

TERMS OF HIRE

1. HIRE AGREEMENT BETWEEN YOU AND US

1.1 We agree to dry hire the Equipment to You at the Hire Rate from the Start Date for the Hire Period and at the Location as set out in the Hire Schedule.

1.2 These Terms of Hire, together with the Hire Schedule provided to You by Us, whether signed or not set out the terms of the hire agreement (**Hire Agreement**) between You and Us (the Parties to this Hire Agreement).

1.3 The provision or acceptance of a Hire Schedule shall not form a separate agreement between You and Us but shall constitute part of this Hire Agreement. Any terms contained in any document supplied by You, including any terms on Your purchase order, will not form part of the Hire Agreement.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

(a) **Consumer** means a consumer as that term is defined in the ACL.

(b) **Consumer Guarantees** means the guarantees relating to the supply of goods and services contained in the ACL.

(c) **Credit Application** means any application for a Credit Account completed by You.

(d) **Credit Account** means any billing arrangement We have extended to You upon Our approval of the Credit Application.

(e) **Credit Agreement** means the agreement You entered into with Us on the approval and acceptance by Us of any Credit Application made by You.

(f) **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.

(g) **Equipment** means the Equipment listed in this Agreement.

(h) **Charges and Rates** means all rates and charges payable by You for the hire of Our Equipment, as well as any other additional resource or service associated with the hire of the Equipment.

(i) **Hire Period** means the period described in clause 3.

(j) **Hire Schedule** means the Schedule provided by Us to You, which includes all the relevant details of the Hire Agreement the Equipment details as well as any associated charges, services, and information.

(k) **Goods** means anything handled, lifted, or carried or to be handled, lifted, or carried under this Hire Agreement.

(l) **Location** means Your address as specified in the Hire Schedule or other address/addresses agreed by Us and specified in the Hire Schedule as the location at which You intend to use the Equipment.

(m) **PPSA** means the Personal Property Securities Act 2009 (Cth) (as amended) and any other legislation and regulations in respect of it and the following words

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.

(n) **Regulatory Authority** means any public authority or government agency responsible for regulating the performance of electrical works.

(o) **Related Body Corporate** has the same meaning as in the Corporations Act 2001.

(p) **Relevant Documents** means:

(i) the Credit Application; and

(ii) any Guarantee, Indemnity & Charge which guarantees all monies owing by You to Us.

(q) **T&D Waiver** has the meaning set out in clause 15.

(r) **"Hirer" and "We/Us/Our"** means Empire Cranes Pty Ltd (ABN 26 627 087 772) and any related bodies corporate (as that term is defined in the Corporations Act 2001) and their successors and assigns and, where applicable, its sub-contractors, employees, servants and agents.

(s) **"Hiree" and "You/Your"** refers to the person, firm, organisation, partnership, corporation, trust or other entity hiring Equipment from Us. The reference to "You/Your" includes any of your employees, agents and contractors.

3. THE HIRE PERIOD

3.1 The Hire Period commences on the earlier of the following:

(a) the Start Date specified in the Hire Schedule

(b) the time We deliver the Equipment to the Location; OR

(c) when You otherwise take possession of the Equipment.

3.2 The Hire Period end on the later of:

(a) the date notified by You that the Equipment is off hire; OR

(b) when the Equipment is back in Our control or possession.

3.3 The Hire Period includes weekends and public holidays.

3.4 Unless otherwise advised at the time of hiring, a minimum Hire Period of 1 month will apply. If You return the Equipment to Us before the expiration of the Minimum Hire Period, You are required to pay all Hire Charges in respect of the Minimum Hire Period.

3.5 No off-hire periods are permitted without our prior written approval

3.6 We will endeavour to have the Equipment available at the start date of the Hire Period. You agree that we will not be liable for any loss or damage (nor shall this Hire Agreement be affected by) any delay or failure of the Equipment during the Hire Period.

4. HOW WE CALCULATE YOUR HIRE CHARGES

4.1 Quoted Hire Rates are based on the following periods of hire and hours of usage with a Minimum Hire Period of 1 Month (unless otherwise agreed)

(a) A Week of hire includes 60 Hours use, consisting of Six (6) consecutive Days; or

(b) A Month of hire includes 240 Hours use, consisting of 4.33 consecutive Weeks.

Additional usage above the Hours stated herein, will attract additional Hire charges on a pro-rata basis at a Rate of \$50 + GST per Hour.

4.2 All Hire Rates exclude GST

4.3 Hire Rates for cranes or items of plant and equipment hired are specified in the hire Schedule together with the method of calculation, or as agreed prior.

4.4 You will be charged for the hire of Equipment for the full Hire Period. For the avoidance of doubt, You must continue to pay the Hire Charges and other charges until you have returned the Equipment to Us. This obligation survives termination of the Hire Agreement.

5. OTHER CHARGES

5.1 In addition to the Hire Charges, You agree to pay:

(a) any special site, meal and/or living away allowances relevant to the Location;

(b) any special fees and permits, consents or approvals required for the transportation of the Equipment and Hire Rates for any special Equipment and the Hire Rates for any special Equipment and/or lifting gear in the Hire Schedule;

(c) a waiting fee (charged at cost) in addition to the delivery and collection fee if the nominated time for delivery or collection of the Equipment is delayed by You;

(d) for any consumables, fuel and oil costs (including that required for services pursuant to this Hire Agreement) or trade materials We supply to You;

(e) if You do not return the Equipment in clean and good working condition, charges for the cleaning and repair of the Equipment as specified in clause 10.3 herein;

(f) any stamp duty or GST arising out of this Hire Agreement;

(g) any other applicable levies, fines, penalties and any other government charges arising out of Your use of the Equipment;

(h) charges for payment made by credit card;

(i) any reasonable charges incurred by Us if we are unable to inspect or carry out maintenance on the Equipment during normal working hours; and

(j) if applicable, the T&D Waiver charge as determined and set out in clause 15.

6. PAYMENT

6.1 Hire Charges and any other amounts payable by You to Us must be paid in accordance with the Credit Account We offer You.

6.2 We issue invoices on the 30th Day of the month for the dry hire of Our Equipment, charged in arrears. You must pay all Hire Charges, rates and costs that become due and payable, within 30 days of the date stated on

the invoice. We only receive electronic payment for services, our EFT details are stated in the Hire Schedule.

6.3 Where the terms of this Hire Agreement and any credit agreement You have with Us differ, this Agreement prevails, unless both Parties agree upon new terms in writing.

7. YOUR OBLIGATIONS

7.1 This Hire Agreement is personal to You and 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.

7.2 You agree that before taking delivery of the Equipment, You have satisfied Yourself as to the suitability and condition of the Equipment and You will ensure that the Equipment is used only for the purpose for which it was designed by the manufacturer. Subject to clauses 15.3 and 15.4, We make no representations and give no guarantee or warranty as to the performance, state, fitness for purpose or capacity of the Equipment or that the Equipment is suitable for Your intended purpose. To the extent that they can be, any statutory warranty (express or implied as to the ability, fitness for purpose or capacity of the Equipment for the intended purpose is expressly excluded.

7.3 You must:

(a) provide a person holding a dogging or rigging certificate issued by an appropriate state authority at the point of each lift;

(b) only use the Equipment at the Location;

(c) supply an appropriately qualified and certified operator for the Equipment at Your own expense;

(d) use Equipment in a skilful and proper manner and only for the purposes and within the capacity for which it was designed;

(e) comply with all statutory and other regulations in relation to the use of the Equipment;

(f) at Your own expense, maintain the Equipment, especially tyres and ropes, in good and substantial repair and condition in accordance with the On-Hire Survey, fair wear and tear excepted;

(g) promptly enter all usage, maintenance and other necessary matters in the log book supplied with the Equipment; and

(h) immediately notify Us orally of any failure in or damage to the Equipment. Howsoever arising and within 48 hours provide written confirmation.

7.4 You must not transport the Equipment outside Australia without obtaining prior written permission from Us.

7.5 Unless otherwise agreed in writing with Us, You must ensure that the Equipment receives all maintenance and standard services (standard services occur after 250 hours, 500 hours, 750 hours and 1,000 hours) at Your expense and You must pay for all punctures, tyre repairs and minor repairs. All

maintenance will be conducted in accordance with the manufacturer's recommendations. Should major repair be required, You must inform Us and We will advise the manner in which the repairs must be undertaken.

7.6 You 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 suitable trained on its safe and proper use, qualified 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.

7.7 You must:

- (a) not in any way alter, modify, tamper with, damage or repair the Equipment without Our prior written consent;
- (b) not deface, remove, vary, or erase any identifying marks, plate, number, notices or safety information, on the Equipment; and
- (c) not remove fuel or oil tank caps, bund plugs or seals from the Equipment and ensure that they are in place when You return the Equipment. At all times during the Hire Period, You must store the Equipment safely and securely.

7.8 You will allow Us to enter Your premises and inspect and maintain the Equipment from time to time during the Hire Period during normal working hours. If We cannot inspect or maintain the Equipment during normal working hours, then additional charges may apply. You can also request to conduct a joint inspection of the Equipment with Us at the end of the Hire Period.

7.9 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 (or any contractor You engage) must observe any safety directions advised by Us and/or the manufacturer of the Equipment to ensure its safe loading and handling.

7.10 You must not use the Equipment off-shore, 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.

7.11 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.

7.12 You must use best endeavours to ensure that the Equipment is not contaminated with any hazardous substances (including asbestos). Subject to clause 7.10, 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 is not capable of being contaminated, You will be charged for the replacement cost of the Equipment.

7.13 You must, during the Period of Hire, comprehensively insure and keep insured the Equipment for an amount not less than the amount shown in this Hire Agreement, for the following risks:

- (a) damage to the Equipment for the replacement value as listed in the Hire Schedule;
- (b) third party property damage;
- (c) public liability insurance for an amount not less than \$10 million.

7.14 For any insurance policy taken out for the purpose of clause 7.13:

- (a) we must be noted on the insurance policy as an insured and each party must be indemnified separately;
- (b) all deductibles/excesses are to be paid by You; and
- (c) it must be a term of the policy that it cannot be cancelled without prior written notification to Us.

7.15 As far as Your obligations are concerned, time is of the essence.

8. OWNERSHIP OF THE EQUIPMENT

8.1 Except as detailed in clause 8.4, 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.

8.2 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 the Equipment in any way.

8.3 In no circumstances will the Equipment be deemed to be a fixture.

8.4 You acknowledge that We may hire or lease Equipment from a third party if we cannot provide the Equipment to You (**Third Party Owner**), and if this occurs, title in the Equipment remains with the Third Party Owner.

9. SUB-CONTRACT BY US

9.1 We may sub-contract the hire of Equipment and, if we do so, the terms and conditions of this Hire

Agreement apply equally to the benefit of any subcontractor.

10. PPSA

10.1 We may register any actual or impending security interest (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.

10.2 You undertake to:

(a) do anything 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 create or purport to create any security interest in the Equipment, nor register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without Our prior written consent.

10.3 You:

(a) waive Your right under section 157 of the PPSA to receive a copy of the verification statement relating to a security interest created under the Hire Agreement;

(b) agree that to the extent permitted by the PPSA, the following provisions of the PPSA will not apply and are contracted out of: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and

(c) agree that the following provisions of the PPSA will not apply and You will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.

10.4 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 PPSA to authorise the disclosure of the above information.

10.5 For the purposes of section 20(2) of the PPSA, the collateral is Equipment including any Equipment which is described in any Hire Schedule provided by Us to You

from time to time. This Hire Agreement is a security agreement for the purposes of the PPSA.

10.6 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 THE EQUIPMENT

11.1 You are responsible for any loss, theft or damage to the Equipment from any and every event whatsoever and howsoever and by whosoever caused during the Hire Period except where any such loss, theft or damage was caused by our actions.

11.2 You are responsible for any consequential losses arising directly or indirectly from the loss, theft or damage to the Equipment such as any hire charges foregone while the Equipment is unavailable for hire, undergoing repairs or otherwise whenever this occurs.

11.3 Notwithstanding clause 11.2, if the item is damaged or a constructive total loss, Hire Charges will continue for a maximum of six months following the date of the incident or upon receipt of the insurance value as set out in this Hire Agreement.

12. RETURN OF THE EQUIPMENT

12.1 At the conclusion of the Hire Period You must thoroughly clean the Equipment.

12.2 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.

12.3 If You do not properly clean the Equipment, we will clean the Equipment at the cost of \$135 per hour plus GST payable by You in accordance with clause 5.1(e).

12.4 If We have agreed to collect the Equipment from You, You must ensure it is kept safe and secure until the time of collection.

13. WHAT TO DO IF EQUIPMENT BREAKS DOWN

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 or oral consent.

13.2 Except if clause 14.1 applies, upon receiving notice from You under clause 13.1(a), We will:

(a) take all reasonable steps 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.

13.3 We agree to replace all items requiring replacement due to fair wear and tear at no cost to You.

14. WHAT TO DO IF EQUIPMENT IS LOST, STOLEN OR DAMAGED

14.1 If the Equipment has broken down or become unsafe to use as a result of Your acts or omissions, (or the acts or omissions of Your employees or contractors) or if the Equipment is lost, stolen or damaged beyond fair wear and tear during the Hire Period, You will be liable for:

(a) any costs incurred by Us to recover and repair or replace the Equipment; and
(b) the Hire Charges for that portion of the Hire Period during which the Equipment is being recovered and repaired or replaced, except where You have paid a T&D Waiver Fee, in which case Your liability is subject to clause 15 below.

14.2 Provided that You pay the costs and charges described in clause 14.1, We will return or replace the Equipment, and You must continue to pay the Hire Charges for the remained of the Hire Period, or until the equipment is repaired to Our satisfaction.

15. THEFT AND DAMAGE WAIVER

15.1 Theft and Damage Waiver (**T&D Waiver**) is not insurance, but is an agreement by Us to limit Your liability in certain circumstances for loss, theft or damage to the Equipment to an amount called the T&D Waiver Excess. The T&D Waiver Excess is explained below.

15.2 Subject to clause 15.3, the T&D Waiver Fee will be automatically charged to You in addition to Your Hire Charges and will be set out in Your Hire Schedule.

15.3 You are not required to pay the T&D Waiver Fee if You produce a certificate of currency for an appropriate policy of insurance that covers loss, theft or damage to the Equipment during the Hire Period for an amount not less than the replacement value of the Equipment. You are responsible for any excess and any other costs associated with any insurance taken out by You under this clause and You are responsible for any shortfall in repair or replacement of the Equipment following payment of any amount received under insurance, including any loss We suffer as a result of not being able to hire the Equipment.

15.4 Where You have paid the T&D Waiver Fee, We will waive Our right to claim against You for loss, theft or damage to the Equipment if:

(a) for theft, You have promptly reported the incident to the police and provided Us with a written police report;
(b) You have co-operated with Us and provided Us with the details of the incident, including any written or photographic evidence We require;
(c) the loss, theft or damage does not fall into one or more of the circumstances set out in clause 15.6; and
(d) You have paid Us the T&D Waiver Excess.

15.5 The T&D Waiver Excess for each item of Equipment is \$10,000.00 plus GST.

15.6 Even if You have paid the T&D Waiver Fee, We will not waive Our rights to claim against You for loss, theft or damage to the Equipment and T&D Waiver will not apply if the loss, theft or damage:

(a) is due to mysterious disappearance or where reasonable care has not been taken to protect the Equipment;
(b) has arisen as a result of Your breach of a clause of this Hire Agreement;
(c) has been caused by Your negligent act or omission;
(d) has arisen as a result of Your use of the Equipment in violation of any laws;
(e) has been caused by Your failure to use the Equipment for its intended purpose or in accordance with Our instructions or the manufacturer's instructions;
(f) results from the misuse, abuse, overloading or exceeding the rated capacity of the Equipment or any component thereof;
(g) occurs to the Equipment whilst it is located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
(h) has been caused by a lack of lubrication or a failure to properly service or maintain the Equipment;
(i) has been caused by collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object due to insufficient clearance;
(j) is to motors or other electrical Equipment or components with the Equipment caused by electrical overload, a surge in electrical current or the use of under-rated or excessive lengths of extension leads with the electrical Equipment;
(k) is caused by exposure to any corrosive or caustic substance, such as cyanide, salt water, acid, etc;
(l) is caused by vandalism;
(m) is to tyres, tubes or ropes other than fair wear and tear. These will be charged to your account (Note: all ropes are visually inspected prior to commencement of the Hire Period and upon return to our nominated depot);
(n) is to windscreens, mirrors, glass or Perspex;
(o) is to accessories such as air conditioners, batteries, etc; OR
(p) occurs whilst the Equipment is being operated over water (special insurance must be taken for these occasions); OR
(q) arises from a third-party claim in respect of the hire or use of the Equipment.

16. INDEMNITIES AND EXCLUSIONS OF LIABILITIES

16.1 We do not provide You with insurance cover or Public Liability cover, nor do We provide You with insurance cover for goods on the hook.

16.2 Subject to clause 16.3, 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.

16.3 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 Consumer Guarantees.

16.4 Where We are not able to exclude a guarantee, term, condition, warranty, undertaking, inducement or representation imposed by legislation in relation to this Hire Agreement, ('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.

16.5 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 without limitation negligence), in equity, under statute, under an indemnity, 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.

16.6 Subject to clauses 16.3 and 16.4, 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 without limitation negligence), in equity, under statute, under an indemnity, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.

16.7 You are liable for an 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 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.

16.8 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.

16.9 We will not be liable to You for any acts or omissions of any person supplied by Us where that person is acting under Your direction and control during the Hire Period and 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.

17. TERMINATION OF HIRE AGREEMENT

17.1 We may terminate the Hire Agreement and any Hire Period for any reason and without cause by giving one month's written notice.

17.2 We may terminate the Hire Agreement immediately if:

(a) You or any third party has made false statement in, or breached any provision of this Hire Agreement; or

(b) in Our opinion, you endanger the Equipment; or in our opinion you are or maybe insolvent (which shall be deemed to have occurred if any application to wind You up is made; or preparation steps to wind You up are taken; or if a controller is appointed to any of Your assets or an administrator is appointed; or You are otherwise externally controlled or managed; or you cease to carry on business.

17.3 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.

18. RECOVERY OF THE EQUIPMENT

18.1 If You are in breach of the Hire Agreement or if the Hire Agreement or a Hire Period has been terminated under clause 17, We may, at Your cost, take all steps necessary (including legal action) to recover the Equipment, including entering into or upon any premises where the Equipment may be located (or any premises under Your control or as Your agent if the Equipment is stored at such premises) to do so and You expressly consent to Us entering such premises for the purposes of recovering Our Equipment.

18.2 If for any reason We are unable or unwilling (on reasonable grounds) to collect the Equipment, the Hire Rate shall continue until the actual recovery of the

Equipment by Us and the return of the Equipment to Our premises.

19. SECURITY

19.1 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.

19.2 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.

19.3 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 document.

20. EQUIPMENT THAT IS COLLECTED OR DELIVERED IN A DAMAGED AND/OR DEFECTIVE CONDITION

20.1 All Equipment Dry Hired shall be subject to a survey prior to the start of each Hire Period (**On Hire Period**), a copy of which shall be provided to You for certification of its accuracy. At the end of the Hire Period, the Equipment shall be subject to a survey (**Off Hire Survey**) to be certified by You as accurate.

Notwithstanding clause 3, the Hire Period is deemed to continue with the Off Hire Survey is certified by you. Subject to clause 20.2, the On Hire and Off Hire Survey shall be determinative of the condition of the Equipment at the relevant times.

20.2 If You collect or receive the Equipment and find that it is broken, damaged and/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.

21. FORCE MAJEURE

21.1 Subject to clause 21.2, neither party will be responsible for any delays in delivery or installation 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.

21.2 Nothing in clause 21.1 will limit or excludes 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.

22. SEVERABILITY

22.1 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.

23. GOVERNING LAW

23.1 The Hire Agreement is governed by the laws of Queensland and each party submits to the non-exclusive jurisdiction of the courts of that State in respect of any proceedings arising in connection with the Hire Agreement. You waive any objection to the venue of any legal proceedings in these courts on the basis that the process has been brought in an inconvenient forum.

24. ENTIRE AGREEMENT

24.1 Subject to any Credit Agreement We have entered into with You, the Hire Agreement comprises the entire agreement between the parties. No additional terms and conditions apply to the hire of the Equipment unless the Hire Agreement is varied in accordance with clause 26.

25. NO RELIANCE

25.1 Subject to clauses 16.2 and 16.4, 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 this Hire Agreement.

26. VARIATION

26.1 From time to time, we may wish to vary this Hire Agreement. If We intend to do so, we will give You written notice of our varied terms. Any other variation of the Hire Agreement must be agreed in writing by one of Our directors.

27. NO WAIVER OF RIGHTS

27.1 Subject to clause 20, no delay or omission by Us to exercise any right, power or remedy available to Us as a result of a 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 Our rights to take action or make a claim in respect of a breach or default.

28. REVIEW OF YOUR CREDIT APPROVAL

28.1 From time to time We may review any Credit Account We have granted to You without notice.

28.2 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.

28.3 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) pay all amounts due to Us under this Hire Agreement, including hire charges until the Equipment is returned to Us and is in Our possession.

29. SIGNING THIS HIRE AGREEMENT

29.1 The person signing any document which forms part of the Hire Agreement or Relevant Documents 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.

29.2 The person signing this Hire Agreement indemnifies Us against all losses, costs and claims incurred by Us arising out of the person so signing this Hire Agreement not in fact having such power and/or authority.

30. ASSIGNMENT

30.1 We may assign this Hire Agreement to any third party without Your consent (including a Related Body Corporate).