1. Definitions and Interpretation / Agreement

(a) In these Terms and Conditions:

“Agreement” means the contract made between the Company and the Hirer in relation to the hire of Equipment, and includes:

(i) the establishment, operation and use of the account of the Hirer with the Company;

(ii) all transactions effected by the Hirer with the Company for the supply of Equipment and Goods or services on its account or on a cash basis unless otherwise expressly agreed in relation to any particular supply of Equipment, Goods and services, and

(iii) the exclusion of all others including any terms and conditions of the Hirer.

(b) These Terms and Conditions shall apply as if incorporated into each order placed by the Hirer with the Company.

2. Rates and Hire Period

(a) The Hirer must pay the Company an amount that the Company determines (acting reasonably) to be equal to the merchant service fee or any similar fee payable by the Company to its transaction acquirer in connection with the transaction.

(b) The Company may add any amount payable by the Hirer under paragraph (a) to the Hire Charges of the relevant goods or services supplied or to be supplied by the Company to the Hirer.

3. Payment and default arrangements

(a) The Hirer agrees to pay the Company interest on all overdue balances at a rate of 1.5% per month until all sums owed to the Company under these Terms and Conditions have been paid in full.

(b) If the Hirer fails to pay for any goods or services supplied by the Company when due, then by notice to the Hirer, the Company may declare any amounts actually or contingently owing by the Hirer to the Company to be immediately due and payable.

4. Credit Card Payments

(a) If a Hirer pays its outstanding account by a credit card, at the time the transaction is processed the Hirer must pay to the Company an amount that the company determines (acting reasonably) to be equal to the merchant service fee or any similar fee payable by the Company to its transaction acquirer in connection with the transaction.

(b) The Company may add any amount payable by the Hirer under paragraph (a) to the Hire Charges of the relevant goods or services supplied or to be supplied by the Company to the Hirer.

5. GST

(a) To the extent that a party makes a taxable supply in connection with these Terms and Conditions, the consideration payable by a party under these Terms and Conditions represents the value of the taxable supply for which payment is to be made, unless otherwise expressly agreed.

(b) Subject to clause 5(c), if a party makes a taxable supply pursuant to these Terms and Conditions for a consideration which, under clause 5(a), represents its value, then the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.

(c) A party’s obligation to make payment under clause 5(b) is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.

6. Cancellations of Orders

The Hirer may not cancel any order that it places for supply of Equipment or services on its account with the Company unless the Company gives it consent in writing. The Company may give or withhold its consent in its absolute discretion.

The Company may give its consent subject to conditions that may include payment of money to the Company.

7. Suspension of Credit

The Company may at any time refuse to extend credit or further credit to the Hirer (and without the Company having or giving any reason for doing so).

8. Delivery, Installation and Removal

(a) The Company will arrange delivery of the Equipment to the Site and will install the Equipment as far as possible in accordance with the Hirer’s sketch plan or verbal directions. The Hirer acknowledges that the Company may need to alter the position of the Equipment to accommodate services to the Site or other obstacles.

(b) The Company will remove all Equipment at the end of the Hire Period unless the Company and the Hirer agree to extend the initial Hire Period.

(c) The Hirer may request the Company to install additional Equipment or to remove part of the Equipment before the expiration of the Hire Period, subject to payment of the extra charges.

(d) If the Company is delayed from delivering or removing the Equipment from any location for any reason beyond its reasonable control, it may charge the Hirer additional delivery charges. The additional delivery charges will be based on the duration of the delay and will be calculated for every 15 minute
period (or part) using the rates published on the Company's Websites from time to time.

(e) No refunds will apply in the event that the Equipment is returned/collated at the Hirer's request prior to the expiration date of any Hire Period.

9. Extra Charges

(a) Additional Equipment requested by the Hirer will incur additional charges for hire and delivery/installation. The remainder of the Equipment will be charged to the Hirer from the payment of the agreed hire charges for the Equipment.

(b) The Hirer is entitled to one pick up included in the hire fees. Any additional pick ups will incur additional charges.

10. Use of Equipment

(a) The Hirer must ensure that the Equipment is used strictly in accordance with the Company's instructions and any procedures recommended by the Company from time to time.

(b) The Hirer must at all times keep the Equipment in good condition and must not, without the Company's prior written consent, alter or make additions to the Equipment, or deface, remove or conceal any Company logo, identifying mark or number, or indication of the Company's ownership of the Equipment.

(c) The Hirer must at all times ensure that the Equipment is used in a safe manner, and not deliberately damage, abuse or mistreat the Equipment or allow the Equipment to be deliberately damaged, abused, or mistreated.

(d) If any damage, loss, theft or destruction of the Equipment occurs, whether the Hirer was responsible or not, the Hirer must immediately notify the Company and provide full details of the damage, loss theft or destruction.

(e) The Hirer must ensure that the Equipment is used at all times strictly in accordance with:

   i) all applicable laws, and
   ii) any relevant industry usage, custom and standards for goods similar to the Equipment.

(f) The Hirer must obtain and maintain, at its own expense, any insurance, permit or license that may be required under any law or by any statutory or other authority for the use of the Equipment, including its installation or removal. Without limiting the Hirer's obligations under this clause, the Hirer must obtain all permits required under any relevant planning, environment or health and safety legislation, and must ensure that its personnel are appropriately inducted, trained and supervised so as to ensure the safe and lawful use of the Equipment.

11. Movement of Equipment

(a) The Hirer may at its own risk move or alter the position of the Equipment on the Site. The Hirer indemnifies the Company against all claims for any loss or damage, however arising, as a result of any movement of, or alteration to the Equipment.

(b) The Hirer may engage the Company to move/relocate the Equipment on the Site. The Company will charge a rate per metre per ton or for this service, which the Hirer can obtain on request and which the Hirer shall pay in accordance with the Company's usual terms for moving/relocating Equipment.

12. Location and Use of the Equipment

(a) The Hirer must expressly inform the Company of the location of the Equipment during the Hire Period.

(b) The Hirer must not:

   i) part with the possession of the Equipment;
   ii) allow any other person to use the Equipment; or
   iii) permit the removal of the Equipment from the location at which the Hirer represented it would be located without the prior written consent of the Company.

(c) The Hirer must store the Equipment in a safe place, and do all other things necessary to ensure the continued safety and preservation of the Equipment.

13. Missing and Damaged Equipment

(a) The Hirer is responsible for any stolen, missing or damaged Equipment while on hire to it, and the cost of replacement or repairs of that Equipment.

(b) If the Equipment is returned or collected in a condition which in the reasonable opinion of the Company renders it unusable for hire, or if the Equipment is stolen or missing, the Hirer must pay the Company on demand the cost of replacement or repair calculated in accordance with the relevant Damaged & Lost Materials price list as published on the Company's Websites, from time to time. In no circumstances will title to the Equipment or any part of it pass to the Hirer and the provisions set out in clause 12 relating to the Company's title rights shall apply.

(c) Other than for the cost of replacing or repairing the Equipment, the Hirer will be liable for all costs, expenses, damages and loss (including consequential loss), incurred by the Company arising out of the Equipment not being returned or collected, including where the Equipment has been stolen or missing.

14. Hirer's Obligations

The Hirer will:

(a) Accept full responsibility for the safe-keeping of the Equipment, and except as specified hereafter, shall indemnify the Company for all loss, theft or damage to the Equipment however caused and without limiting the generality of the foregoing whether or not such loss, theft or damage is attributable to any negligence, failure or omission of the Hirer.

(b) Accept full responsibility for and indemnify the Company against all claims arising out of the possession or use of the Equipment during the Hire Period however arising, whether from the negligence of the Hirer or the Company or other party and limiting the generality of the foregoing whether or not the Equipment was being operated by an employee, servant or agent of the Hirer or any person for whose acts the Company might be or is held to be responsible in connection with the use of the Equipment.

(c) Not be entitled to sell, transfer, mortgage, charge or encumber in any way the Equipment nor, without the Company's management prior written consent, part with the possession of the Equipment nor assign the benefit of this Agreement.

(d) Not be entitled to remove the Equipment from the Site or allow it to be removed without the Company's permission.

(e) Ensure that the Equipment is returned to the Company in the same condition as it was delivered.

(f) Pay to the Company all hire and related charges and other costs as stipulated in accordance with the Company's Terms and Conditions and payment terms.

(g) The Company may inspect the Equipment from time to time during the Hire Period and the Hirer shall permit or procure permission for representatives of the Company to enter the Site.

15. Exclusions of Warranties and Limitations of Liability

(a) The Company acknowledges that the Australian Consumer Law and similar legislation provides:

   i) certain rights for Consumers that cannot be excluded; and
   ii) in relation to the supply of goods and services, that in some circumstances the Hirer may be a Consumer.

(b) Subject to paragraph (c), the Company excludes any and all conditions, warranties, terms and consumer guarantees implied by statute, general law or custom (including without limitation the Australian Consumer Law) applicable to any supply of goods (including all Equipment) and services under these Terms and Conditions.

(c) The Consumer Guarantees apply to any supply of goods and services where the Hirer is a Consumer, and the liability of the Company in the event that the Consumer Guarantees is not limited except as stated in paragraph

(d) If the Hirer is a Consumer in relation to the supply of goods and services, and those goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the liability of the Company in connection with the Consumer Guarantees is limited to one of the following (as selected by the Company):

   i) the purchase of the services of the supplier again; or
   ii) the payment of the cost of having the services supplied again.

(e) The Company:

   i) excludes liability in contract, tort (including negligence) or otherwise, in connection with any supply of goods and services and for all claims under or relating to the Equipment for any indirect damages or losses, or for any special, punitive or exemplary damages;
   ii) limits its liability in contract, tort (including negligence) or otherwise, in connection with any supply of goods and services and for all claims under or relating to the Equipment and to the sums payable by the Hirer for the hire of the Equipment; and
   iii) excludes any liability for or in connection a claim that the Equipment supplied by the Company under these Terms and Conditions is not fit for a particular purpose, except where the Company has a liability as contemplated by paragraph (a) or (d).

(f) The Hirer is liable for and shall indemnify the Company 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 the Company and any environmental loss, cost, damage or expense) in respect of:

   i) Personal injury;
   ii) Damages to intangible property;
   iii) A claim by a third party in respect of the Hirer's hire or use of the Equipment.

The indemnity set out in paragraph (f) above is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of the term of hire of the Equipment. It is not necessary for a party to undertake an act or make any payment before enforcing a right of indemnity conferred under these Terms & Conditions.

(b) The Company will not be liable to the Hirer for any acts or omissions of any person supplied by the Company that is acting under the Hirer's direction or control during the Hire Period relating to the Equipment and the services provided under these Terms & Conditions and the Hirer shall indemnify the Company against all liability, claims, damages, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis) arising from or incurred in connection with such acts or omissions.

(i) Subject to the provisions contained in this clause 15, the Company will not be responsible for failure or delay in delivery, pickup, installation or removal and will have no liability to the Hirer or any other person for any loss (including any consequential loss) arising out of such failure or delay.

16. Retention of Title Arrangements

(a) Property in and to the Equipment remains with the Company in all circumstances (even if the Hirer goes into liquidation or becomes bankrupt during the hire period).

(b) The Hirer's right to use the Equipment is a bailee only.

(c) The Hirer is not entitled to offer, sell, assign, sub let, charge, mortgage, pledge or create any form of security interest over or otherwise deal in any way with any of the Equipment.

(d) Unless otherwise agreed by the Company, the Hirer must identify and store the Equipment in a manner that clearly shows that it is the property of the Company.

17. Equipment supplied will not become fixtures

(a) The Hirer acknowledges and agrees that it is the intention of the parties that:

   i) Where the Equipment is or might be characterized as fixtures to land, or
   ii) Where the Equipment rests by its own weight on the land then the following provisions apply.

(b) The Equipment shall be taken to be personal property of the Company and not fixtures despite having been connected to an electricity point, gas supply, water, plumbing connection or another appliance or otherwise affixed to land.

(c) In the event of a default by the Hirer under these Terms and Conditions, that in addition to any other enforcement provisions set out in these Terms and Conditions, if the Equipment can be removed without causing significant damage to the premises on which they are located, the Hirer consents to the Company and any authorized contractor acting on behalf of the Company,
A security interest in the Equipment will attach to the Equipment at the time that the Hirer has rights in the Equipment and not at any later time.

(vi) Do all things necessary
The Hirer must do anything reasonably required by the Company to enable the Company to register the security interest as a PMSI and to maintain that registration.

Confidential Information
(i) The Company and the Hirer agree that neither party will disclose to an interested person or to any other person, any information of the kind described in section 275 (1) of the PPSA except that the Company may disclose that information to an interested person where section 275(7) of the PPSA applies.
(ii) The Hirer agrees that it will not authorize the disclosure of any information of the kind described in section 275 (1) of the PPSA.

Enforcement
If the Hirer fails to pay a amount owing when due or if it fails to perform any of its obligations in connection with the supply Equipment, the Hirer agrees that the Company shall be entitled to exercise its enforcement rights and remedies as a secured party in accordance with the provisions of the PPSA including without limitation the rights contained in section 123 of the PPSA to seize the Goods by any method permitted by law. For these purposes, and without limiting any other rights of the Company under the PPSA as a secured party, the Hirer further agrees:
(i) upon demand made by the Company, to immediately deliver up to the Company the Equipment;
(ii) to irrevocably authorise the Company to enter any premises occupied by the Hirer in order to search for, retrieve and remove the Equipment to which the Company has title and which are the subject of a security interest as provided for by these Terms and Conditions;
(iii) to do all things necessary to immediately facilitate the Company's access to the Hirer's premises and to assist the Company to locate and identify the Equipment;
(iv) to authorize the Company to resell or re-hire the Equipment seized and apply the proceeds of sale or re-hire in payment of any monies that the Hirer owes it;
(v) that in the event of any inconsistency with the provisions contained in section 123 of the PPSA and the provisions contained in this paragraph, the provisions of this paragraph shall prevail.

Application of certain further PPSA provisions
To the extent they apply, the following provisions of the PPSA: section 126 (apparent possession); section 128 (security interest includes right to take possession of and section 134 (1) (retention of collateral) confer rights on the Company. The Hirer agrees that in addition to those rights, the Company shall if there is default by the Hirer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any Goods, not only under those sections but also, as additional and independent rights, under this document and the Hirer agrees that the Company may do so in any manner it sees fit including (in respect of dealing or dispossession) by private or public sale, lease or licence.

Contracting out provisions
To the extent that Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest under or in connection with this Agreement the following provisions of the PPSA do not apply and for the purposes of section 115 of the PPSA are "contracted out" of this document in respect of all Goods to which that section can be applied: section 95 (notice of removal of access to the extent it requires the Company to give a notice to the Hirer); section 96 (retention of accession); section 125 (obligation to dispose of or retain collateral);section 121(4) (notice of grant); section 130 (notice of disposal to the extent it requires the Company to give notice to the Hirer);section 129 (2) & (3) (d) (contents of statement of account afterdisposal);section 132 (4) (statement of account if no disposal);section 135 (notice of retention);section 142 (redemption of collateral);and section 143 (re- instatement of security document).

Notices
PPSA Notices
The Hirer agrees that the Company does not need to give the Hirer any notice under the PPSA (including without limitation a notice of a verification statement received from the Registrar) unless the notice is required by the PPSA and that requirement cannot be excluded.

Where default
In the event of a default by the Hirer in performing of any of its obligations in connection with a supply of the Equipment, the Hirer agrees that (as between the parties to the Terms and Conditions) the Company is not obliged to give notice to any other secured party with interests in the same collateral or to any other third party of any enforcement or recovery action that it takes or which it may take with respect to its security interest in any of the Equipment.

Change of Details
In the event that there is a change in any of the Hirer's details and contact numbers or addresses set out in these Terms and Conditions or contained in any application for credit made by the Hirer prior to executing such application, the Hirer agrees to notify the Company in writing within 5 days of such change.

19. Termination of Hire
The Company may terminate the Agreement without notice to the Hirer, if the Hirer:
(a) Breaches any of the Terms and Conditions; or
(b) has a winding up petition presented against it, is wound up, goes into voluntary liquidation, commits an act of bankruptcy has a receiver appointed to its assets or any of them makes an assignment or compromise for the benefit of its creditors, is placed under official management or ceases to carry on business.
(c) Upon termination of the Agreement, the Company shall be entitled to take possession of the Equipment and for this purpose the Hirer irrevocably authorises the Company or its representatives to enter onto the Site and agrees to indemnify the Company in respect of any claims, damages and expenses associated with the recovery of the Equipment.
(d) The Company shall be entitled to take possession of the Equipment without authority of the Hirer if the Hirer fails to comply with payment terms.

20. Changes to Terms and Conditions
(a) The Company may amend these Terms and Conditions at any time by publishing the amendments on its Company's Websites or otherwise notifying the Hirer.
(b) The amended Terms and Conditions will apply to any hire of the Equipment from the time the amendments are published on the Company's Websites or otherwise notified to the Hirer. Any such amendment will not affect the validity or enforceability of the agreement between the Company and the Hirer in any way.

21. Signatory's Warranties
Any person signing any document on behalf of Hirer in respect of the hire of the Equipment warrants that they:
(a) have the Hirer's authority to contract with the Company on the Hirer's behalf; and
(b) have been authorised by the Hirer to bind the Hirer to hire the Equipment on the terms set out in the Agreement, and agrees to indemnify the Company against all losses, costs and claims incurred by the Company if this is not the case.