



**STANDARD TERMS AND CONDITIONS  
FOR THE COMMERCIAL HIRE OF GOODS AND EQUIPMENT PROCEDURE**

These Standard Terms and Conditions together with the Quotation or Proposal and Account Application (if applicable), whether signed or not, represent the offer by the Owner to the Customer to hire the Equipment and/or provide the Services (“Offer”) and, if the Customer accepts this Offer, together constitute the whole of the Contract.

**1. DEFINITIONS**

In these Terms and Conditions these words and phrases have the following meanings:

“**Acceptance**” and “**Accepted**” means express or implied acceptance of the Owner’s Quotation or Proposal by the Customer (including, without limitation, acceptance in writing, verbally, or by conduct).

“**Account Application**” means the application by the Customer to the Owner to open a Credit Account (if any), being in the form approved by the Owner.

“**Additional Equipment**” means the Owner’s goods, tools, consumables, accessories or equipment that the Customer may, outside the scope of the Quotation or Proposal, hire on the Terms and subject to any further terms and conditions that the Owner (in its absolute discretion) thinks fit.

“**Cancellation**” means the cancellation by the Customer of this Contract, which cancellation must be communicated to the Owner by email, facsimile or letter and be to that effect.

“**Cancellation Fee**” means the cancellation fee that the Owner may charge and invoice to the Customer in accordance with clause 11.3.

“**Certificate of Currency**” means a certificate of currency evidencing to the satisfaction of the Owner that insurance cover exists in respect of the Customer’s business site/s that is sufficient to cover loss/damage to or destruction of the Equipment. “**COD**” means cash on delivery to Site.

“**Contract**” means the contract between the Owner and the Customer for the hiring of the Equipment and/or provision of the Services, which contract is made on the Terms.

“**Credit Account**” means a credit account that the Customer has with the Owner, which account the Owner has approved and opened upon the Customer completing and submitting to the Owner an Account Application.

“**Customer**” means the addressee or applicant (as the case may be) named in the Quotation or Proposal or Account Application. If the Customer comprises more than one person or entity, each is jointly and severally liable for the performance of all the Customer’s obligations under the Contract.

“**Day**” means a calendar day commencing immediately on midnight and finishing immediately before the next midnight.

“**Default Event**” means an event of default set out in clause 8.1 of these Standard Terms and Conditions.

“**Delivery Address**” means, except where otherwise stated in the Quotation or Proposal, the Site.

“**Deposit**” means any sum stated in the Quotation or Proposal as a deposit required to be remitted by the Customer prior to commencement of the hire.

“**Dry Hire**” means the hiring of the Equipment to the Customer without the provision of persons to operate the Equipment.

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**"Duty"** means any duty payable under any State or Territory legislation in respect of the hiring of the Equipment to the Customer under this Contract.

**"Effective Control"** means actual physical control and use of the Equipment at relevant times. Where the Equipment is provided to the Customer on a Dry Hire basis, it will be deemed to be under the Effective Control of the Customer. Where the Equipment is provided to the Customer on a Wet Hire basis, it will be deemed to be under the Effective Control of the Owner.

**"Environmental Laws"** means any legislation, statutes, laws or regulations made by a regulatory body relating to use or protection of the environment.

**"Equipment"** means collectively all the goods, tools, consumables, accessories and equipment described in the Quotation or Proposal and separately each item of the goods and equipment designated in the Quotation or Proposal, and all Additional Equipment.

**"Essential Term"** means any term in these Standard Terms and Conditions which is expressly stated to be an essential term and also means any term which is expressly stated in the Quotation or Proposal to be an essential term. "Essential Term" also includes any term which, by its nature and importance, one or other of the parties would not enter into this Contract without that term being included.

**"Facilities"** means all earthworks, electrical services, scaffolding, lighting, awnings, components, lifting/cranes and other requirements necessary in order to facilitate the proper and safe installation and use of the Equipment on the Site during the Period of Hire.

**"GST"** means Goods and Services Tax as defined in A New Tax Act (Goods and Services) 1999 (Cth).

**"Hire Charge"** means the fee exclusive of GST which the Customer has by this Contract agreed to pay to the Owner for the hire of the Equipment for the Period of Hire. Additional Equipment required will be invoiced to the Customer and will be in addition to the Hire Charge and will be added to the invoice of the Hire Charge to the Customer. The Hire Charge is set out in the Quotation or Proposal.

**"Manufacturer"** means in respect of each item of Equipment the identified manufacturer of that item of Equipment.

**"Other Charges"** includes but is not limited to site medicals/inductions, consumables and fuels, delivery/collection costs, cleaning, duties/levies or other government charges, Loss and Damage Waiver. **"Owner"** means Babylon Operations Pty Ltd ACN 617 350 731.

**"Owner / Owner's Agents"** means the Owner and includes a reference to the Owner's employees, agents, contractors, lawful successors and assignees.

**"Owner's Premises"** means the premises which the Owner may designate (from time to time) for the collection or return of any Equipment.

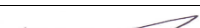
**"Period of Hire"** means the period or term for which the Equipment is hired by the Customer from the Owner, being the period or term specified in the Quotation or Proposal (as amended by any written agreement by the Customer and the Owner), including weekends and public holidays. **"PPSA"** means the Personal Property Securities Act 2009 (Cth).

**"Proposal"** or **"Quotation"** means the Quotation or Proposal for the supply of Equipment and/or provision of Services which the Owner submits to the Customer.

**"Scope of Work"** contained within the Quotation or Proposal or as provided by the Customer, capturing and defining in detail the work activities, deliverables and timeline of performance of specified work.

**"Services"** means the provision of labour by the Owner (its servants, agents or lawful contractors) including but not limited to labour for preliminary site visits, production planning, engineering and design, function testing, Equipment mobilisation, installation, commissioning, operation, servicing, decommissioning and demobilisation, and all associated travel costs.

**"Site"** means the site, place, Venue, or location at which the Equipment and any Additional Equipment is, or is to be, located during the Period of Hire or any holding over period.

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“Special Conditions” means the special conditions (if any) as set out in the Quotation or Proposal.

“Terms” means all of the terms and conditions of and incorporated in the Contract, being the terms and conditions set out in these Standard Terms and Conditions and in the Quotation or Proposal (including any Special Conditions).

“Venue” means the place where the Equipment is, or is to be, used by the Customer.

“Wet Hire” means the hiring of the Equipment and the provision of persons to operate the Equipment and provide Services in respect thereto.

**2. INTERPRETATION**

2.1. In these Standard Terms & Conditions, unless the context requires otherwise:

- (a) a reference to a statute, rule, legislation or regulation is a reference to that statute, rule, legislation or regulation as amended, re-enacted or modified from time to time;
- (b) the headings are for convenience only and do not affect their construction or interpretation;
- (c) a reference to any party includes a permitted assign of that party;
- (d) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal entity, and any executor, administrator or successor;
- (e) a singular word includes the plural and vice versa;
- (f) a word which suggests one gender includes the other.

2.2. All words and phrases appearing in the Terms which are defined in the PPSA have the same meaning in the Terms as they do in the PPSA, including (without limitation) the following words and phrases: “purchase money security interest”, “register”, “registration”, “security agreement”, “security interest”, and “verification statement”.

**3. BINDING CONTRACT**

3.1. To the fullest extent legally possible, all dealings between the Owner and the Customer are entered into subject to the Terms and will bind the Owner and the Customer upon Acceptance.

3.2. The Terms supersede and replace any terms and conditions of the Customer to the extent of any inconsistency between them.

3.3. The Terms may only be amended, supplemented or replaced by agreement in writing.

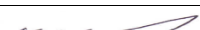
3.4. All Equipment is available as listed at the time the Quotation or Proposal is sent to the Customer. The Owner will ensure that the Equipment specified in the Quotation or Proposal is available for the Customer if the Quotation or Proposal is Accepted within 72 hours of the Quotation or Proposal being sent to the Customer or in such other time as may be specified in the Quotation or Proposal.

3.5. Until the Customer has Accepted this Offer, the Owner may at any time withdraw the Offer by email, facsimile or letter to the Customer to that effect.

3.6. The Customer hereby acknowledges that it has had the full opportunity to review and understand the Terms. The Customer represents and warrants that any person who, with apparent authority, accepts the Quotation or Proposal on the Customer’s behalf:

- (a) has the authority to make this agreement on the Customer’s behalf;

- (b) is empowered by the Customer to bind the Customer to this agreement; and hereby indemnifies the Owner against all losses and costs incurred by the Owner arising out of the person so accepting this agreement failing to have such power and/or authority.

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- 3.7 The Owner has no obligation to the Customer to supply the Equipment named in the Quotation or Proposal if the Acceptance by the Customer is received by the Owner outside the period of time set out in Clause 3.4.
- 3.8 The Owner may, at its absolute discretion, where the Acceptance is received from a person or company other than the Customer, require written confirmation by the Customer that such Acceptance is given for and on its behalf and with its full authority. If the Owner requires such confirmation, then the Acceptance will not be deemed to have been communicated and received by the Owner until such confirmation is received.
- 3.9 If any clause or part of a clause in the Terms is illegal, unenforceable or invalid, that clause or part is to be treated as removed from the Terms without affecting or impairing the rest of the Terms in any way whatsoever.

**4. TERMS OF PAYMENT**

4.1. The Owner will provide a tax invoice in \$AUD to the Customer for the Hire Charge, Services and Other Charges (“**Total Charges**”). The Customer will pay the Total Charges to the Owner in strict accordance with the Payment Terms as stated in the Quotation or Proposal or otherwise within 30 Days of the date of the tax invoice. The Customer must also pay the GST as stated on the tax invoice when paying the Total Charges to the Owner. 4.2. Time shall be of the essence in relation to payments by the Customer to the Owner under this Contract.

4.3. The Owner may, as part of its Quotation or Proposal, require the Customer as a pre-condition of Acceptance, to pay to the Owner a Deposit in respect of the Equipment to be hired. The amount of the Deposit shall be as stated in the Quotation or Proposal.

4.4. Without limiting the circumstances in which the Owner may require the Total Charges to be paid in advance, the Owner may require advance payment of the Total Charges or a progress payment/deposit thereof before any hiring takes place where any of the Equipment to be hired has to be manufactured, adapted or any process has to be applied to existing items of the Equipment to match with the Customer’s specific requirements.

4.5. Any such Deposit shall when paid be applied against the Total Charges, or if the Customer cancels the Contract or any Equipment, the Owner may, at its discretion, apply such Deposit as a credit against any such Cancellation Fee.

4.6. No variation to the Period of Hire (including off-hires), the Hire Charge, Services or Other Charges will be acknowledged by the Owner unless agreed to in writing by the Owner.

4.7. The Customer acknowledges and agrees that the Owner may, at its absolute discretion and unless specifically catered for in the Quotation or Proposal, amend any of the charges or fees specified, including introducing additional charges or fees, with such amendment taking effect upon the Owner providing written notice to the Customer.

4.8. The Owner reserves the right to charge for a minimum Period of Hire for certain types of Equipment.

4.9. The Customer shall notify the Owner in writing within seven (7) days of receipt of any disputed invoice whether in whole or in part. Failure to notify the Owner of any dispute within this period will render the invoice irrevocable and payment will be due and payable in accordance with clause 4.1.

4.10. No claims for credit will be recognised after 14 (fourteen) Days from the date of the tax invoice.

4.11. Without prejudice to any other rights or remedies available to the Owner, if the Customer fails to pay the full amount payable of an invoice within the period specified in Clause 4.1, the Customer must pay to the Owner on demand interest on the amount outstanding at the rate which is 3% above the maximum overdraft rate of the Owner’s principal bankers, as published from time to time, which will be calculated daily, and

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reimburse the Owner for any costs (including legal fees or commissions) incurred by the Owner in recovering any unpaid amounts.

4.12. The Customer must notify the Owner of any overpayment made by or adjustment, credit or refund due to the Customer within six (6) months of the date of the applicable tax invoice, adjustment or credit. The Owner will not be obliged to provide a refund for any adjustment, credit or refund not claimed within the 6 (six) month period.

4.13. The Owner may fromtime to time review any Credit Account and, at the Owner's absolute sole discretion, stop or suspend the Credit Account of the Customer for any reason including but not limited to the Customer's failure to make payments in accordance with Clause 4.1 or failure to use the Equipment in accordance with this Contract.

4.14. The Owner reserves the right to account offset against monies owed to the Customer but this cannot be effected against the Owner.

**5. THE EQUIPMENT**

5.1. Unless the Quotation or Proposal provides otherwise, the Customer is responsible for collecting the Equipment from and returning the Equipment to the Owner's Premises and must bear all costs associated with insuring, loading, transporting and unloading the Equipment. Where the Customer requires the Owner to arrange delivery or collection of the Equipment from the Customer, the Customer must reimburse the Owner for all transportation costs incurred by the Owner for transporting the Equipment to or from the Customer.

5.2. Upon delivery, the Equipment must be inspected by the Customer to determine whether the Equipment delivered is complete in accordance with the Contract and is in good order and working condition. Unless otherwise stated in the Quotation or Proposal, the Customer will on completion of the inspection be deemed to have satisfied itself that the Equipment as a whole is suitable, fit and merchantable and capable of meeting all the requirements of the Customer.

5.3. Unless the Owner has been expressly retained in writing to advise on the suitability, fitness and merchantability of the Equipment for the Customer's purpose, any warranties as to suitability, fitness or merchantability are hereby expressly excluded to the full extent legally permitted.

5.4. Any shortages or malfunctioning of the Equipment must be notified by the Customer to the Owner in writing within 24 hours of delivery.

5.5. Where the Customer is in Effective Control of the Equipment, then the Customer is a bailee of the Equipment. In addition to all duties imposed at law upon bailees, it is an Essential Term of the Contract that the Customer will:

(a) at all times exercise all reasonable care and diligence in the use of the Equipment in accordance with Manufacturer's specifications; (b) ensure that any users of the Equipment:

- i. are not under the influence of drugs or alcohol;
- ii. wear suitable clothing and protective equipment;
- iii. are suitably trained, understand and follow all safety rules and precautions (including conducting a job safety analysis) in accordance with the Manufacturer's instructions.

(c) where the Customer has elected to perform regular servicing of the Equipment during the Period of Hire, take care of the Equipment and clean, lubricate, keep in good condition and provide Scheduled Oil Samples as directed by the Owner;

(d) be responsible for arranging at the Customer's expense the testing and tagging of electrical Equipment provided by the Owner in accordance with the Manufacturer's instructions and the applicable Australian Standard(s) and regulatory authority requirements. Any damage caused to the Equipment resulting from incorrect testing will be at the Customer's cost;

(e) at all times provide insurance cover that is sufficient to cover loss/damage to or destruction of the Equipment during the Period of Hire (unless the Customer has

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accepted the Owner's Loss and Damage Waiver charge per Clause

6. The Customer must before the Period of Hire provide an insurance Certificate of Currency acceptable to the Owner that covers loss, theft, damage to or destruction of the Equipment for an amount not less than the new replacement value of the

Equipment and includes a waiver of subrogation in favour of the Owner;

(c)ensure safe loading, securing and transporting of the Equipment at all times in accordance with all laws and Manufacturer's guidelines or the directions of the Owner;

(d)where the Customer has responsibility to return the Equipment, it must return it in good order and working condition and fully fuelled to the Owner's Premises. The Equipment remains on hire and chargeable to the Customer until this date and the Owner reserves the right to charge for fuel not returned and an environmental fee to cover cleaning and waste disposal should the Equipment be returned in an unsatisfactory condition;

(e)where the Owner is to collect the Equipment from the Site, the Customer must make it available for collection in good order and working condition and fully fuelled at the Delivery Address. The Owner will use all endeavours to collect the Equipment promptly however the Customer remains responsible for safeguarding the Equipment from loss, damage or destruction until collected. Unless due to delays in collection and only as agreed by the Owner in writing, the Equipment remains on hire and chargeable to the Customer until the Equipment arrives at the Owner's Premises. The Owner reserves the right to charge for fuel not returned and an environmental fee to cover cleaning and waste disposal should the Equipment be returned in an unsatisfactory condition;

(f)not tamper, modify or in any way interfere with, or repair or attempt to repair or alter the Equipment without the prior consent of the Owner. Where the Customer notifies the Owner immediately of any Equipment breakdown, the Hire Charge will not be payable during the time the Equipment is not working unless such condition is due to negligence or misuse of the Equipment on the part of or attributable to the Customer;

(g)be responsible for all accidental damage to the Equipment, save and except where such damage is caused by the Owner;

(h)be responsible for all loss or damage to the Equipment occasioned by theft, malicious damage, or other unlawful act, save and except where such loss or damage occurs when the Equipment is under the effective control of the Owner;

(i)ensure that the Equipment is secure at all times and where being stored in an unlocked Site, supply such security measures to ensure that the Equipment is safe and secure from theft, seizure, loss or damage at all times during the Period of Hire; (m) at no time during the Period of Hire remove, vary or deface any label,

Manufacturer's serial numbers or other marks identifying the Equipment and/or the Owner's ownership of the Equipment or in any way deal with it in a manner inconsistent with the rights of the Owner as owner;

(j)not permit any person to improperly use the equipment;

(k)not allow the Equipment to be moved from the State or Territory in which it was hired without the Owner's written consent;

(l)not allow or authorise another person or entity to use, rehire or have possession of the Equipment, without the written permission of the Owner;

(m)comply with all Environmental Laws and immediately rectify any breach of an Environmental Law caused by using the Equipment;

(n)keep the Equipment free from contamination or hazardous substances and advise the Owner of any risk or as soon as they become apparent. If the Equipment becomes contaminated the Customer must thoroughly decontaminate the Equipment and provide a written report of the processes applied. If the Owner is not reasonably satisfied that the Equipment has been or can be decontaminated, the Owner reserves the right to charge the Customer for the new replacement cost of the Equipment.

5.6During the Period of Hire, in the event that the Equipment breaks down or becomes unsafe to use, the Customer must immediately cease using the

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Equipment and notify the Owner, taking all necessary steps to prevent injury to any persons or property, or further damage to the Equipment itself. The Customer must not tamper, modify or in any way interfere with, or repair or attempt to repair or alter the Equipment without the prior consent of the Owner. The Hire Charge will not be payable during the period the Equipment is not working unless such condition is due to negligence or misuse of the Equipment on the part of or attributable to the Customer;

5.7 In the event the Equipment or any part of it is lost, stolen or damaged during the Period of Hire in circumstances where the Customer bears responsibility under these Terms, the Customer will be liable to the Owner and will indemnify it for the cost and expenses of the new replacement of such lost or stolen Equipment and/or for the new replacement of Equipment which, in the sole determination of the Owner, is damaged beyond repair and/or for the costs and expenses of repairing or reinstating the damaged Equipment.

5.8 Referring to Clause 5.7, where the event is the result of the negligence or conduct of the Customer, including where applicable failure to service the Equipment per the Terms of the Contract, the Customer will in addition be liable for the Hire Charge for that portion of the hire during which the Equipment was being recovered and repaired or replaced.

5.9 If the Customer fails or refuses for any reason whatsoever to return or make available for collection all the Equipment to the Owner then the Customer will be in breach of an Essential Term of this Contract and without prejudice to any other rights which the Owner may have, either pursuant to these Terms or at law, the Customer will be liable to pay the Owner on a Day-Rate basis for the hiring of the Equipment for such further period of time until returned to the Owner's Premises.

5.10 For the purposes of Clause 5.9 above, such further period of time will conclude at the earliest to occur of, the date when the Equipment is returned to the Owner's Premises in good working order and condition or the date when the Owner receives from the Customer full monetary compensation for the loss, damage or destruction to the Equipment. In addition, the Customer fully indemnifies the Owner for any other liability, loss or cost that the Owner might sustain as a result of the Owner being unable to meet any other contractual obligation to supply that Equipment (or any other item thereof) to any other person.

**6. LOSS AND DAMAGE WAIVER**

6.1. A fee for Loss and Damage Waiver ("Waiver") will be charged to the Customer if the Customer elects not to provide their own comprehensive insurance cover for the Equipment during the Period of Hire. The Waiver charge rate will be outlined in the Quotation or Proposal but in any event will be not less than 12% of the Hire Charge.

6.2. Waiver is not insurance. Where it has been charged to the Customer, the Owner agrees to limit the Customer's liability in specific circumstances for loss, theft, damage to or destruction of the Equipment during the Period of Hire.

6.3. Where the Customer has paid Waiver to the Owner, the Owner will waive its right to claim against the Customer for loss, theft, damage to or destruction of the Equipment caused by fire, storm, flood, collision, accident, and burglary, so long as the Customer has:

- (a) taken adequate precautions to reasonably safeguard the Equipment;

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- (b) where applicable, promptly reported the incident to the police and provided a copy of the police report to the Owner;
- (c) fully cooperated with the Owner and provided their own written report detailing the incident, including photographs where required;
- (d) paid to the Owner the Waiver excess referred to in Clause 6.4.

6.4. The Waiver excess for each item of the Equipment is an amount equal to:

- (a) where the Equipment is partially damaged and can be repaired - 15% of the full repair costs;
- (b) where the Equipment cannot be repaired, is lost or stolen - 15% of the full new replacement cost.

6.5. Irrespective of whether the Customer has been charged Waiver, the Owner will not waive its rights to claim against the Customer for loss, theft, damage to or destruction of the Equipment where such event:

- (a) has resulted from a negligent act, omission or failure to act by the Customer;
- (b) has been caused by a breach of a clause of this Contract by the Customer;
- (c) has occurred due to the incorrect installation or connection of the Equipment by the Customer;
- (d) has resulted from the improper use of the Equipment in violation of any statutory laws and regulations;
- (e) was caused during transport of the Equipment (unless transported by the Owner);
- (f) occurs due to misuse, abuse or overloading of the Equipment or failure to use in accordance with the Owner's or Manufacturer's instructions;
- (g) was caused by the unauthorised modification or conversion of the Equipment by the Customer;
- (h) results from the Customer failing to adequately service or maintain the Equipment;
- (i) has been caused by exposure to corrosive or abrasive substances such as caustic, cyanide, acid, salt water etc;
- (j) occurs where the Equipment is used on oil rigs, or is otherwise located or being transported over water;
- (k) results to pumping Equipment which has been submerged in open shafts, open pits, underground or in bores.

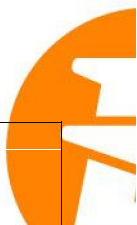
6.6. No claims for credit will be recognised for Waiver that was charged prior to the Customer submitting a Certificate of Currency that complies with Clause 5.5(e) of these Terms.

**7. SERVICES**

7.1. Where the Owner provides Services for a Customer at a Site, each of the following are Essential Terms of this Contract which the Customer must comply with. The Customer must:

- (a) ensure that the Owner / Owner's Agents are able to access the Site at all times specified by the Owner and at all other reasonable times so as to enable the Owner / Owner's Agents to provide the Services;

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- (b) ensure that the Equipment when installed remains in place at the Site and that the Site is not required for any other purpose which would require the Equipment to be dismantled and re-installed or which may put the whole or any part of the Equipment at risk of being lost, damaged or destroyed;
- (c) ensure that all access to the Site is given to the Owner / Owner's Agents and that such time as is required by the Owner is available to enable the Owner / Owner's Agents to dismantle and remove the Equipment from the Site;
- (d) do all such things as are necessary to discharge the Customer's obligations under all applicable Occupation Health, Safety and Environmental legislation, regulations and codes of practice so as to ensure that the Site and the Equipment as installed are safe and free from defects and dangerous conditions;
- (e) ensure that where the Equipment is being installed on any structure or held in place by any structure that the structure is capable of holding the weight of the Equipment and that the structure is properly erected so as to be safe and so as to take the anticipated loads involved in holding the Equipment;
- (f) ensure that the Site is safe for all of the Owner's employees and contractors to carry out the services required of the Owner under this Contract.

7.2 Where the Owner is requested by the Customer to provide an operator to operate the Equipment ("**Operator**"), the Operator will be under the direction and control of the Customer. The Owner will not be liable for any acts or omissions of the Operator where they are acting under the direction and control of the Customer during the Period of Hire.

7.3 The Customer acknowledges that the Owner may in providing the Services be dependent upon other contractors or the Customer preparing the Site for the Equipment or its installation. The Owner will not be liable for any delay in installing the Equipment or for providing the Services where such delay is a consequence of any act or omission on the part of the Customer or such external contractors.

7.4 Except where the Owner has expressly agreed to provide any Facilities, it is the exclusive responsibility of the Customer to ensure that for the duration of the Period of Hire:

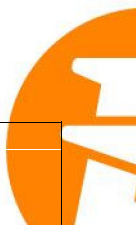
- (a) the Site is safe for the installation and use of the Equipment;
- (b) all required Facilities are available and are in place, are safe and in good working order;
- (c) the Site is safe for the provision of the Services.

**8. DEFAULT EVENTS**

8.1. The Customer will be in default under the Contract if:

- (a) it breaches any of its obligations under this Contract and fails to remedy such breach within seven (7) Days of being requested by the Owner to do so;
- (b) it breaches any Essential Term of this Contract;
- (c) where the Customer being a corporation becomes insolvent, is wound-up or goes into Liquidation or has an Administrator appointed to it or has a Receiver appointed over any of its assets; or
- (d) where the Customer is a natural person, he or she is or becomes

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insolvent or makes an assignment for the benefit of his or her creditors or commits an act of bankruptcy under the Bankruptcy Act 1966 (Cth) or is declared bankrupt.

8.2. The customer irrevocably and to the full extent permitted by law authorises the Owner to, without prior notice to the Customer, do any or all of the following if a Default Event occurs (reserving all other rights and remedies whatsoever available to the Owner):

- (a) terminate the Contract;
- (b) re-take possession of the Equipment;
- (c) enter any Site, or any property at which the Owner reasonably believes the Equipment to be located, for the purpose of doing anything reasonably necessary to:
- (d) remove the Equipment from the Site or property; or (ii) to re-take possession of the Equipment.

8.3. The Customer indemnifies the Owner, and must keep the Owner indemnified, against any loss or liability, expense, claimor cost which might be incurred by the Owner in exercising its rights under clause 8.2. This indemnity covers (without limitation) any liability to any third party for trespass or for damage to any property occasioned by the Owner exercising its rights under clause 8.2(c).

**9. WARRANTIES**

9.1. Except where specifically agreed in the Quotation or Proposal and to the maximum extent permitted by law, the Customer acknowledges that the Owner has not, in the provision of the Equipment or Services, whether expressly or impliedly, directly or indirectly, statutory or otherwise, made any representation or given any inducement, warranty, undertaking or guarantee as to any fact, matter, circumstance or thing.

9.2. All warranties implied by the Competition and Consumer Act 2010 (Cth) and any other statutes (if any) that can be expressly excluded are hereby expressly excluded.

9.3. Where permitted by statute, the Owner’s liability for breach of any warranty is limited to:

- (a) the supply to the Customer of substituted equivalent Equipment; or
- (b) the payment of the costs of supplying to the Customer substituted equivalent Equipment; or
- (c) the repayment to the Customer of the Hire Charge.

9.4. The Customer warrants that it:

- (a) does not have a conflict of interest with the Owner;
- (b) will not allow a conflict of interest to arise during the Period of Hire;
- (c) will not provide or offer to provide any gift or inducement by way of fees, rebates, grants, gifts or commissions to the Owner / Owner’s Agents;
- (d) will immediately inform the Owner of the existence of or potential for a conflict of interest.

9.5. During the term of this Contract and for twelve months thereafter, the Customer warrants that it will not directly or indirectly retain the services (whether as an employee, independent contractor or otherwise) of any employee of the Owner (or ex-employee within three months of the employee’s termination from the Owner) who has provided services to the Customer on behalf of the Owner.

**10. LIMITATION OF LIABILITY**

10.1. The liability of the Owner is limited as follows:

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- (a) the Owner is not liable to the Customer for any loss or damage which the Customer might sustain as a consequence of the Customer ordering the wrong Equipment or insufficient quantities of the Equipment or where the Equipment is hired for a purpose which is outside of the Equipment's specifications.
- (b) the Owner is not liable for any damage or loss suffered by the Customer as a consequence of any late delivery of the Equipment to the Site whether or not the Customer has contributed to the cause of the late Delivery by any means.
- (c) the Owner is not liable to the Customer for any loss or damage caused by the Customer's failure to discharge any responsibility or obligation of the Customer to:
  - i. prepare the Site for the delivery and installation of the Equipment;
  - ii. provide the Facilities at the time of delivery of the Equipment to the Site; and/or
  - iii. ensure that the Facilities (or any of them) are available and suitable during the Period of Hire.
- (d) the Owner has no liability to the Customer for any damage or loss which the Customer might sustain where the cause of that damage or loss is the negligence of the Customer or any of its servants, agents or contractors.
  
- (e) in the event of the Customer suffering any loss, damage or claim howsoever arising as a result of hiring the Equipment, the liability of the Owner does not include indirect, liquidated, economic or consequential damages, loss of actual or anticipated profits, or loss of business or business interruption costs, of any nature whatsoever. (f) in any event liability is restricted to the amount of the Owner's insurance coverage.

10.2 Where it is the responsibility of the Customer to ensure that the Site is safe and that the Facilities are safe, then the Customer indemnifies the Owner against any liability to any third party who suffers death, injury, loss or damage where such death, injury, loss or damage is caused wholly or partly as a consequence of any negligent act or omission or other failure on the part of the Customer to ensure that the Site is safe.

10.3 The Customer agrees to the fullest extent permitted by law to indemnify and hold harmless the Owner, its officers, directors, employees and subcontractors (collectively the Owner) against all claims, damages, liabilities, losses, costs or expenses on a full indemnity basis, including reasonable attorney's fees and defence costs, in respect of personal injury, death or damage to property, arising out of or in any way connected with the Equipment or the performance by any of the parties in this agreement, excepting proportionately only those claims, damages, liabilities, losses, costs or expenses attributable to the negligent acts or negligent failure to act by the Owner.

10.4 Each indemnity in this Contract is a continuing obligation and survives the termination, expiration or completion of the Contract.

10.5 Time shall not be of the essence in relation to the provision of the Equipment and Services by the Owner to the Customer.

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## 11. CANCELLATION AND CANCELLATION FEE



11.1. The Customer has the right to and may at its absolute sole discretion terminate this Contract by giving 5 (five) Days prior notice, provided that it sends a Cancellation notification by post, email or facsimile to the Owner. Upon receipt of such Cancellation, the Owner has no further obligation to deliver the Equipment, the subject of the Cancellation, to the Site.

11.2. The Cancellation sent by the Customer must clearly identify each and every item of the Equipment which the Customer no longer requires.

11.3. The Owner may charge and invoice to the Customer a Cancellation Fee up to the amount necessary to recover costs incurred by the Owner (up to the Cancellation notification) in giving effect to the Contract by:

- (a) manufacturing, adapting or preparing the Equipment;
- (b) applying any process to existing items of the Equipment to match with the Customer's specific requirements; or
- (c) delivering, or procuring the delivery of, the Equipment to the Site.

11.4. The Customer agrees and acknowledges that it must pay the Cancellation Fee in full as invoiced by the Owner.

## 12. NO SALE AND ACKNOWLEDGEMENT OF OWNERSHIP

12.1. This is a hiring agreement only and does not constitute or give rise to any sale of the Equipment to the Customer, any hire purchase agreement or arrangement with the Customer or any leasing agreement that contains an option to purchase the Equipment.

12.2. The Customer has no legal or equitable interest in the Equipment or any part thereof and the Owner retains its full interest in, title to, and ownership of the Equipment at all times, including during a Default Event as set out in Clause 8.

12.3. The Customer acknowledges that the Owner is the sole exclusive owner of the Equipment and the Additional Equipment. The relationship between the Owner and the Customer is limited (upon delivery of the Equipment) to a relationship of owner and bailee in respect of the Equipment.

12.4. Except as detailed in Clause 13, the Customer is not entitled to offer, sell, sub- let, assign, pledge, mortgage, create any form of security interest over, or otherwise deal with (in any way whatsoever) the Equipment.

12.5. Nothing in this Contract confers any option on the Customer to purchase the Equipment or any part thereof unless expressly stated within the Quotation or Proposal.

## 13. PPSA

13.1. The Customer consents to the Owner (in its absolute discretion) affecting and maintaining a registration on the register (in any reasonable manner the Owner deems appropriate) in relation to any security interest contemplated or constituted by the Contract in the Equipment and the proceeds arising in respect of any dealing in the Equipment. The Customer agrees to do all things (including, without limitation, sign any documents and provide all assistance and information to the Owner) as the Owner reasonably requires to

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facilitate the registration and maintenance of any security interest the subject of the Contract.

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13.2. The Owner may at any time register a financing statement or financing charge statement in respect of a security interest. The Customer waives its right under section 157 of the PPSA to receive a notice in relation to any registration events which relate to the Equipment. This waiver is subject to any requirement section 157 of the PPSA (notably s 157(3)(a)) that the relevant registration describe the Equipment as “commercial property”.

13.3. For the purpose of section 20(2) of the PPSA, the “collateral” covered by the Contract (being a security agreement) is the Equipment.

13.4. The Customer agrees to do anything reasonably required by the Owner:

- (a) so that the Owner can acquire and maintain one or more perfected security interests under the PPSA in respect of the Equipment and their proceeds;
- (b) to enable the Owner to gain first priority for its security interest (or any other priority agreed to in writing by the Owner);
- (c) to register a financing statement or financing change statement; (d) to ensure that the Owner’s security position and rights to the Equipment are not adversely affected by the PPSA.

13.5 Notwithstanding any other provision of the Contract, the Customer is not entitled to obtain possession of the Equipment until after the Owner’s security interest in the Equipment (as contemplated by the Contract) is perfected by registration on the register. The Owner may refuse to transfer to the Customer possession of any Equipment unless the Customer provides the Owner with all details, data and time that the Owner reasonably requires to register a financing statement under the PPSA with respect to any security interest the subject of the Contract,

13.6 If the Customer makes any payment to the Owner, the Owner may apply the payment to satisfy any obligation of the Customer to the Owner (whether the obligation is unsecured, secured by security interest, or secured by purchase money security interest). The Owner may:

- (a) apply the payment in any order or manner that it (in its absolute discretion) thinks fit; and
- (b) amend or re-apply any application made.

13.7 The Customer undertakes not to grant a security interest to any third party in respect of the Equipment and not to register (or permit to be registered in favour of a third party) a

financing statement or a financing change statement in respect of the Equipment or any security interest the subject of this Contract, without the prior written consent of the Owner.

13.8 The Customer must not lease, sub/cross-hire, bail or otherwise give possession (“Rehire”) of the Equipment to any third party without the prior written consent of the Owner (which may be withheld at the Owner’s absolute discretion). Any Rehire agreement must be subject to any terms and conditions that the Owner (in its absolute discretion) thinks fit. Any Rehire agreement must also be:

- (a) in writing;
- (b) expressly subject to the rights of the Owner under this Contract; and

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(c) expressly incapable of variation or alteration in any way without the prior written consent of the Owner.

13.9 The Customer must keep the Owner fully informed about the Rehire including the identity of the Customer, the terms and conditions of the Rehire and the location and condition of the Equipment.

13.10 In addition to the requirements of clause 13.4, where a Rehire is in effect, the Customer agrees to do anything reasonably required by the Owner:

- (a) to enable the Customer to gain (subject to the rights of the Owner) first priority for the security interest (or any other priority agreed to in writing by the Owner);
- (b) to enable the Owner and the Customer to exercise their respective rights in connection with their respective security interests;
- (c) to enforce these Standard Terms and Conditions and any Special Conditions against the Customer.

13.11 Unless otherwise agreed, the Customer and the Owner agree to the extent permitted by the PPSA not to disclose information of the kind referred to in section 275(1) of the PPSA to an interested person or any third party to the interested person.

13.12 The Owner and the Customer agree that the following provisions of the PPSA are excluded to the extent that they apply to the Equipment and to the extent that they may be excluded by law for the purposes of section 115(1) of the PPSA:

- (a) section 95 (notice of removal of accession);
- (b) section 121(4) (enforcement of liquid assets – notice to grantor); (c) section 125 (obligation to dispose of or retain collateral);
- (c) section 130 (notice of disposal, to the extent that it requires the Owner to give a notice to the Customer);
- (d) section 132(3)(d) (contents of statement of account after disposal); (f) (d) section 132(4) (statement of account if no disposal); (g) section 135 (notice of retention).

13.13. Without limiting any other rights the Owner may have, the Customer must immediately return the Equipment to the Owner on the Owner's request if:

- (a) a Default Event occurs; or
- (b) the Owner reasonably believes that a default event has occurred or will occur, and notifies the Customer of the grounds for the belief.

13.14 To the extent that the PPSA does not apply or the Owner is unable by any means to register a security interest in the Equipment, no title or interest in the Equipment or any part thereof will pass to the Customer unless and until the Owner has received full payment of the purchase price for the Equipment or part (as the case may be) in accordance with terms and conditions of sale agreed in writing by the Customer and the Owner.

13.15 The Customer agrees to notify the Owner in writing of any changes to its details set out in the Account Application within 5 (five) Days from the date of such change.

**14. PRIVACY**

14.1. In all dealings with the Customer, the Owner will comply with the National Privacy Principles established in the Privacy Act 1988 (Cth).

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14.2. The Customer consents to the Owner using the Customer's personal information to assess its credit worthiness or as required in accordance with Clause 13.

14.3. The Customer consents to the Owner providing the Customer's personal information to any credit provider or credit reporting agency for the purpose of obtaining information conducive to assessing the credit worthiness of the Customer.

14.4. The Customer consents to the Owner providing the Customer's ongoing Credit Account performance to any credit provider or credit reporting agency as required.

**15. MISCELLANEOUS**

15.1. This Contract shall be governed by and shall be construed and interpreted in accordance with the laws of Western Australia.

15.2. Intellectual Property Rights including without limitation all design, development, customisation, engineering, technical drawings, know-how, trade secrets, patents and copyright resulting from the provision of Equipment required to satisfy the Scope of Works remain vested in the Owner. The Customer must take all necessary steps to ensure that the Owner obtains full legal title in and to such rights. Nothing in this Contract prevents or restricts the Owner from developing any further ideas, concepts, information, tools, methodologies or know-how relating to or as a result of the Contract.

15.3. The Customer will not without the prior written consent of the Owner engage in any publicity related to this Contract or use the Owner's name, logo, trademark, trade name, insignia or any other designation in any manner whatsoever.

15.4. The Owner reserves the right to update these Standard Terms and Conditions from time to time and they will apply immediately upon notice to the Customer. Notice is deemed given (whether or not actually received) when the Owner sends updated Standard Terms and Conditions to the Customer at any address supplied by the Customer (including an email address) or publishes the updated Standard Terms and Conditions on its website.

15.5. Termination during or following the Period of Hire shall not affect any of the Terms that are expressed or implied to operate or have effect after termination.

15.6. No failure to exercise or any delay in exercising any right, power or remedy by the Owner operates as a waiver of such right, power or remedy. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made and agreed to in writing.

15.7. Neither the Owner nor Customer will be responsible for any delays in performing their obligations to the Contract as a result of causes beyond their control including but not limited to war, terrorism, acts of God, civil commotion, riots and unrest, floods, strikes, fires.

15.8. Nothing in the Contract shall be construed so as to create a partnership or joint venture between the Owner and the Customer or making any employee of the Owner a servant of the Customer or any employee of the Customer a servant of the Owner.

15.9. The Owner and Customer agree to act in good faith in all matters relating to this Contract.

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