

Winch Hire Australia – Terms & Conditions of Hire

1 Definitions

- 1.1 "Owner" means Impact Supplies (Australia) Pty Ltd ATF Williamson Family No 2 Trust T/A Winch Hire Australia, its successors and assigns or any person acting on behalf of and with the authority of Impact Supplies (Australia) Pty Ltd ATF Williamson Family No 2 Trust T/A Winch Hire Australia.
- 1.2 "Hirer" means the Hirer or any person acting on behalf of and with the authority of the Hirer, as specified in any invoice, document or order, and if there is more than one Hirer is a reference to each hirer jointly and severally.
- 1.3 "Equipment" means all Equipment (including any accessories) supplied on hire by the Owner to the Hirer (and where the context so permits shall include any incidental supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by the Owner to the Hirer.
- 1.4 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Owner to the Hirer.
- 1.5 "Price" means the cost of the hire of the Equipment as agreed between the Owner and the Hirer subject to clause 4 of this contract.

2 Acceptance

- 2.1 The Hirer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Hirer places an order for, or accepts delivery of, the Equipment.
- 2.2 These terms and conditions may only be amended with the Owner's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Hirer and the Owner.

3 Change in Control

- 3.1 The Hirer shall give the Owner not less than fourteen (14) days prior written notice of any proposed change of ownership of the Hirer and/or any other change in the Hirer's details (including but not limited to, changes in the Hirer's name, address, contact phone or fax number/s, or business practice). The Hirer shall be liable for any loss incurred by the Owner as a result of the Hirer's failure to comply with this clause.

4 Price and Payment

- 4.1 At the Owner's sole discretion the Price shall be either;
- (a) as indicated on invoices provided by the Owner to the Hirer in respect of Equipment supplied on hire; or
 - (b) the Owner's current Price, at the date of delivery of the Equipment, according to the Owner's current Price list; or
 - (c) the Owner's quoted Price (subject to clause 4.2) which shall be binding upon the Owner provided that the Hirer shall accept in writing the Owner's quotation within thirty (30) days.
- 4.2 The Owner reserves the right to change the Price in the event of a variation to the Owner's quotation.
- 4.3 The Hirer acknowledges and agrees that the Price only covers the sale or hire of the Equipment. In the event that the Hirer requires any additional services (including, but not limited to, freight and transport costs, loading and unloading fees, instruction/training Services), the Hirer shall be charged for these as a variation to the Price as per clause 4.2.
- 4.4 At the Owner's sole discretion a deposit may be required.
- 4.5 Time for payment for the Equipment being of the essence, the Price will be payable by the Hirer on the date/s determined by the Owner, which may be:
- (a) the date specified on any invoice or other form as being the date for payment; or
 - (b) due thirty (30) days following the end of the month in which a statement is posted to the Hirer's address or address for notices; or
 - (c) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Hirer by the Owner.
- 4.6 Payment may be made by cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Hirer and the Owner.
- 4.7 Receipt by the Owner of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 4.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Hirer must pay to the Owner an amount equal to any GST the Owner must pay for any supply by the Owner under this or any other agreement for the hire of the Equipment. The Hirer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Hirer pays the Price. In addition the Hirer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5 Hire Period

- 5.1 Hire charges shall commence from the time the Equipment departs from the Owner's premises and will continue until the return of the Equipment to the Owner's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs. In the event the Hirer fails to return the Equipment to the Seller's premises until after 8am on the day following the day of hire, then the Hirer will be charged a minimum of an additional half day hire if the Equipment is returned before 12 noon, or an additional full day's hire if the Equipment is returned after 12 noon.
- 5.2 The date upon which the Hirer advises of termination shall in all cases be treated as a full day's hire.
- 5.3 If the Owner agrees with the Hirer to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves the Owner's premises and continue until the Equipment is returned to the Owner's premises.

Winch Hire Australia – Terms & Conditions of Hire

- 5.4 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless the Owner confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Hirer notifies the Owner immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Hirer.
- 5.5 The daily rate for hire of Equipment is based upon the Equipment being hired for a minimum hire period of eight (8) hours. In the event the Equipment is used in excess of eight (8) hours per day, an additional hiring charge may apply.

6 Delivery

- 6.1 In the event the Hirer requests the Owner to arrange transport for the Equipment, the Hirer shall be liable for all transport costs incurred by the Owner in delivering the equipment to the worksite and transporting it back to the Owner's premises.
- 6.2 Delivery ("**Delivery**") of the Equipment is taken to occur at the time that:
(a) the Hirer or the Hirer's nominated carrier takes possession of the Equipment at the Owner's address; or
(b) the Owner (or the Owner's nominated carrier) delivers the Equipment to the Hirer's nominated address even if the Hirer is not present at the address.
- 6.3 At the Owner's sole discretion the cost of delivery is in addition to the Price.
- 6.4 The Hirer must take delivery by receipt or collection of the Equipment whenever they are tendered for delivery. In the event that the Hirer is unable to take delivery of the Equipment as arranged then the Owner shall be entitled to charge a reasonable fee for redelivery.
- 6.5 The Owner may deliver the Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.6 Any time or date given by the Owner to the Hirer is an estimate only. The Hirer must still accept delivery of the Equipment even if late and the Owner will not be liable for any loss or damage incurred by the Hirer as a result of the delivery being late.

7 Risk

- 7.1 If the Owner retains ownership of the Equipment nonetheless, all risk for the Equipment passes to the Hirer immediately once Equipment leaves the Owner's premises irrespective of whose transport is used for delivery.
- 7.2 The Hirer accepts full responsibility for the safekeeping of the Equipment and indemnifies the Owner for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Hirer.
- 7.3 The Hirer will insure, or self insure, the Owner's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Hirer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 7.4 The Hirer accepts full responsibility for and shall keep the Owner indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Hirer or any other persons.
- 7.5 The Hirer acknowledges and agrees that the Hirer cannot recover from the Owner compensation for any damages (including, for consequential loss) in respect of these Terms and Conditions of Trade or the hiring or use of any Equipment.
- 7.6 The Hirer acknowledges and agrees that the Hirer cannot remove the Equipment from the site without the prior written consent of the Owner.
- 7.7 The Hirer shall be responsible for any damage caused by exposure to any corrosive or caustic substance, such as cyanide, salt water, or acid, as well as for any damage or loss caused during transport of the Equipment.
- 7.8 All electrical equipment has been safety checked, tested and tagged by the Owner prior to any hire. While the electrical Equipment is on hire, the Hirer is responsible for arranging at the Hirer's costs, the re-testing and re-tagging of the electrical Equipment in accordance with the applicable Australian Standard(s) and Regulatory Authority Requirements. The Owner is able to arrange, at the Hirer's cost, for such re-testing and re-tagging of the electrical Equipment.

8 Access

- 8.1 The Hirer shall be responsible for free access by the Owner to the site on which the Equipment is located. If there are any delays due to free access not being available then the Hirer shall be responsible and shall reimburse the Owner for all lost hire fees associated with the Equipment being unavailable. The Hirer shall also be responsible for all other expenses and costs incurred by the Owner due to delays in access to the Equipment.

9 Title

- 9.1 The Equipment is and will at all times remain the absolute property of the Owner, and the Hirer must return the Equipment to the Owner upon request to do so.
- 9.2 If the Hirer fails to return the Equipment to the Owner as is required under this agreement or when requested to do so, then the Owner or the Owner's agent may (as the invitee of the Hirer) enter upon and into any land and premises owned, occupied or used by the Hirer, or any premises where the Equipment is situated and take possession of the

Winch Hire Australia – Terms & Conditions of Hire

Equipment, without being responsible for any damage thereby caused. Any costs incurred by the Owner as a result of the Owner so repossessing the Equipment shall be charged to the Hirer.

- 9.3 The Hirer is not authorised to pledge the Owner's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

10 Personal Property Securities Act 2009 ("PPSA")

- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the Hirer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Equipment that has previously been supplied and that will be supplied in the future by the Owner to the Hirer.
- 10.3 The Hirer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Owner may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Owner for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Equipment charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Owner;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without the prior written consent of the Owner.
- 10.4 The Owner and the Hirer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Hirer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Hirer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by the Owner, the Hirer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Hirer must unconditionally ratify any actions taken by the Owner under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

11 Security and Charge

- 11.1 In consideration of the Owner agreeing to supply Equipment, the Hirer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Hirer either now or in the future, to secure the performance by the Hirer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Hirer indemnifies the Owner from and against all the Owner's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Owner's rights under this clause.
- 11.3 The Hirer irrevocably appoints the Owner and each director of the Owner as the Hirer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Hirer's behalf.

12 Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 12.1 The Hirer must inspect the Equipment on delivery and must immediately notify the Owner of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Hirer must notify any other alleged defect in the Equipment as soon as reasonably possible after any such defect becomes evident. The Hirer shall afford the Owner an opportunity to inspect the Equipment within a reasonable time following delivery if the Hirer believes the Equipment is defective in any way. If the Hirer shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage.
- 12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
- 12.3 The Owner acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Owner makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Equipment. The Owner's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Hirer is a consumer within the meaning of the CCA, the Owner's liability is limited to the extent permitted by section 64A of Schedule 2.

Winch Hire Australia – Terms & Conditions of Hire

- 12.6 If the Owner is required to rectify, re-supply, or pay the cost of re-supplying any services or Equipment under this clause or the CCA, but is unable to do so, then the owner may refund any money the Hirer has paid for the services or Equipment but only to the extent that such refund shall take into account the value of any services or Equipment and consumables which have been provided to the Hirer which were not defective.
- 12.7 If the Hirer is not a consumer within the meaning of the CCA, the Owner's liability for any defect or damage in the services or Equipment is:
- (a) limited to the value of any express warranty or warranty card provided to the Hirer by the Owner at the Owner's sole discretion;
 - (b) limited to any warranty to which the Owner is entitled, if the Owner did not manufacture the Equipment;
 - (c) otherwise negated absolutely.
- 12.8 Notwithstanding clauses 12.1 to 12.7 but subject to the CCA, the Owner shall not be liable for any defect or damage which may be caused or partly caused by, or arise as a result of:
- (a) the Hirer failing to properly maintain or store any Equipment;
 - (b) the Hirer interfering with the Equipment in any way without the Owner's written approval to do so;
 - (c) the Hirer using the Equipment for any purpose other than that for which it was designed;
 - (d) the Hirer continuing the use of the Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (e) the Hirer failing to follow any instructions or guidelines provided by the Owner;
 - (f) fair wear and tear, any accident, or act of God.

13 Hirer's Responsibilities

- 13.1 The Hirer shall:
- (a) maintain the Equipment as is required by the Owner (including, but not limited to, maintaining water, oil and fluid levels and tyre pressures and punctures);
 - (b) notify the Owner immediately by telephone of the full circumstances of any mechanical breakdown or accident in connection with the Equipment. The Hirer is not absolved from the requirements to safeguard the Equipment by giving such notification. In the event of a breakdown the Hirer shall not repair, or attempt to repair the Equipment without prior consent of the Owner in writing. If the Equipment breaks down or becomes unsafe the Hirer must immediately stop using the Equipment and must take all necessary steps to prevent injuries to any persons or damage to any property as a result of the condition of the Equipment. The Owner shall not be liable for any expenditure, damages, loss or inconvenience incurred by the Hirer arising out of any breakdown in the Equipment whether caused by fair wear and tear, lack of repair or negligence on the part of the Owner or for any reason whatsoever. If the Equipment breaks down or is damaged due to the Hirer's negligence or wilful misuse the Owner is entitled to continue to charge hire charges until the Equipment has been repaired, replaced or the Owner may recover the costs of any repairs that are carried out to the Plant;
 - (c) satisfy itself prior to taking delivery of the Equipment that the Equipment is suitable for its purposes;
 - (d) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction, whether supplied by the Owner or posted on the Equipment;
 - (e) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use, and where necessary, hold a current certificate of competency and/or are fully licensed;
 - (f) comply with all occupational health and safety laws relating to the Equipment and its operation;
 - (g) keep the Equipment in their own possession and control;
 - (h) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
 - (i) employ the Equipment solely in its own work and not permit the Equipment of any part thereof to be used by any other party for any other work;
 - (j) not exceed the recommended or legal load and capacity limits of the Equipment;
 - (k) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
 - (l) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to take a lien, or grant any encumbrance over the Equipment.
- 13.2 Immediately on request by the Owner the Hirer will pay:
- (a) the new list price of any Equipment that is for whatever reason destroyed, written off, or not returned to Owner;
 - (b) all costs incurred in cleaning the Equipment;
 - (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to 10% of the new list price of the Equipment;
 - (d) the cost of repairing any damage to the Equipment caused by the negligence of the Hirer or the Hirer's agent;
 - (e) the cost of repairing any damage to the Equipment caused by vandalism, or (in the Owner's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Hirer;
 - (f) any lost hire fees the Owner would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
 - (g) the cost of fuels and consumables provided by the Owner and used by the Hirer;
 - (h) for the service, cleaning, fuel, lubrication and maintenance of the Equipment to keep the Equipment in good and substantial condition;
 - (i) all costs of repairing or replacing the Equipment or vehicle;

Winch Hire Australia – Terms & Conditions of Hire

- (j) all fines, tolls, penalties and other charges arising out of the use of the motor vehicle or Equipment and must reimburse the Owner if the Owner has made such payment even if received by the Owner after completion of the hire period;
 - (k) the cost of repairing or replacing flat or damaged tyres and other damage to tyres arising outside the ordinary and reasonable use of the motor vehicle.
- 13.3 The Hirer will not allow any person to drive a motor vehicle if the person does not hold an unrestricted licence to drive that class of motor vehicle, or has a breath or blood alcohol concentration exceeding the minimum lawful concentration or is under the influence of any drug, toxic or illegal substance.
- 13.4 The Hirer acknowledges that the Owner will arrange motor vehicle accident insurance for each Toyota Land Cruiser to cover any damage caused through a motor vehicle accident and the Hirer must pay a charge for such insurance. This insurance will not cover the Hirer for the loss, theft or other damage to the motor vehicle (other than a motor vehicle accident). If the motor vehicle is damaged in a motor vehicle accident then the Hirer will be liable for the following additional costs:
- (a) the first two and a half thousand dollars (\$2500) of the cost of any damage if the driver is twenty-five (25) years or over; and
 - (b) the first three and a half thousand dollars (\$3500) of the cost of any damage if the driver is under twenty-five (25) years; and
 - (c) the cost of repairing damage:
 - (i) to the motor vehicle; and/or
 - (ii) to or caused by a truck mounting device: and/or
 - (iii) to tyres: and/or
 - (iv) caused other than by the normal use of the motor vehicle; and/or
 - (v) caused while the motor vehicle is being driven on any road that is unsealed or that is not a public road; and/or
- In the event that damage is caused that is not covered by the above insurance, the Hirer acknowledges and agrees they shall be liable for all costs incurred by the Owner in repairing the motor vehicle.
- 13.5 The Owner reserves the right to set-off against any credit owed to the Hirer, any amount owing by the Hirer to the Owner.
- 13.6 The Hirer agrees it shall be their responsibility to ensure that a job safety analysis is conducted prior to operating any electrical or mechanical Equipment to ensure safe working methods apply.
- 13.7 The Hirer agrees that they shall 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.
- 13.8 The Hirer indemnifies and agrees to keep the Owner indemnified against any loss, damages or costs howsoever resulting which may be incurred by the Owner arising from the use of the Equipment under this contract.
- 13.9 In the event the Owner needs to make any type of insurance claim due to damage, loss or theft to any Equipment during the hire period, the Hirer shall be liable for any costs incurred including the excess costs.
- 13.10 The Hirer agrees that they shall be responsible and maintain the liability for the Equipment and/or vehicle whilst waiting for the Owner to collect the item/s.
- 13.11 The Hirer acknowledges and agrees that in the event the Equipment or vehicle or trailer is required to be towed, the Hirer's vehicle shall be suitable for doing so.
- 13.12 In the event that the Equipment (Cable Trailer) is due for scheduled compliance pre-registration inspection whilst on hire, the Hirer agrees to arrange to deliver the Equipment to the Owner's approved inspection agent and to pay the costs of such delivery. The Owner shall be responsible for the cost of the actual inspection.
- 13.13 The Hirer agrees to pay for all damage sustained by the Owner's Equipment whilst on site, or being transported (whether due to negligence or otherwise) by anyone who is not an employee of the Owner.
- 13.14 In the event of war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event, the Hirer is responsible to take all necessary steps to ensure the safety of the Equipment. If the Hirer fails to do so and the Owner's Equipment sustains damage as a result, the Hirer shall be responsible to pay for all such damage as stated in section 13.13.

14 Cancellation

- 14.1 The Owner may cancel these terms and conditions or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice to the Hirer. On giving such notice the Owner shall repay to the Hirer any sums paid in respect of the Price. The Owner shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 In the event that the Hirer cancels delivery of the Equipment the Hirer shall be liable for any and all loss incurred (whether direct or indirect) by the Owner as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 14.3 In addition to the Owner's right to retake possession of the Equipment and or vehicle, the Owner is entitled in its discretion, following any breach of any provision of this agreement by the Hirer, to terminate this agreement, and/or sue for recovery of any damages, charges or loss suffered by the Owner, and/or cancel any insurances effective in respect of the vehicle or Equipment hired.

15 Dispute Resolution

- 15.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference

Winch Hire Australia – Terms & Conditions of Hire

each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration; and

15.2 Both parties agree that any such dispute arbitration shall be conducted within the Brisbane region.

16 Default and Consequences of Default

16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at the Owner's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

16.2 If the Hirer owes the Owner any money the Hirer shall indemnify the Owner from and against all costs and disbursements incurred by the Owner in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Owner's contract default fee, and bank dishonour fees).

16.3 Without prejudice to any other remedies the Owner may have, if at any time the Hirer is in breach of any obligation (including those relating to payment) under these terms of hire the Owner may repossess the Equipment as per clause 9.2, or suspend or terminate the supply of Equipment to the Hirer and any of its other obligations under the terms and conditions. The Owner will not be liable to the Hirer for any loss or damage the Hirer suffers because the Owner has exercised its rights under this clause.

16.4 At the Owner's sole discretion if any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.

16.5 Without prejudice to the Owner's other remedies at law the Owner shall be entitled to cancel all or any part of any order of the Hirer which remains unperformed in addition to and without prejudice to any other remedies the Owner may have and all amounts owing to the Owner shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to the Owner becomes overdue, or in the Owner's opinion the Hirer will be unable to meet its payments as they fall due; or
- (b) the Hirer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Hirer or any asset of the Hirer.

17 Privacy Act 1988

17.1 The Hirer agrees for the Owner to obtain from a credit reporting agency a credit report containing personal credit information about the Hirer in relation to credit provided by the Owner.

17.2 The Hirer agrees that the Owner may exchange information about the Hirer with those credit providers either named as trade referees by the Hirer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by the Hirer; and/or
- (b) to notify other credit providers of a default by the Hirer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Hirer is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Hirer.

The Hirer understands that the information exchanged can include anything about the Hirer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

17.3 The Hirer consents to the Owner being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

17.4 The Hirer agrees that personal credit information provided may be used and retained by the Owner for the following purposes (and for other purposes as shall be agreed between the Hirer and Owner or required by law from time to time):

- (a) the provision of Equipment on Hire; and/or
- (b) the marketing of services by the Owner, its agents or distributors; and/or
- (c) analysing, verifying and/or checking the Hirer's credit, payment and/or status in relation to the provision of Equipment on hire; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Hirer; and/or
- (e) enabling the daily operation of Hirer's account and/or the collection of amounts outstanding in the Hirer's account in relation to the hire of the Equipment.

17.5 The Owner may give information about the Hirer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Hirer;
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Hirer.

17.6 The information given to the credit reporting agency may include:

Winch Hire Australia – Terms & Conditions of Hire

- (a) personal particulars (the Hirer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
- (b) details concerning the Hirer's application for credit or commercial credit and the amount requested;
- (c) advice that the Owner is a current credit provider to the Hirer;
- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that the Hirer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of the Owner, the Hirer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Hirer's credit obligations);
- (g) advice that cheques drawn by the Hirer for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Hirer by the Owner has been paid or otherwise discharged.

18 General

- 18.1 The failure by the Owner to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Owner's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of Queensland in which the Owner has its principal place of business, and are subject to the jurisdiction of the Brisbane Courts in that state.
- 18.3 Subject to clause 12 the Owner shall be under no liability whatsoever to the Hirer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Hirer arising out of a breach by the Owner of these terms and conditions (alternatively the Owner's liability shall be limited to damages which under no circumstances shall exceed the Price of the Equipment hire).
- 18.4 The Hirer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Hirer by the Owner nor to withhold payment of any invoice because part of that invoice is in dispute.
- 18.5 The Owner may license or sub-contract all or any part of its rights and obligations without the Hirer's consent.
- 18.6 The Hirer agrees that the Owner may amend these terms and conditions at any time. If the Owner makes a change to these terms and conditions, then that change will take effect from the date on which the Owner notifies the Hirer of such change. The Hirer will be taken to have accepted such changes if the Hirer makes a further request for the Owner to provide any Equipment to the Hirer.
- 18.7 The Hirer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.