



ABN 95 091 411 031

TERMS OF HIRE

1. HIRE AGREEMENT BETWEEN YOU AND US

These Terms of Hire, together with:

- (a) any Credit Application You completed and submitted to Us;
- (b) any Guarantee, Indemnity and Charge You completed and submitted to Us;
- (c) each Hire Schedule provided to You by Us, whether signed or not; and
- (d) any Special Terms specific to the type of Equipment You have hired attached to Your Hire Schedule,

make up the hire agreement (the "Hire Agreement") between You and Us. The provision or acceptance of a Hire Schedule shall not form a separate agreement between You and Us, but shall constitute part of this Hire Agreement. It is important that You read and understand all of the terms and conditions of the Hire Agreement before hiring from Us. If You have any questions please ask Us.

2. DEFINITIONS

To assist, when We refer to the following terms in this document:

"Credit Account" means You have properly completed and submitted a Credit Application to Us and We have approved You for an account with Us.

"Environmental Laws" means any statute, regulations or other laws made or issued by a regulatory body or government regulating or otherwise relating to the environment including without limitation the use or protection of the environment.

"Equipment" means any of Our equipment, including but not limited to, portable buildings, vehicles, compaction and heavy earth moving, dewatering equipment, shoring and pumps and any associated or attached tools, accessories and parts available for hire.

"Expected Off Hire Date" means the date You advised Us at the commencement of the hire that You would no longer require the Equipment. This date is set out in the Hire Schedule.

"Hire Period" means for Equipment specified in a Hire Schedule the period described in clause 4.

"Hire Schedule" means the document provided by Us to You which outlines important information, including but not limited to, the Equipment You have hired, the hire rates which apply to the Equipment, any other applicable charges, the Expected Off Hire Date and the address for delivery of the Equipment.

"Licence to Perform High Risk Work" means a validly issued licence issued by the relevant workplace health and safety departments of each respective state government required for the operation of equipment which is considered to be high risk.

"Long Distance Location" is a location in excess of 50km from Our branch.

"LTD Waiver" has the meaning set out in clause 15.

"Non Excludable Provision" has the meaning set out in clause 16.3.

"Off Hire Date" has the meaning set out in clause 5.6.

"Off Hire Number" is the number given by Us to You on the Off Hire Date, as set out in clause 5.6.

"PMP" is the electronically managed preventive maintenance program operated by Us (or Our agent) for all Equipment. The PMP involves regular attendance on site by Our service team to conduct routine (zoo hourly) Equipment servicing and general maintenance requirements.

"PPSA" means the PPS Act and any other legislation and regulations in respect of it and the following words in clause 9.2,10 and 31 have the respective meanings given to them in the PPS Act; collateral, financing change statement, financing statement, interested person, purchase money security interest, register, registration, security agreement, security interest and verification statement.

"PPS Act" means the Personal Property Securities Act 2009 (Cth) (as amended).

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

"We/Us/Our" means Action Hire Pty Ltd (ABN 95 091 411 031).

"You/Your" refers to the person, firm, organisation, partnership, corporation, trust or other entity hiring Equipment from Us, as named in the Credit Application or the Hire Schedule (where You do not hold a Credit Account). The reference to "You" includes any employees, agents and contractors.

3. OUR HIRE COMMITMENT TO YOU

We agree to hire You the Equipment and will:

- (a) provide the Equipment to You in good working order; and
- (b) subject to clause 8.6, allow You to exclusively use the Equipment during the Hire Period.

4. THE HIRE PERIOD

4.1 The Hire Period commences when, either:

- (a) You take possession of the Equipment; OR
- (b) if You request delivery and collection of the Equipment, the time We deliver the Equipment to the address You provide to Us in the Hire Schedule,

whichever occurs first.

4.2 The Hire Period is for an indefinite term and ends when the Equipment is back in Our custody and possession.

4.3 The Hire Period includes weekends and public holidays.

4.4 The Hire Period can only be changed if You request a variation and We agree to that variation in writing.

5. HOW WE CALCULATE YOUR HIRE CHARGES

5.1 You will pay Us for the hire of the Equipment at the hire charge rates set out in the Hire Schedule.

5.2 The Hire Schedule will specify the type of rate which will apply to You and the method of calculation.

5.3 Additional rental charges as set out in the Hire Schedule will apply if the Equipment is used for **more than 8 hours per day**.



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- 5.4 We reserve the right to charge for a minimum period of hire for certain types of Equipment, but We will advise You of any minimum hire periods before You commence the hire.
- 5.5 Except in the circumstances set out in clause 5.6, You will be charged for the hire of Equipment for the full Hire Period. For the avoidance of doubt, You will continue to incur hire and other charges after the Expected Off Hire Date if You have not returned the Equipment to Us by the Expected Off Hire Date.
- 5.6 If You have requested that We deliver and collect the Equipment and We have agreed, hire charges will commence from the time the Equipment leaves Our premises and continue until the date You notify Us that You no longer require the Equipment and that the Equipment is available for collection (the "Off Hire Date"). At this time, We will give You a number as verification that Your request has been received ("Off-Hire Number"). On the Off Hire Date, You must notify Us that the Equipment is available for collection by no later than the time of day at which Your hire commenced (e.g. if Your hire commenced at loam, then You must notify Us by no later than loam on the Off Hire Date), otherwise We reserve the right to charge an extra day of hire charges. For the avoidance of doubt, the Expected Off Hire Date set out in the Hire Schedule is not considered to be Your notice to Us that the Equipment is available for collection.
- 6. OTHER CHARGES**
In addition to hire charges, You agree that You will be required to pay:
- (a) for any consumables, fuel or trade materials We supply to You;
 - (b) if You require Us to deliver, collect or install the Equipment, the cost of delivery, collection or installation, as detailed in the Hire Schedule;
 - (c) if You do not return the Equipment in clean and good working condition, charges for the cleaning and repair of the Equipment;
 - (d) any GST arising out of this Hire Agreement;
 - (e) any other applicable levies, fines, penalties and any other government charges arising out of Your use of the Equipment;
 - (f) charges for payment made by credit card, as detailed in the Hire Schedule;
 - (g) an environmental charge in relation to any item of Equipment, as detailed in the Hire Schedule;
 - (h) if You request operational guidance or training on the use of the Equipment and Our staff are available to provide this, the cost for the provision of these services at rates agreed with Us;
 - (i) charges in connection with the administration of Your account with Us, as detailed in the Hire Schedule, which may include printing and postage costs; and
 - (j) if applicable, The LTD Waiver charge as determined and set out in clause 15 of these Terms of Hire.
- 7. PAYMENT**
7.1 You must pay all fees, charges and costs that become due and payable under this Hire Agreement as per your payment terms.
- 7.2 If You do not pay the invoice in full by the payment due date, We reserve the right to charge, in addition to any other costs recoverable under this Hire Agreement:
- (a) interest, calculated monthly, on the total outstanding balance. The interest rate used to calculate the interest payable for the month is the 90-day Bank Bill Swap Rate published on the first business day of that month plus 2%; and
 - (b) any costs and expenses (including any commission payable to any commercial or mercantile agents and legal costs) incurred by Us in recovering any unpaid amounts under this Hire Agreement.
- 8. YOUR OBLIGATIONS TO US**
- 8.1 This Hire Agreement is personal to You and so You must not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time, unless expressly agreed by Us in writing.
- 8.2 You agree that before accepting the Equipment, You have satisfied Yourself as to the suitability, condition and fitness for purpose of the Equipment for the job You intend to use it for. Subject to clauses 16.2 and 16.3, We make no representations and give no guarantee or warranty that the Equipment is suitable for Your intended purpose.
- 8.3 To help You stay safe during the Hire Period, You and Your employees, agents and contractors must:
- (a) operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
 - (b) ensure persons operating or erecting the Equipment are suitably trained on its safe and proper use, qualified to use the Equipment and where necessary, hold a current Licence to Perform High Risk Work;
 - (c) wear suitable clothing and protective equipment when operating the Equipment as required or recommended by Us or the manufacturer;
 - (d) ensure that no persons operating the Equipment are under the influence of drugs or alcohol;
 - (e) conduct a job safety analysis prior to using the Equipment;
 - (f) ensure that no persons carry illegal, prohibited or dangerous substances in or on the Equipment; and
 - (g) display all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Equipment.
- 8.4 It is important to take care of the Equipment during the Hire Period. You must:
- (a) clean, fuel, lubricate and keep the Equipment in good condition and in accordance with the manufacturer's and Our instructions at Your own cost;
 - (b) not in any way alter, modify, tamper with, damage or repair the Equipment without Our prior written consent; and
 - (c) not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment.
- 8.5 At all times during the Hire Period, You must store the Equipment



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- safely and securely and protected from theft, seizure, loss or damage.
- 8.6 You will allow Us to enter Your premises and inspect the Equipment from time to time during the Hire Period. You can also request to conduct a joint inspection of the Equipment with Us at the end of the Hire Period.
- 8.7 Whenever You are moving the Equipment, You must ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturer's guidelines. You (or any contractor You engage) must observe any safety directions advised by Us and/or the manufacturer of the Equipment to ensure its safe loading and handling.
- 8.8 You must not remove the Equipment from the State Or Territory in which You hired it without Our written consent.
- 8.9 You must not use the Equipment off-shore, in mire, in an area where friable asbestos is present, or move the Equipment over water without Our prior written consent, which may be reasonably withheld.
- 8.10 You warrant that You will comply with all Environmental Laws from time to time and immediately rectify any breach of an Environmental Law caused by the use of the Equipment,
- 8.11 You must use best endeavours to ensure that the Equipment is not contaminated with any hazardous substances (including asbestos). Subject to clause 8.9, You must advise Us of any risks of hazardous substance contamination to the Equipment as soon as they become apparent. Where Equipment may have been subjected to contamination, you must effectively decontaminate the Equipment, as well as provide Us with written details of decontamination processes applied. If, in Our opinion acting reasonably, the Equipment has not been properly decontaminated or is not capable of being decontaminated, You *will* be charged for the new replacement "cost of the Equipment.
- 8.12 Any electrical Equipment provided by Us will be tested and tagged before it is hired to You, but You are responsible for arranging the re-testing and re-tagging of any electrical Equipment in accordance with the manufacturer's instructions and the applicable Australian Standard(s) and Regulatory Authority requirements at Your cost. We are able to arrange for such re-testing and re-tagging of the electrical Equipment at Your cost. Except where We arrange for re-testing and re-tagging of the electrical Equipment, any damage caused to the Equipment resulting from incorrect testing arranged by You will be at Your cost.
- 8.13 If, at Your request, We supply an operator to operate the Equipment ("Operator"):
- the Operator will be under Your direction and control during the Hire Period and will comply with Your reasonable directions;
 - We will not, while the Operator is working under Your direction and control in accordance with clause 8.13(a), seek to direct or supervise any of the work undertaken by Operator;
 - We will not be liable to You for any acts or omissions of the Operator where they are acting under your direction and control during the Hire Period; and
 - You will not allow any other person to operate the Equipment without Our prior written consent.
- REMEMBER, WE OWN THE EQUIPMENT**
- You acknowledge that We own the Equipment and in all circumstances We retain title to the Equipment (even if You go into liquidation or become bankrupt during the Hire Period). Your rights to use the Equipment are as a bailee only.
- 9.2 Except in the circumstances set out in clause 10, You are 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.
- 9.3 In no circumstances will the Equipment be deemed to be a fixture.
- 10. PPSA**
- 10.1 You consent to Us affecting and maintaining a registration on the register (in any manner We consider 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 You agree to sign any documents and provide all assistance and information to-Us required to facilitate the registration and maintenance of any security interest. We may at any time register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest). You waive 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.
- 10.2 You undertake to:
- do anything (in each case, including executing any new document or providing any information) that is required by Us (i) so that We 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 Our security position, and rights and obligations, are not adversely affected by the PPSA;
 - not register a financing change statement in respect of a security interest contemplated or constituted by this Hire Agreement without Our prior written consent; and
 - 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 Our prior written consent.
- 10.3 If Chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising under or in connection with this Hire Agreement and:
- section 115(1) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of *the* PPS Act will not apply and You 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
 - section 115(7) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and You will have no rights under them: section 127; section 129(2) and (3); section 130); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.



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

10.5 For the purposes of section 20(2) of the PPS Act, the collateral is Equipment including any Equipment which is described in any Hire Schedule provided by Us to You from time to time. This Hire Agreement is a security agreement for the purposes of the PPS Act.

10.6 We 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 We determine in Our absolute discretion.

10.7 You agree to notify Us in writing of any change to Your details set out in the Credit Application, within 5 days from the date of such change.

11. RESPONSIBILITY FOR THE EQUIPMENT

You are responsible for the Equipment for the Hire Period.

12. RETURN OF EQUIPMENT

12.1 You must return the Equipment to Us in the same clean condition and good working order it was in when You received it, ordinary fair wear and tear excluded. If You do not properly clean the Equipment, We will charge You a cleaning cost in accordance with clause 6(c).

12.2 Except in the circumstances set out in clause 12.3 below, it is Your responsibility to return the Equipment in good working condition to the Action Hire branch You hired it from during normal business hours.

12.3 if You have requested, and We have agreed, to collect the Equipment from You, You must ensure it is kept safe and secure until the time of collection.

13. WHAT TO DO IF EQUIPMENT BREAKS DOWN

13.1 In the event that the Equipment breaks down or becomes unsafe to use during the Hire Period You must:

- (a) immediately stop using the Equipment and notify Us;
- (b) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
- (c) take all steps necessary to prevent any further damage to the Equipment itself; and
- (d) not repair or attempt to repair the Equipment without Our written consent.

13.2 Except if clause 14.1 applies, upon receiving notice from You under clause 12.1, We will:

- (a) take all steps necessary to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by You; and
- (b) not impose a hire charge for that portion of the Hire Period for which the Equipment was broken down or unsafe, nor the costs associated with any repair or

replacement of the Equipment.

14. WHAT TO DO IF EQUIPMENT IS LOST, STOLEN OR DAMAGED

14.1 If the Equipment has broken down or become unsafe to use as a result of Your negligence or if the Equipment is lost, stolen or damaged beyond fair wear and tear during the Hire Period, You will be liable for:

- (a) any costs incurred by Us to recover and repair or replace the Equipment; and
- (b) the hire charges for that portion of the Hire Period during which the Equipment is being recovered and repaired or replaced,

except where You have paid an LTD Waiver Fee, in which case Your liability is subject to clause 15 below.

14.2 Provided that You pay the costs and charges described in clause 14.1, We will return the Equipment to You once it has been repaired or replaced, and You will continue to pay the hire charges for the remainder of the Hire Period.

15. LOSS THEFT DAMAGE WAIVER

15.1 Loss Theft Damage Waiver ('LTD Waiver') is not insurance, but is an agreement by Us to limit Your liability in certain circumstances for loss, theft or damage to Our Equipment to an amount called the LTD Waiver Excess. The LTD Waiver Excess is explained below.

15.2 An LTD Waiver Fee will be automatically charged to You in addition to Your hire charges and is set out in Your Hire Schedule.

15.3 You are not required to pay the LTD Waiver Fee if You produce a certificate of currency for an appropriate policy of insurance that covers loss, theft or damage to the Equipment during the Hire Period for an amount not less than the full new replacement value of the Equipment.

15.4 Where You have paid the LTD Waiver Fee, We will waive Our right to claim against You for loss, theft or damage to the Equipment if:

- (a) You have promptly reported the incident to the police and provided Us with a written police report;
- (b) You have co-operated with Us and provided Us with the details of the incident, including any written or photographic evidence We require;
- (c) the loss, theft or damage does not fall into one or more of the circumstances set out in clause 15.6; and
- (d) You have paid Us the LTD Waiver Excess.

15.5 The LTD Waiver Excess for each item of Equipment is the amount equal to:

- (a) \$2,500.00 or (if the replacement cost of the Equipment is less than \$500.00) the replacement cost of the Equipment; OR
- (b) 40% of the cost of the repairs (if the Equipment is partially damaged and can be repaired) OR 45% of the full new replacement cost of the Equipment (if the Equipment is lost, stolen or damaged beyond repair),

whichever is greater.

15.6 Even if You have paid the LTD Waiver Fee, We will not waive Our rights to claim against You for loss, theft or damage to the Equipment



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and LTD Waiver **will not apply** if the loss, theft or damage:

- (a) has arisen as a result of Your breach of a clause of this Hire Agreement;
- (b) has been caused by Your negligent act or omission;
- (c) has arisen as a result of Your use of the Equipment in violation of any laws;
- (d) has been caused by Your failure to use the Equipment for its intended purpose or in accordance with Our instructions or the Manufacturer's instructions;
- (e) occurs to the Equipment whilst it is located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
- (f) has been caused by a lack of lubrication or a failure to properly service or maintain of Equipment;
- (g) has been caused by collision with a bridge, car park, awning, gutter, tree or any other overhead structure or object due to insufficient clearance;
- (h) has been caused by the overloading of the Equipment or any components thereof;
- (i) is to motors or other electrical Equipment or components within the Equipment caused by electrical overload, a surge in electrical current or the use of under-rated or excessive lengths of extension leads with the electrical Equipment;
- (j) is caused by exposure to any corrosive or caustic substance, such as cyanide, salt water, acid, etc;
- (k) is caused by vandalism;
- (l) is to tyres or tubes; OR
- (m) is to glass.

16. INDEMNITIES AND EXCLUSION OF LIABILITIES

16.1 Subject to clause 16.3, and 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.

16.2 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 goods and services in certain circumstances.

16.3 Where any legislation implies or imposes a guarantee, term, condition, warranty, undertaking, inducement or representation in relation to this Hire Agreement and We are not able to exclude that guarantee, term, condition, warranty, undertaking, inducement or representation ('Non-Excludable Provision'), and We are able to limit Your remedy for a breach of the Non-Excludable Provision, then Our liability for breach of the Non-Excludable Provision is limited to (at Our election):

- (a) in the case of goods, the repair or replacement

of the goods or the supply of substitute goods (or the cost of doing so); or

- (b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.

16.4 Subject to Our obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, Our 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 a fundamental term or on any other basis, is limited to an amount equal to the fees paid by You under this Hire Agreement. In calculating Our aggregate liability under this clause, the parties must include any amounts paid or the value of any goods or services replaced, repaired or supplied by Us for a breach of any Non-Excludable Provisions.

16.5 Subject to clauses 16.3 and 16.4, We will not be liable to You for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs You have incurred, amounts that you are liable to Your 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 a fundamental 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.

16.6 You are liable for and indemnify Us 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 Us and any environmental loss, cost, damage or expense) in respect of:

- (a) personal injury;
- (b) damage to tangible property; or
- (c) a claim by a third party,

in respect of Your hire or use of the Equipment or Your breach of the Hire Agreement. Your liability under this indemnity is diminished to the extent that Our breach of the Hire Agreement or Our negligence causes the liability, claims, damage, loss, costs or expenses.

16.7 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 this Hire Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Hire Agreement.

16.8 We will not be liable to You for any acts or omissions of any person supplied by Us where that person is acting under Your direction and control during the Hire Period and you indemnify Us 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 Us and any environmental loss, cost, damage or expense) arising from or incurred in connection with such acts or omissions.

17. WHEN THIS HIRE AGREEMENT TERMINATES

17.1 Either party may terminate this Hire Agreement and any Hire Period immediately by giving notice to the other party, if:



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- (a) that other party breaches any term of the Hire Agreement and fails to remedy the breach within 14 days of written notification of the breach; or
- (b) that other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business.
- 17.2 We may terminate the Hire Agreement and any Hire Period for any other reason on 24 hours notice.
- 17.3 These rights of termination are in addition to any other rights either party has under the Hire Agreement and does not exclude any right or remedy under law or equity.
- 18. RECOVERY OF THE EQUIPMENT**
If You are in breach of the Hire Agreement or if the Hire Agreement or a Hire Period has been terminated under clause 17, We may take all steps necessary (including legal action) to recover the Equipment, including entering Your premises to do so. Upon receiving written notice from Us, You expressly consent to Us entering Your premises for the purposes of recovering Our Equipment.
- 19. SECURITY**
Except where clause 33 applies:
- (a) as security for Your obligations and liabilities under this Hire Agreement, You hereby charge for the due and punctual payment and performance of those obligations and liabilities, all of Your legal and equitable interest (both present and future) of whatsoever nature held in any and all real property;
- (b) without limiting the generality of the charge in this clause, You agree, on Our request, to execute any documents and do all things necessary required by Us to register a mortgage security or other instrument of security over any real property and against the event that You fail to do so within a reasonable time of being so requested, You irrevocably and by way of security, appoint any credit manager or solicitor engaged by Us to be Your true and lawful attorney to execute and register such instruments;
- (c) You will indemnify Us on an indemnity basis against all costs and expenses incurred by Us in connection with the preparation and registration of any such charge and mortgage documents; and
- (d) You also consent unconditionally to Us lodging a caveat or caveats noting Our interest in any of Your real property.
- 20. EQUIPMENT THAT IS COLLECTED OR DELIVERED IN A DAMAGED AND / OR DEFECTIVE CONDITION**
If You collect or receive the Equipment (whichever is applicable) and find that it is broken, damaged and/or defective, You must notify Us within 24 hours after You collect or receive the Equipment. If YOU do not notify Us within this time period, We are entitled to assume that the Equipment You collected or received was in good order and condition.
- 21. LONG DISTANCE MAINTENANCE**
21.1 If You hire Equipment for use at a Long Distance Location, this clause 21 applies to You.
- 21.2 The PIMP for all Equipment operating in a Long Distance Location will be subject to a per kilometre charge both to and from the premises nominated by You, as specified by Us. There will be no charge for the first 50 kilometres either way.
- 21.3 Multiple items of Equipment You hire from Us at the Long Distance Location will only be charged as one call out.
- 21.4 For the avoidance of doubt, You remain responsible for daily maintenance and care of all Equipment in accordance with clause 8, including but not limited to, daily checking of all fluids (fuel, oil, water, battery levels etc), general tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points.
- 21.5 If the Equipment breaks down at a Long Distance Location, You will also pay Us the costs associated with any attendance to the Long Distance Location in addition to any other costs payable under this Hire Agreement.
- 22. PRIVACY**
22.1 At Action Hire, We take Your privacy seriously. We will comply with the National Privacy Principles in all dealings with You.
- 22.2 We may need to collect personal information about You, including but not limited to, Your full name and address, drivers licence, credit card details, date of birth, credit or business history and other personal information. You consent to Us using Your personal information in order to:
- (a) fulfill functions associated with the hire of Equipment to You, including but not limited to assessing Your credit worthiness, or taking steps in accordance with clause 10;
- (b) provide services to You;
- (c) prevent theft of Our Equipment;
- (d) enter into contracts with You or third parties, and
- (e) to market to You and maintain a client relationship with You.
- 22.3 You also consent to Us disclosing Your personal information:
- (a) to any credit provider or credit reporting agency for the purposes of obtaining information about Your consumer or commercial credit or business history or Your commercial activities or credit worthiness: and
- (b) to Our service providers, contractors and affiliated companies from time to time to help improve and market Our services to You.
- 22.4 You have the right to access the personal information We hold about You.
- 22.5 A copy of Our Privacy Statement is available upon request or visit www.actionhire.com.au.
- 23. FORCE MAJEURE**
23.1 Subject to clause 23.2, neither party will be responsible for any delays in delivery, installation or collection due to causes beyond their 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.



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23.2 Nothing in clause 23.1 will limit or exclude Your responsibility and liability under the Hire Agreement for Equipment that is lost, stolen or damaged beyond fair wear and tear during the Hire Period, or has broken down or become unsafe to use as a result of Your conduct or negligence.

24. 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.

25. GOVERNING LAW

The Hire Agreement is governed by the laws of the State or Territory of Australia where the Hire Agreement is entered into by the parties and each party submits to the non-exclusive jurisdiction of the courts of that State or Territory.

26. ENTIRE AGREEMENT

The Hire Agreement as defined in clause 1, comprises the entire agreement between the parties. No additional terms and conditions (including any terms contained in any purchase order) apply to the hire of the Equipment unless agreed in writing by the parties.

27. NO RELIANCE

Subject to clauses 16.1 and 16.3, You acknowledge that neither We nor any person acting on Our behalf have made any representation or other inducement to You to enter into the Hire Agreement and You have not entered into the Hire Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those representations contained in this Hire Agreement.

28. VARIATION

Except where clause 33 applies, from time to time, We may need to vary this Hire Agreement. If We intend to do so, We will give You 30 days written notice and clearly set out Our proposed amendments. If You have reasonable grounds to believe the change will be detrimental to Your rights, You may terminate this Hire Agreement without penalty within 30 days of receiving Our written notice. Any other variation of these terms and conditions must be agreed in writing by You and Us.

29. NO WAIVER OF RIGHTS

Subject to clause 20, no delay or omission by a party to exercise any right, power or remedy available to that party as a result of a continuing breach or default 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.

30. REVIEW OF YOUR CREDIT APPROVAL

30.1 From time to time We may review any Credit Account We have granted to You without notice.

30.2 We may, at Our discretion, decide to withdraw credit for any reason, including but not limited to if Your circumstances change, You fail to make payments on time or You fail to use the Equipment in accordance with the terms of the Hire Agreement.

30.3 If we withdraw credit you may terminate this Hire Agreement immediately by giving Us written notice. However, if You do so You must:

- (a) pay amounts that were subject to credit in accordance with the terms on which that credit was provided; and

- (b) still pay all amounts due to Us under this Hire Agreement, including hire charges until the Equipment is back in our custody and possession.

31. SIGNING THIS HIRE AGREEMENT

31.1 The person signing any document which forms part of the Hire Agreement for and on behalf of You hereby warrants that he or she has Your authority to enter into the Hire Agreement on Your behalf and grant the security interests in connection with it and is empowered to bind You to the Hire Agreement and each security interest granted in connection with it.

31.2 Except where clause 33 applies, the person signing this Hire Agreement indemnifies Us against all losses, costs and claims incurred by Us arising out of the person so signing this Hire Agreement not in fact having such power and/or authority.

32. CLAIM FOR PAYMENT

This Hire Agreement is a claim for payment under the *Building and Construction Industry Security of Payment Act 1999* (NSW), the *Building and Construction Industry Security of Payment Act 2002* (V10), the *Building and Construction Industry Payments Act 2004* (QLD), the *Building and Construction Industry Security of Payment Act 2009* (SA), the *Construction Contracts Act 2004* (WA), 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 2005* (NT).

33. PROVISIONS OF THIS AGREEMENT EXCLUDED FROM CONSUMER CONTRACTS

Where You are an individual acquiring goods or services wholly or predominantly for personal, domestic or household use or consumption, the following provisions of these Terms of Hire will not apply for the purposes of Your Hire Agreement:

- (a) clause 19 (Security);
- (b) clause 28 (Variation); and
- (c) clause 31.1 (Signing this Agreement).

34. PREVIOUS EDITIONS

This edition of the Terms of Hire replaces and supersedes the Standard Conditions of Hire March 2009 and all previous editions of the Terms of Hire We have issued.

35. HIRE OF MOTOR VEHICLES

Where the Plant hired by the Hirer is a Motor Vehicle the following additional conditions also apply to the Hire Contract:

35.1 Definitions: 'Motor Vehicle' means a car, truck, utility or trailer.

35.2 Insurance: The Owner will arrange motor vehicle accident insurance for each Motor Vehicle recover any damage caused through a motor vehicle accident and the Hires must pay a charge for such insurance. This insurance will not cover the Hirer for the loss, theft or other damage to the vehicle (other than a Motor Vehicle accident). If the Motor Vehicle is damaged in a motor accident then the Hirer will be liable for the following additional costs:

- (a) the first \$2,500 of the cost of any damage if the driver is 25 years or over;
- (b) the first \$3,500 of the cost of any damage if the driver is under 25 years;

- (c) the cost of repairing damage;
- (i) to the pantech;
 - (ii) to or caused by a truck mounting device;
 - (iii) to tyres;
 - (iv) caused other than by the normal use of the Motor Vehicle,
 - (v) caused while the Motor Vehicle is being driven on any road that is unsealed or is not a public road; or
 - (vi) caused while the Hirer is in breach of any clause of the Hire Contract.
- 35.3 Damage to Motor Vehicle: In the event that the Motor Vehicle is lost, stolen or damaged (not through a motor accident) during the Hire Period, the Hirer is liable to pay the amount to replace or repair the Motor Vehicle, except where the Hirer pays the Damage Waiver Fee, in which case its liability is subject to the Damage Waiver clause (clause 15).
- 35.4 Damage to Tyres: The Hirer is liable to pay the cost of repairing or replacing that or damaged tyres and other damage to tyres arising outside of the ordinary and reasonable use of the Motor Vehicle.
- 35.5 Operation of Motor Vehicles: The Hirer warrants that it will not allow another person to drive a Motor Vehicle if:
- (a) the person does not hold an unrestricted licence to drive that class of Motor Vehicle;
 - (b) the person is under the age of 21 years;
 - (c) the person is affected by drugs and/or alcohol;
 - (d) the person has been convicted of any offence relating to driving a motor vehicle under the influence of drugs or more than the legally prescribed limit of alcohol; or
 - (e) the person has previously been refused motor vehicle insurance
- A breach of any of this clause 35.5 will render the Owner's insurance void and the Hirer liable for the costs of repairs or the replacement cost of the Motor Vehicle.
- 35.6 Fines and Government Charges: The Hirer will promptly pay all tolls, fines, penalties and other statutory or Government charges arising out of the use of the Motor Vehicle by the Hirer during the Hire Period. If the Owner pays any such charges the Hirer must reimburse the Owner within 7 days of receiving notification of the charges from the Owner.
- 35.7 Kilometre Charge: The Hirer must pay a charge for the number of kilometres that the Owner reasonably believes the Motor Vehicle has travelled during the Hire Period or for excess kilometres if an agreed usage is made within the hire charge.
- 35.8 Driver information: Prior to the commencement of the Hire Period the Hirer will provide the Owner with all information required by the relevant legislation for those persons who will operate the Motor Vehicle for or on behalf of the Hirer. The Owner is also permitted to take a copy of any driver's licences at the commencement of the Hire Period.
- 35.9 Safe Loading: The Hirer warrants that no Motor Vehicle will be laden in excess of the Motor Vehicle's gross vehicle mass anytime during the Hire Period.
- 35.10 Consumables: The Hirer must return the Motor Vehicle to the Owner with a full tank of fuel or the Hirer will be liable to pay the Owner the reasonable cost of filling the fuel tank.
- 35.11 Other Conditions: The Hirer acknowledges that These Standard Conditions, particularly clause 8 - Your Obligation To Us also apply to

Motor Vehicles.

36. HIRE OF TEMPORARY FENCING AND ITS ACCESSORIES

Where the Plant hired by the Hirer is temporary fencing and related accessories, the following additional conditions also apply to the Hire Contract.

- 36.1 Delivery, Collection, Installation and Removal: Subject to clause 6(b) the Hirer retains the Owner to deliver, collect, install, or remove the temporary fencing, the Owner will do so as the agent of the Hirer. All hire rates assume collection by the Hirer from the depot. Delivery and collection charges are extra and will be quoted upon request.
- 36.2 Excess Labour: An excess labour charge is payable by the Hirer if the following occurs:
- (a) installation location exceeds a 30 metre radius from access point;
 - (b) rough, steep and/or poor terrain whereas access is hindered and/or installation process has slowed;
 - (c) heavy growth, vegetation or lack of accessibility due to site conditions;
 - (d) an installation falls below the average installation rate of 75m of fencing for every one hour of labour;
 - (e) any installation where product is required to be moved, altered, amended or secured after initial installation. Transport and/or product charges may also apply in addition to relocation/labour charges and will be applied at the Owner's discretion.
- 36.3 Additional Delivery: Maximum Load capacity is restricted to 200 metre of fencing per truck. If requirements exceed the maximum amount, additional delivery charges apply.
- 36.4 Partial Collection: Transport cost provided in quote will cover the Hirer for the 1st delivery/installation of Plant, and the final pick-up of Plant. Any partial pickups during this time constitute additional transportation costs.
- ### 37. HIRE OF EARTH MOVING PLANT
- Where the Plant hired by the Hirer is deemed to be earth moving Plant as nominated by the Owner, then the following additional conditions also apply to the Hirer.
- 37.1 Excess Hire Charges: An excess hire charge is payable by the Hirer where the Hirer uses the earth moving Plant in excess of the number of hours specified in the Hire Contract. The excess hire charge is payable only in respect of those hours exceeding the specified number of hours.
- 37.2 Useable Items Charge: Unless otherwise indicated in the Hire Contract, the Hirer must pay a useable items charge in respect of the fuel, tyres, track gear, ground engaging tools and any other useable items listed in the Hire Contract. The level of usage will be determined by the Owner as a percentage of the actual cost of the useable item to the Owner. This percentage is to be calculated by deducting the percentage usage at the start of the Hire Period from the percentage usage at the end of the Hire Period. The Hirer will not be entitled to a payment or credit in respect of any useable item returned with less usage than at the start of the Hire Period.
- 37.3 Replacement of Useable items: The Hirer is responsible for replacing useable items when they become worn out or they run out.
- 37.4 Wear to Tyres: The Owner is responsible for the cost of ordinary wear and tear of tyres and tracks. Ordinary wear and tear is considered to be 4,000 SMU hours. The Hirer is liable for the cost of repairing or replacing



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flat or damaged tyres and is responsible for all wear and tear and damage to tyres and tracks which is caused by use of the tyres and tracks in conditions which the Owner considers are adverse or abnormal. At all times the Hirer must adhere to the manufacturer's recommended tyre pressure and track tension.

- 37.5 Bucket and Blade Wear: The Owner is responsible for the cost of normal bucket and blade wear or damage. The Hirer is responsible for the cost of all bucket and blade wear or damage which is caused by use of the buckets or blades in conditions which the Owner considers to be abnormal or adverse.
- 37.6 Ground Engaging Tools: The Hirer is responsible for all wear and tear to cutting edges, bucket teeth, hardware, ripper teeth and all other ground engaging tools hired. All ground engaging tools hired by the Hirer are to be returned to the Owner at the end of the Hire Period in the same condition in which they were supplied. Usage of ground engaging tools will be measured by comparing the percentage of use at the commencement of the Hire Period with the percentage of use at the end of the Hire.
- 37.7 Cleaning and Maintenance: The Hirer will at its own expense service, clean, maintain and return the Plant to the Owner in good and substantial repair and condition, with the exception of reasonable wear and tear. Except as otherwise notified by the Owner:
- (a) the Hirer is responsible for undertaking all preventative maintenance servicing and minor running repairs (including electrical, hydraulic hoses and oil leaks) in accordance with the manufacturer's specifications; and
 - (b) the Hirer is responsible for completing the manufacturer's oil sampling analysis (set out in the Operations and Maintenance Guide) on all compartments. If this is not completed the Hirer will be responsible for paying the Owner the reasonable Cost of doing so.