

TERMS AND CONDITIONS OF HIRE

1 DEFINITIONS

1.1 For the purposes of these Terms and Conditions: -

Account Application means the PSS Credit Application document as completed by the Hirer upon the application with PSS for the hire of Equipment from PSS on credit, as varied by PSS from time to time.

Business Days means Monday to Friday, excluding public holidays.

Business Hours means 7.00am to 5.00pm Monday to Friday, excluding public holidays (and 9.00am to 4.00pm for office hours) .

Charging Schedule means the PSS Charging Schedule document, as varied by PSS from time to time.

Hirer means:-

- a) the Person identified in the Account Application as the applicant requesting the provision by PSS of hire of Equipment on credit; or
- b) otherwise, the Person requesting the hire of Equipment from PSS, either directly or by their employee or agent

PSS means Navara Homes Pty Ltd ACN 149 568 981, trading as Premium Scaffold Solutions, including its substitutes, successors and permitted assigns.

Equipment includes (but is not limited to) heavy duty & aluminium scaffold, fall protection systems, handrail, mobile scaffold, pitch platform, three plank hangers, void protection, temporary toilets and site fencing (including, where relevant, all parts and accessories).

Notice includes any approvals, consents, instructions, orders, directions, statements, requests, certificates or other communications that may be given and/or are required to be given under the Terms. Unless expressly stated otherwise, all Notices must be:

- a) in writing; and
- b) signed; and
- c) either left at an address, sent by post, transmitted by email, or given in any other way permitted by law; and
- d) take effect from the earlier of either: -
 - i. the time the Notice is received; or
 - ii. four (4) Business Days from the date of posting (where sent via post)

Further: -

- e) where a Notice is signed for a company, then the Notice must be signed by that company's directors or solicitors; and
- f) the parties agree that electronic signatures and the provision of Notice by the parties shall be deemed to be acceptable provided that the party serving the Notice has complied with relevant requirements of the *Electronic Transactions (Victoria) Act 2000* (Vic) applicable in the circumstances

Hirer's Nominated Site means any address at which PSS is required to deliver, erect and/or dismantle Equipment for or on behalf of the Hirer

Period of Hire means the period commencing at the date and time that the equipment is:-

- a) delivered to the Hirer by PSS; or
- b) collected by the Hirer from PSS (whether from the PSS Address or any other address expressly authorised by PSS in writing)

and continuing indefinitely until the date and time that either:-

- a) the Minimum Hire period as set out under the Charging Schedule has elapsed; or
- b) where a relevant Minimum Hire period does not apply to the Equipment, the Equipment is otherwise returned by the Hirer to PSS in its entirety and in the same condition as it was when hired (subject to any fair wear and tear); or
- c) PSS provide an off hire number in accordance with Clause 4.3 of the Terms; or
- d) PSS recovers the Equipment in full following termination of the hire under Clause 8 of the Terms

Person means an individual, corporation, government or governmental agency, estate, trust, partnership, association or other legal or commercial entity or undertaking

The PSS Address means Unit 2, 47 Assembly Drive, Tullamarine in the State of Victoria 3043

GST has the meaning set out in the *New Tax System (Goods and Services Tax) Act 1999 (Cth)*

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

PPSR means the Personal Property Security Register as defined in the PPSA

Terms means these Terms and Conditions of Hire, as varied by PSS from time to time

1.2 In the Terms, unless the context otherwise indicates, a reference to a party includes that party's executors, administrators, successors and permitted assigns

1.3 The singular includes the plural and vice versa and any gender includes any other gender.

2. RENTAL OF EQUIPMENT

2.1 PSS agrees to rent Equipment to the Hirer for the Period of Hire and pursuant to the Terms

2.2 In consideration of the rental provided by PSS to the Hirer in accordance with Clause 2.1 of the Terms, the Hirer agrees to pay PSS: -

- a) the relevant rental charge for the Period of Hire of the Equipment hired from PSS pursuant to Clause 2.1 (being either an amount agreed between PSS and the Hirer or otherwise as set out in the Charging Schedule); and
- b) any charges for rectification work required to Equipment during the Period of Hire (including, but not limited to, circumstances where the Equipment is modified and/or removed by the Hirer and/or their employees and agents to the extent that it is no longer compliant with applicable legislative or regulatory requirements); and
- c) any charges for delivery and/or collection of the Equipment; and



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- d) any labour rates (including any penalty rates) applicable to the hire, delivery, installation and/or collection of the Equipment, as detailed under the Charging Schedule; and
- e) any applicable credit card surcharges levied upon PSS for payments made by the Hirer by credit card; and
- f) any other duties, stamp duty, fees, outgoings, penalties, fines, charges or costs imposed upon PSS by any authority in connection with hire of the Equipment; and
- g) any cleaning and/or repair charges incurred by PSS due to a failure by the Hirer to comply with Clause 2.9 of the Terms
- h) any applicable GST payable on the items listed in Clause 2.2 a) to h) above

2.3 PSS may require payment of some or all the amounts set out under Clause 2.2 of the Terms prior to the delivery /collection of the Equipment by the Hirer.

2.4 In the event that a proposed hire of Equipment by the Hirer:-

- a) exceeds the credit limit for the Hirer as set under the Account Application; and/or
- b) is sought at a time where previous tax invoices rendered by PSS to the Hirer are outside the payment terms for those tax invoices under Clause 5.2 of the Terms

PSS reserves the right to refuse to provide hire of Equipment to the Hirer.

2.5 For the avoidance of doubt, the Hirer agrees that PSS may render charges to the Hirer detailed under Clause 2.2 of the Terms up to and including the actual end date and time of the Period of Hire for the Equipment, even where the actual end date and time of the Period of Hire exceeds the end date and time originally contemplated by PSS and the Hirer at the commencement of the Period of Hire.

2.6 On delivery of the Equipment, the Hirer must inspect the Equipment and satisfy itself that the Equipment:-

- a) has been received in good condition; and
- b) has been received in the quantity ordered (including any relevant parts and accessories); and
- c) is suitable and fit for the purpose for which Hirer intends to use it,

2.7 In the event that the Equipment does not comply with Clause 2.6 of the Terms, the Hirer must provided Notice to PSS within twenty four (24) hours of the delivery of the Equipment.

2.8 In the event that Notice is not received by PSS in accordance with Clause 2.7 of the Terms, the Hirer will be deemed to have accepted the Equipment in good condition, in the quantity ordered and for the purpose for which the Hirer intends to use the Equipment.

2.9 Upon the end of the Period of Hire, the Hirer agrees to deliver up the Equipment (complete with all parts and accessories accompanying the Equipment) to
PSS cleaned and in good order (allowing for fair wear and tear).

2.10 Where request is made by the Hirer for PSS or their employees and agents to estimate quantities and types of Equipment, PSS shall be entitled to rely upon the accuracy of:-

- a) any plans, specifications and other information provided by the Hirer to PSS for the purposes of this estimate; or
- b) any representations made by the Hirer or their employees and agents to PSS as to matters in Clause 2.10 a) of these Terms

2.11 The Hirer further acknowledges and agrees that PSS accepts no responsibility for any losses, damages, or costs however caused resulting from reliance by the Hirer on any representations made by PSS pursuant to the information provided under Clause 2.10 of the Terms

2.12 Where the Hirer:-

- a) makes request for hire of Equipment from PSS that is accepted by PSS; and
- b) subsequently cancels the hire of Equipment within twenty (24) hours of the request made in Clause 2.12 a) of the Terms

the Hirer agrees that PSS are entitled in those circumstances to charge the Hirer for the delivery charge (as set out in the Charging Schedule) relevant for the delivery of the Equipment

3 ACCESS, INSTALLATION AND REMOVAL OF EQUIPMENT

3.1 Where PSS is required to install and/or dismantle the Equipment for the Hirer, the Hirer shall ensure that PSS has clear and free access as near as practicable to the work area at Hirer's Nominated Site and all necessary preparatory steps have been taken to enable the prompt installation, dismantling and/or removal of the Equipment.

3.2 Without limiting the scope of Clause 3.1 above, the Hirer shall specifically ensure that:-

- a) the Hirer's Nominated Site is cleared and ready for installation of the Equipment;
- b) a clear perimeter of at least two metres (2m) exists in the work area at the Hirer's Nominated Site;
- c) any and all overhead electrical wiring in the work area at the Hirer's Nominated Site is covered, in compliance with all relevant laws and regulations;
- d) all overhead power likely to cause a hazard or adversely affect the installation of Equipment at the Hirer's Nominated Site is turned off prior to the installation of the Equipment;
- e) no digging or excavation work is performed near or under the Equipment at the Hirer's Nominated Site during the installation or once the Equipment is installed;
- f) all appropriate traffic control arrangements are in place at the Hirer's Nominated Site to allow both delivery and return of the Equipment (including suitable notifications to and arrangements with council and local authorities where it is intended to use a nature strip for delivery and/or collection of the Equipment);
- g) suitable covering are in place to prevent damage or marking to any finishing's on concreted areas, patios, driveways, timber



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decks, lower level roof areas or other structures at the Hirer's Nominated Site;

- h) the foundations and/or structures upon which PSS are to install the Equipment at the Hirer's Nominated Site are sufficiently firm and otherwise suitable to safely carry and hold the load of the Equipment;
- i) where PSS require access to any property adjoining or adjacent to the Hirer's Nominated Site that is not owned by the Hirer or their client, that prior permission has been obtained from the relevant registered proprietor of the adjoining or adjacent property for access by PSS for the entire duration required by PSS for the installation, dismantling and/or removal of the Equipment;
- j) all scaffolding decks at the Hirer's Nominated Site have been cleared of all building material and rubbish

3.3 The Hirer also agrees that that, upon provision of reasonable notice from PSS, the Hirer will grant (or make arrangements for access with the owner or occupier of the Hirer's Nominated Site to grant) access by PSS to the Hirer's Nominated Site during any Period of Hire for the purpose(s) of:

- a) allowing inspection and/or testing of the Equipment by PSS; or
- b) allowing PSS to protect any of their rights and/or interests in the Equipment; or
- c) allowing confirmation by PSS of compliance with any law, including any law relating to health and safety by the Hirer and/or their employees and agents; or
- d) exercising any right held by PSS (either under the PPSA, statute, common law and/or equity) to take possession or control of the Equipment.

3.4 Where the Hirer unreasonably fails to comply with Clause 3.1 to 3.3 above, the Hirer agrees that PSS may:-

- a) render further charges to the Hirer for any additional costs occasioned by the failure; and/or
- b) where the failure creates a potential safety issue for PSS in effecting the installation, dismantling and/or removal of the Equipment, refuse to attend to the installation, dismantling and/or removal of the Equipment until the Hirer's Nominated

Site is made safe for PSS to attend to the installation, dismantling and/or removal of the Equipment

4 RETURN OF EQUIPMENT

4.1 To arrange for collection of the Equipment by PSS, the Hirer agrees that notification must be provided by the Hirer to PSS a minimum of two (2) business days prior to the Hirer's date of proposed collection of the Equipment.

4.2 PSS will issue the Hirer with an off hire number only where:-

- a) the Equipment has been returned by the Hirer to PSS during Business Hours at the PSS Address (or any other address expressly advised by PSS to the Hirer in writing); or

- b) PSS receives notification in accordance with Clause 4.1 of the Terms

4.3 The provision of the off hire number by PSS confirms the expiration of the Period of Hire

4.4 Whilst PSS will make best endeavours to collect the Equipment in accordance with the Hirer's date as advised pursuant to Clause 4.1 of the Terms, the Hirer acknowledges and agrees that:-

- a) all collection bookings are subject to availability of the relevant agents and employees of PSS; and
- b) where an off hire number has been provided to the Hirer in accordance with Clause 4.3 of the Terms, PSS may attend to collection of the Equipment at a later date without further notice to the Hirer.

4.5 The Hirer agrees that additional hire, labour and freight charges may apply if the Equipment is not available for collection by PSS for any reason on the date of proposed collection of the Equipment advised by the Hirer under Clause 4.1 of the Terms.

4.6 The issue of an off-hire number under Clause 4.3 does not constitute an express or implied waiver of any other rights PSS may have under the Terms or otherwise under statute, common law, or equity.

5 PAYMENT BY THE HIRER FOR RENTAL OF THE EQUIPMENT

5.1 PSS will render a tax invoice to the Hirer setting out the applicable charges (pursuant to Clause 2.2 of the Terms) arising from the rental of the Equipment by PSS to the Hirer (pursuant to Clause 2.1 of the Terms)

5.2 Any tax invoice rendered by PSS to the Hirer (pursuant to Clause 5.1 of the Terms) is due and payable and must be paid in full by the Hirer:-

- a) thirty (30) days from the end of the month of invoicing, where the Hirer has completed an Account Application that has been accepted by PSS; or
- b) as otherwise provided for under the tax invoice rendered by PSS under Clause 5.1 of the Terms; or
- c) prior to or on the commencement of the Period of Hire for the Equipment, in all other instances

5.3 The Hirer must provide Notice to PSS of any errors in a tax invoice rendered under Clause 5.1 of the Terms within seven (7) days of the date of that tax invoice.

5.4 Any amount that becomes due and payable by the Hirer to PSS under Clause 5.2 must be paid in full and without reduction for any reason (unless expressly agreed by PSS in writing).

5.5 Without limiting Clause 5.4 of the Terms, the Hirer is not entitled to claim a reduction in the fees rendered by PSS under Clause 2.2 where the equipment is returned by the Hirer to PSS before the end of the Period of Hire.

5.6 In the event that any tax invoice rendered under Clause 5.1 of the Terms remains unpaid after the relevant period for payment applicable to that tax invoice under Clause 5.2 of the Terms, the Hirer agrees to pay interest on the unpaid amount of that invoice at the rate set out under s.2 of the *Penalty Interest Rates Act 1983* (Vic) (as varied from time to time),



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plus 2 %, calculated daily from the relevant due date of the invoice until payment of the invoice.

6 HIRER'S WARRANTIES

6.1 The Hirer warrants to PSS that the Hirer:-

- a) has provided information in the Account Application that is true and correct in every respect and is not misleading in any way (including, but not limited to, any omissions in the completion of the Account Application by the Hirer);
- b) has properly authorised any person:-
 - i. executing or purporting to execute any PSS document on behalf of the Hirer; and/or
 - ii. presenting any document on behalf of the Hirer to PSS relevant to the hire of the Equipment

including, but not limited to, any person executing the Account Application and/or providing any other request for hire of Equipment or any person signing any document evidencing receipt of the Equipment by the Hirer from PSS

- c) will provide Notice to PSS (within seven (7) days of the date of any such change) of any change in the structure, management or legal entity of the Hirer specified in the Account Application (including, but not limited to, any change in director(s), management, partners, trustee, trading address, registered office or mailing address of the Hirer);
- d) will advise PSS (within (7) days of the date of any such change) of any change in any email address or addresses nominated by the Hirer for the receipt of Notice electronically from PSS to the Hirer;
- e) has not relied upon PSS's skill or judgment in making their selection of the Equipment (nor upon any representations made by or on behalf of PSS by their employees or agents);
- f) has obtained all permits required for the Equipment under any relevant planning, environment and/or health and safety legislation for the Period of Hire;
- g) will only use the Equipment for its intended purpose and in accordance with:-
 - i. any specifications, instructions and/or procedures for the Equipment provided to the Hirer by the manufacturer and/or PSS; and
 - ii. relevant industry usage, custom and standards for the Equipment
- h) will (at all material times during a Period of Hire) only allow the Equipment to be erected and/or used by persons properly trained, certified and/or licensed to use the Equipment;
- i) will maintain, store and transport the Equipment with due care and diligence and strictly in accordance with any instructions provided to the Hirer by the manufacturer and/or PSS;
- j) will, where the Hirer or their employees and/or agents attend to installation, erection and/or dismantling of the Equipment, ensure that Equipment is installed, erected and/or dismantled by suitable qualified persons holding certificates of competency and/or licensing as required by relevant regulatory authorities

for the installation, erection and/or dismantling of the Equipment;

- k) holds and will continue to hold at all material times during a Period of Hire (including, but not limited to, during transportation of the Equipment) current policies of insurance relevant to the transport, possession and usage of the Equipment (including, but not limited to):-
 - i. relevant workers compensation insurance;
 - ii. public liability insurance (for an amount not less than \$AUD20 million);
 - iii. insurance to cover PSS for any destruction, loss and/or theft of the Equipment;
 - iv. insurance to cover any building damage at the Hirer's Nominated Site caused directly or indirectly by the Equipment
- l) will not part with possession of the Equipment or permit usage of the Equipment by any other person than the Hirer;
- m) will strictly comply with all Commonwealth, State and Local Government workplace and occupational health and safety laws and regulations relating to the proper handling, operation and use of the Equipment (including, but not limited to, industry best practice guidelines for scaffolding and any applicable Australian Standards);
- n) will not use the Equipment (nor make the Equipment available for use by any other party) for any improper or illegal purpose;
- o) will not deliberately damage, abuse or mistreat the Equipment or allow the Equipment to be deliberately damaged, abused or mistreated by any third party
- p) will not repair, alter or modify the Equipment in any way (nor permit any other party to repair, alter or modify the Equipment) without the prior written consent of PSS (including, and without limiting this clause):-
 - i. the removal of or tampering with scaffolding ties fixed by PSS and/or their employees or agents; or
 - ii. defacing or erasing any identifying mark, plate or number in or on the Equipment;
- q) will ensure suitable security is in place at the Hirer's Nominated Site to prevent any loss and/or theft of the Equipment;
- r) will, in the event of damage, loss, theft or destruction of the Equipment, immediately notify PSS and provide full details of the relevant damage, loss, theft and/or destruction;
- s) will not remove the Equipment from the State of Victoria without the prior written consent of PSS;
- t) will report any damage to and/or loss of the Equipment to PSS immediately upon becoming aware of such damage and/or loss;
- u) will not otherwise take any step that may serve to invalidate and/or compromise any claim for indemnity under policies of insurance held by PSS

7 PSS WARRANTIES



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7.1 Insofar as PSS (in their absolute discretion and upon proper compliance by the Hirer with Clauses 2.6 and 2.7 of the Terms) determines that the

Equipment provided to the Hirer is not of acceptable quality and/or fit for purpose, PSS warrants to provide the Hirer with a suitable replacement for the Equipment

7.2 PSS acknowledges that the Hirer may be a consumer for the purposes of applicable State or Federal law (including the Australian Consumer

Law), with the consequence that:

- a) certain warranties or conditions may be implied into the Account Application and/or the Terms; and
- b) certain guarantees may be conferred on the Hirer; and
- c) certain rights and remedies may be conferred on Hirer

which cannot be excluded, restricted or modified by operation of law.

7.3 Insofar as the subject warranties, conditions, guarantees, rights and/or remedies contained in Clause 7.2 of the Terms are applicable to the

Hirer in the hire of the Equipment and/or provision of services by PSS, then the Hirer agrees that PSS limits their liability (to the maximum extent permitted by law) to:

- a) in the case of the hire of Equipment by PSS:-
 - i. replacement or repair of the Equipment; or
 - ii. payment of the reasonable costs of replacing or repairing the Equipment; and
- b) in the case of the provision of services by PSS and/or their employees or agents:
 - i. resupply of the services; or
 - ii. payment of the reasonable costs of resupplying the services.

7.4 Subject to Clause 7.1 to 7.3 of the Terms and to the maximum extent permitted by law, the Hirer agrees that:-

- a) all other warranties, conditions, guarantees and terms in relation to the state, quality or fitness of the Equipment and of every other kind (whether express or implied by use, statute or otherwise) are expressly excluded by PSS;
- b) PSS is not responsible to the Hirer or to any other person for any loss (including consequential loss), damage, or injury, caused by, resulting from or in any way connected with, the use of the Equipment; and
- c) PSS will not be responsible for any failure and/or delay in delivery, collection, installation and/or removal of the Equipment and will have no liability to the Hirer (or any other person) for any loss (including any consequential loss) arising out of such failure and/or delay;

8.1 In the event that the Hirer commits any event of default under the Terms, the Hirer agrees that PSS may elect (at their discretion) to do any or all of the following:-

- a) immediately terminate the hire of the Equipment by the Hirer;
- b) repossess the Equipment from the Hirer;
- c) commence recovery action against the Hirer (including, but not limited to, mercantile agent or debt collection recovery action, legal proceedings and/or lodgement of notifications or registrations of security against real or personal property) for unpaid monies or amount(s) due and payable to PSS, either under the Terms or otherwise;
- d) terminate the future provision of hire and/or services on credit under the Account Application without liability to the Hirer or any third party

8.2 For the purposes of Clause 8.1 of the Terms, an event of default includes (but is not limited to):-

- a) any failure whatsoever by the Hirer to pay any tax invoice rendered by PSS (pursuant to Clause 5.1 of the Terms) within the relevant payment terms applicable to that tax invoice (pursuant to Clause 5.2 of the Terms);
- b) any breach whatsoever of the Hirer's Warranties (pursuant to Clause 6 of the Terms);
- c) the commission by the Hirer of any insolvency event (including, but not limited to):-

- i. any non-compliance by the Hirer with a creditor's statutory demand or bankruptcy

notice (whether served by PSS or otherwise);

- ii. the filing of any winding up proceeding or creditors petition against the Hirer (whether filed by PSS or otherwise);
- iii. the filing by the Hirer of a debtor's petition;
- iv. the proposed or actual making of any deed of company arrangement, debt agreement or personal insolvency agreement by the Hirer;
- v. any arrangement or composition with creditors of the Hirer that affects or may affect the rights of PSS;
- vi. the making of a winding up order or a sequestration order against the Hirer; or
- vii. any appointment of a receiver, manager, administrator, liquidator and/or trustee in bankruptcy to the affairs of the Hirer

8 TERMINATION AND RECOVERY BY PSS UPON DEFAULT



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- d) any failure by the Hirer to surrender the Equipment at the completion of the Period of Hire (or upon proper notification and/or Notice under these Terms by PSS requesting same)

8.3 The Hirer agrees that PSS may exercise any and all rights under Clause 8.2 of the Terms, notwithstanding that the Period of Hire for the Equipment previously agreed between PSS and the Hirer may not have otherwise ended

8.4 For the purposes of effecting repossession of the Equipment under Clause 8.1 b) of the Terms, the Hirer agrees that:-

- a) PSS may lawfully enter into or upon any premises where the Equipment may be located (including the Hirer's Nominated Site) to recover the Equipment from the Hirer;
- b) the Hirer will indemnify PSS for any costs and/or damage to any third party however caused arising from the collection of the Equipment; and
- c) any such recovery of Equipment and determination of the Period of Hire will not prejudice the rights of PSS to further recover from the Hirer any additional claims, damages or expenses arising out of the event of default (as defined in Clause 8.2 of the Terms), default generally or otherwise payable by the Hirer to PSS under the Terms

9 INDEMNITY

9.1 The Hirer agrees to indemnify PSS against any claim or loss arising from or related in any way to:-

- a) any dealing between PSS and the Hirer; or
- b) anything arising as a result of any breach of the Terms by the Hirer.

9.2 Without limiting the generality of Clause 9.1 of the Terms, the Hirer specifically agrees to indemnify PSS for all costs and expenses incurred by PSS and its Australian legal practitioners, mercantile agents, debt collectors or other parties acting on behalf of PSS (including, but not limited to, costs of repossession of the Equipment,

commission on recovery of outstanding debt to PSS or otherwise) in respect of:-

- a) the institution of and/or consideration of any action by PSS against the Hirer under Clause 8.1 of the Terms; and
- b) any breach by the Hirer whatsoever of the Hirer's warranties under Clause 6 of the Terms (including, but not limited to, any consequential loss or liability of PSS to third parties occasioned by or connected to such a breach);
- c) any breach by the Hirer of Clause 17.2 or 18.3 of the Terms

10 SECURITY AND CHARGE

10.1 To secure the Hirer's obligations to PSS under the Account Application and/or the Terms, the Hirer charges in favour of PSS all

of their estate or interest (whether joint or several) in any freehold or leasehold land wherever situate which the Hirer now has or may subsequently acquire.

11 PRIVACY ACT 1988

11.1 The Hirer consents and agrees to PSS (subject to obligations upon PSS under the *Privacy Act 1988* (Cth)) collecting, storing and using and/or disclosing commercial and/or consumer information about the Hirer relating to (but not limited to):-

- a) the identity, credit history and solvency of the Hirer; and
- b) any assessment of the creditworthiness and risk of the Hirer for the purposes of enforcement of the rights of PSS; and
- c) the seeking from and/or provision to a credit reporting agency of personal information about the Hirer (including, but not limited to, notification to such an agency of any default by the Hirer under these Terms); and
- d) the contacting of any trade references or other credit providers and acquisition from them and/or provision to them of personal information in relation to the Hirer and their creditworthiness.

11.2 The execution by the Hirer of the Account Application may be produced as conclusive evidence of the Hirer's consent to the matters set out in Clause 11.1 of the Terms.

12 FORCE MAJEURE

12.1 If PSS is unable to perform (either in whole or in part) any obligation under the Terms by reason of any fact, circumstance, matter or thing beyond the reasonable control of PSS:-

- a) PSS is relieved of that obligation under the Terms to the extent and for the period that it is unable to perform such an obligation; and
- b) PSS will not be liable to the Hirer or any other party for failure to perform such obligation to the extent and for the period of non-performance contemplated by this clause

13 NO WAIVER

13.1 No delay by PSS in exercise of any right or power under the Account Application and/or the Terms will operate as a waiver of that right or power.

13.2 No single or partial exercise by PSS of any right or power under the Account Application and/ or the Terms will preclude any other or further exercise of that right or power

14 CREDIT LIMIT

14.1 Any credit limit specified in the Account Application is an indication only of the intentions of PSS at the time of entering the Account Application with the Hirer.

14.2 PSS may (at their absolute discretion) vary or withdraw the credit limit specified in the Account Application at any time without any liability to the Hirer or any other party.



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15 REVIEW OF TERMS AND CONDITIONS

15.1 PSS reserves the right to review the Terms at any time.

15.2 If there is to be any change to the Terms following such a review, the Hirer agrees that the relevant amendments will take effect from the date on which PSS provides Notice to the Hirer of such change.

15.3 For the purposes of provision of Notice under Clause 15.2, the Hirer agrees that the provision by PSS of:-

- a) a copy of the amended Terms to the last known address of the Hirer; and
- b) provision by PSS of a specified date upon which the amended Terms are to take effect

constitutes sufficient notification to the Hirer for that purpose.

16 ENTIRE AGREEMENT

16.1 The Hirer agrees that the Terms:-

- a) shall apply to the exclusion of all others (including, but not limited to, any terms and conditions of the Hirer); and
- b) constitute the whole agreement between the parties, unless otherwise agreed by PSS in writing

16.2 No amendments to the Terms by the Hirer will be of effect unless the subject amendment(s) are expressly agreed and endorsed in writing by PSS

17 OWNERSHIP OF THE EQUIPMENT

17.1 The Hirer agrees that:-

- a) possession of the Equipment by the Hirer is in the capacity as a mere bailee only; and
- b) PSS and/or its associated entities retain title to the Equipment at all times

17.2 The Hirer further acknowledges that they will not:-

- a) agree, attempt, offer or purport to sell, assign, sub-let, lend, pledge, mortgage, let, on-hire or otherwise part with or attempt to part with possession of the Equipment; or
- b) otherwise deal with the Equipment in a manner contrary to the ownership of the Equipment by PSS; or
- c) conceal or alter the nature of the Equipment; or
- d) encumber the Equipment in any way (whether by any grant of a security interest under the PPSA or otherwise)

18 PPSA

18.1 The Hirer grants a security interest (as defined in the PPSA) to PSS registrable on the PPSR in respect of any security interest that arises or may arise under the Account Application and/or the Terms (including, but not limited to, circumstances leading to the creation of a PPS Lease under the PPSA)

18.2 For any security interest arising under the Account Application and/or the Terms, the parties agree that:-

- a) the Account Application and/or the Terms constitute the security agreement; and
- b) the collateral is any of the Equipment hired by PSS to the Hirer after the Account Application is signed, adopted or accepted by the Hirer;

18.3 The Hirer must not, without the prior written consent of PSS, do or agree to do any of the following in respect of the collateral (as defined in Clause 18.2 b) above):-

- a) sell, assign or otherwise dispose of the collateral;
- b) lease or license the collateral;
- c) part with possession of the collateral (other than by giving possession to PSS);
- d) change the nature of the collateral;
- e) move the collateral outside of Australia;
- f) deal in any other way with the collateral or any interest in it, or allow any interest in it to arise or be varied (including, but not limited to, any further security interest under the PPSA)

18.4 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest created under Clause 18.1 of the Terms, the parties agree that Chapter 4 does not apply (to the full extent permitted by the law)

18.5 The Hirer expressly waives their right to receive a verification statement under s.157 of the PPSA.

19 BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 2002

19.1 The parties agree that any invoicing issued by PSS under Clause 5.1 of the Terms constitutes a payment claim for the purposes of the *Building and Construction Industry Security of Payment Act 2002* (Vic)

20 SEVERABILITY

20.1 If any provision of the Terms is prohibited by law or judged by a court or tribunal to be unlawful, void or unenforceable, that provision shall, to the extent required, be severed from the Terms and rendered ineffective as far as possible without modifying the remaining provisions of the Terms and shall not in any way affect the validity or enforcement of the Terms.

21 APPLICABLE LAW

21.1 The Account Application and the Terms will be governed by and construed and interpreted in accordance with the laws of the State of Victoria.

21.2 PSS and the Hirer submit to the non-exclusive jurisdiction of the courts of the State of Victoria.