Winch Hire Australia Pty Ltd
ACN: 633 179 665 • ABN: 89 633 179 665
35 Boron St, Sumner QLD 4074 Brisbane Ph: 07 3376 2888
182 Military Rd, Guildford NSW 2161 Sydney Ph: 02 8103 0047
Email: accounts@winchhire.com.au
Web: www.winchhire.com.au

CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Hire overleaf or attached.

Client's Details: ☐ Individual ☐ Sole Trader ☐ Trust ☐ Partnership ☐ Company ☐ Other:			
Full or Legal Name:			
Trading Name (if different from above):			
Physical Address:		State:	Postcode:
Billing Address:		State:	Postcode:
Email Address:			
Phone No:	Fax No:	Mobile No:	
Personal Details: *(please complete if you are an Individual)*			
D.O.B.	Driver's Licence No:		
Business Details: *(please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)*			
ABN:	ACN:	Date Established *(current owners)*:	
Nature of Business:			
Paid Up Capital: $	Estimated Monthly Purchases: $	Credit Limit Required: $	
Principal Place of Business is: ☐ Rented ☐ Owned ☐ Mortgaged (*to whom*):			
Directors / Owners / Trustee *(if more than two, please attach a separate sheet)*			
(1) Full Name:		D.O.B.	
Private Address:		State:	Postcode:
Driver's Licence No:	Phone No:	Mobile No:	
(2) Full Name:		D.O.B.	
Private Address:		State:	Postcode:
Driver's Licence No:	Phone No:	Mobile No:	
Account Terms: ☐ 30 Days from EOM ☐ 30 Days following invoice ☐ Other:			
Purchase Order Required? ☐ YES ☐ NO	Accounts to be emailed? ☐ YES ☐ NO		
Accounts Email Address:			
Accounts Contact:		Phone No:	
Bank and Branch:		Account No:	

Trade References: *(please provide companies that are willing to do trade references)*

Name:	Address:	Phone / Fax / Email:
1.		
2.		
3.		

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF HIRE (overleaf or attached) of Winch Hire Australia Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. ***I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.***

SIGNED (CLIENT): _____ **SIGNED (SUPPLIER):** _____

Name: _____ Name: _____

Position: _____ Position: _____

WITNESS TO CLIENT'S SIGNATURE:

Signed: _____ Name: _____ Date: _____

OFFICE USE ONLY				
Account / Ref. No.	CREDIT LIMIT	APPROVED BY	DATA INPUTTED	DATE
	$			/ /

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Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of Winch Hire Australia Pty Ltd and its successors and assigns ("the Supplier") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply equipment and/or services to

[ ] ("the Client") ***[Insert Company Name In Box Provided]***

I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

1. **GUARANTEE** the due and punctual payment to the Supplier of all monies which are now owing to the Supplier by the Client and all further sums of money from time to time owing to the Supplier by the Client in respect of equipment and services supplied or to be supplied by the Supplier to the Client or any other liability of the Client to the Supplier, and the due observance and performance by the Client of all its obligations contained or implied in any contract with the Supplier, including but not limited to the Terms & Conditions of Hire signed by the Client and annexed to this Guarantee and Indemnity. If for any reason the Client does not pay any amount owing to the Supplier the Guarantor will immediately on demand pay the relevant amount to the Supplier. In consideration of the Supplier agreeing to supply the equipment and/or services to the Client, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under these terms and conditions (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 ("PPSA") and unequivocally consents to the Supplier registering any interest so charged. The Guarantor irrevocably appoints the Supplier and each director of the Supplier as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which the Supplier may reasonably require to:
   (a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
   (b) register any other document required to be registered by the PPSA or any other law; or
   (c) correct a defect in a statement referred to in clause 1(a) or 1(b).
2. **HOLD HARMLESS AND INDEMNIFY** the Supplier on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, the Supplier in connection with:
   (a) the supply of equipment and/or services to the Client; or
   (b) the recovery of monies owing to the Supplier by the Client including the enforcement of this Guarantee and Indemnity, and including but not limited to the Supplier's nominees contract default fee and legal costs; or
   (c) monies paid by the Supplier with the Client's consent in settlement of a dispute that arises or results from a dispute between, the Supplier, the Client, and a third party or any combination thereof, over the supply of equipment and/or services by the Supplier to the Client.

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

3. **I/We have received, read and understood the Supplier's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
4. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of monies owing to the Supplier by the Client and all obligations herein have been fully paid satisfied and performed.
5. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on the Supplier's part (whether in respect of the Client or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Client's obligations to the Supplier, each Guarantor shall be a principal debtor and liable to the Supplier accordingly.
6. If any payment received or recovered by the Supplier is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and the Supplier shall each be restored to the position in which they would have been had no such payment been made.
7. The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
8. **I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Client to the Supplier.**
9. I/we irrevocably authorise the Supplier to obtain from any person or company any information which the Supplier may require for credit reference purposes. I/We further irrevocably authorise the Supplier to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with the Supplier as a result of this Guarantee and Indemnity being actioned by the Supplier.
10. The above information is to be used by the Supplier for all purposes in connection with the Supplier considering this Guarantee and Indemnity and the subsequent enforcement of the same.

GUARANTOR-1

SIGNED: _____

FULL NAME: _____

HOME ADDRESS: _____

DATE OF BIRTH: _____

SIGNATURE OF WITNESS: _____

NAME OF WITNESS: _____

OCCUPATION: _____

PRESENT ADDRESS: _____

EXECUTED as a Deed this day of 20____

GUARANTOR-2

SIGNED: _____

FULL NAME: _____

HOME ADDRESS: _____

DATE OF BIRTH: _____

SIGNATURE OF WITNESS: _____

NAME OF WITNESS: _____

OCCUPATION: _____

PRESENT ADDRESS: _____

EXECUTED as a Deed this day of 20____

Note: 1. If the Client is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).
2. If the Client is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

WARNING: THIS IS AN IMPORTANT DOCUMENT. YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE SIGNING IT

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Winch Hire Australia Pty Ltd – Terms & Conditions of Hire

1. Definitions

1.1 "Supplier" means Winch Hire Australia Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Winch Hire Australia Pty Ltd.

1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting the Supplier to provide the Equipment and/or Services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Client, is a reference to each Client jointly and severally; and
(b) if the Client is a partnership, it shall bind each partner jointly and severally; and
(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Client's executors, administrators, successors and permitted assigns.

1.3 "Equipment" means all Equipment (including any accessories) supplied on hire by the Supplier to the Client. The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by the Supplier to the Client.

1.4 "Services" means all Services supplied by the Supplier (including the supply of parts for repairs) to the Client at the Client's request from time to time (where the context so permits the terms 'Equipment or 'Services' shall be interchangeable for the other).

1.5 "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 Supplier to the Client.

1.6 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "**Personal Information**" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.

1.7 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Works via the website.

1.8 "Price" means the cost of the hire of the Equipment (plus any GST where applicable) as agreed between the Supplier and the Client subject to clause 5 of this contract.

1.9 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. Acceptance

2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery of the Goods/Equipment.

2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.

2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.

2.4 The Client acknowledges that the supply of Goods/Equipment on credit shall not take effect until the Client has completed a credit application with the Supplier and it has been approved with a credit limit established for the account.

2.5 In the event that the supply of Goods/Equipment request exceeds the Clients credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse Delivery.

2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

3.1 The Client acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
(a) resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of this contract; and/or
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Services.

3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Supplier; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

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

5. Price and Payment

5.1 At the Supplier's sole discretion the Price shall be either;
(a) as indicated on invoices provided by the Supplier to the Client in respect of Equipment supplied on hire; or
(b) the Supplier's current Price, at the date of delivery of the Equipment, according to the Supplier's current Price list; or
(c) the Supplier's quoted Price (subject to clause 5.2) which shall be binding upon the Supplier provided that the Client shall accept in writing the Supplier's quotation within thirty (30) days.

5.2 The Supplier reserves the right to change the Price in the event of a variation to the Supplier's quotation. Variations will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Client shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

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5.3 The Client acknowledges and agrees that the Price only covers the sale or hire of the Equipment. In the event that the Client requires any additional services (including, but not limited to, freight and transport costs, loading and unloading fees, instruction/training Services), the Client shall be charged for these as a variation to the Price as per clause 5.2.

5.4 At the Supplier's sole discretion a deposit may be required.

5.5 Time for payment for the Equipment being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, 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 delivered to the Client'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 Client by the Supplier.

5.6 Payment may be made by cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Supplier.

5.7 Receipt by the Supplier 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.

5.8 The Supplier may in its discretion allocate any payment received from the Client towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Equipment.

5.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.

5.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client 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.

6. Hire Period

6.1 Hire charges shall commence from the time the Equipment departs from the Supplier's premises and will continue until the return of the Equipment to the Supplier's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs. In the event the Client fails to return the Equipment to the Supplier's premises until after 8am on the day following the day of hire, then the Client 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.

6.2 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.

6.3 If the Supplier agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves the Supplier's premises and continue until the Equipment is returned to the Supplier's premises.

6.4 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless the Supplier confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies the Supplier 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 Client.

6.5 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.

7. Delivery

7.1 In the event the Client requests the Supplier to arrange transport for the Equipment, the Client shall be liable for all transport costs incurred by the Supplier in delivering the equipment to the worksite and transporting it back to the Supplier's premises.

7.2 Delivery ("**Delivery**") of the Equipment is taken to occur at the time that:
(a) the Client or the Client's nominated carrier takes possession of the Equipment at the Supplier's address; or
(b) the Supplier (or the Supplier's nominated carrier) delivers the Equipment to the Client's nominated address even if the Client is not present at the address.

7.3 At the Supplier's sole discretion the cost of delivery is in addition to the Price.

7.4 The Supplier 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.

7.5 Any time specified by the Supplier for delivery of the Equipment is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Equipment to be delivered at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Equipment as agreed solely due to any action or inaction of the Client, then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.

8. Risk

8.1 If the Supplier retains ownership of the Equipment nonetheless, all risk for the Equipment passes to the Client immediately once Equipment leaves the Supplier's premises irrespective of whose transport is used for delivery.

8.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies the Supplier 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 Client.

8.3 The Client will insure, or self-insure, the Supplier'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

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or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

8.4 The Client accepts full responsibility for and shall keep the Supplier 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 Client or any other persons.

8.5 The Client acknowledges and agrees that the Client cannot recover from the Supplier 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.

8.6 The Client acknowledges and agrees that the Client cannot remove the Equipment from the site without the prior written consent of the Supplier.

8.7 The Client 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.

8.8 All electrical equipment has been safety checked, tested and tagged by the Supplier prior to any hire. While the electrical Equipment is on hire, the Client is responsible for arranging at the Client'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 Supplier is able to arrange, at the Client's cost, for such re-testing and re-tagging of the electrical Equipment.

9. Access

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

10. Title

10.1 The Equipment is and will at all times remain the absolute property of the Supplier, and the Client must return the Equipment to the Supplier upon request to do so.

10.2 If the Client fails to return the Equipment to the Supplier as is required under this agreement or when requested to do so, then the Supplier or the Supplier's agent may (as the invitee of the Client) enter upon and into any land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused. Any costs incurred by the Supplier as a result of the Supplier so repossessing the Equipment shall be charged to the Client.

10.3 The Client is not authorised to pledge the Supplier's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

10.4 Where Equipment is sold, the Supplier and the Client agree that ownership of the Equipment shall not pass until:
(a) the Client has paid the Supplier all amounts owing to the Supplier; and
(b) the Client has met all of its other obligations to the Supplier.

10.5 Receipt by the Supplier 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.

11. Personal Property Securities Act 2009 ("PPSA")

11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

11.2 Upon assenting to these terms and conditions in writing the Client 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 and/or collateral (account) – being a monetary obligation of the Client to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Client.

11.3 The Client 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 Supplier 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 11.3(a)(i) or 11.3(a)(ii);
(b) indemnify, and upon demand reimburse, the Supplier 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 Supplier;
(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 Supplier.

11.4 The Supplier and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

11.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

11.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

11.7 Unless otherwise agreed to in writing by the Supplier, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

11.8 The Client must unconditionally ratify any actions taken by the Supplier under clauses 11.2 to 11.5.

11.9 Subject to any express provisions to the contrary (including those contained in this clause 11), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

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11.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 11 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 11 will apply generally for the purposes of the PPSA.

12. Security and Charge

12.1 In consideration of the Supplier agreeing to supply Equipment, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

12.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.

12.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.

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

13.1 The Client must inspect the Equipment on delivery and must immediately notify the Supplier of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Equipment as soon as reasonably possible after any such defect becomes evident. The Client shall afford the Supplier an opportunity to inspect the Equipment within a reasonable time following delivery if the Client believes the Equipment is defective in any way. If the Client shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage.

13.2 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).

13.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Equipment. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.

13.5 If the Client is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.

13.6 If the Supplier 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 Client 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 Client which were not defective.

13.7 If the Client is not a consumer within the meaning of the CCA, the Supplier'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 Client by the Supplier at the Supplier's sole discretion;
(b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Equipment;
(c) otherwise negated absolutely.

13.8 Notwithstanding clauses 13.1 to 13.7 but subject to the CCA, the Supplier 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 Client failing to properly maintain or store any Equipment;
(b) the Client interfering with the Equipment in any way without the Supplier's written approval to do so;
(c) the Client using the Equipment for any purpose other than that for which it was designed;
(d) the Client 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 Client failing to follow any instructions or guidelines provided by the Supplier;
(f) fair wear and tear, any accident, or act of God.

14. Client's Responsibilities

14.1 The Client shall:

(a) maintain the Equipment as is required by the Supplier (including, but not limited to, maintaining water, oil and fluid levels and tyre pressures and punctures);
(b) notify the Supplier immediately by telephone of the full circumstances of any mechanical breakdown or accident in connection with the Equipment. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification. In the event of a breakdown the Client shall not repair, or attempt to repair the Equipment without prior consent of the Supplier in writing. If the Equipment breaks down or becomes unsafe the Client 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 Supplier shall not be liable for any expenditure, damages, loss or inconvenience incurred by the Client 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 Supplier or for any reason whatsoever. If the Equipment breaks down or is damaged due to the Client's negligence or wilful misuse the Supplier is entitled to continue to charge hire charges until the Equipment has been repaired, replaced or the Supplier 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 Supplier 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 work health and safety laws relating to the Equipment and its operation;
(g) keep the Equipment in their own possession and control;

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(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.

14.2 Immediately on request by the Supplier the Client will pay:
(a) the new list price of any Equipment that is for whatever reason destroyed, written off, or not returned to Supplier;
(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 Client or the Client's agent;
(e) the cost of repairing any damage to the Equipment caused by vandalism, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
(f) any lost hire fees the Supplier 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 Supplier and used by the Client;
(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;
(j) all fines, tolls, penalties and other charges arising out of the use of the motor vehicle or Equipment and must reimburse the Supplier if the Supplier has made such payment even if received by the Supplier after completion of the hire period;
(k) the cost of repairing or replacing flat or damage tyres and other damage to tyres arising outside the ordinary and reasonable use of the motor vehicle.

14.3 The Client 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.

14.4 The Client acknowledges that the Supplier will arrange motor vehicle accident insurance for each Toyota Land Cruiser to cover any damage caused through a motor vehicle accident and the Client must pay a charge for such insurance. This insurance will not cover the Client 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 Client 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

14.5 In the event that damage is caused that is not covered by the above insurance, the Client acknowledges and agrees they shall be liable for all costs incurred by the Supplier in repairing the motor vehicle.

14.6 The Supplier reserves the right to set-off against any credit owed to the Client, any amount owing by the Client to the Supplier.

14.7 The Client 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.

14.8 The Client 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.

14.9 The Client indemnifies and agrees to keep the Supplier indemnified against any loss, damages or costs howsoever resulting which may be incurred by the Supplier arising from the use of the Equipment under this contract.

14.10 In the event the Supplier needs to make any type of insurance claim due to damage, loss or theft to any Equipment during the hire period, the Client shall be liable for any costs incurred including the excess costs.

14.11 The Client agrees that they shall be responsible and maintain the liability for the Equipment and/or vehicle whilst waiting for the Supplier to collect the item/s.

14.12 The Client acknowledges and agrees that in the event the Equipment or vehicle or trailer is required to be towed, the Client's vehicle shall be suitable for doing so.

14.13 In the event that the Equipment (Cable Trailer) is due for scheduled compliance pre-registration inspection whilst on hire, the Client agrees to arrange to deliver the Equipment to the Supplier's approved inspection agent and to pay the costs of such delivery. The Supplier shall be responsible for the cost of the actual inspection.

14.14 The Client agrees to pay for all damage sustained by the Supplier's Equipment whilst on site, or being transported (whether due to negligence or otherwise) by anyone who is not an employee of the Supplier.

14.15 In the event of war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event, the Client is responsible to take all necessary steps to ensure the safety of the Equipment. If the Client fails to do so and the Supplier's Equipment sustains damage as a result, the Client shall be responsible to pay for all such damage as stated in section 14.14.

15. Cancellation

15.1 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms of hire the Supplier may repossess the Equipment as per clause 10.2, or suspend or terminate the supply of

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Equipment to the Client and any of its other obligations under the terms and conditions. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.

15.2 The Supplier 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 Client. On giving such notice the Supplier shall repay to the Client any sums paid in respect of the Price. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.

15.3 In the event that the Client cancels delivery of the Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).

15.4 In addition to the Supplier's right to retake possession of the Equipment and or vehicle, the Supplier is entitled in its discretion, following any breach of any provision of this agreement by the Client, to terminate this agreement, and/or sue for recovery of any damages, charges or loss suffered by the Supplier, and/or cancel any insurances effective in respect of the vehicle or Equipment hired.

16. Dispute Resolution

16.1 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 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

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

17. Default and Consequences of Default

17.1 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 Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

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

17.3 Further to any other rights or remedies the Supplier may have under this contract, if a Client has made payment to the Supplier, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.

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

(a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to meet its payments as they fall due; or

(b) the Client has exceeded any applicable credit limit provided by the Supplier;

(c) the Client 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

(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

18. Privacy Policy

18.1 All emails, documents, images or other recorded information held or used by the Supplier is Personal Information, as defined and referred to in clause 18.3, and therefore considered Confidential Information. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by the Supplier that may result in serious harm to the Client, the Supplier will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

18.2 Notwithstanding clause 18.1, privacy limitations will extend to the Supplier in respect of Cookies where transactions for purchases/orders transpire directly from the Supplier's website. The Supplier agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:

(a) IP address, browser, email client type and other similar details;

(b) tracking website usage and traffic; and

(c) reports are available to the Supplier when the Supplier sends an email to the Client, so the Supplier may collect and review that information ("collectively Personal Information")

In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via the Supplier's website.

18.3 The Client agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by the Supplier.

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18.4 The Client agrees that the Supplier may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
(a) to assess an application by the Client; and/or
(b) to notify other credit providers of a default by the Client; and/or
(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
(d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.

18.5 The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.

18.6 The Client agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):
(a) the provision of Goods; and/or
(b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
(d) enabling the collection of amounts outstanding in relation to the Goods.

18.7 The Supplier may give information about the Client to a CRB for the following purposes:
(a) to obtain a consumer credit report;
(b) allow the CRB to create or maintain a credit information file about the Client including credit history.

18.8 The information given to the CRB may include:
(a) Personal Information as outlined in 18.3 above;
(b) name of the credit provider and that the Supplier is a current credit provider to the Client;
(c) whether the credit provider is a licensee;
(d) type of consumer credit;
(e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Supplier has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
(g) information that, in the opinion of the Supplier, the Client has committed a serious credit infringement;
(h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars ($150).

18.9 The Client shall have the right to request (by e-mail) from the Supplier:
(a) a copy of the Personal Information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect Personal Information; and
(b) that the Supplier does not disclose any Personal Information about the Client for the purpose of direct marketing.

18.10 The Supplier will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

18.11 The Client can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au

19. Service of Notices

19.1 Any written notice given under this contract shall be deemed to have been given and received:
(a) by handing the notice to the other party, in person;
(b) by leaving it at the address of the other party as stated in this contract;
(c) by sending it by registered post to the address of the other party as stated in this contract;
(d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
(e) if sent by email to the other party's last known email address.

19.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

20. Trusts

20.1 If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Client covenants with the Supplier as follows:
(a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
(b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
(c) the Client will not without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
(i) the removal, replacement or retirement of the Client as trustee of the Trust;
(ii) any alteration to or variation of the terms of the Trust;
(iii) any advancement or distribution of capital of the Trust; or
(iv) any resettlement of the trust property.

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21. General

21.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party'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.

21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the State in which the Supplier has its principal place of business, and are subject to the jurisdiction of the Brisbane Courts in Queensland.

21.3 Subject to clause 13, the Supplier shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Equipment hire).

21.4 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.

21.5 The Client cannot licence or assign without the written approval of the Supplier.

21.6 The Supplier may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.

21.7 The Client agrees that the Supplier may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Supplier to provide Equipment and/or Services to the Client.

21.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

21.9 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.

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