

# Terms of Hire:



## 1. HIRE AGREEMENT BETWEEN YOU AND ETC HIRE

These Terms of Hire, together with:

- (a) each Hire Schedule provided to you by ETC Hire, whether signed or not; and
- (b) any Special Conditions specific to the type of Equipment you have hired,

set out the terms of the hire agreement (the "Hire Agreement") between you and ETC Hire. The provision or acceptance of a Hire Schedule shall not form a separate agreement between you and ETC Hire, 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

When We refer to the following terms in this document:

"ACL" means the Australian Consumer Law which is contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

"Consumer" means a consumer as that term is defined in the ACL.

"Consumer Guarantees" means the guarantees relating to the supply of goods and services contained in the ACL.

"Credit Application" means any application for a Credit Account completed by you.

"Credit Account" means any billing arrangement we have extended to You upon our approval of the Credit Application.

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

"Equipment" means any equipment provided by ETC Hire to you under the Hire Agreement, including any associated or attached accessories and parts available for hire.

"Expected Off Hire Date" means the date that you expect the Hire Period to end. This date is set out in the Hire Schedule.

"Hire Charge" or "Hire Charges" means the rates and charges payable by you for the hire of the Equipment.

"Hire Period" means the period described in clause 4.

"Hire Schedule" means the document provided by ETC Hire to you which includes details of the Equipment you have hired, the Hire Charge, any other applicable charges, the Expected Off Hire Date and the address for delivery of the Equipment.

"Licence to Perform High Risk Work" means a validly issued licence issued by the relevant workplace health and safety departments of each respective state government required for the operation of Equipment which is considered to be high risk.

"Long Distance Location" is a location more than 15km from ETC Hire.

"D Waiver" has the meaning set out in clause 15.

"Non-Excludable Provision" has the meaning set out in clause 16.3.

"Off Hire Date" has the meaning set out in clause 5.5.

"MP" is the maintenance programme operated by ETC Hire for all Equipment. The MP involves regular attendance on site by ETC Hire services team to conduct routine Equipment servicing and general maintenance requirements.

"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 in clause 9.2, 10 and 31 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.

"Regulatory Authority" means any public authority or government agency responsible for regulating the performance of electrical works.

"Related Body Corporate" has the same meaning as in the Corporations Act 2001.

"Relevant Documents" means:

- (a) the Credit Application; and
- (b) any Guarantee, Indemnity & Charge which guarantees all monies owing by you to ETC Hire.

"Special Conditions" means the ETC Hire special conditions of this hire document may be amended from time to time to ensure that any laws and regulations can be amended.

"We/Us/Our/ETC Hire" means ETC Hire Pty Limited (ABN: 38 129 495 905)

"You/Your" refers to the person, firm, organisation, partnership, corporation, trust or other entity hiring Equipment from ETC Hire. The reference to "You/Your" includes any of your employees, agents and contractors.

## 3. OUR HIRE COMMITMENT TO YOU

We agree to hire the Equipment to you and will:

- (a) provide the Equipment to you in good working order; and
- (b) subject to clause 8.6, allow you to exclusively use the Equipment during the Hire Period.

## 4. THE HIRE PERIOD

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

- (a) when You take possession of the Equipment; OR
- (b) if you request delivery and collection of the Equipment, the time we deliver the Equipment to the address in the Hire Schedule.

4.2 The Hire Period is for an indefinite term and ends when the Equipment is back in our control, possession or returned and checked by ETC Hire Staff.

4.3 The Hire Period includes weekends and public holidays.

4.4 A minimum Hire Period may apply in respect of certain items of Equipment ("Minimum Hire Period"). We will advise you at the time of hiring if a Minimum Hire Period applies. If You return the Equipment to ETC Hire before the expiration of the Minimum Hire Period, you are required to pay all Hire Charges in respect of the Minimum Hire Period.

## 5. HOW WE CALCULATE YOUR HIRE CHARGES

5.1 You will pay ETC Hire for the hire of the Equipment at the Hire Charge set out in the Hire Schedule.

5.2 The Hire Schedule will specify the type of rate which will apply to you and the method of calculation.

5.3 Additional Hire Charges as set out in the Hire Schedule will apply if the Equipment is used for more than 8 hours per day.

5.4 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 after the Expected Off Hire Date if you have not returned the Equipment to ETC Hire by the Expected Off Hire Date. This obligation survives termination of the Hire Agreement.

5.5 Hire Charges will commence from the Hire Period and continue until the date you notify ETC Hire that the Equipment will be available for collection (the "Off Hire Date"). At this time, ETC Hire will give you verification that your request has been received ("verbal, text or email"). The Equipment must be available for collection by no later than the time of day at which your hire commenced (for example, if your hire commenced at 10am, then the Equipment must be ready for collection by no later than 10am on the Off-Hire Date), otherwise ETC Hire reserve the right to charge additional Hire Charges. For the avoidance of doubt, the Expected Off-Hire Date is not considered to be your notice to ETC Hire that the Equipment is available for collection.

## 6. OTHER CHARGES

In addition to the Hire Charges, you agree to pay:

- (a) for any consumables, fuel or trade materials we supply to You;
- (b) if You require ETC Hire to deliver, collect or install the Equipment, the cost of delivery, collection or installation, as detailed in the Hire Schedule. Such charge may include 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 or associated contractual parties.
- (c) if you do not return the Equipment in clean and good working condition, charges for the cleaning and repair of the Equipment;
- (d) a charge for refilling water or fuel tanks;
- (e) any stamp duty or GST arising out of this Hire Agreement;
- (f) any other applicable levies, fines, penalties and any other government charges arising out of your use of the contracted Equipment;
- (g) charges for payment made by credit card;
- (h) an environmental charge in relation to any item of Equipment, as detailed in the Hire Schedule;
- (i) if You request operational guidance or training on the use of the

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Equipment and our staff are available to provide this, the cost for the provision of these services at rates agreed with ETC Hire;

(j) charges relating to the administration of your Credit Account, as detailed in the Hire Schedule, which may include printing and postage costs;

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

(l) if applicable, the LTD Waiver charge as determined and set out in clause 15.

## 7. PAYMENT

7.1 First time Hires must pay all Hire Charges in advance, upon receiving our invoice or as determined reasonable by ETC Hire. Only approved customers can pay other fees, charges and costs that become due and payable under this Hire Agreement within 30 days of the date of invoice.

7.2 If You do not pay the invoice in full by the payment due date, ETC Hire may charge, in addition to any other costs recoverable under this Hire Agreement:

(a) interest, calculated monthly, on the total outstanding balance. The interest rate used to calculate the interest payable for the month is the 90-day Bank Bill Swap Rate published on the first business day of that month plus 2%; and

(b) any costs and expenses (including any commission payable to any commercial or mercantile agents and legal costs) incurred by ETC Hire in recovering any unpaid amounts under this Hire Agreement.

7.3 We are entitled to set off against any amount we owe you any amount owed to ETC Hire by you or any amount owed to ETC Hire by any of your Related Bodies Corporate.

## 8. YOUR OBLIGATIONS TO US

8.1 This Hire Agreement is personal to you and you must not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time, unless expressly agreed by ETC Hire in writing.

8.2 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 16.2 and 16.3, We make no representations and give no guarantee or warranty that the Equipment is suitable for your intended purpose.

8.3 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 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;
- (c) wear suitable clothing and protective equipment when operating the Equipment as required or recommended by ETC Hire or the manufacturer;
- (d) ensure that no persons operating the Equipment are under the influence of drugs or alcohol;
- (e) conduct a job safety analysis prior to using the Equipment;
- (f) ensure that no persons carry illegal, prohibited or dangerous substances in or on the Equipment; and
- (g) display all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Equipment.

8.4 You must:

- (a) clean, fuel, lubricate and keep the Equipment in good condition and in accordance with the manufacturer's and our instructions at your own cost;
- (b) not in any way alter, modify, tamper with, damage or repair the Equipment without ETC Hire's prior written consent;
- (c) not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment; and
- (d) 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;

8.5 At all times during the Hire Period, you must store the Equipment safely and securely.

8.6 You will allow ETC Hire 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 ETC Hire at the end of the Hire Period.

8.7 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 ETC Hire and/or the manufacturer of the Equipment to ensure its safe loading and handling.

8.8 You must not remove the Equipment from the State or Territory in which You hired it without Our written consent.

8.9 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 ETC Hire prior written consent, which may be reasonably withheld.

8.10 You warrant that You will comply with all Environmental Laws from time to time and immediately rectify any breach of an Environmental Law caused using the Equipment.

8.11 You must use best endeavours to ensure that the Equipment is not contaminated with any hazardous substances (including asbestos). Subject to clause 8.9, You must advise ETC Hire 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 ETC Hire with written details of decontamination processes applied. If, in our opinion acting reasonably, the Equipment is not capable of being decontaminated, you will be charged for the replacement cost of the Equipment.

8.12 Any electrical Equipment provided by ETC Hire will be tested and tagged before it is hired to you, but during the Hire Period, you are responsible for arranging the re-testing and re-tagging of any electrical Equipment in accordance with the manufacturer's instructions and the applicable Australian Standard(s) and Regulatory Authority requirements at your cost. We can arrange for such re-testing and re-tagging of the electrical Equipment at your cost. Except where we arrange for re-testing and re-tagging of the electrical Equipment, you will be liable for any damage caused to the Equipment resulting from incorrect testing.

8.13 If, at your request, we supply an operator to operate the Equipment ("Operator"):

- (a) the Operator will be under your direction and control during the Hire Period and will comply with your reasonable directions;
- (b) we will not, while the Operator is working under Your direction and control in accordance with clause 8.13(a), seek to direct or supervise any of the work undertaken by Operator;
- (c) we will not be liable to You for any acts or omissions of the Operator where they are acting under your direction and control during the Hire Period; and
- (d) you will not allow any other person to operate the Equipment without our prior written consent.

## 9. OWNERSHIP OF THE EQUIPMENT

9.1 Except as detailed in clause 9.4, 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.

9.2 Except in the circumstances set out in clause 10, you are not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Equipment in any way.

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

9.4 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.

## 10. PPSA

10.1 We may register any actual or impending security interest (in any manner ETC Hire considers 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 ETC Hire (i) so that we acquire and maintain one or more perfected security interests under the PPSA in respect of

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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 ETC Hire 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 ETC Hire 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

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.

## 12. RETURN OF EQUIPMENT

12.1 You must return the Equipment to ETC Hire in the same clean condition and good working order, that it was in when you received it, ordinary fair wear and tear excluded. If you do not properly clean the Equipment, we will charge you a cleaning cost in accordance with clause 6(c).

12.2 Except in the circumstances set out in clause 12.3 below, it is your responsibility to return the Equipment to the ETC Hire Yatala, during normal business hours.

12.3 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 ETC Hire;
- (b) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
- (c) take all steps necessary to prevent any further damage to the Equipment itself; and
- (d) not repair or attempt to repair the Equipment without our written consent.

13.2 Except if clause 14.1 applies, upon receiving notice from you under clause 13.1, we will:

- (a) take all 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.

## 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 ETC Hire 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 the Damage 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 remainder of the Hire Period.

## 15. DAMAGE WAIVER

15.1 Damage Waiver ('D Waiver') is not insurance, but is an agreement by ETC Hire to limit your liability in certain circumstances for loss, theft or damage to the Equipment to an amount called the D Waiver Excess. The D Waiver Excess is explained below.

15.2 Subject to clause 15.3, the 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 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 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 ETC Hire with a written police report;
- (b) you have co-operated with ETC Hire and provided ETC Hire 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 ETC Hire the D Waiver Excess.

15.5 The D Waiver Excess for each item of Equipment is the amount equal to:

- (a) \$1000.00 or (if the replacement cost of the Equipment is less than \$1000.00) the replacement cost of the Equipment; OR
- (b) 10% of the cost of the repairs (if the Equipment is partially damaged and can be repaired) OR 10% of the full new replacement cost of the Equipment (if the Equipment is lost, stolen or damaged beyond repair), whichever is greater.

15.6 Even if you have paid the D Waiver Fee, we will not waive our rights to claim against You for loss, theft or damage to the Equipment and D Waiver will not apply if the loss, theft or damage:

- (a) has arisen as a result of your breach of a clause of this Hire Agreement;
- (b) has been caused by your negligent act or omission;
- (c) has arisen as a result of your use of the Equipment in violation of any laws;
- (d) 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;
- (e) occurs to the Equipment whilst it is located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
- (f) has been caused by a lack of lubrication or a failure to properly service or maintain the Equipment;
- (g) has been caused by collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object due to insufficient clearance;

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- (h) has been caused by the overloading of the Equipment or any components thereof;
- (i) is to motors or other electrical Equipment or components within 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;
- (j) is caused by exposure to any corrosive or caustic substance, such as cyanide, salt water, acid, etc;
- (k) is caused by vandalism;
- (l) is to tyres or tubes; OR
- (m) is to windscreens, mirrors, glass, or Perspex.

## 16. INDEMNITIES AND EXCLUSION OF LIABILITIES

16.1 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.

16.2 Nothing in this Hire Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Consumer Guarantees.

16.3 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.

16.4 Subject to our obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, our maximum aggregate liability for all claims under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including 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.

16.5 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.

16.6 You are liable for and indemnify ETC Hire 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 ETC Hire 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.

16.7 Each indemnity in this Hire Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Hire Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Hire Agreement.

16.8 We will not be liable to you for any acts or omissions of any person supplied by ETC Hire where that person is acting under your direction and control during the Hire Period and you indemnify ETC Hire 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 ETC Hire 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 Either party may terminate this Hire Agreement and any Hire Period immediately by giving notice to the other party, if:

- (a) that other party breaches any term of the Hire Agreement and fails to remedy the breach within 7 days of written notification of the breach; or
- (b) that other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business.

17.2 We may terminate the Hire Agreement and any Hire Period for any other reason on 24 hours' notice.

17.3 We may terminate the Hire Agreement immediately if you or any third party has made a false statement in, or breached any provision of the Relevant Documents.

17.4 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

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 Your premises to do so and you expressly consent to ETC Hire entering your premises for the purposes of recovering our Equipment.

## 19. SECURITY

Except where clause 33 applies:

(a) 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;

(b) 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 ETC Hire 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 ETC Hire to be your true and lawful attorney to execute and register such instruments; and

(c) You will indemnify ETC Hire on an indemnity basis against all costs and expenses incurred by ETC Hire 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

If you collect or receive the Equipment and find that it is broken, damaged and/or defective, you must notify ETC Hire within 24 hours after you collect or receive the Equipment. If you do not notify ETC Hire within this time period, We are entitled to assume that the Equipment you collected or received was in good order and condition.

## 21. LONG DISTANCE MAINTENANCE

21.1 This clause 21 applies if you hire Equipment for use at a Long Distance Location.

21.2 The PMP for all Equipment located at a Long-Distance Location will be subject to a per kilometre charge both to and from the premises nominated by you. There will be no charge for the first 15 km either way.

21.3 The PMP for multiple items of Equipment which are located at the Long-Distance Location will only be charged as one call out.

21.4 For the avoidance of doubt, you remain responsible for daily maintenance and care of all Equipment in accordance with clause 8, including but not limited to, checking of all fluids (fuel, oil, water, battery levels, waste tanks etc.), checking of all hoses (hydraulic, fuel and water), general tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points.

21.5 If the Equipment breaks down at a Long-Distance Location, you will also pay us the costs associated with any attendance to the Long-Distance Location in addition to any other costs payable under this Hire Agreement.

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## 22. PRIVACY

- 22.1 We will comply with the Australian Privacy Principles in all dealings with you.
- 22.2 We may need to collect personal information about you, including but not limited to, your full name and address, drivers licence details, credit card details, date of birth, and credit or business history. You consent to ETC Hire using your personal information in order to:
- (a) fulfill functions associated with the hire of Equipment to you, including but not limited to assessing your credit worthiness, or exercising our rights under clause 10;
  - (b) provide services to you;
  - (c) prevent theft of our Equipment;
  - (d) enter into contracts with you or third parties, and
  - (e) to market to you and maintain a client relationship with you.
- 22.3 You also consent to ETC Hire disclosing your personal information:
- (a) to any credit provider or credit reporting agency for the purposes of obtaining information about your consumer or commercial credit or business history or your commercial activities or credit worthiness; and
  - (b) to our service providers, contractors and affiliated companies from time to time to help improve and market our services to you.
- 22.4 You have the right to access the personal information we hold about you.

## 23. FORCE MAJEURE

- 23.1 Subject to clause 23.2, 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.
- 23.2 Nothing in clause 23.1 will limit or exclude your responsibility and liability under the Hire Agreement for Equipment that is lost, stolen or damaged beyond fair wear and tear during the Hire Period, or has broken down or become unsafe to use as a result of your conduct or negligence.

## 24. SEVERABILITY

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.

## 25. GOVERNING LAW

The Hire Agreement is governed by law 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. Each party waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

## 26. ENTIRE AGREEMENT

The Hire Agreement comprises the entire agreement between the parties. No additional terms and conditions (including any terms contained in any purchase order supplied by you) apply to the hire of the Equipment unless the Hire Agreement is varied in accordance with clause 28.

## 27. NO RELIANCE

Subject to clauses 16.1 and 16.3, You acknowledge that neither we nor any person acting on our behalf have made any representation or other inducement to you to enter into the Hire Agreement and you have not entered into the Hire Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those representations contained in this Hire Agreement.

## 28. VARIATION

Except where clause 33 applies, from time to time, we may wish to vary this Hire Agreement. If we intend to do so, we will give You 28 days' written notice of our varied terms. If you have reasonable grounds to believe the change will be detrimental to your rights, you may terminate this Hire Agreement without penalty within 28 days of receiving our written notice. Any other variation of the Hire Agreement must be agreed in writing by you and ETC Hire.

## 29. NO WAIVER OF RIGHTS

Subject to clause 20, no delay or omission by a party to exercise any right, power or remedy available to that party as a result of a continuing breach or default under the Hire Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of that party's rights to take action or make a claim in respect of a continuing breach or default.

## 30. REVIEW OF YOUR CREDIT APPROVAL

- 30.1 From time to time we may review any Credit Account we have granted to you without notice.
- 30.2 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.
- 30.3 If we withdraw credit you may terminate this Hire Agreement immediately by giving ETC Hire 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 ETC Hire under this Hire Agreement, including hire charges until the Equipment is returned to ETC Hire and is in our possession.

## 31. SIGNING THIS HIRE AGREEMENT

- 31.1 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.
- 31.2 Except where clause 33 applies, the person signing this Hire Agreement indemnifies ETC Hire against all losses, costs and claims incurred by ETC Hire arising out of the person so signing this Hire Agreement not in fact having such power and/or authority.

## 32. CLAIM FOR PAYMENT

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

## 33. PROVISIONS OF THIS AGREEMENT EXCLUDED FROM CONSUMER CONTRACTS

Where you are an individual acquiring goods or services wholly or predominantly for personal, domestic or household use or consumption, the following provisions of these Terms of Hire will not apply for the purposes of your Hire Agreement:

- (a) clause 17.2 (Termination on 24 hours' notice)
- (b) clause 19 (Security);
- (c) clause 28 (Variation);
- (d) clause 31.1 (Signing this Agreement); and
- (e) clause 34(a) (Assignment).

## 34. ASSIGNMENT

- (a) We may assign this Hire Agreement to any third party without your consent (including a Related Body Corporate).
- (b) Where you are an individual acquiring goods or services wholly or predominantly for personal, domestic or household use or consumption, then we may assign this Hire Agreement to a Related Body Corporate providing that Related Body Corporate has the financial and operational resources to comply with the terms of the Hire Agreement. If you have reasonable grounds to believe the assignment will be detrimental to your rights, you may terminate this Hire Agreement without penalty by giving ETC Hire 28 days written notice that You wish to terminate the Hire Agreement.

## 35. PREVIOUS EDITIONS

This edition of the Terms of Hire replaces all previous editions of the Terms of Hire we have issued.