

## Hire Terms

### 1. HIRE AGREEMENT

1.1 The hire agreement (**Hire Agreement**) between You and Us is made up of the following:

- (a) any Quotation provided to You by Us;
- (b) these Hire Terms;
- (c) any credit application You completed and submitted to Us;
- (d) any guarantee, indemnity and charge You completed and submitted or made in our favor;
- (e) any purchase order provided to You to Us,

and unless stated otherwise in our Quotation, the order of priority in which these documents will apply (to the extent of determining any inconsistency) is the order set out above.

1.2 The provision or acceptance of a Quotation and the issue of a purchase order form part of this Hire Agreement and will not constitute a separate agreement between You and Us.

1.3 **It is important that You read and understand all of the terms and conditions of the Hire Agreement before hiring from Us. If You have any questions, please ask Us.**

### 2. DEFINITIONS AND INTERPRETATION

2.1 The following terms are used in this document:

**Authority** means any public authority or government agency responsible for regulating the performance of Services;

**Business Day** means a day that is not a Saturday, Sunday or Public Holiday in Australia;

**Corporations Law** means the *Corporations Act 2001* (Cwth);

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

**Equipment** means Our equipment, including portable Water Towers, Bunds, Pumps, Standpipes, Welltech Megafill™ units, drives, telemetry equipment, pipes and pipelines, plugs, portable buildings, dewatering equipment, and all associated or attached tools, accessories and equipment available for hire;

**Expected Off Hire Date** means the date by which You expect you will no longer require the Equipment or Services; -

**Hire Period** means for Equipment specified in a Quotation, the period described in **clause 4**;

**Long Distance Location** is a location in excess of 50km from Our nearest branch;

**Non-Excludable Provision** has the meaning set out in **clause 15.3**;

**Off Hire Date** has the meaning set out in **clause 5.5**;

**Personnel** means employees, agents and contractors engaged by Us to perform Services;

**PPSA** means the PPS Act and any other legislation and regulations in respect of it and the following words in **clauses 9.2, 10 and 24** have the respective meanings given to them in the PPS Act: collateral, financing change statement, financing statement, interested person, purchase money security interest, register, registration, security agreement, security interest and verification statement;

**PPS Act** means the *Personal Property Securities Act 2009* (Cth);

**Quotation or Quote** means the document (whether provided by letter, facsimile, email or by any other means) provided by Us to You which outlines important information, including the Equipment You wish to hire, the hire rates which apply to the Equipment and any other applicable charges;

**Related Entity** has the meaning given to it in the Corporations Law;

**Services** means assistance in the operation, management, monitoring or supervision of Equipment from time to time;

**We/Us/Our** means Technologies International Group Pty Ltd t/as Welltech Total Water Management (ABN 94 071 424 783);

**You/Your** refers to the person, organisation, partnership, corporation, trust or other entity hiring Equipment from Us, as named in Your credit application, or in Our Quotation (where You do not hold a credit account). Reference to “You” includes your employees, agents and contractors. “You” also includes any of your Related Entities who hires Equipment from Us.

## 2.2 The following rules of interpretation apply to these Hire Terms:

- (a) reference to:
  - (i) one gender includes the others;
  - (ii) the singular includes the plural and the plural includes the singular;
  - (iii) a person includes a body corporate;
  - (iv) a party includes the party’s executors, administrators, successors and permitted assigns;
  - (v) a statute, regulation or provision of a statute or regulation includes that statutory provision as amended or re-enacted from time to time and a statute, regulation or provision enacted in replacement of it;
  - (vi) money is to Australian dollars, unless otherwise stated;
- (b) ‘**including**’ and similar expressions are not words of limitation;
- (c) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- (d) headings are for convenience only and do not form part of this Agreement or affect its interpretation;
- (e) a provision of the Hire Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the document or the inclusion of the provision in the document;
- (f) if an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day; and
- (g) a party who is a trustee is bound both personally and in its capacity as a trustee.

### 3. HIRE OF EQUIPMENT AND SUPPLY OF SERVICES

We agree to hire to You the Equipment and perform the Services and will:

- (a) provide the Equipment to You in good working order;
- (b) provide Services in a competent manner; and
- (c) subject to **clause 8.6** and the provision of Services as stipulated in a Quotation, allow You to exclusively use the Equipment during the Hire Period.

### 4. HIRE PERIOD

4.1 The Hire Period commences when, either:

- (a) You take possession of the Equipment; or
- (b) if You request delivery and collection of the Equipment, the time We deliver the Equipment to the address stipulated,

whichever occurs first.

4.2 The Hire Period ends on either:

- (a) We take possession of the Equipment; or
- (b) if You request collection of the Equipment, the time We receive the Equipment from the address stipulated,

includes all weekends and public holidays.

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

### 5. HIRE CHARGES AND SERVICE FEES

5.1 You will pay Us for the hire of the Equipment and the provision of the Services at the rates set out in the Quotation.

5.2 The Quotation will specify the types of rate which will apply to You and the method of calculation, including additional hire charges that may apply based on the use of the Equipment.

5.3 We reserve the right to charge for a minimum period of hire or provision of Services for certain types of Equipment, but We will advise You of any minimum periods before You commence the hire.

5.4 Except in the circumstances set out in **clause 5.5**, You will be charged for the hire of Equipment for the full Hire Period. For the avoidance of doubt, You will continue to incur hire and other charges after the Expected Off Hire Date if You have not returned the Equipment to Us by the Requested Off Hire Date.

5.5 If You have requested that We deliver and collect the Equipment and We have agreed, hire charges will commence from the time the Equipment leaves Our premises and continue until the date You notify Us that You no longer require the Equipment and that the Equipment is immediately available for collection (**Off Hire Date**).

## 6. OTHER CHARGES

In addition to hire charges and fees payable for Services provided, You agree that You will be required to pay:

- (a) for any consumables, fuel or trade materials We supply to You;
- (b) if You require Us to deliver, collect or install the Equipment, the cost of delivery, collection or installation, as detailed in the Quotation;
- (c) if You do not return the Equipment in clean and good working condition, charges for the cleaning and repair of the Equipment;
- (d) duty (whether stamp duty, transfer duty or any other duty) or GST arising out of this Hire Agreement;
- (e) any other applicable levies, fines, penalties and any other government charges arising out of Your use of the Equipment;
- (f) charges for payment made by credit card;
- (g) an environmental charge in relation to certain items of Equipment as detailed in the Quotation; and
- (h) charges in connection with the administration of Your account with Us, as detailed in Your credit application, which may include printing and postage costs.

## 7. PAYMENT

- 7.1 You must pay all fees, charges and costs that become due and payable under this Hire Agreement within 30 days of the date of invoice.
- 7.2 If You do not pay the invoice in full by the payment due date, We reserve the right to charge, in addition to any other costs recoverable under this Hire Agreement:
  - (a) interest, calculated monthly, on the total outstanding balance. The interest rate used to calculate the interest payable for the month is the 90-day Bank Bill Swap Rate published on the first business day of that month plus 2%; and
  - (b) any costs and expenses (including any commission payable to any commercial or mercantile agents and legal costs) incurred by Us in recovering any unpaid amounts under this Hire Agreement.

## 8. YOUR OBLIGATIONS

- 8.1 This Hire Agreement is personal to You. You must not allow or authorise any other person or entity to use, re-hire or have possession of the Equipment at any time, unless expressly agreed by Us in writing.
- 8.2 You agree that before accepting the Equipment, You have satisfied Yourself as to the suitability, condition and fitness for purpose of the Equipment for the job You intend to use it for. Subject to **clauses 15.2 and 15.3**, We make no representations and give no guarantee or warranty that the Equipment is suitable for Your intended purpose.
- 8.3 To help You stay safe during the Hire Period, You and Your employees, agents and contractors must:

- (a) operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
  - (b) ensure persons operating or erecting the Equipment are suitably trained on its safe and proper use and are qualified and licensed (where necessary) to use the Equipment;
  - (c) wear suitable clothing and protective equipment when operating the Equipment as required or recommended by Us or the manufacturer;
  - (d) ensure that no persons operating the Equipment are under the influence of drugs or alcohol;
  - (e) conduct a job safety analysis prior to using the Equipment;
  - (f) ensure that no persons carry illegal, prohibited or dangerous substances in or on the Equipment; and
  - (g) display all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Equipment.
- 8.4 You must take care of the Equipment during the Hire Period. You must:
- (a) clean, fuel, lubricate and keep the Equipment in good condition and in accordance with the manufacturers and Our instructions at Your own cost;
  - (b) not in any way alter, modify, tamper with, damage or repair the Equipment without Our prior written consent; and
  - (c) not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment.
- 8.5 At all times during the Hire Period, You must store the Equipment safely and securely and protect it from theft, seizure, loss or damage.
- 8.6 You must allow Us to enter Your premises and inspect the Equipment from time to time during the Hire Period.
- 8.7 You may request that a joint inspection of the Equipment take place at the end of the Hire Period.
- 8.8 Whenever You are moving the Equipment, You must ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturer's guidelines. You must observe any safety directions advised by Us and the manufacturer of the Equipment to ensure its safe loading and handling.
- 8.9 You must not remove the Equipment from the place detailed in the Quotation as the place of use without Our written consent.
- 8.10 You must not use the Equipment offshore, in a mine, in an area where friable asbestos is present, or move the Equipment over water without Our prior written consent, which may be reasonably withheld. This subclause does not apply to the extent that the place of use detailed in the Quotation is specifically agreed to include or permit such use.
- 8.11 You warrant that You will comply with all Environmental Laws from time to time and immediately rectify any breach of an Environmental Law caused by the use of the Equipment.
- 8.12 You must use Your best endeavors to ensure that the Equipment is not contaminated with any hazardous substances (including asbestos). Subject to **clause 8.10**, You must advise Us of any risks of hazardous substance contamination to the Equipment as soon as they become apparent. Where Equipment may have been subjected to contamination, you must effectively decontaminate the Equipment, as well as provide Us with written details of decontamination processes applied. If, in Our opinion acting reasonably, the Equipment has not been properly

decontaminated or is not capable of being decontaminated, You will be charged for the new replacement cost of the Equipment.

- 8.13 Any electrical Equipment provided by Us will be tested and tagged before it is hired to You, but You are responsible for arranging the re-testing and re-tagging of any electrical Equipment in accordance with the manufacturer's instructions, the applicable Australian Standard(s) and Authority requirements at Your cost. We can arrange for re-testing and re-tagging of the electrical Equipment at Your cost if you prefer. If You arrange for re-testing and re-tagging of the electrical Equipment, any damage caused to the Equipment resulting from incorrect testing must be rectified at Your cost.
- 8.14 If, at Your request, we supply Services in respect of the Equipment:
- (a) Our Personnel will be deemed to be under Your direction and control whilst providing the Services and they will comply with Your reasonable directions;
  - (b) We will not, while the Personnel are working under Your direction and control in accordance with **clause 8.14(a)**, seek to direct or supervise any of the work undertaken by those Personnel;
  - (c) We will not be liable to You for any acts or omissions of the Personnel where they are acting under your direction and control; and
  - (d) You will not allow any other person to operate the Equipment without Our prior written consent.

## 9. OWNERSHIP OF EQUIPMENT

- 9.1 You acknowledge that We own the Equipment and in all circumstances, We retain title to the Equipment (even if You go into liquidation or become bankrupt during the Hire Period). Your rights to use the Equipment are as a bailee only.
- 9.2 Except in the circumstances set out in **clause 10**, You are not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with ownership or title to or create any interest in, the Equipment in any way.
- 9.3 In no circumstances will Our Equipment be deemed to be a fixture.

## 10. PPSA

- 10.1 You consent to Us affecting and maintaining a registration on the register (in any manner We consider appropriate) in relation to any security interest contemplated or constituted by this Hire Agreement in the Equipment and the proceeds arising in respect of any dealing in the Equipment and You agree to sign any documents and provide all assistance and information to Us required to facilitate the registration and maintenance of any security interest.
- 10.2 We may at any time register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest). You waive the right to receive notice of a verification statement in relation to any registration on the register of a security interest in respect of the Equipment.
- 10.3 You undertake to:
- (a) do anything (in each case, including executing any new document or providing any information) that is required by Us
    - (i) so that We acquire and maintain one or more perfected security interests

- under the PPSA in respect of the Equipment and its proceeds;
- (ii) to register a financing statement or financing change statement; and
  - (iii) to ensure that Our security position, and rights and obligations, are not adversely affected by the PPSA;
- (b) not register a financing change statement in respect of a security interest contemplated or constituted by this Hire Agreement without Our prior written consent; and
  - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favor of a third party without Our prior written consent.
- 10.4 If Chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising under or in connection with this Hire Agreement and:
- (a) section 115(1) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and You will have no rights under them – ss 95 (to the extent that it requires the secured party to give notices to the grantor), 96, 118 (to the extent that it allows a secured party to give notices to the grantor), 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143; and
  - (b) section 115(7) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply, and You will have no rights under them – ss 127, 129(2) and (3), 130(1), 132, 134(2), 135, 136(3), (4) and (5) and 137.
- 10.5 Unless otherwise agreed and to the extent permitted by the PPSA, You and We agree not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. You waive any right You may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of this information.
- 10.6 For the purposes of section 20(2) of the PPS Act, the collateral is Equipment including any Equipment which is described in any Quotation provided by Us to You from time to time. This Hire Agreement is a security agreement for the purposes of the PPS Act.
- 10.7 We may apply amounts received in connection with this Hire Agreement to satisfy obligations secured by a security interest contemplated or constituted by this Hire Agreement in any way We determine in Our absolute discretion.
- 10.8 You agree to notify Us in writing of any change to Your details set out in the Credit Application, within 5 days from the date of such change.

## **11. RESPONSIBILITY FOR EQUIPMENT**

You are responsible for the Equipment for the Hire Period.

## **12. RETURN OF EQUIPMENT**

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

- 12.1 Except in the circumstances set out in **clause 12.2**, it is Your responsibility to return the Equipment in good working condition to Us during normal business hours.
- 12.2 If You have requested, and We have agreed, to collect the Equipment from You, You must ensure it is kept safe and secure until the time of collection and that the Equipment is able to be collected at the time we attend to collect it.

### **13. EQUIPMENT BREAKDOWN**

- 13.1 In the event that the Equipment breaks down or becomes unsafe to use during the Hire Period You must:
- (a) immediately stop using the Equipment and notify Us;
  - (b) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
  - (c) take all steps necessary to prevent any further damage to the Equipment itself; and
  - (d) not repair or attempt to repair the Equipment without Our written consent.
- 13.2 Except if **clause 14.1** applies, upon receiving notice from You under **clause 13.1**, We will:
- (a) take all steps necessary to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by You; and
  - (b) not impose a hire charge for that portion of the Hire Period for which the Equipment was broken down or unsafe, nor the costs associated with any repair or replacement of the Equipment.

### **14. LOST, STOLEN OR DAMAGED EQUIPMENT**

- 14.1 If the Equipment:
- (a) has broken down; or
  - (b) become unsafe to use as a result of Your negligence; or
  - (c) is lost, stolen, or damaged beyond fair wear and tear,
- between the time that it was delivered or taken by you and the time at which it is returned to Us, You will be liable for:
- (d) any costs incurred by Us to recover and repair or replace the Equipment; and
  - (e) the hire charges for that portion of the Hire Period during which the Equipment is being recovered and repaired or replaced.
- 14.2 Provided that You pay the costs and charges described in **clause 14.1**, We will return the Equipment to You once it has been repaired or replaced, and You will continue to pay the hire charges for the remainder of the Hire Period.



## 15. INDEMNITIES, LIMITATION AND EXCLUSION OF LIABILITIES

- 15.1 Subject to **clause 15.3**, and except as expressly provided to the contrary in this Hire Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements, or representations whether express or implied, statutory or otherwise, relating to this Hire Agreement or its subject matter are excluded to the maximum extent permitted by law.
- 15.2 Nothing in this Hire Agreement excludes, restricts, or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Australian Consumer Law, which contains guarantees that protect the purchasers of goods and services in certain circumstances.
- 15.3 Where any legislation implies or imposes a guarantee, term, condition, warranty, undertaking, inducement, or representation in relation to this Hire Agreement and We are not able to exclude that guarantee, term, condition, warranty, undertaking, inducement, or representation (**Non-Excludable Provision**), and We are able to limit Your remedy for a breach of the Non-Excludable Provision, then Our liability for breach of the Non-Excludable Provision is limited to (at Our election):
- (a) in the case of goods, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or
  - (b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- 15.4 Subject to Our obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, Our maximum aggregate liability for all claims under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, is limited to an amount equal to the fees paid by You under this Hire Agreement. In calculating Our aggregate liability under this clause, the parties must include any amounts paid or the value of any goods or services replaced, repaired, or supplied by Us for a breach of any Non-Excludable Provisions.
- 15.5 Subject to **clauses 15.3 and 15.4**, We will not be liable to You for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs You have incurred, amounts that you are liable to Your customers for or any loss suffered by third parties under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.

- 15.6 You are liable for and indemnify Us against all liability, claims, damage, loss, costs, and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us, and any environmental loss, cost, damage or expense) in respect of:
- (a) personal injury;
  - (b) damage to tangible property; or
  - (c) a claim by a third party,
- in respect of Your hire or use of the Equipment or Your breach of the Hire Agreement. Your liability under this indemnity is diminished to the extent that Our breach of the Hire Agreement or Our negligence causes the liability, claims, damage, loss, costs, or expenses.
- 15.7 Each indemnity in this Hire Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion, and expiration of this Hire Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Hire Agreement.
- 15.8 We will not be liable to You for any acts or omissions of any Personnel supplied by Us where the Personnel is acting under Your direction and control during the Hire Period. You indemnify Us against all liability, claims, damage, loss, costs, and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us, and any environmental loss, cost, damage or expense) arising from or incurred in connection with such acts or omissions.

## 16. TERMINATION OF HIRE AGREEMENT

- 16.1 Either party may terminate this Hire Agreement and any Hire Period immediately by giving notice to the other party, if:
- (a) that other party breaches any term of the Hire Agreement and fails to remedy the breach within 14 days of written notification of the breach; or
  - (b) that other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business.
- 16.2 We may terminate the Hire Agreement and any Hire Period for any other reason on 24 hours' notice.
- 16.3 These rights of termination are in addition to any other rights either party has under the Hire Agreement and does not exclude any right or remedy under law or equity.

## 17. RECOVERY OF EQUIPMENT

If You are in breach of the Hire Agreement or if the Hire Agreement or a Hire Period has been terminated under **clause 16**, We may take all steps necessary (including legal action) to recover the Equipment, including entering Your premises to do so. Upon receiving written notice from Us, You expressly consent to Us entering Your premises for the purposes of recovering Our Equipment.

## **18. REAL PROPERTY SECURITY**

- 18.1 As security for Your obligations and liabilities under this Hire Agreement, You hereby charge for the due and punctual payment and performance of those obligations and liabilities, all of Your legal and equitable interest (both present and future) of whatsoever nature held in any and all real property.
- 18.2 Without limiting the generality of the charge in this clause, You agree, on Our request, to execute any documents and do all things necessary required by Us to register a mortgage security or other instrument of security over any real property and against the event that You fail to do so within a reasonable time of being so requested, You irrevocably and by way of security, appoint any credit manager or solicitor engaged by Us to be Your true and lawful attorney to execute and register such instruments.
- 18.3 You will indemnify Us on an indemnity basis against all costs and expenses incurred by Us in connection with the preparation and registration of any such charge and mortgage documents.
- 18.4 You also consent unconditionally to Us lodging a caveat or caveats noting Our interest in any of Your real property.

## **19. EQUIPMENT COLLECTED / DELIVERED IN A DAMAGED OR DEFECTIVE CONDITION**

If You collect or receive the Equipment (whichever is applicable) and find that it is broken, damaged or defective, You must notify Us within 24 hours after You collect or receive the Equipment. If You do not notify Us within this time period, We are entitled to assume that the Equipment You collected or received was in good order and condition and for the purposes of this agreement it will be deemed to have been so.

## **20. LONG DISTANCE MAINTENANCE**

- 20.1 If You hire Equipment for use at a Long Distance Location, this clause applies to You.
- 20.2 In respect of all manufacturer recommended servicing that We are required to undertake on Equipment You are operating in a Long Distance Location, You will be subject to a reasonable per kilometer charge both to and from the premises nominated by You, as specified by Us. There will be no charge for the first 50 km either way.
- 20.3 Where possible, manufacturer recommended servicing of multiple items of Equipment You hire from Us will be scheduled together, so as to only incur a single call out charge.
- 20.4 For the avoidance of doubt, You remain responsible for daily maintenance and care of all Equipment in accordance with the Hire Agreement (especially **clause 8** of these Hire Terms), including but not limited to, daily checking of all fluids (fuel, oil, water, battery levels, etc.), general tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points.
- 20.5 If the Equipment breaks down at a Long Distance Location, You will also pay Us the costs associated with any attendance at the Long Distance Location in addition to any other costs payable under this Hire Agreement.

## 21. PRIVACY

- 21.1 We will comply with the National Privacy Principles in all dealings with You.
- 21.2 We may need to collect personal information about You, including but not limited to, Your full name and address, drivers license, credit card details, date of birth, credit or business history and other personal information.
- 21.3 You consent to Us using Your personal information in order to:
- (a) fulfil functions associated with the hire of Equipment to You, including assessing Your credit worthiness, or taking steps in accordance with **clause 10**;
  - (b) provide Services to You;
  - (c) prevent theft of Our Equipment;
  - (d) enter into contracts with You or third parties; and
  - (e) to market to You and maintain a client relationship with You.
- 21.4 You also consent to Us disclosing Your personal information:
- (a) to any credit provider or credit reporting agency for the purposes of obtaining information about Your consumer or commercial credit or business history or Your commercial activities or credit worthiness; and
  - (b) to Our service providers, contractors, and affiliated companies from time to time to help improve and market Our services to You.
- 21.5 You have the right to access the personal information We hold about You.
- 21.6 A copy of Our privacy policy is available upon request.

## 22. FORCE MAJEURE

- 22.1 Subject to **clause 22.2**, neither party will be responsible for any delays in delivery, installation, or collection due to causes beyond their control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.
- 22.2 Nothing in **clause 22.1** will limit or exclude Your responsibility and liability under the Hire Agreement for Equipment that is lost, stolen or damaged beyond fair wear and tear during the Hire Period, or has broken down or become unsafe to use as a result of Your conduct or negligence.

## 23. CREDIT REVIEW

- 23.1 From time to time We may review any Credit Account We have granted to You without notice.
- 23.2 We may, at Our discretion, decide to withdraw credit for any reason, including but not limited to if Your circumstances change, You fail to make payments on time or You fail to use the Equipment in accordance with the terms of the Hire Agreement.

- 23.3 If we withdraw credit, you may terminate this Hire Agreement immediately by giving Us written notice. However, if You do so You must:
- (a) pay amounts that were subject to credit in accordance with the terms on which that credit was provided; and
  - (b) still pay all amounts due to Us under this Hire Agreement, including hire charges until the Equipment is back in our custody and possession.

## 24. SIGNING THIS HIRE AGREEMENT

- 24.1 The person signing any document which forms part of the Hire Agreement for and on behalf of You hereby warrants that he or she has Your authority to enter into the Hire Agreement on Your behalf and grant the security interests in connection with it and is empowered to bind You to the Hire Agreement and each security interest granted in connection with it.
- 24.2 The person signing this Hire Agreement indemnifies Us against all losses, costs and claims incurred by Us arising out of the person signing this Hire Agreement not in fact having such power and/or authority.

## 25. CLAIM FOR PAYMENT

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

## 26. GENERAL TERMS

- 26.1 If any part of this Hire Agreement becomes void or unenforceable for any reason, then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.
- 26.2 The Hire Agreement is governed by the laws of Western Australia and each party submits to the non-exclusive jurisdiction of the courts of that State.
- 26.3 The Hire Agreement as defined in **clause 1** comprises the entire agreement between the parties. No additional terms and conditions apply to the hire of the Equipment unless agreed in writing by the parties.
- 26.4 Subject to **clauses 15.1 and 15.3**, You acknowledge that neither We nor any person acting on Our behalf have made any representation or other inducement to You to enter into the Hire Agreement and You have not entered into the Hire Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those representations contained in the Hire Agreement.

- 26.5 From time to time We may need to vary this Hire Agreement. If We intend to do so, We will give You 30 days written notice and clearly set out Our proposed amendments. If You have reasonable grounds to believe the change will be detrimental to Your rights, You may terminate this Hire Agreement without penalty within 30 days of receiving Our written notice, failing which the changes will take effect. Any other variation of these terms and conditions must be agreed in writing by You and Us.
- 26.6 Except as set out in **clause 19**, no delay or omission by a party to exercise any right, power or remedy available to that party as a result of a continuing breach or default under the Hire Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of that party’s rights to take action or make a claim in respect of a continuing breach or default.
- 26.7 A notice given by one party to another under the Hire Agreement must be in writing and may be sent in the following manner.

Method	Date of receipt
Hand delivered	when delivered or left at the party’s address
Pre-paid post	on the third (3rd) Business Day after posting
Facsimile	if on a Business Day – on the day of transmission if not on a Business Day, on the next Business Day (provided always that the sender receives proof of success of transmission)
Email	on the day on which receipt of the email is acknowledged by the recipient

The address, facsimile number and email address of a party is that set out in the Hire Agreement, or such other address, facsimile number, or email address of which the party may from time to time give notice.

- 26.8 This edition of the Hire Terms replaces and supersedes all previous editions of Hire Terms We have issued. Renewal or extension of hire of Equipment is deemed to incorporate these Hire Terms as amended from time to time and available for download on our website.