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## TERMS AND CONDITIONS OF HIRE

*All Equipment hired to the Customer by the Hirer will be hired on the following General Terms and Conditions, which form part of the Quotation and the Hire Agreement.*

### 1. DEFINITIONS AND INTERPRETATION

- 1.1. In these General Terms and Conditions, unless otherwise required:

**'Agreement'** means the rental agreement for the hire of Equipment by the Customer, and comprises the Quotation, the Purchase Order any order documentation or invoice and these General Terms and Conditions;

**'Business Day'** means a day that is not a Saturday, Sunday or public holiday in Western Australia;

**'Certificate of Currency'** means a certificate issued by the insurer under a policy of insurance obtained by the Party as specified in clause 17.1;

**'Collection'** means collection of the Equipment, whether by the Customer or any agent of the Customer from the Hirer's Premises or from the premises of any manufacturer or other person or company where the Equipment are for the time being located;

**'Customer'** means the person or company with whom the Hirer makes the Agreement;

**'Day'** means a calendar day.

**'Delivery'** means Collection or the delivery of the Equipment to a site specified by the Customer, as specified in the Quotation or as otherwise agreed in writing between the Parties;

**'Delivery Address'** means the delivery address specified in the Quotation or such alternate delivery address as may be agreed in writing between the Parties;

**'Dispute'** means a dispute between the Parties arising out of or in connection with this Agreement;

**'Dispute Notice'** means a notice issued by one Party to the other Party under clause 28.2 notifying the other Party that there is a Dispute to be resolved;

**'Event of Default'** means an event of default within the meaning of clause 19.1;

**'Equipment'** means the Equipment including the Sub Hire Equipment (if any) hired to the Customer as detailed in the Agreement or as may be agreed in writing by the Hirer and the Customer;

**'General Terms and Conditions'** means these terms and conditions, and includes the Quotation;

**'Guaranteed Period'** means the minimum term of Hire set out in the Agreement.

**'Hire'** means the hire of the Equipment by the Customer;

**'Hire Charge'** means a charge for hire of the Equipment, and any other amount which may be charged by the Hirer to the Customer under the Agreement calculated as set out in the Quotation or arising from or in relation to any cost or expense incurred by the Hirer under the Agreement;

**'Hire Rate'** means a rate at which Hire Charges are calculated pursuant to the Quotation;

**'Hirer'** means the AMG PUMP RENTALS (ABN 65 635 473 488) of 194 Star St, Carlisle, WA 6101, and its successors and assigns.

**'Hirer's Premises'** means the Hirer's premises at 19 Star Street, Carlisle, WA 6101, or such other premises as the Hirer may specify in writing for the purpose;

**'Invoice'** means an invoice in respect of Hire Charges issued under clause 7;

**'Loss'** means:

- (a) loss, including but not limited to direct loss, consequential loss, special loss, loss of anticipated profits and/or loss of business opportunity;
- (b) liability;
- (c) damage including but not limited to any damages or compensation and/or any damage to reputation; and/or
- (d) cost or expense including legal costs on a full indemnity basis;

**'Nomination'** means a nomination to have a mediator appointed within the terms of clause 28.3;

**'Parties'** means the Hirer and the Customer, and **'Party'** means either of them;

**'Personal Property Securities Act'** means the Personal Property Securities Act (Cth) 2009, as amended from time to time;

**'Purchase Order'** means a purchase order issued by the Customer to the Hirer for the hire of any Equipment;

**'Quotation'** means a quotation given by the Hirer to the Customer detailing the Equipment, Hire Rate, Term and related conditions, such Quotation being subject at all times to these General Terms and Conditions;

**'Security Agreement', 'Commingled Goods', 'Financing Statement', 'Financing Change Statement', 'Collateral', 'Notice of Objection', 'Personal Property', 'All Present and After Acquired Property', 'Purchase Money Security Interest', 'PPS Lease', 'Registration' and 'Security Interest'** have the meanings given to them in the Personal Property Securities Act.

**'Sub Hire Equipment'** means any Equipment not owned by the Hirer but which may be under the Hirer's (as bailee) bailment from a third Party (as bailor), or the Hirer has hired or leased such Equipment from a third Party, or as notified in writing between the Hirer and the Customer from time to time;

**'Term'** means the hire term agreed in writing between the Parties; and

**'Termination Date'** means the date of expiry or earlier termination of the Agreement.

1.2. In these General Terms and Conditions:

- (a) the singular includes the plural and *vice versa*;
- (b) terms cognate with defined terms have corresponding meanings; and
- (c) the Customer must not represent to any third party that it is acting for the Hirer, and the Hirer will not be bound by any agreements with third parties to which the Customer is a party.

## 2. AGREEMENT FOR HIRE

- 2.1. The initial process for the Agreement to take effect will be for the Hirer to provide the Customer with the Quotation and these General Terms and Conditions
- 2.2. The Agreement will only become legally binding on the Parties once the Customer accepts these General Terms and Conditions in writing and returns a signed copy of the Quotation and the Purchaser Order to the Hirer.
- 2.3. The Agreement comprises the Quotation, these General Terms and Conditions and Purchase Order.
- 2.4. In the event of any inconsistencies, the documents comprised in this Agreement will take precedence in the following order: these General Terms and Conditions, the Purchase Order and the Quotation.
- 2.5. Prior to accepting the Agreement, the Hirer may carry out credit checks and require the Customer to provide security payments in advance and/or the Customer's directors to provide personal guarantees.
- 2.6. Any quotation or proposed Agreement from the Hirer shall remain valid for thirty (30) Days from the date of receipt.
- 2.7. Except as provided by clause 2.9, by providing the Hirer with the Purchase Order or by agreeing to any requirements which the Hirer may make under clause 2.5, the Customer agrees to be bound by these General Terms and Conditions. The signing of the Agreement by an officer of the Customer with apparent authority to do so will be conclusive evidence for all purposes whatsoever of the Customer's acceptance of these General Terms and Conditions to the exclusion of all other terms and conditions.
- 2.8. If for whatever reason the Customer does not sign this Agreement, the Customer is deemed to have accepted this Agreement and these General Terms and Conditions if the Customer collects or takes delivery of the Equipment.
- 2.9. Upon the Agreement becoming binding, the Hirer agrees to hire to the Customer, and the Customer agrees to take on hire from the Hirer, the Equipment for the Term on the terms and conditions contained in the Agreement and these General Terms and Conditions.
- 2.10. It is expressly agreed between the Hirer and the Customer that, notwithstanding the terms and conditions of any document (including the Purchase Order) provided by the Customer to the Hirer purportedly regulating the legal relations between them, the Agreement and these General Terms and Conditions will prevail and the Hirer will only be bound by the terms and conditions of such document to the extent, not inconsistent with the Agreement and these General Terms and Conditions.

## 3. TERM

- 3.1. Subject to clause 19, the Term of the Hire is specified in the Agreement and may be extended or varied from time to time by agreement in writing between the Parties.
- 3.2. If the Hirer is required under the Agreement to install any Equipment, the Term will commence on the earlier of the date of practical completion or the date upon which any part of the Equipment becomes operational.
- 3.3. In no case will the Term be less than the Guaranteed Period.
- 3.4. The Term will expire on the later of:
  - (a) The date which is 30 days following the receipt of notice by the Hirer that the Customer no longer requires the Equipment; and
  - (b) The date on which all of the Equipment is returned to the Hirer at the Hirers Premises or other closer location as the Hirer may require where the Customer is responsible for its return; and
  - (c) The date on which the Equipment is removed by the Hirer where the Hirer is responsible for its removal and the removal is delayed due in part or whole to an action or omission of the Customer.

## 4. DELIVERY AND RISK

- 4.1. The Hirer will be responsible for the delivery, installation and commissioning of the Equipment at the Delivery Address unless otherwise agreed in writing between the Parties.
- 4.2. Risk in the Equipment passes to the Customer in accordance to clause 6.1.
- 4.3. The Customer will ensure that delivery is enabled by way of vehicular access via a properly constructed roadway to the Delivery Address, and if for whatever reason the Customer does not provide such access the Hirer will not be liable to the Customer for any costs or expenses incurred or suffered by the Customer arising directly or indirectly from any inability to effect delivery to the Delivery Address, or for any damage or injury to the Equipment or to any other property or to any person arising directly or indirectly from the circumstances or manner of delivery, whether to the Delivery Address or otherwise.
- 4.4. Unless specifically stated otherwise in the Agreement or the Quotation, the Customer is responsible for all transport charges incurred or charged by the Hirer in relation to the mobilisation and return of the Equipment to the Hirer's Premises or such other premises as may be agreed in writing between the Parties.
- 4.5. If the Customer elects to demobilise the Equipment itself it must return the Equipment:
  - (a) at its own expense;
  - (b) suitably and securely packed; and
  - (c) in the same condition as the Equipment were in at the commencement of the Hire, cleaned and properly maintained in accordance to this Agreement.

## 5. INSPECTION AND WARRANTIES

### 5.1. Inspection of Equipment

The Hirer and the Customer will conduct a joint inspection of the Equipment and an induction prior to Collection or at Delivery. The Customer is required to sign an inspection report failing which The Customer will be deemed to be satisfied as to the condition, quality, quantity, safety of the Equipment, the Equipment's fitness for the Customer's purposes and its compliance with its description.

### 5.2. Implied terms and conditions regarding Equipment

To the fullest extent permitted by law, the Customer agrees that the Hirer has not given or made any warranty or representation whatsoever in favour of the Customer:

- (a) as to the condition or quality of the Equipment including, without limitation, latent and other defects and whether or not discoverable by the Hirer or the Customer; and
- (b) as to the suitability or fitness for ordinary or any special use or purpose of the Equipment.

## 6. RISK, TITLE AND THE PERSONAL PROPERTY SECURITIES ACT ('PPSA')

6.1. Equipment supplied by the Hirer to the Customer will be at the Customer's risk upon:

- (a) delivery to the Customer;
- (b) collection by the Customer; or
- (c) delivery to the Customer's custody, possession or control, whichever is the sooner.

6.2. The Customer must store the Equipment in such a manner that it is readily distinguishable from other equipment held by the Customer so they clearly show that it is the property of the Hirer.

6.3. The Hirer retains full title to the Equipment (or rights as bailee for the Sub Hire Equipment) notwithstanding their delivery to the Customer, their possession and use by the Customer and any temporary attachment of the Equipment to any land or buildings to facilitate use of the Equipment.

6.4. The Customer acknowledges that the Agreement and these Terms and Conditions constitute a Security Agreement which creates a Security Interest in favour of the Hirer in the Equipment supplied by the Hirer (including any Sub-Hire Equipment) from time to time pursuant to this Agreement. The Customer agrees that the Hire may constitute a PPS Lease. The Customer grants to the Hirer a Purchase Money Security Interest. Further, the Customer grants to the Hirer Security Interest in the Customer's All Present and After Acquired Property to secure the payments and obligations of the Customer under this Agreement.

6.5. The Customer accepts, acknowledges and agrees that:

- (a) the Hirer can, affect and maintain a Registration (in any manner that the Hirer considers appropriate) of its Security Interest on the Personal Property Securities Register ('PPSR') in relation to any Security Interest contemplated or constituted by the Agreement including but not limited to the Equipment, contract rights or intellectual property;
- (b) It waives its rights under section 157(3)(b) of the PPSA to receive notice of a verification statement; and
- (c) Pursuant to section 275(6) of the PPSA, the Customer agrees the Hirer is not required to disclose to an interested person information pertaining to the Hirer's Security Interest unless required to do so pursuant to the PPSA or at law generally.

6.6. The Customer will:

- (a) sign any documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) and/or assistance which the Hirer may reasonably require to enable perfection of its Security Interest or Registration of a Financing Statement or Financing Change Statement on the PPSR;
- (b) not offer, sell, assign, sub-hire, charge, mortgage, pledge or create any form of security interest or otherwise deal with the Equipment in any way;
- (c) give the Hirer not less than 14 days' written notice of any proposed change in their name and/or any other changes in their details (including but not limited to, changes in their

address, facsimile number, email address, trading name or business activities);

(d) indemnify the Hirer against any costs the Hirer incurs in perfecting and maintaining its perfected Security Interest in the Equipment or such other Personal Property under the PPSA and any costs the Hirer may incur in the course of enforcing any of its rights under this Agreement, the PPSA or at law generally;

(e) procure from any persons considered by the Hirer to be relevant to its security position, such agreement and waivers as the Hirer may at any time reasonably require; and

(f) not register, or permit to be registered, a Financing Statement or a Financing Change Statement in respect of a Security Interest contemplated or constituted by this Agreement in favour of a third party without the Hirer's prior written consent.

6.7. If Chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest arising in connection with this Agreement to which these terms and conditions apply, the Customer agrees that the following provisions of the PPSA will not apply to the enforcement of the Agreement:

- (a) Section 95 (notice of removal of accession), to the extent that it requires the Hirer to give a notice to the Customer;
- (b) Section 96 (when a person with an interest in the whole may retain an accession);
- (c) Subsection 121(4) (enforcement of liquid assets – notice to grantor);
- (d) Section 125 (obligation to dispose of or retain collateral);
- (e) Section 129 (disposal by Purchase);
- (f) Section 130 (notice of disposal of collateral), to the extent that it requires the Hirer to give a notice to the Customer;
- (g) Section 132(3)(d) (contents of statement of account after disposal);
- (h) Section 132(4) (statement of account if no disposal);
- (i) Section 135 (notice of retention of collateral);
- (j) Section 142 (redemption of collateral); and
- (k) Section 143 (reinstatement of security agreement).

6.8. Notices or documents required or permitted to be given to the Hirer for the purposes of the PPSA must be given in accordance with the PPSA.

6.9. In the event that any person attempts to enforce any Security Interest or judgment against the Customer or otherwise purports to seize the Equipment, the Customer must notify such person of the Hirer's Security Interests in the Equipment and must immediately contact the Hirer to advise the Hirer of such enforcement.

6.10. If the Hirer consents to the Customer sub-hiring the Equipment, the Customer must register its Security Interests in the Equipment against its customer (being the grantor). The Customer must ensure the Security Interest is registered and perfected in accordance with the specific timeframes in the PPSA for a Purchase Money Security Interest. The Customer must produce the verification statement to the Hirer as proof that the registrations were effected.

## 7. HIRE CHARGES AND TERMS OF PAYMENT

7.1. The Customer will pay the Hire Charges during the Term calculated in accordance with the Hire Rate set out in the Quotation or this Agreement and as subject to the Invoices

issued from time to time. The Customer must pay the invoice within 30 days from the date of the invoice.

- 7.2. The Customer will pay the Hirer on demand interest at a rate of one point five per cent (1.5%) per calendar month calculated daily and such interest will be compounded monthly from the date when payment becomes due, until the date of payment.
- 7.3. The Hire Rate excludes GST unless otherwise stated in the Quotation.
- 7.4. Notwithstanding clause 7.3, the Hirer will, on the Customer's request and in any case as required by law, provide tax invoices to the Customer in order to assist the Customer to comply with legislation relating to GST.
- 7.5. Upon Collection or Delivery (whichever is earlier), the Hire and Hire Charges will commence.
- 7.6. The Customer agrees to pay any additional costs (e.g labour) if the Hirer has to prepare the Equipment to suit the Customer's site specifications. The Customer must provide a separate purchase order to the Hirer.
- 7.7. If the Customer terminates the Agreement prior to expiry of the Term, it shall pay the Hirer all monies owing at the time of termination plus all amounts which would have become due for the balance of the Term, provided that, if the Hirer is able to re-hire the Equipment to another person or company before the date on which the Term would otherwise have expired, there will be deducted from the amount which the Hirer would otherwise be due under this clause such amount as the Hirer receives or is entitled to receive from that other person or company during the period ending on the date on which the Term would otherwise have expired.
- 7.8. The Customer may not set-off any amounts owed to the Hirer whatsoever or assert any purported right to set-off or make any claim whatsoever based upon a set-off.
- 7.9. If the Parties have agreed in writing that the Hirer will transport or install the Equipment, all costs relating thereto will be invoiced by the Hirer in the month in which the services are performed or as soon thereafter as is practicable, and are payable by the Customer as specified in the Quotation or this Agreement.

## 8. CALCULATION OF CHARGES

- 8.1. Hire Charges are based on the entire duration of the period of hire and are specified in the Agreement.
- 8.2. Where the Customer elects to return the Equipment, the Hire Rate shall apply in full until all Equipment is returned to the Hirer's Premises.

## 9. STAND DOWN

Should the Customer wish to stand down an item of Equipment the Customer must pay the Hire Rate in full regardless of its use or otherwise of the Equipment.

## 10. VARIATION TO HIRE CHARGE

- 10.1. During the Guarantee Period the Hire Rate shall not be varied except by the agreement of the Parties in writing.
- 10.2. If during the Term the Customer requires the hire of any equipment other than the Equipment (including Sub Hire Equipment if any) originally hired pursuant to this Agreement ("Further Equipment"), then the Hirer shall specify the Hire Charge of such Further Equipment and subject to the Customer agreeing with that Hire Charge, the Further Equipment will also be hired to the Customer by the Hirer pursuant to the terms of this Agreement.

## 11. DUTIES, TAXES, ETC

The Customer must pay all duties, rates, taxes and imposts, and all registrations, permits, licences and other fees which may be levied by any statutory or public authority at any time directly or

indirectly upon the Equipment or in relation to their transportation, installation and/or use for the purposes of the Agreement.

## 12. USE OF EQUIPMENT

- 12.1. Unless otherwise specified in writing by the Hirer, The Customer will be solely responsible for the operation of the Equipment after Delivery, and the Hirer and the Customer agree and the Customer specifically acknowledges that:
  - (a) the Customer must not modify or alter the Equipment in any manner whatsoever, including without limitation the removal of any item or parts of the Equipment, without the Hirer's prior written consent; and
  - (b) the Customer must, at its own cost and prior to the return of the Equipment at the expiry of the Term or the earlier termination of the Agreement, rectify all modifications and alterations of any nature whatsoever to the Equipment, and any damage caused to the Equipment.
- 12.2. Without limiting in any manner whatsoever any other indemnity given by the Customer under the Agreement, the Customer will indemnify the Hirer and hold it harmless in respect of all claims, costs, damages, expenses and losses which the Hirer may incur or suffer arising out of any failure or default in respect of the Customer's obligations under this clause 12 including without limitation any remedial or rectification action in respect of improper or unlawful installation of the Equipment.
- 12.3. The Customer must not use or operate the Equipment in a manner that is likely to invalidate any insurance claim by either the Customer or the Hirer.

## 13. MAINTENANCE OF EQUIPMENT

- 13.1. The Customer must operate and maintain the Equipment and all parts thereof in accordance with the operations and maintenance manual provided by the Hirer, the requirements and recommendations of the manufacturer or supplier of the Equipment, and all recognised methods and standards for Equipment of their type.
- 13.2. If the Hirer is requested to carry out any maintenance or repair the Customer will be liable for all costs of materials, labour, freight, transport, travel time and other associated costs.
- 13.3. The Customer will be fully and solely responsible for any Loss or damage to the Equipment and will notify the Hirer in writing and will pay for any Loss of or damage to the Equipment, however occasioned.
- 13.4. Unless otherwise specified in the Agreement, the Customer must at its own expense, when, where and as often as is needed, keep and maintain the Equipment clean and properly serviced, in proper working order and condition and in good and substantial repair, and will replace parts which become worn out or damaged with parts sourced from the Hirer. The Customer must also supply all consumables including lubricants and chemicals necessary for operation of the equipment at its own expense.

## 14. EQUIPMENT FAILURE

- 14.1. If Equipment becomes unsafe, in a state of disrepair or not in working order, the Customer agrees to immediately discontinue the use of the Equipment and to notify the Hirer immediately. The Customer will on no account attempt to repair the Equipment without the consent of the Hirer and will immediately arrange for the Equipment to be decommissioned and returned to the Hirer's premises if required to do so by the Hirer.
- 14.2. If the failure is caused by reasonable wear and tear and for no other reason including the Customer's negligence or misuse, the Hirer may, at its discretion:
  - (a) Repair the equipment within 30 days; or
  - (b) Make similar equipment available; or

- (c) Adjust the rental charge.

In no case shall the Hire Rate payments abate.

- 14.3. Following Equipment failure, the Hirer may terminate this Agreement by giving 5 days prior written notice to the Customer. The Hirer shall not, in any circumstances, be liable for any loss sustained by the Customer.

#### 15. THEFT

If any Equipment is stolen or vandalised the Customer must immediately report the theft or vandalism to police and provide the Hirer with all details of the police report.

#### 16. INSPECTION OF EQUIPMENT BY THE HIRER

- 16.1. On giving the Customer reasonable notice, the Hirer may enter with its servants and agents upon or into the Customer's site to inspect the Equipment and carry out such inspections and tests on the Equipment as may seem reasonable to the Hirer.
- 16.2. The Hirer may serve on the Customer a notice in writing of any defect or deficiency in the Equipment and their operation, requiring the Customer within a reasonable time (specified in the notice) to repair or replace the Equipment or to make good the defect or deficiency.
- 16.3. If the Customer fails to carry out any requirements under Clause 16.2, the Hirer may carry out those requirements and the costs of such maintenance will be payable by the Customer.

#### 17. INSURANCE

- 17.1. The Customer must effect before the commencement of the Hire and maintain during the Term, and provide the Hirer with requisite Certificates of Currency and notify the Hirer of same, for:

- (a) **General insurance:** insurance of the Equipment for their full insurance value against theft, Loss, damage or destruction caused by accident and any insurable risk commonly insured against in regard to equipment of a similar nature to the Equipment; and
- (b) **Third Party risks:** insurance against all third party risks including liability for all damage or injury of any kind to any property or person and otherwise as required to the full extent required by law,

pursuant to policies insuring for the benefit of the Hirer, the Customer and any Sub Hire Equipment' owner. The Customer must ensure that any claim relating to loss or damage to the Equipment is paid directly to the Hirer.

- 17.2. The Customer's insurance coverage referred to in clause 17.1 must also contain the following provisions:

- (a) either an indemnity in favour of the Hirer or cover at no cost to the Hirer up to the limits of the policy regardless of any act or neglect of the Customer or any breach or violation by the Customer of any warranties, declarations or conditions contained in the policy;
- (b) notwithstanding the lapse of the policy (except by reason of expiration in accordance with its terms) or any right of cancellation by the insurer or cancellation by the Customer (whether voluntary or involuntary), the insurer will notify the Hirer of the same and the policy will continue in force for the benefit of the Hirer for at least thirty (30) days after written notice of cancellation has been given to the Hirer and the Customer will indemnify and hold the Hirer harmless in respect of any damage, cost or expense suffered or incurred by the Hirer as a result of the insurer's omission or failure to so continue the policy in force; and
- (c) if for any reason whatsoever, any such policy is lapsed or cancelled before the expiry of the Term, the Customer must forthwith take out and maintain for the balance of the Term

a replacement insurance policy satisfying the requirements of this clause.

#### 18. EXTENSION OF HIRE TERM

- 18.1. If the Customer wishes to extend the Hire for a further period, it may make a written request to the Hirer to do so at least ten (10) Business Days prior to the expiry of the Term, and the Hirer will endeavour to notify the Customer in writing not later than the expiry of the Term whether or not the Hirer agrees to grant that request and, if so, at what Hire Rate.
- 18.2. If the Hirer has not given the Customer its written response by the expiry of the Term, the Agreement will continue on the current terms and conditions until the Hirer gives its written response and the Hirer may without limitation:
- (a) advise the Customer that the Equipment must be delivered up in accordance with Clause 20.1;
- (b) send the Customer a new Quotation and new Terms and Conditions; or
- (c) request that the Customer provide a new Purchase Order under the current terms and conditions.

#### 19. DEFAULT AND TERMINATION

##### 19.1. Events of default

Each of the following events is an Event of Default, namely:

- (a) if the Customer fails to pay the Hire Charges on the due date for payment thereof and such failure continues after notification of such by the Hirer to the Customer for more than three (3) Business Days;
- (b) if the Customer fails to perform or observe any of the covenants or provisions of the Agreement and (if capable of remedy) such default continues for more than seven (7) Business Days after notice from the Hirer requiring the Customer to remedy the same;
- (c) if the Customer commits any act of insolvency or ceases to carry on business;
- (d) if the Customer is unable to take out a replacement insurance policy as required by clause 17;
- (e) if any of the Equipment are abandoned or condemned or are seized or appropriated by any third party; or
- (f) if the Hirer reasonably believes that the Equipment is in any way at risk of a claim by any third party of any interest therein.

##### 19.2. Consequences of default

If an Event of Default occurs, the Hirer may at its option do any one or more of the following, namely:

- (a) terminate the Agreement and the Customer's right to possession of the Equipment by notice in writing to the Customer;
- (b) take such court action as it considers appropriate, whether to enforce performance by the Customer or otherwise; and
- (c) recover damages for the breach concerned.

If the Customer defaults in payment and leads to an Event of Default under clause 19.1(a), the Customer shall indemnify the Hirer from and against all costs and disbursements incurred by the Hirer in pursuing the debt including legal costs (on a solicitor and own client basis) and the Hirer's debt recovery costs (in addition to the Hirer's other remedies available in this clause 19.2). **The Customer's directors or principals agree to jointly and severally indemnify and guarantee the payment of any monies owing from the Customer to the Hirer.**

### 19.3. Early termination by the Customer

The Customer may by notice in writing to the Hirer terminate the Agreement before the expiry of the Term, in which case Clause 7.7 will apply and the Customer will remain liable to the Hirer for the Hire Charges applicable to the balance of the Term subject only to reduction in the circumstances set out in clause 7.7.

### 19.4. Termination by the Hirer

The Hirer may terminate this Agreement at any time and for any reason. The Hirer will give the Customer forty eight (48) hours' written notice of termination. Once the Agreement is terminated, the Customer must return the Equipment pursuant to clause 20.

## 20. RETURN OF EQUIPMENT

### 20.1. Delivery-up of Equipment by the Customer

- (a) Upon the expiry or earlier termination of the Agreement, the Customer must at its own expense immediately deliver up the Equipment to the Hirer's Premises or as otherwise directed in writing by the Hirer. The Customer is responsible to arrange a joint inspection with the Hirer when the Equipment is returned.
- (b) The Customer will return the Equipment in accordance with clause 4.5, and if upon the return of the Equipment, the Hirer determines that the Customer has failed to observe the provisions contained in this Agreement, The Customer must pay the invoice for such repairs and/or cleaning within seven (7) days from the date of the invoice.
- (c) Notwithstanding the expiry of the Term or earlier termination of the Agreement under clause 19, the Equipment will remain on Hire at the Hire Rate then current until they are cleaned and any repairs (other than in relation to fair wear and tear) are completed and the Equipment are able to be re-hired.
- (d) Without limiting in any manner whatsoever any other indemnity given by the Customer under the Agreement, the Customer will indemnify the Hirer and hold it harmless in respect of all costs and expenses which the Hirer may incur or suffer arising out of any failure or default in respect of the Customer's obligations under this clause 20 including without limitation any cleaning and maintenance required in respect of the Equipment (other than in relation to fair wear and tear) after their return by the Customer.

### 20.2. Repossession of Equipment

If, pursuant to Clause 20.1, the Customer does not return the Equipment to the Hirer as and when required, the Hirer may retake possession of the Equipment, and the Hirer and its employees and agents may for this purpose, without notice, liability or legal process, enter upon or into the Customer's site and may break open any gate, door or fastening and detach or dismantle the Equipment from any part of the location to which the Equipment have been affixed and the Customer will pay all costs incurred.

## 21. NOTIFICATION OF THE HIRER'S OWNERSHIP OF THE EQUIPMENT

In the event that any person executes any judgment against the Customer or otherwise purports to seize the Customer's property or any part thereof, the Customer must notify such person of the Hirer's ownership of the Equipment (or the Hirer's rights as bailee of any Sub Hire Equipment) and must contact the Hirer immediately to advise the Hirer regarding such execution or purported seizure and must forthwith give written notice thereof to the Hirer.

## 22. NO DEALING WITH EQUIPMENT

The Customer must not without the Hirer's prior written consent:

- (a) sell, assign, sublet, lend, pledge, mortgage, let on, hire or otherwise part or deal with any of the Equipment and any

part thereof, or agree with or offer to any person or company, or attempt or purport, to do any of the foregoing;

- (b) modify or alter any of the Equipment or any part thereof or make any addition thereto, except as previously agreed in writing by the Hirer, or remove, change, alter or deface any name, name plate, identification number, trade mark or any other identifying mark or number on the Equipment, except so as to indicate any replacement, alteration or addition which has been authorised by the Hirer in writing; or
- (c) subject to clause 6, suffer any encumbrance, charge or lien of any kind to arise or remain on any of the Equipment or any part thereof.

## 23. SEVERABILITY AND SURVIVAL OF COVENANTS

If any provision of the Agreement is or at any time becomes void or unenforceable, the remaining provisions will continue in full force and effect, and the Parties agree that they will amend the Agreement forthwith so that such void or unenforceable provision will be replaced forthwith by a lawful and enforceable provision which, so far as possible, achieves the same economic benefit or burden for Parties as the unlawful or unenforceable provision was intended to achieve.

## 24. TIME AND WAIVER

- 24.1. Time is of the essence in relation to any notice given by the Hirer requiring any matter to be done by the Customer in order to achieve compliance with the Agreement, including without limitation the payment of any sum of money.
- 24.2. No failure or delay on the part of the Hirer to exercise any power or right operates as a waiver of that power or right, and no single or partial exercise of any power or right precludes any other or further exercise of that power or right.
- 24.3. The Hirer will only be taken to have waived a power or right under the Agreement, including without limitation a right in respect of an Event of Default, to the extent that the power or right has been expressly waived in writing by the Hirer and irrespective of any previous waiver of any other breach of the same or any other covenant or provision of the Agreement.

## 25. LIMITATION OF LIABILITY

- 25.1. The Customer agrees that the Hirer, its affiliates, agents and sub-contractors and each of their directors, partners, principals, members, employees and other personnel will not be liable to the Customer for any actions, claims, or loss in any way arising out of or relating to this Agreement (including but not limited to a breach of this Agreement by the Hirer).
- 25.2. In no event will the Hirer, its affiliates, agents or sub-contractors or any of their partners, directors, principals, members, employees or other personnel be liable for special, incidental, indirect, consequential or punitive damages, costs expenses or losses of any kind, lost profits, lost revenue, loss of management time, loss of goodwill, opportunity costs, failure to realise anticipated savings, or lost data.
- 25.3. The provisions of this clause 25 will apply regardless of the form of action, damage, claim, liability, cost, expense or loss whether in Agreement, statute or tort (including without limitation, negligence) or otherwise.

## 26. INDEMNITY

To the fullest extent permitted by law, the Customer indemnifies and shall keep indemnified the Hirer and its agents and employees from and against:

- (a) all claims and demands in respect of any Loss or damage whatsoever and whenever caused to the Customer or its agents or employees or any other person or company whatsoever, whether by way of death of, or injury to, any person of any nature or kind, accident or damage to property, delay, financial loss or otherwise arising from the transport of the Equipment to and from the Delivery Address and the Customer's possession or use of the Equipment;

and

- (b) any and all costs and disbursements incurred by the Hirer in pursuing any debt arising from a default in payment of an invoice by the Customer when due, including legal costs (on a solicitor and own client basis and the Hirer's collection agency costs).

## 27. NOTICES

Any notice, Invoice or document relating to the Agreement will be deemed to be served:

- (a) on the second Business Day after the date on which it was posted – if sent by ordinary pre-paid post addressed to the Customer;
- (b) on the day on which it was sent – if it is sent:
  - (i) by facsimile transmission before or during normal business hours on a Business Day, and a receipt of successful transmission is produced to that effect; or
  - (ii) by email transmission before or during normal business hours on a Business Day; or
- (c) on the next Business Day following the day on which it was sent – if it is sent:
  - (i) by facsimile transmission after normal business hours on a Business Day or on a day other than a Business Day, and a receipt of successful transmission is produced to that effect; or
  - (ii) by email transmission after normal business hours on a Business Day or on a day other than a Business Day.

## 28. DISPUTE RESOLUTION

- 28.1. Other than in respect of matters requiring urgent injunctive relief, the Parties will use their best endeavours to settle amicably, by negotiation, any Dispute which arises.
- 28.2. If the Parties cannot settle the Dispute by negotiation in a reasonable time, either Party may issue to the other Party a Dispute Notice indicating that there is a Dispute to be resolved in accordance with the following provisions of this clause.
- 28.3. If the Dispute cannot be settled within 21 days of issuance of the Dispute Notice, either Party may make a Nomination in writing within 14 days of that date to have a mediator appointed for the purpose of conducting a mediation of the Dispute in Perth, Western Australia, such mediator to be independent of the Parties and, if the Parties cannot agree on a mediator within 14 days of the Nomination, the mediator will be a person appointed by the Chair of LEADR (Lawyers Engaged in Alternative Dispute Resolution) or his or her nominee.
- 28.4. The mediation will be governed by the 'Institute of Arbitrators & Mediators' Australian Mediation and Conciliation Rules or any replacement rules from time to time.

## 29. FORCE MAJEURE

- 29.1. This Agreement may be terminated without adverse effect to any rights that the Hirer may have in accordance with this Agreement in the event that the Customer's ability to fulfil terms of this order is affected by a force majeure event for a period of 14 days or more.
- 29.2. If in the event of Force Majeure, either Party becomes unable to fulfil the requirements of this order in whole or in part, or is delayed:

- (a) The Party affected must give immediate notice to other affected Parties. Notice must identify details of the event of Force Majeure; establish which requirements have been affected and the estimated delay in meeting requirements of this order.
- (b) The requirements affected will be suspended, but only for as long as those requirements are affected by the event of force majeure.
- (c) The Party affected by the event of force majeure must move to overcome or remove the impact of the event from affecting the requirements of this order and minimise any subsequent delay to the best of the Party's ability.

## 30. GENERAL

- 30.1. The Agreement will be construed in accordance with the laws of Western Australia, and the Parties submit to the non-exclusive jurisdiction of the courts of Western Australia and the courts of appeal therefrom.
- 30.2. If any provision of the Agreement or these Terms and Conditions is invalid, void, illegal or unenforceable then that provision is severed to the minimum extent required by the law and the validity, existence, legality and enforceability of the remaining provisions are not affected, prejudiced or impaired.
- 30.3. The Hirer is under no liability whatsoever to the Customer for any Loss suffered by the Customer arising out of a breach by the Hirer of the Agreement or these Terms and Conditions.
- 30.4. In the event of any breach of the Agreement or these Terms and Conditions by the Hirer, the remedies of the Customer are limited to damages which under no circumstances will exceed the Hire Charge of the Equipment.
- 30.5. The Customer is not entitled to set-off against or deduct from the Hire Charge any sums owed or claimed to be owed to the Customer by the Hirer.
- 30.6. the Hirer may license or sub-Agreement all or any part of its rights and obligations without the Customer's consent.
- 30.7. the Hirer reserves the right to review the Agreement or these Terms and Conditions at any time. If, following any such review, there is to be any change to the Agreement or these Terms and Conditions, then that change takes effect from the date on which the Hirer notifies the Customer of such change in writing.
- 30.8. The failure of the Hirer to enforce any provision of the Agreement or these Terms and Conditions is not a waiver of that provision (unless specifically waived in writing and signed by the Hirer) nor does it affect the Hirer's right to subsequently enforce that provision.
- 30.9. This Agreement (and these General Terms and Conditions) constitutes the sole and entire agreement between the Parties and a warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Agreement (and these General Terms and Conditions) is of no force or effect.
- 30.10. The documents comprising the Agreement will be read in the following order of precedence:
  - (a) the Agreement;
  - (b) the Terms and Conditions;
  - (c) Purchase Order; and
  - (d) Quotation.