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SECTION D Terms and Conditions of hire

Definitions

ACL means the Australian Consumer Law in Schedule 2 of the Competition and Consumer Act 2010.

Application Form means the standard application form provided by MER for the hire of the Equipment.

Business Day means any day other than a Saturday, Sunday, or a bank holiday or a public holiday in Victoria and a reference to a date which does not fall on a Business Day is to be construed as a reference to the next Business Day.

Commencement Date is the earlier of (a) when the Customer takes possession of the Equipment or (b) when MER delivers the Equipment to the Customer's Premises.

Credit Account means any billing arrangement MER has extended to the Customer upon MER's approval of the Credit Application.

Credit Application means any application for a Credit Account completed by the Customer.

Customer means the entity hiring the Equipment the subject of these Terms.

Equipment means all equipment including tools, buildings, vehicles, accessories and parts hired to the Customer.

Expiration Date means the date on which the Equipment is returned to the physical possession of MER.

GST has the meaning given in GST Law.

GST Law has the meaning given in A New Tax System (Equipment and Services Tax) Act 1999 (Cth).

Guarantor means the person set out in Section F

Hire Agreement means the agreement between MER and Customer for the hire of Equipment which includes:

- a) any Credit Application;
- b) these Standard Terms and Conditions of Hire; and
- c) any applicable Special Conditions of Hire.

Hire Charge means the rates and Charges payable by the Customer for the hire of the Equipment.

Hire Period means the period from the Commencement Date to the Expiration Date (both dates inclusive) as specified in Hire Agreement unless otherwise terminated in accordance with these Terms.

Location means the address where the Equipment is delivered

Loss Theft Damage Waiver means the waiver provided by MER to the Customer in accordance with clause 15.

Loss Theft Damage Waiver Amount means the amount payable for the Damage Waiver as set out in this Credit Application

MER means Melbourne Equipment Rentals Pty Ltd.

MER Premises means the premises nominated by MER as the location for the collection and return of the Equipment by the Customer

Off Hire Date means the date the Customer advises MER the Equipment is no longer required and MER issues the Customer with an Off-Hire Number in accordance with clause 8.6

Parts means any and all appliances, parts, instruments, appurtenances, accessories and other equipment (including without limitation tyres) of whatever nature constituting part of the Equipment or which may from time to time be incorporated or installed in, or attached to the Equipment.

PPSA means the Personal Property Securities Act 2009 (Cth).

PPSR means the Personal Property Securities Register established pursuant to the PPSA.

Security Interest means an interest in personal property provided for by a transaction that, in substance, secures payment of money or performance of an obligation (without regard to the form of the transaction or the identity of the person who has title to the property), and also includes a transaction which the PPSA treats as a security interest whether or not the transaction concerned, in substance, secures payment or performance of an obligation.



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Secured Property means all goods that are supplied to the Customer by MER (whether now or in the future) including the Equipment and for the avoidance of doubt the proceeds of any sale of those goods.

Unforeseen Events means an event beyond the control of MER including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, orders or regulations or governments fires, floods and strikes.

1. HIRE OF EQUIPMENT

- 1.1. MER agrees to hire the Equipment to the Customer for the Hire Period and the Customer agrees to pay the Hire Charges and Other Charges.
- 1.2. MER hires Equipment at its absolute discretion and may refuse to hire to the Customer.

2. HIRE PERIOD

- 2.1. 1 The Hire Period commences on the Commencement Date and ends on the earlier of:
 - 2.1.1. when the Customer Off Hire's equipment and makes it available for collection
 - 2.1.2. when back in the possession of MER (irrespective of any expected Off Hire Date).
 - 2.1.3. The Hire Period includes weekends and public holidays and is irrespective of the time the Equipment is being used.

3. COLLECTION AND DELIVERY OF EQUIPMENT

- 3.1. Where MER is delivering Equipment to or collecting Equipment from the Customer's Location, access must be granted to enable timely delivery and collection. The Customer will be responsible for any demurrage, delay or futile deliveries or collection costs of Equipment if access is not granted.
- 3.2. Delivery times and dates are estimates only. MER is not responsible for the failure or delays in delivery or installation due to an Unforeseen Event.
- 3.3. MER will notify the Customer of any delay in delivering or collecting Equipment.
- 3.4. The Customer must not remove the Equipment from the Location or part with possession of the Equipment without MER's prior written consent.

4. ACCEPTANCE, RISK & TITLE

- 4.1. As at the Commencement Date, the Customer acknowledges that the Customer has inspected the Equipment and is satisfied as to the condition, quality, safety and (where applicable) roadworthiness of the Equipment, its fitness for the Customer's purposes and its compliance with its description.
- 4.2. The Customer will be deemed to have accepted the Equipment and risk will have passed to the Customer:
 - 4.2.1. where MER delivers the Equipment, upon delivery of the Equipment to the Location; or
 - 4.2.2. upon the Customer or its agent taking possession of the Equipment.
- 4.3. The Customer acknowledges that MER owns the Equipment and in all circumstances MER retains title to the Equipment. The Customer's rights to use the Equipment are as a bailee only.
- 4.4. The Customer must not, and must not attempt to, sell or offer for sale, assign, mortgage, pledge, charge, encumber, or otherwise dispose of or part with the Equipment or any part thereof in the Hire Period without MER's prior written consent.

5. CUSTOMER'S HIRE OBLIGATIONS

- 5.1. Operation of Equipment: The Customer warrants that it will:
 - 5.1.1. operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
 - 5.1.2. ensure persons operating or erecting the Equipment are suitably trained on its safe and proper use, qualified to use the Equipment and where necessary, hold a current licence to perform high risk work;
 - 5.1.3. if the Equipment includes vehicles, only operate the registered vehicles on public roads;
 - 5.1.4. wear suitable clothing and protective equipment when operating the Equipment as required or recommended by MER or the manufacturer;
 - 5.1.5. ensure that no persons operating the Equipment are under the influence of drugs or alcohol;
 - 5.1.6. conduct a job safety analysis prior to using the Equipment;
 - 5.1.7. ensure that no persons carry illegal, prohibited or dangerous substances in or on the Equipment;
 - 5.1.8. display all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Equipment; and
 - 5.1.9. acquire and incorporate any additional or other Part that is required to be acquired, incorporated or installed in, or attached or made to, the Equipment in order to comply with any and all applicable laws. Any such additional or other Part will, unless otherwise agreed in writing by MER, become the property of MER and be considered part of the Equipment for all purposes.
- 5.2. Cleaning & Maintenance: The Customer must:
 - 5.2.1. clean, fuel, lubricate and maintain Equipment in good condition and in accordance with the manufacturer's and MER's instructions at the Customer's cost;
 - 5.2.2. not in any way alter, modify (including removing any identifying mark or plate), tamper with, damage or repair the Equipment without MER's written consent;
 - 5.2.3. provide access to MER to maintain and service the Equipment and undertake statutory inspections when necessary during normal business hours, failing which additional charges for out of hours service and maintenance may apply;



- 5.2.4. arrange for the emptying of any waste tanks and water carts; and
- 5.2.5. return the Equipment to MER in the same good and clean condition it was in when the Customer received it, ordinary fair wear and tear excepted.
- 5.3. Safekeeping The Customer must ensure that the Equipment is:
 - 5.3.1. stored safely and securely and is protected from theft, vandalism, seizure and damage or subject to adverse climatic or environmental conditions which may damage the Equipment (ie corrosion, sea-salt and flooding); and
 - 5.3.2. not exposed to any hazardous substance including asbestos without prior written consent.
- 6. BREAKDOWN OF EQUIPMENT**
 - 6.1. In the event that the Equipment breaks down or becomes unsafe to use during the Hire Period, the Customer must:
 - 6.1.1. notify MER immediately;
 - 6.1.2. immediately stop using the broken down Equipment;
 - 6.1.3. take all necessary steps to prevent injuries to any persons or damage to any property as a result of the condition of the Equipment; and
 - 6.1.4. not repair, or attempt to repair the Equipment
 - 6.2. If the Equipment has broken down or becomes unsafe to use as a result of the Customer's acts or omissions (or its employees or contractors), the Customer will be liable for:
 - 6.2.1. any costs incurred by MER to repair or replace the Equipment; and
 - 6.2.2. the Hire Charge for that portion of the Hire Period during which the Equipment is being repaired or replaced.
 - 6.3. Subject to clause 6.2 if the Customer notifies MER immediately of a breakdown, MER may determine not to charge the Hire Charge during the time in which the Equipment is not working.
- 7. LOSS, THEFT DAMAGE OF EQUIPMENT**
 - 7.1. In the event that the Equipment becomes lost, damaged or stolen, the Customer must immediately notify MER.
 - 7.2. If the Equipment is lost, damaged beyond fair wear and tear or stolen during the Hire Period, the Customer will be liable for:
 - 7.2.1. any costs incurred by MER to recover the Equipment; and
 - 7.2.2. all other costs listed in clauses 6.2.1 and 6.2.2.
 - 7.3. Notwithstanding clause 7.2, where the Customer has paid the Loss Theft Damage Waiver Amount, the Customer's liability in respect of theft, loss or damage to the Equipment will be subject to clause 13 below.
- 8. AMOUNT PAYABLE BY CUSTOMER**
 - 8.1. The Customer must pay MER all charges set out in any quote and/or Hire Agreement. MER reserves the right to amend the Hire Charges in accordance with any change to its standard pricing for the Equipment.
 - 8.2. Additional hire charges may apply if the Equipment is used more than 8 hours a day or more than 48 hours per week.
 - 8.3. Equipment hired for at least 5 days in a seven day continuous period, will be charged at the 'weekly rate'.
 - 8.4. In addition to the fees provided in clauses 8.1, 8.2 and 8.3, the Customer agrees to pay:
 - 8.4.1. any and all rates, road taxes (if the Equipment is or include a motor vehicle) and other taxes such as GST (but excluding any income tax payable by MER), outgoings, penalties, fines, demands, charges or costs, stamp and other duties and registration fees;
 - 8.4.2. all repair and operating expenses in respect of the Equipment including (without limitation) the cost of fuel and lubricant and the cost of replacement Parts; and
 - 8.4.3. all other costs and expenses required under these Terms.
 - 8.5. In the event that these Terms are terminated prior to the Expiration Date due to the default of the Customer or the Equipment is not required or otherwise returned to MER by the Customer prior to the Expiration Date, the Customer acknowledges that the remaining Hire Fee up to the Expiration Date is payable by the Customer to MER.
 - 8.6. Off-hire When the Customer wants to off-hire the Equipment, it must obtain an "Off-Hire number" by 9.00am of the Off-Hire Date and provide access for collection of the Equipment. Hire Charges are payable for the full Hire Period if the customer retains the Equipment past an expected Off Hire Date.
- 9. PAYMENT**
 - 9.1. All amounts payable by the Customer to MER are payable within 30 days of the date of the invoice.
 - 9.2. If the Customer defaults in making payment to MER in accordance with these Terms, MER may in its absolute discretion:
 - 9.2.1. charge the Customer interest on the overdue amount; and
 - 9.2.2. require the Customer to reimburse MER for all collection costs (on a full indemnity basis) incurred by MER.
- 10. GUARANTEE**
 - 10.1. The Customer must guarantee all payments due and owing to MER under these Terms by providing either:
 - 10.1.1. a director's guarantee on the terms included at Schedule 2 of these Terms for and on behalf of the Customer; or
 - 10.1.2. a bank guarantee from an Australian trading bank for the sum of the replacement value of the Equipment on terms agreed by MER.
 - 10.2. For the avoidance of doubt, MER must not draw or call on such bank guarantee unless MER is at that time entitled to the payments, has requested the Customer for the payments and the Customer has failed (after a reasonable period) or refused to do so.



11. SECURITY & CHARGE

11.1. Despite anything to the contrary contained in these Terms:

11.1.1. where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to MER to secure all amounts and other monetary obligations payable under these Terms. The Customer and/or the Guarantor acknowledge and agree that MER shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable under these Terms have been met.

11.1.2. should MER elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify MER from and against all MER's costs and disbursements including legal costs on a solicitor and own client basis.

11.2. The Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint MER as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of clause 18.1.

12. TITLE IN THE EQUIPMENT

12.1. The Customer acknowledges that MER retains title to the Equipment at all times (even if the Customer goes into liquidation, external administration of any kind or becomes bankrupt during the Hire Period) and in no circumstance will the Equipment be deemed to be a fixture. The Customer has no interest in the Equipment of any kind other than as a bailee.

12.2. MER may hire or lease Equipment from third parties to supply to the Customer and if this occurs title in the Equipment remains with that sub-hirer.

12.3. **PPSA:** MER may register its security interest that arises under this Hire Agreement and in the Equipment and the proceeds from any dealing in the Equipment. The Customer:

12.3.1. must do all things necessary to enable MER to register and perfect its security interest in the Equipment under the PPSA including enabling it to register a financing statement;

12.3.2. must take all steps to ensure any security interest arising under or in respect of sub-hire is enforceable, perfected and otherwise effective under PPSA;

12.3.3. must not register a financing change statement in respect of a security interest arising out of this Hire Agreement without MER's consent;

12.3.4. must not create a security interest in the Equipment, register or permit to be registered a financing statement in relation to the Equipment;

12.3.5. must notify MER of any change in writing of the Customer's details set out in the Credit Application;

12.3.6. waives all rights under s157 of the PPSA to receive a copy of the verification statement relating to security interest created under this Hire Agreement;

12.3.7. agrees to the extent permitted by the PPSA, the following provisions of the PPSA will not apply and are contracted out of: s95 (to the extent that it requires the secured party to give notices to the grantor); s96; s118 (to the extent that it allows a secured party to give notices to the grantor); s121(4), s125; s130; s132(3)(d); s132(4); s135; s142 an s143; and

12.3.8. agrees that the following provisions of the PPSA will not apply and the Customer will have no rights under them; s127; s192(2) and (3); s130(1); s132; s134(2); s135; s136(3), (4) and (5) and s137.

12.4. Unless otherwise agreed, MER and the Customer will not disclose information referenced in s275(1) of the PPSA to an interested person, or any other person requested by an interested person. The Customer waives any right it may have had under s275(7)(c) of the PPSA to authorise disclosure of that information.

12.5. For the purposes of s20(2) of the PPSA, the collateral is the Equipment set out in any quote and/or Hire Agreement. The Quote and/or Hire Agreement is the security agreement for the purposes of the PPSA.

12.6. If MER does not have at Commencement a PPS Law registration ensuring a perfected first priority security interest in the Equipment, the Hire Period, (including any extension of the Hire Period or the aggregate of consecutive Hire Periods during which the Customer has substantially uninterrupted possession) may not despite anything else in this document or any Hire Schedule be longer than 2 years

13. LOSS THEFT DAMAGE WAIVER

13.1. The Customer may elect to either pay the Loss Theft Damage Waiver Amount or obtain insurance covering the full replacement value of the Equipment.

13.2. Subject to clause 13.5, if the Customer elects to pay the Loss Theft Damage Waiver Amount to MER, in the event of theft, loss or damage to the Equipment, MER agrees upon prompt submission of a written police report by the Customer and subject to clause 13.5, to waive its right to claim for theft, loss or damage to the Equipment caused by fire, storm, collision, accident, theft or burglary for amounts over the excess. The Customer is responsible for payment of the excess and all amounts above that will be waived in accordance with this clause.

13.3. The excess is calculated as follows:

13.3.1. Equipment Insurance

13.3.1.1. 1% of market value; or

13.3.1.2. \$5,000

13.3.2. Loss of Revenue



13.3.2.1. One weeks Hire Charge

- 13.4. The excess amount may be varied in writing by agreement between MER and the Customer.
- 13.5. Even if the Customer pays the Loss Theft Damage Waiver Amount, the Customer will be liable for and indemnifies MER for all loss, theft or damage to the Equipment if:
- 13.5.1. the damage was due to misuse, abuse or overloading of the Equipment or Parts;
 - 13.5.2. there occurred wrongful conversion of the Equipment or Parts;
 - 13.5.3. the loss or damage was in contravention of these Terms;
 - 13.5.4. the loss or damage was from use in violation of any statutory laws and regulations;
 - 13.5.5. the loss or damage was to tools, accessories, grease guns, hoses and similar, electric cords, welding cable, oxy and acetylene bottles, pneumatic tools, steels and other similar accessories;
 - 13.5.6. the damage caused to tyres and tubes was by blowout, bruises, cuts or other causes inherent in the use of the Equipment;
 - 13.5.7. glass breakage;
 - 13.5.8. the loss or damage was a consequence of lack of lubrication or other normal servicing of the Equipment;
 - 13.5.9. the loss or damage to the Equipment occurred whilst the Equipment was located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
 - 13.5.10. the loss or damage to motors or other electrical appliances or devices was caused by overloading or artificial electrical current, including use of under-related or excessive length of extension leads on electrical powered tools and machines;
 - 13.5.11. the damage was caused by exposure to any corrosive substance including but not limited to caustic, cyanide, salt water, acid;
 - 13.5.12. theft of the Equipment unless the Equipment was reasonably locked and secured;
 - 13.5.13. the loss or damage occurred during transport except where transported by MER;
 - 13.5.14. the loss or damage arose from the Customer not taking adequate precautions to safeguard the Equipment;
 - 13.5.15. the loss or damage occurred before the Customer paid the Loss Theft Damage Waiver Amount; or the loss or damage was caused by the negligence of the Customer

14. INSURANCE

- 14.1. If the Customer elects not to pay the Loss Theft Damage Waiver fee, it must take out and maintain a policy of insurance that covers loss or damage to the Equipment during the Hire Period for not less than the full new replacement cost of the Equipment ("Hire Equipment Insurance").
- 14.2. The Customer must provide a certificate of currency of the Equipment Insurance upon request. The Customer will be responsible for the excess and any shortfall in repair or replacement costs from any insurance payout.

15. INDEMNITIES AND EXCLUSION OF LIABILITIES

- 15.1. To the extent permitted by law (unless otherwise expressly set out in this Agreement), all terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to MER's obligations under the Hire Agreement are excluded.
- 15.2. Nothing in this Hire Agreement limits any condition, guarantee or warranty imposed by legislation, including any Consumer Guarantees that may apply. Where MER cannot exclude a condition, guarantee or warranty, it can limit its liability (at MER's election to):
- 15.2.1. In the case of goods, the repair or replacement of the Equipment (or the cost of repair or replacement);
 - 15.2.2. In the case of services, supplying the services again.
- 15.3. Subject to clause 15.2 and any legislation governing MER's obligations and liabilities, MER's liability (in tort, statute, contract, under an indemnity or however arising) is limited to the Hire Charges paid under this Hire Agreement.
- 15.4. Subject to clause 15.2, MER is not liable for consequential loss or damage (including but not limited to loss of actual or anticipated revenue, business interruption, delays, loss of production or economic loss of any kind) in contract, tort, under statute or otherwise.
- 15.5. The Customer is liable for and indemnifies MER against all Claims arising out of or in connection with Customer's hire and use of the Equipment or breach of this Hire Agreement, including personal injury, damage to property and claims by third parties.
- 15.6. Each indemnity is a continuing obligation and survives termination or expiration of this Hire Agreement. It is not necessary for MER to incur an expense or make any payment before enforcing a right of indemnity under this Hire Agreement. The Customer must pay on demand under this Hire Agreement.

16. TERMINATION

- 16.1. Either party may terminate these Terms with immediate effect by serving a written notice on the other party if:
- 16.1.1. the other party becomes unable to lawfully perform its obligations under these Terms;
 - 16.1.2. the other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business; or



16.1.3. commits a breach of these Terms which it does not remedy (if capable of remedy) within 5 Business Days of receiving written notice of breach.

16.2. MER may also terminate these Terms at any time for any reason for convenience by giving the Customer at least 24 hours notice.

16.3. MER may terminate these Terms immediately if the Customer or any third party has made a false statement in, or breached any provision of the Credit Application.

16.4. These rights of termination are in addition to any other rights either party has under these Terms and does not exclude any right or remedy under law or equity.

17. CONSUMER CONTRACTS & SMALL BUSINESS CONTRACTS

17.1. Where these Terms would be subject to the application of Part 2-3 of the ACL, the following provisions do not apply:

17.1.1. clause 11.3

17.1.2. clause 14.3 **Error! Reference source not found.**; and

17.1.3. clause 16.2.

18. GENERAL

18.1. The only contractual terms which are binding upon MER are those set out in these Terms or otherwise agreed to in writing by MER and those, if any, which are imposed by law and which cannot be excluded by these Terms. Any terms and conditions of the Customer included on documents submitted to MER are expressly excluded and do not apply.

18.2. All previous negotiations, representations, warranties, arrangements and statements (if any) whether expressed or implied, including any collateral agreement or warranty between the Customer and MER, are excluded and cancelled.

18.3. If any of these Terms are found to be void, voidable or unenforceable the validity and enforceability of the remaining provisions shall not in any way be affected or impaired.

18.4. A waiver by either party of any breach or failure to enforce or to insist upon the observance of a condition of these Terms will not be a waiver of any other or of any subsequent breach.

18.5. These Terms can only be amended, supplemented or replaced by another document signed by the Customer and MER.

18.6. The Customer may not assign these Terms without MER's prior written consent.

18.7. Time is of the essence in relation to these Terms.

19. PRIVACY & CONSENT

19.1. The Customer and each Guarantor of the Customer's obligations agree that MER may, at any time when credit is or may be extended to the Customer:

19.2. obtain a banker's opinion about them;

19.3. obtain and use a credit report and any related information about them for any purpose and in any way that is permitted by any law including the Privacy Act 1988, and the Customer and any Guarantor each hereby provide their consent accordingly. The purposes include assessing whether credit can be provided or continued to the Customer and whether to accept or require any guarantee, and for purposes in connection with collecting any overdue payment; and

19.4. disclose credit information including to a credit reporting agency in any way and for any purpose that is permitted by any law including the Privacy Act 1988, and the Customer and Guarantor each hereby provide their consent accordingly. This includes reporting any default in payment and any purposes in connection with collecting any overdue payment.

These Terms and any agreement including them shall be governed by the laws of the State of Victoria and MER and the Customer submit to the jurisdiction of the Courts of that State

SECTION E Acceptance

The customer agrees to be bound by and comply with the terms and conditions of hire in Section D on this application for credit

Signed By Director/Partner/Sole Trader



Signed By Director / Partner / Sole Trader		Date:	
Signed By Director / Partner / Sole Trader		Date:	

SECTION F Guarantee

I/We _____ of _____ do hereby declare that I/we are jointly and severally responsible for all monies payable to MER pursuant to these Terms and Conditions of Equipment Hire as if we were the Customer described therein. We hereby indemnify and shall keep MER indemnified against each and every loss it shall sustain by reason of the Customer's failure to comply with these Terms and Conditions of Equipment Hire. We grant our authority and consent to MER assessing me/us as guarantors of the Customer.

Signature		Address	
Print Name		Witness Name	
Date		Witness Signature	

Signature		Address	
Print Name		Witness Name	
Date		Witness Signature	