excluded by law for the purposes of section 115(1) of the PPSA:

- (a) Section 95 (to the extent that it requires the Owner to give notices to the Customer);
- (b) Section 96
- (c) Section 118 (to the extent that it requires the Owner to give notices to the Customer);
- (d) Section 121(4) ;
- (e) Section 125;
- (f) Section 130 (to the extent that it requires the Owner to give a notice to the Customer);
- (g) Section 132(3)(d) ;
- (h) Section 132(4);
- (i) Section 135;
- (j) Section 142; and
- (k) Section 143.

12.13 **Changes:** The Customer agrees to notify the Owner in writing of any changes to its details set out in the Account Application within 5 (five) Days from the date of such change.

13. PRIVACY

13.1. In all dealings with the Customer, the Owner will comply with the Australian Privacy Principles established in the Privacy Act 1988 (Cth) and the Privacy Policy.

13.2 The Customer consents to the Owner using the Customer's personal information to hire the Equipment to the Customer, provide the Services to the Customer, assess the Customer's credit worthiness or as required in accordance with Clause 12.

13.3. The Customer consents to the Owner providing the Customer's personal information to any credit provider or credit reporting agency for the purpose of obtaining information conducive to assessing the credit worthiness of the Customer.

13.4 The Customer consents to the Owner providing the Customer's ongoing Credit Account performance to any credit provider or credit reporting agency as required, or to the Owner's service providers, contractors and affiliated companies to help improve, provide or market the Owner's goods and services to the Customer as set out in the Privacy Policy.

14. INTELLECTUAL PROPERTY

14.1 The Owner's IP remains vested in the Owner or the Manufacturer. The Customer acquires no rights in the Owner's IP or any other material provided by the Owner. The customer must not use the Owner's IP for any purpose except the lawful use of the Equipment.

14.2 The Customer must not register or apply to register any rights in relation to the Owner's IP, and must not challenge or impair the Owner's IP.

14.3 To the extent that any intellectual property rights relating to the Equipment or any improvement have not vested in the Owner or the Manufacturer, the Customer hereby assigns, and must procure any third party to assign, all rights in the Equipment and the improvements to the Owner. The Customer must execute any documents and do all things to effect the assignment of rights in the Equipment and improvements to the Owner.

15. MISCELLANEOUS

15.1 **Governing Law:** This Contract shall be governed by and shall be construed and interpreted in accordance with the laws of Western Australia. The parties submit to the non-exclusive jurisdiction of the courts of Western Australia.

15.2 **Publicity:** The Customer will not without the prior written consent of the Owner engage in any publicity related to this Contract or use the Owner's name, logo, trademark, trade name, insignia or any other designation in any manner whatsoever.

15.3 **Updated Terms:** The Owner may update these Standard Terms and Conditions from time to time and they will apply immediately upon notice to the Customer. Notice is deemed given (whether or not actually received) when the Owner sends updated Standard Terms and Conditions to the Customer at any address supplied by the Customer (including an email address).

15.4 **No Waiver:** No failure to exercise or any delay in exercising any right, power or remedy by the Owner operates as a waiver of such right, power or remedy. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made and agreed to in writing.

15.5 **Force Majeure:** Neither the Owner nor Customer will be responsible for any delays in delivery or installation under the Contract as a result of causes beyond their control including but not limited to war, terrorism, acts of God, civil commotion, riots and unrest, embargoes, floods, strikes, fires or shortages of or inability to obtain shipping space or land transportation.

15.6 **Relationship:** Nothing in the Contract shall be construed to create a partnership or joint venture between the Owner and the Customer or to make any employee of the Owner a servant of the Customer or any employee of the

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Customer a servant of the Owner.

15.7 **Severability:** If any part of the Contract becomes void, ineffective or unenforceable for any reason, then that part will be severed and this will not affect the validity or enforceability of the remaining parts which will continue in full force and effect unaffected by the severance of any other parts.

15.8 **Variation:** The Contract may only be amended, supplemented or replaced by agreement in writing between the Owner and the Customer.

15.9 **Time:** Time shall not be of the essence in relation to the provision of the Equipment and Services by the Owner to the Customer.

15.10 **No reliance:** The Customer acknowledges that neither the Owner nor any person acting on behalf of the Owner has made any representation or other inducement to the Customer to enter into the Contract and that the Customer has not entered into the Contract in reliance on any representations or inducements except for those contained in the Contract.

15.11 **Claim for Payment:** The Contract is a claim for payment under the Construction Contracts Act 2004 (WA), the Building and Construction Industry Security of Payment Act 1999 (NSW), the Building and Construction Industry Security of Payment Act 2002 (VIC), the Building and Construction Industry Payments Act 2004 (QLD), the Building and Construction Industry Security of Payment Act 2009 (SA), the Building and Construction Industry (Security of Payment) Act 2009 (ACT), the Building and Construction Industry Security of Payment Act 2009 (TAS), and or the Construction Contracts (Security of Payments) Act 2009 (NT).

15.12 **Liability:** If the Customer comprises more than one person or entity, each is jointly and severally liable for the performance of all the Customer's obligations under the Contract.

15.13 **Notices:** Any notice under the Contract must be in writing and sent by post, email or facsimile to the address advised by the other party in the Quotation or Account Application, or subsequently advised in writing. Notices sent by post are deemed delivered 4 Days after posting. Notices sent by email or facsimile are deemed delivered on the Day of transmission.