

Yes Equipment Rental Pty Ltd Hire Agreement - Terms and Conditions

This document records the Equipment Hire Terms and Conditions on which Yes Equipment Rental Pty Ltd agrees to hire Equipment to the Customer. Yes Equipment Rental Pty Ltd may in its absolute discretion decline to hire any Equipment to a Customer.

Yes Equipment Rental Pty Ltd may vary these Terms and Conditions from time to time where reasonably required to protect Yes Equipment Rental Pty Ltd's legitimate business interests. Yes Equipment Rental Pty Ltd will notify you of such variations by publishing the varied Terms and Conditions on its website and/or by notifying the Customer in writing. Variations to these Terms and Conditions will only apply to hire agreements entered into after the variations have occurred.

1 Definitions and interpretation

1.1 Definitions

In these Terms and Conditions, unless the context requires otherwise:

Accident means an unintended and unforeseen incident, including:

- (a) *a collision between the Equipment and another vehicle or object, including animals and roadside infrastructure;*
- (b) *rollovers; or*
- (c) *a weather event, including hail Damage,*

that results in Damage Excess, Damage or Third-Party Loss.

Agreement means the agreement between Yes Equipment Rental Pty Ltd and the Customer for the hire of the Equipment, consisting of: these Terms and Conditions, the Quote, Invoice and any other documents produced by Yes Equipment Rental Pty Ltd to the Customer.

Amount Owing means all amounts owing by the Customer to Yes Equipment Rental Pty Ltd under or in connection with the Agreement.

Approvals means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by the Agreement.

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 of the Competition Consumer Act 2010 (Cth).

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person.

Business Day means a day that is not a Saturday, Sunday or public holiday in the State or Territory in which the Equipment was hired from Yes Equipment Rental Pty Ltd.

Claims means any claim (whether actual or contingent), including a claim for loss, damages and expenses (including legal fees) arising out of tort, breach of statute, breach of warranty or guarantee or breach of the Agreement and including a notice, demand, debt, account, action, expense, damage, the loss, cost, lien, liability, proceeding, litigation (including reasonable legal costs), investigation or judgment of any nature, whether known or unknown.

Consumer Guarantee means a consumer guarantee as it applies to supplies made under the Agreement, as set out in under Part 3-2, Division 1 of the Australian Consumer Law.

Customer refers to the person, firm, organisation, partnership, corporation or other entity (including trust) hiring the Equipment from Yes Equipment Rental Pty Ltd as identified in the Quote, Invoice or any document supplied by Yes Equipment Rental Pty Ltd to the Customer.

Damage means:

- (a) any loss or damage in relation to the costs of new Equipment;
 - (b) any loss or damage to the Equipment including its parts, components and accessories, that is not Fair Wear and Tear;
 - (c) towing and salvage costs;
 - (d) assessing fees; and
 - (e) Loss of Use,
- and for the removal of doubt, any damage to the windscreen, headlights, lights or tyres that makes any of the Equipment unroadworthy is not Fair Wear and Tear.

Damage Cover means the damage cover set out in clause 9.

Damage Excess means the amount, excluding GST, the Customer must pay Yes Equipment Rental Pty Ltd in the event of an Accident that causes Damage or Third-Party Loss or the Equipment has been lost, stolen or damaged beyond repair. The Damage Excess is the greater of the amount equal to 10% of the Claim and \$1,000, or such other amount charged by Yes Equipment Rental Pty Ltd's insurer regarding any age or circumstances as notified by Yes Equipment Rental Pty Ltd to the Customer. The Customer acknowledges and agrees that young or inexperienced operators may be subject to higher damage excesses.

Damage Waiver Fee means 10% of the Hire Charges for each item of Equipment, excluding carriage fees.

Dangerous Goods means substances or articles which pose a risk to people, property or the environment due to their chemical or physical properties and includes asbestos, explosives, fireworks, ammunition, toxic, flammable or combustible liquids, solids and gases, refrigerant gases, dangerous when wet chemicals, oxidising substances, infectious substances, clinical or medical waste, radioactive substances, corrosives and dry ice.

Default Rate means 10% per annum.

Delivery Address means the address nominated by the Customer in writing as the location for the delivery and collection of the Equipment in the Quote, Invoice or any other document the Customer presents to Yes Equipment Rental Pty Ltd or otherwise agreed in writing by Yes Equipment Rental Pty Ltd.

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

Equipment means any item or kind of equipment, including but not limited to, tools, portable buildings, vehicles, trailers, accessories, attachments, parts, manuals, instructions, packing and transportation materials or substitute or replacement equipment including any other equipment hired to the Customer in accordance with the Agreement.

Event of Default means an event of default described in clause 13.1.

Fair Wear and Tear means minor damage, in the reasonable opinion of Yes Equipment Rental Pty Ltd, caused by ordinary day-to-day use of the Equipment in compliance with the Agreement.

Force Majeure Event means an act of God, fire, lightning, earthquake, explosions, flood, subsidence, insurrection or civil disorder or military operations or act of terrorism, expropriation, strikes, lock-outs or other industrial disputes of any kind not relating solely to the party affected, and any other event which is not within the reasonable control of the party affected but does not include any act or omission of the other party.

GST has the meaning given in GST Law.

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

Hire Charges means the amounts shown in the Invoice or any document produced by Yes Equipment Rental Pty Ltd to the Customer which are payable by the Customer to hire the

Equipment, including any other amounts owing under the Agreement, including but not limited to the following:

- (a) for any operational guidance, instructions or training of the Equipment or other services provided by Yes Equipment Rental Pty Ltd at the rates agreed with the Customer;
- (b) for any additional or special conditions to permit and gain access to the Delivery Address, including but not limited to, site inductions;
- (c) for out of hour's service and maintenance;
- (d) for any Loss or Damage incurred by Yes Equipment Rental Pty Ltd;
- (e) for any consumables and trade materials included but not limited to fuel charges;
- (f) Environmental Charge;
- (g) Taxes and Authority charges, levies or fines (including any environmental levy) in relation to the hire of the Equipment;
- (h) GST subject to a taxable invoice;
- (i) charges for delivery and collection and installation;
- (j) if applicable, Damage Waiver Fee and Damage Excess;
- (k) for cleaning and repair of Equipment if not returned in clean, good working condition;
- (l) costs for changing out Equipment and mobilization and demobilization costs;
- (m) for any variations that are necessary or requested by the Customer;
- (n) the cost passed on by Yes Equipment Rental Pty Ltd arising out of a change in law, code, regulations or Customer policy or guideline.

Hire Period means the period specified in the Quote or Invoice unless otherwise agreed with Yes Equipment Rental Pty Ltd or such longer period until off-hire validly occurs prior in accordance with clause 3. The Hire Period only ends once the Customer has off hired the machine with Yes Equipment Rental Pty Ltd by written notice and Yes Equipment Rental Pty Ltd has collected the Equipment from the Customer. It is the Customer's responsibility to off-hire the Equipment otherwise Hire Charges will accrue.

Insolvency Event means the happening of any one or more of the following events:

- (a) in relation to a natural person:
 - (i) that person being unable to pay his or her debts as and when they fall due;
 - (ii) an application and filing for bankruptcy being made in respect of that person; or
 - (iii) a receiver, or receiver and manager, trustee for creditors or trustee in bankruptcy or analogous person being appointed over that person's assets or undertakings or any of them; or
- (b) in relation to a body corporate:
 - (i) that body corporate being unable to pay its debts as and when they fall due;
 - (ii) a receiver, receiver and manager, administrator or liquidator being appointed over that body corporate's assets or undertakings or any of them;
 - (iii) an application for winding up or other process seeking orders which, if granted, would render that body corporate an externally-administered body corporate being filed and not being withdrawn within 20 Business Days;
 - (iv) that body corporate being or becoming the subject of an order, or a resolution being passed, for the winding up or dissolution of that body corporate; or
 - (v) that body corporate entering into, or resolving to enter into, a deed of company arrangement or an arrangement, composition or compromise with, or proceedings being commenced to sanction such a deed of company arrangement or arrangement, composition or compromise, other than for the purposes of a bona fide scheme of solvent reconstruction or amalgamation.

Invoice means an invoice issued by Yes Equipment Rental Pty Ltd to the Customer, including particulars of the Equipment to be

supplied to the Customer and the Hire Period and such other information as Yes Equipment Rental Pty Ltd may require.

Liability means any liability (whether actual, contingent or prospective), loss, damage, cost and expense howsoever arising.

Long Distance Location means any location in excess of 50km of the nearest Yes Equipment Rental Pty Ltd local branch.

Loss means any damage, loss, liability, expense or cost whether direct or indirect, consequential or incidental including but not limited to:

- (a) stamp duties, GST any other taxes or duties;
- (b) tolls, fines, penalties, levies or charges;
- (c) fuels and consumables;
- (d) debt collection costs and/or legal costs; and/or
- (e) any Damage Excess payable to Yes Equipment Rental Pty Ltd or such other amount charged by Yes Equipment Rental Pty Ltd's insurer regarding any age or circumstance as notified by Yes Equipment Rental Pty Ltd to the Customer.

Loss of Use means Yes Equipment Rental Pty Ltd's loss calculated on a daily or weekly basis at the daily rate or weekly rate shown in the Invoice or any other document produced by Yes Equipment Rental Pty Ltd to the Customer because the Equipment is being repaired or replaced, or if it is written off as a result of an Accident or if deemed by Yes Equipment Rental Pty Ltd to be beyond reasonable repair, or it has been stolen, lost or destroyed.

Major Breach means a breach of any of clauses 5 and 9.4, that causes Damage, theft of the Equipment or Third-Party Loss.

Off-Hire Date means the date the Customer advises Yes Equipment Rental Pty Ltd the Equipment is no longer required and Yes Equipment Rental Pty Ltd issues the Customer with an Off-Hire Number in accordance with clauses 3.6, 3.7 or 3.8.

Overhead Damage means:

- (a) Damage at or above the level of the top of the front windscreen of the Equipment; or
- (b) Third-Party Loss, caused by:
 - (c) contact between the part of the Equipment that is at or above the level of the top of the front windscreen with objects overhanging or obstructing its path;
 - (d) objects being placed on the roof of the Equipment; or
 - (e) the Customer or any person standing or sitting on the roof of the Equipment.

PPSA means the Personal Property Securities Act 2009 (Cth) and where applicable includes all regulations made pursuant to it.

PPSR means the Personal Properties Security Register.

Quote means the quote provided by Yes Equipment Rental Pty Ltd to the Customer setting out the proposed terms, pricing, and details for the hire of Equipment, which may include the Hire Period, Hire Charges, and any other applicable conditions or requirements.

Related Bodies Corporate has the meaning it has in section 50 of the Corporations Act 2001 (Cth).

Start Date means:

- (a) the date set out in the Invoice; or
- (b) if the Customer is collecting the Equipment, when it collects the Equipment from Yes Equipment Rental Pty Ltd; or
- (c) if Yes Equipment Rental Pty Ltd is delivering the Equipment, when the Equipment is delivered to the Delivery Address, whichever is earlier.

Security Interest has the meaning given in the PPSA.

Sites mean sites specified by the Customer in writing and approved by Yes Equipment Rental Pty Ltd from which it will use or store the Equipment.

Site Procedures means the Approvals, policies and procedures in respect of each Site.

Taxes means any tax, levy, charge, impost, rates, duty, fee, deduction, compulsory loan or withholding tax which is (or is able to be) assessed, levied, imposed or collected by or payable to any Authority and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed or made on or in respect of the above.

Terms and Conditions means these terms and conditions.

Third-Party Loss means loss or damage to third party property, including other motor vehicles and any claim for third party loss of income.

Underbody Damage means any damage to the Equipment caused by or resulting from contact between the underside of the Equipment and any part of the roadway or any object or obstruction, including kerbs, gutters, speed or road humps, barriers or wheel stops and does not arise as a result of an impact with another vehicle.

Warranties mean the warranties specified in clause 11 or otherwise under these Terms and Conditions.

Yes Equipment Rental means Yes Equipment Rental Pty Ltd (ACN 697 444 509) or any of its Related Bodies Corporate.

2 Hire of Equipment: Yes Equipment Rental

2.1 In consideration of the Customer agreeing to pay the Hire Charges, Yes Equipment Rental Pty Ltd agrees to hire the Equipment to the Customer for the Hire Period in accordance with the Agreement.

2.2 The Customer is to pay the Hire Charges for the Hire Period and the Customer is entitled to use the Equipment for the Hire Period. Any variation to the Hire Period must be agreed to by Yes Equipment Rental Pty Ltd in writing.

2.3 If the obligation to pay the Damage Waiver Fee for Damage Cover applies to the Customer, the Customer acknowledges and agrees that it has read, understood and agrees to be bound by the terms and conditions outlined in clause 9 of the Terms and Conditions, including the additional charge of 10% to be paid by the Customer.

2.4 The Invoice will specify the Hire Charges for the Equipment. Hire Charges will either be payable as a daily rate or a weekly rate. Equipment hired for at least six (6) days in a seven (7) day continuous period, will be charged at the weekly rate. The Hire Period includes public holidays irrespective of whether the Equipment is being used by the Customer or not.

2.5 The weekly Equipment rates are based upon usage from Monday – Sunday unless otherwise agreed with Yes Equipment Rental Pty Ltd. Rates outside of this usage period will be charged at a corresponding day rate unless otherwise agreed with Yes Equipment Rental Pty Ltd.

2.6 Yes Equipment Rental Pty Ltd hires the Equipment to the Customer at its absolute discretion and may refuse to hire to the Customer for reasons, including but not limited to, failing to provide adequate identification and perceived safety risks.

3 Collection, Delivery and Inspection of Equipment

3.1 Upon acceptance by the Customer of the Agreement and the Customer paying the Hire Charges (if required to be paid upfront), either:

- (a) the Customer will collect or cause to be collected from and return or cause to be returned the Equipment to Yes Equipment Rental Pty Ltd; or
- (b) only if offered by Yes Equipment Rental Pty Ltd, the Customer can request Yes Equipment Rental Pty Ltd to collect or cause to be collected from and deliver or cause to be delivered the Equipment.

3.2 All costs for the transport, collection, delivery and return of any Equipment between Yes Equipment Rental Pty Ltd and the

Customer must be paid for by the Customer, unless otherwise stated in the Invoice or separately agreed in writing.

3.3 Delivery times and the delivery date are estimates only. Yes Equipment Rental Pty Ltd is not responsible for the failure or delays in delivery, installation or collection of the Equipment. If delivery, installation or collection of the Equipment is suspended or delayed due to the Customer's action or inaction, the Customer must reimburse Yes Equipment Rental Pty Ltd for its Loss and expenses for any delay, including any applicable waiting fees.

3.4 Yes Equipment Rental Pty Ltd will use reasonable endeavours to notify the Customer of any delay in delivering, collecting or installing the Equipment.

3.5 The Customer must inspect the Equipment either at the time the Customer collects or at the time Yes Equipment Rental Pty Ltd delivers the Equipment (as applicable). The Customer must give written notice to Yes Equipment Rental Pty Ltd of any fault, defect or damage of the Equipment within 24 hours of collection or delivery of the Equipment (as applicable). If no written notice is given by the Customer pursuant to this clause, Yes Equipment Rental Pty Ltd is entitled to assume the Equipment was received in good working order and condition.

3.6 When the Customer no longer requires the Equipment (unless a pre-determined Hire Period is agreed) and it is available for collection by Yes Equipment Rental Pty Ltd, it must contact Yes Equipment Rental Pty Ltd during Yes Equipment Rental Pty Ltd's business hours and provide 1 Business Day's written notice of the Customer's intention to off-hire the Equipment. Yes Equipment Rental Pty Ltd will issue an off-hire number which must be recorded and kept by the Customer and the Off-Hire Date will be the following Business Day after receipt by Yes Equipment Rental Pty Ltd of the written notice provided by the Customer.

3.7 Provided the off-hire number is allocated, and access is granted to enable collection of the Equipment (if applicable), Hire Charges will cease from the Off-Hire Date. If the equipment is not returned on the Off-Hire Date or access is not granted to Yes Equipment Rental Pty Ltd to collect the Equipment, Hire Charges will continue to apply until the Equipment is returned or until Yes Equipment Rental Pty Ltd is able to collect the Equipment.

3.8 Where there is no specified Hire Period, Yes Equipment Rental Pty Ltd may require return of the Equipment within 5 Business Days of notice to the Customer at its discretion.

3.9 Yes Equipment Rental Pty Ltd will inspect the Equipment upon its return to Yes Equipment Rental Pty Ltd and notify the Customer in writing of any fault, defect or damage to the Equipment or any fuel charge.

4 Hire Charges and Payment

4.1 The Customer must pay Yes Equipment Rental Pty Ltd the Hire Charges set out in the Invoice for the entire Hire Period.

4.2 Unless Yes Equipment Rental Pty Ltd has approved the Customer to pay the Hire Charges for the Equipment on credit, the Customer must pay the Hire Charges in full on the Start Date and prior to Yes Equipment Rental Pty Ltd releasing the Equipment to the Customer.

4.3 If Yes Equipment Rental Pty Ltd has approved the Customer to pay the Hire Charges for the Equipment on credit, Yes Equipment Rental Pty Ltd may render Invoices to the Customer at the Start Date or at completion of the Hire Period or periodically throughout the Hire Period, at its sole discretion. Notwithstanding that Yes Equipment Rental Pty Ltd has approved the Customer to pay the Hire Charges for the Equipment on credit, Yes Equipment Rental Pty Ltd may, acting reasonably, still require the Customer to pay the Hire Charges in full on the Start Date and prior to Yes Equipment Rental Pty Ltd releasing the Equipment to the Customer.

4.4 All Hire Charges must be paid in full within 30 days of the end of the month in which the Invoice is dated.

4.5 All payments made under this Agreement must be paid to Yes Equipment Rental Pty Ltd's bank account nominated in the Invoice or via credit card. If payment is made by credit card, the Customer is responsible for any credit card fees charged by Yes Equipment Rental Pty Ltd.

4.6 The Customer hereby authorises Yes Equipment Rental Pty Ltd to capture and store their credit card details and/or pre-authorise an amount set out on the Start Date to cover potential future Hire Charges incurred by the Customer.

4.7 The Customer must pay all amounts due to Yes Equipment Rental Pty Ltd:
without set-off, deductions, counter-claims or conditions; and
in available cleared funds to the bank account of Yes Equipment Rental Pty Ltd nominated on the Invoice.

4.8 If the Customer owes any amount to Yes Equipment Rental Pty Ltd then Yes Equipment Rental Pty Ltd may, without prejudice to any of its other rights, upon reasonable notice to the Customer do one or more of the following:

- (a) collect the Equipment; or
- (b) set-off that amount against any amount owing by Yes Equipment Rental Pty Ltd to the Customer.

4.9 If an amount due under these Terms and Conditions is paid by the Customer after the due date the Customer must pay Yes Equipment Rental Pty Ltd, in addition to the Amount Owing:

- (a) interest at the Default Rate calculated based on a 365-day year from the date of the default until the date the amount (together with all accrued interest) is paid in full; and
- (b) all costs and expenses, including debt collection costs and legal costs, reasonably incurred by Yes Equipment Rental Pty Ltd in collecting the Amount Owing.

4.10 Without limiting the ability of Yes Equipment Rental Pty Ltd to recover all amounts owing to it, the Customer authorises Yes Equipment Rental Pty Ltd to charge any amounts owing by the Customer to any credit account or credit card held with Yes Equipment Rental Pty Ltd pursuant to a Credit Application.

4.11 Yes Equipment Rental Pty Ltd reserves the right to vary the Hire Charges in accordance with any change to its standard pricing for the Equipment by providing seven (7) days written notice to the Customer. Any variation to the Hire Charges will not apply to any current hires unless otherwise agreed by the Customer.

4.12 Yes Equipment Rental Pty Ltd reserves its rights under security of payment legislation.

4.13 The Customer acknowledges and agrees that there is no sale or other disposal of title to fuel under this Agreement and that Yes Equipment Rental Pty Ltd shall be exclusively entitled to claim any fuel tax credits.

5 Customer's Hire Obligations

5.1 The Customer must not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time during the Hire Period without the prior written approval of Yes Equipment Rental Pty Ltd.

5.2 The Customer remains responsible and liable to Yes Equipment Rental Pty Ltd irrespective of any sub-hire agreement or arrangement entered into by the Customer.

5.3 The Customer is liable to Yes Equipment Rental Pty Ltd for the acts and omissions of any sub-hirer and the employees, agents, contractors and officers of the sub-hirer as if they were acts or omissions of the Customer.

5.4 The Customer agrees that before accepting the Equipment it has satisfied itself as to the suitability, condition and fitness for purpose of the Equipment without relying upon the skills or

judgment of Yes Equipment Rental Pty Ltd or any person purporting to act on its behalf.

5.5 The Customer warrants that at all times it will:

- (a) operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions whether supplied by Yes Equipment Rental Pty Ltd or posted on the Equipment;
- (b) indemnify Yes Equipment Rental Pty Ltd for all injury and/or damage caused or contributed to by the Customer to persons and property in relation to the Equipment and its operation and have adequate insurance to cover all liabilities incurred as a result of the use of the Equipment;
- (c) ensure persons operating or erecting the Equipment are suitably instructed, trained and qualified in its safe and proper use and all persons operating the Equipment wear suitable clothing and protective equipment as required or recommended by relevant laws, applicable industry standard and the manufacturer of the Equipment or Yes Equipment Rental Pty Ltd;
- (d) comply with all laws and Site Procedures and hold all licences, permits and Approvals necessary to hire and use the Equipment and that no restriction of any kind prevents the Customer from entering into an agreement or arrangement for the hire of the Equipment;
- (e) display and maintain all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Equipment;
- (f) ensure that no persons operating the Equipment are under the influence of drugs or alcohol;
- (g) conduct a job safety analysis prior to using the Equipment at the Delivery Address or Sites and comply with all occupational health and safety laws relation to the Equipment and its operation;
- (h) insure the Equipment during the Hire Period (if not electing the Damage Waiver Fee);
- (i) comply with all Environmental Laws applying from time to time and immediately rectify any breach of an Environmental Law caused by the use, possession or storage of the Equipment;
- (j) ensure that any person collecting or taking delivery of the Equipment on behalf of the Customer is authorised by the Customer to do so and the Customer will not allege that any such person is not authorised to do so;
- (k) clean, fuel, lubricate and maintain the Equipment in good condition and in accordance with the instructions of the manufacturer and Yes Equipment Rental Pty Ltd at the Customer's cost;
- (l) not in any way alter, modify, tamper with, damage or repair the Equipment without the prior written consent of Yes Equipment Rental Pty Ltd;
- (m) return the Equipment to Yes Equipment Rental Pty Ltd in the same good and clean condition it was in when the Customer received it, Fair Wear and Tear excepted. In the event that the Equipment is not returned in clean and good working order, Yes Equipment Rental Pty Ltd may charge, and the Customer must pay for all reasonable cleaning and repair costs incurred by Yes Equipment Rental Pty Ltd;
- (n) ensure the Equipment is stored safely and securely and is protected from theft, vandalism, seizure and damage or subject to adverse climatic or environmental conditions which may damage the Equipment (i.e. corrosion, sea-salt and flooding);
- (o) ensure the Equipment is not exposed to any hazardous substance including asbestos without prior written consent and advise Yes Equipment Rental Pty Ltd of any risks of hazardous substance contamination to the Equipment as soon it becomes apparent (or should have become apparent);
- (p) provide to Yes Equipment Rental Pty Ltd its asbestos register upon request and decontaminate the Equipment and provide to Yes Equipment Rental Pty Ltd details of the process applied. If the Equipment has not been properly decontaminated (or not capable of being decontaminated) the Customer may be charged for new

Equipment;

(q) ensure the Equipment is not altered, defaced, removed or any notices, safety information, identifying mark, plate or number on the Equipment is removed;

(r) ensure the safe loading, securing and transporting of all Equipment in accordance with all laws, industry guidelines and Manufacturer's guidelines;

(s) ensure that any transporting contractor will observe any safety directions advised by Yes Equipment Rental Pty Ltd and/or a manufacturer of the Equipment for its loading, unloading and safe handling;

(s) supervise the loading and unloading of the Equipment at the Delivery Address or Sites;

(t) not remove the Equipment from the Delivery Address without the prior written consent of Yes Equipment Rental Pty Ltd and notify Yes Equipment Rental Pty Ltd of the location of the Equipment at all times. If consent is provided, the Equipment must be returned to the original Yes Equipment Rental Pty Ltd Premises from where the Equipment was hired;

(u) agree to pay any costs associated with an attendance by Yes Equipment Rental Pty Ltd if the Equipment breaks down at a Long-Distance Location;

(v) must not use the Equipment off-shore, underwater, in tidal areas, underground, in exploration of oil and natural gas, on barges or watercraft without the prior written consent of Yes Equipment Rental Pty Ltd;

(w) arrange at its cost the re-testing and re-tagging of any electrical and fire extinguisher and/or suppression units and equipment comprising the Equipment by the manufacturer's agent in accordance with the manufacturer's instructions, relevant law, applicable Australian Standards and regulatory authority requirements. Yes Equipment Rental Pty Ltd is able to arrange, at the Customer's cost, for such re-testing and re-tagging of the electrical equipment comprising the Equipment. Any damage caused to the Equipment resulting from incorrect testing will be at the Customer's cost;

(x) ensure the return of the Equipment to Yes Equipment Rental Pty Ltd with a full tank of fuel, failing which the Customer acknowledges that additional charges will apply to the Hire Charges for fuel;

(y) be responsible for:

(i) the cost of repairing or replacing flat or damaged tyres and damage to tyres and tracks which is caused by use of the tyres and tracks in conditions which Yes Equipment Rental Pty Ltd reasonably considers, at its sole discretion, are adverse or abnormal. At all times the Customer must adhere to the manufacturer's recommended tyre pressure and track tension;

(ii) the cost of all bucket and blade wear or damage caused by conditions which Yes Equipment Rental Pty Ltd reasonably considers are abnormal or adverse use;

(iii) all Fair Wear and Tear to cutting edges, bucket teeth, hardware, ripper teeth and all other ground engaging tools hired. All ground engaging tools hired by the Customer are to be returned to Yes Equipment Rental Pty Ltd at the end of the Hire Period in the same condition in which they were supplied. Usage of ground engaging tools will be measured by comparing the percentage of use at the commencement of the Hire Period with the percentage of use at the end of the Hire Period;

(aa) ensure that it does not exceed the recommended or legal load and capacity limits of the Equipment or exceed the recommended or legal speed limit for the Equipment;

(bb) not sell, charge, encumber, grant any right, interest or lien (of any nature) in or over the Equipment; and

(cc) not store any illegal, prohibited and/or Dangerous Goods in or on the Equipment.

6.1 Risk in the Equipment passes to the Customer upon dispatch of the Equipment from Yes Equipment Rental Pty Ltd's premises by Yes Equipment Rental Pty Ltd or its agent or representatives or by the Customer's agent or representative. This clause 6.1 does not apply if this is a consumer contract or a small business contract for the purposes of section 23 of the Australian Consumer Law, in which case risk and responsibility passes on delivery to the Customer (if applicable).

6.2 Until Yes Equipment Rental Pty Ltd has received payment in full for all Amounts Owed by the Customer to Yes Equipment Rental Pty Ltd under this Agreement and Yes Equipment Rental Pty Ltd receives possession of the Equipment:

(a) title to the Equipment shall remain with Yes Equipment Rental Pty Ltd;

(b) until payment in full is received under this Agreement, the Customer holds the Equipment as bailee for the Company; and
(c) the Equipment shall, so far as practicable, be kept separate from other goods of the Customer, so as to be readily identifiable as the property of Yes Equipment Rental Pty Ltd.

6.3 Upon default of the Customer of the due performance or observance of any other obligation under these Terms and Conditions, including an Insolvency Event, Yes Equipment Rental Pty Ltd may by reasonable notice in writing to the Customer enter upon the Delivery Address or any Sites to remove any of the Equipment to which Yes Equipment Rental Pty Ltd has retained title and for this purpose the Customer shall afford Yes Equipment Rental Pty Ltd all reasonable assistance to locate and take possession of the Equipment.

6.4 In the event that Yes Equipment Rental Pty Ltd repossesses the Equipment, the Customer authorises Yes Equipment Rental Pty Ltd to take possession of any property in, on or attached to the Equipment which is not the property of Yes Equipment Rental Pty Ltd (but will return such Customer property upon reasonable request).

6.5 The Customer acknowledges that by virtue of clause 6.2, Yes Equipment Rental Pty Ltd has or will have a Security Interest in the Equipment, the proceeds from the sale of the Equipment, the proceeds of any insurance policy for the purposes of the PPSA.

6.6 The Customer also grants Yes Equipment Rental Pty Ltd a security interest in all of the Customer's present and after acquired property and any proceeds until the Equipment is returned and Yes Equipment Rental Pty Ltd is paid in full under this Agreement.

6.7 The Customer acknowledges that Yes Equipment Rental Pty Ltd may do anything reasonably necessary, including but not limited to registering its Security Interest on the personal property securities register established under the PPSA in order to perfect this Security Interest and comply with the requirements of the PPSA. The Customer agrees to do all things reasonably necessary to assist Yes Equipment Rental Pty Ltd to achieve perfection of this Security Interest under the PPSA.

6.8 The Customer and Yes Equipment Rental Pty Ltd agree that, pursuant to section 115 of the PPSA, the following provisions in the PPSA do not apply in relation to this Security Interest to the extent, if any, mentioned (words in this provision have the same meaning as in the PPSA):

(a) section 117 (obligations secured by interests in personal property and land);

(b) section 118 (enforcing Security Interest in accordance with land law decisions), to the extent that it allows a secured party to give a notice to the grantor;

(c) section 125 (obligation to dispose of or retain collateral);

(d) section 129 (disposal by purchase);

(e) section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor and other secured parties before disposal;

(f) paragraph 132(3)(d) (contents of statement of account after

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disposal);
(g) subsection 132(4) (statement of account if no disposal);
(h) section 142 (redemption of collateral); and
(i) section 143 (reinstatement of security agreement).

6.9 The Customer waives its right to receive a verification statement under section 157 of the PPSA.

6.10 Yes Equipment Rental Pty Ltd retains any rights of enforcement arising on the PPSA, under this Agreement, or otherwise, including but not limited to a right to seize the collateral under section 123 of the PPSA.

7 Equipment Breakdown

7.1 In the event that the Equipment breaks down, is damaged (whether in an Accident or otherwise) or becomes unsafe to use during the Hire Period the Customer must:

- (a) immediately stop using the Equipment and notify Yes Equipment Rental Pty Ltd in writing;
- (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; and
- (d) not repair or attempt to repair the Equipment without the prior written consent of Yes Equipment Rental Pty Ltd.

7.2 In the event that the Equipment breaks down, is damaged or becomes unsafe to use (through no act or omission of the Customer including misuse, recklessness and negligence), Yes Equipment Rental Pty Ltd will:

- (a) repair the Equipment or provide suitable substitute Equipment when reasonably possible after being notified by the Customer provided any employees, servants, agents or subcontractors of Yes Equipment Rental Pty Ltd are allowed access to the Delivery Address or Sites during business hours;
- (b) not impose Hire Charges for that portion of the Hire Period the Equipment could not be used, nor charge the costs associated with any repair or replacement of the Equipment; and
- (c) not be liable for any expenditure, damages, losses, costs or inconvenience incurred by the Customer arising from a breakdown of the Equipment, however caused, including as a result of Yes Equipment Rental Pty Ltd requiring time to assess, repair and/or replace the Equipment.

8 Lost, Stolen or Damaged Equipment

8.1 The Customer is responsible for the Equipment and any accessory and tools during the Hire Period. If the Equipment is:

- (a) destroyed or damaged during the Hire Period beyond Fair Wear and Tear;

- (b) becomes unsafe to use due to any act or omission of the Customer; or
 - (c) is lost or stolen due to the gross or reckless negligence of the Customer,
- the Customer must immediately notify Yes Equipment Rental Pty Ltd in writing and the Customer is liable to Yes Equipment Rental Pty Ltd for and must indemnify Yes Equipment Rental Pty Ltd for:
- (a) the full cost of either:
 - (i) repairing the Equipment; or
 - (ii) replacing the Equipment with new equipment, as determined by Yes Equipment Rental Pty Ltd in its sole and absolute discretion; and
 - (b) without limitation, all cleaning and repair costs reasonably incurred by Yes Equipment Rental Pty Ltd;
 - (c) any Damage Excess;
 - (d) any other reasonable costs arising from or in connection with the loss, theft or damage to the Equipment including but not limited to Hire Charges, Claim, Damage and/or Loss until the replacement value is paid to Yes Equipment Rental Pty Ltd; and
 - (e) any lost revenue, including Loss of Use, arising from or in connection with the loss, theft or damage to the Equipment until the replacement value is paid to Yes Equipment Rental Pty Ltd.

8.2 If the Customer has paid the Damage Waiver Fee, the Customer's liability may be limited as provided in clause 9 below.

9 Damage Cover and Damage Waiver Fee

9.1 Subject to clauses 2.3 and 10, the Customer must pay a damage waiver fee (Damage Waiver Fee) to Yes Equipment Rental Pty Ltd which shall, subject to these Terms and Conditions, entitle the Customer to a limitation on liability for loss, theft or damage of the Equipment (Damage Cover) or obtain insurance covering the full replacement value of the Equipment and Loss, Damage, theft, recovery costs, transport, economic loss and cover for road risk if any Equipment is subject to any registration requirement and third party liability. The Damage Waiver Fee is separate and in addition to the Hire Charge.

9.2 Subject to clause 9.4, where the Customer pays the Damage Waiver Fee, Yes Equipment Rental Pty Ltd agrees to limit the Customer's liability for loss, theft or damage to the Equipment during the Hire Period if:

- (a) the Customer submits to Yes Equipment Rental Pty Ltd within five (5) Business Days:
 - (i) a written Police report of the loss or damage to the Equipment (unless Yes Equipment Rental Pty Ltd provides written confirmation that such report is not required); and
 - (ii) any other written or photographic evidence requested by Yes Equipment Rental Pty Ltd (which may include sworn statements and statutory declarations); and
- (b) the Customer pays to Yes Equipment Rental Pty Ltd the Damage Excess.

9.3 If applicable, the Damage Waiver Fee will be automatically added to the Hire Charges and will appear on the Invoice issued by Yes Equipment Rental Pty Ltd to the Customer.

9.4 There is no Damage Cover, and the Customer and any Customer's personnel are liable for:

- (a) Loss or Damage or Third-Party Loss arising:
 - (i) from a Major Breach of these Terms and Conditions;
 - (ii) from the use of the Equipment by any driver who is not the Customer's personnel or who is less than 18 years of age;
 - (iii) before the Damage Waiver Fee is paid to Yes Equipment Rental Pty Ltd;
 - (iv) if caused, or contributed by, any intentional, negligent or fraudulent act or omission of the Customer;
- (b) Overhead Damage;
- (c) Underbody Damage;
- (d) Damage caused by immersion of the Equipment in water;
- (e) breach of any laws or regulations relating to the use of the Equipment;
- (f) misuse, abuse, wilful or malicious use, negligent, careless or reckless use, overloading, exceeding rated capacity, or improper servicing of Equipment or any of its components;
- (g) the overloading or artificial electrical current to motors or other electrical appliances or devices, including use of under-rated or excessive length of extension leads on electrical powered tools and machines;
- (h) Loss or Damage by whatever cause to tools and/or accessories supplied with the Equipment including but not limited to hoses, drills, bits, leads, tyres and tubes (including punctures, blowouts, bursts, bruises or cuts);
- (i) lack of lubrication, incorrect lubricant, wrong or incorrect fuel, incorrect additive, or non-compliance with maintenance requirements that could reasonably be expected of the Customer under this Agreement;
- (j) an exposure to any corrosive or caustic substance, or atmospheric conditions which may cause loss or damage, such as cyanide, salt water, acid, etc;
- (k) the transport of the Equipment, except where transported by Yes Equipment Rental Pty Ltd;
- (l) disregard of instructions given to the Customer by Yes

Equipment Rental Pty Ltd or the manufacturer in respect of the proper use of the Equipment or a breach of this Agreement;

- (m) failure to reasonably secure the Equipment against theft which in circumstances where onsite security is available includes, but is not limited to, ensuring the Equipment is kept in a secure compound or premises, locked yard, locked building or shed and in circumstances where onsite security is not used by the Customer to secure the Equipment whilst they are left unattended;
- (n) vandalism, including graffiti on the Equipment;
- (o) wrongful conversion of the Equipment or any components of the Equipment;
- (p) glass breakage or erosion or earth movement;
- (q) Damage to batteries due to lack of maintenance, or incorrect maintenance;
- (r) Damage to Equipment paintwork or decals;
- (s) Loss or Damage caused by misappropriation or wrongful conversion;
- (t) Loss or Damage if the Equipment is used off-shore, over water, underwater, in tidal areas, or underground, or is located, used, loaded, unloaded, transported on or over water, wharves, bridges, rigs, barges or marine vessels of any kind; and
- (u) Loss or Damage if Yes Equipment Rental Pty Ltd reasonably believes that the Customer failed to take reasonable precautions to protect and secure the Equipment or the loss or damage arose from the negligence of the customer or its agents.

There is also no Damage Cover for:

- (a) the full cost of replacing or repairing any accessories supplied by Yes Equipment Rental Pty Ltd including, but not limited to lost keys, keyless start and remote-control devices; or
- (b) personal items that are left in or stolen from the Equipment or for loss or damage to property belonging to or in the custody of:
 - (i) the Customer;
 - (ii) any relative, friend or associate of the Customer ordinarily residing with the Customer or with whom the Customer ordinarily resides;
 - (iii) any relative, friend or associate of the Customer's personnel; or
 - (iv) the Customer's employees.

9.5 For the avoidance of doubt, the Customer is not required to pay the Damage Waiver Fee if a Certificate of Currency is provided to Yes Equipment Rental Pty Ltd in accordance with clause 10.

10 Insurance

10.1 Without limiting clause 9, upon risk in the Equipment passing to the Customer and until all monies owed under this Agreement by the Customer are paid to Yes Equipment Rental Pty Ltd, the Customer must take out and maintain a policy of insurance that:

- (a) includes cover for Plant & Equipment Insurance with a Hired in Plant extension naming Yes Equipment Rental Pty Ltd (ACN 697 444 509) as insured for a limit of liability of not less than replacement value for any single claim for all Loss and/or Damage, including theft or mysterious disappearance to the Equipment, during the Hire Period for not less than the full new replacement cost of the Equipment (Equipment Insurance) including any costs to recover/collect the Equipment, any on-going Hire Charges incurred by the Customer whilst the Equipment is being repaired or replaced, any Loss of Use costs, cover for road risk up to \$20million in any one occurrence if any Equipment is subject to registration requirements and third party liability. If new Equipment cannot be sourced, at Yes Equipment Rental Pty Ltd's sole discretion, Yes Equipment Rental Pty Ltd may replace the Equipment with a suitable substitute.; and
- (b) covers public and products liability insurance up to \$20million in any one occurrence, but limited to \$20million in the aggregate for a claim for product liability, as well as insurance.

10.2 Evidence in the form of a Certificate of Currency for the policy and any renewal must be given to Yes Equipment Rental Pty Ltd at its request and in any event no later than seven (7) days

after the expiry date of the previous Certificate of Currency (where applicable). Such insurance cover must include Yes Equipment Rental Pty Ltd as an insured party and must contain an indemnity in favour of Yes Equipment Rental Pty Ltd for all Loss, Damage, theft and/or Loss of Use regardless of any act or neglect of the Customer or any breach or violation by the Customer of any warranties, declarations or conditions contained in the policy. The Customer is responsible for any excess and any other costs associated with any insurance taken out by the Customer under this clause and the Customer is responsible for any shortfall in repair or replacement of the Equipment following payment of any amount received under insurance, including any loss Yes Equipment Rental Pty Ltd suffers as a result of not being able to hire the Equipment.

10.3 Notwithstanding clause 9 and if required by Yes Equipment Rental Pty Ltd, the Customer must also take out and maintain, for the duration of the Hire Period, insurance for Equipment which will be used off-shore, over water or in underground mines. Such insurance cover must:

- (a) include Yes Equipment Rental Pty Ltd as an insured party so that Yes Equipment Rental Pty Ltd is deemed a separate insured under the policy and specifically noting that the risks in this clause 10.3 are covered. Any non-disclosure or misrepresentation by one insured must not prejudice the right of the other insured to claim under any insurance policy.
- (b) cover Yes Equipment Rental Pty Ltd's liability as a principal in connection with the performance of the Agreement; and
- (c) contain provisions where all rights of subrogation or action against any of the persons comprising the insured are waived.

10.4 The Customer will not be required to pay the Damage Waiver Fee to Yes Equipment Rental Pty Ltd if, to the reasonable satisfaction of Yes Equipment Rental Pty Ltd, the Customer obtains, and provides evidence in the form of a Certificate of Currency, insurance that complies with this clause 10.

11 Warranties and Liability

11.1 Where the Australian Consumer Law applies, the Customer has the benefit of guarantees in relation to the hire of the Equipment which cannot be excluded.

11.2 Where the Australian Consumer Law applies, and the goods are not of a kind ordinarily acquired for personal domestic or household use or consumption, Yes Equipment Rental Pty Ltd's liability in respect of any guarantee is limited to the replacement or repair of the goods, or the cost of having the goods repaired or replaced.

11.3 Subject to this clause 11, the Customer indemnifies and holds Yes Equipment Rental Pty Ltd harmless to the full extent permitted by law for any Claim, Loss or Damage whatsoever arising in connection with the hire of the Equipment to the Customer or these Terms and Conditions, including any third party Claims, in respect of the Customer's hire or use of the Equipment or the Customer's breach of these Terms and Conditions. The Customer's liability under this indemnity is reduced to the extent that the Claim, Loss or Damage arises because of Yes Equipment Rental Pty Ltd's negligence or breach of these Terms and Conditions.

11.4 To the extent permitted by law, Yes Equipment Rental Pty Ltd's liability under this agreement is limited to the Hire Charge and Yes Equipment Rental Pty Ltd is not liable for any indirect or consequential loss (including loss of profit or opportunity).

12 Release and Indemnity

12.1 The Customer agrees to use and possess the Equipment at its own risk. The Customer agrees that Yes Equipment Rental Pty Ltd bears no responsibility or liability for any Loss to any of the Customer's property (including the Equipment).

12.2 To the fullest extent permitted by law, the Customer releases and discharges Yes Equipment Rental Pty Ltd and its agents and employees from:

(a) all Claims and demands on Yes Equipment Rental Pty Ltd; and
(b) any Loss or Damage whatsoever and whenever caused to the Customer or its agents or employees or any third party whether by way of death of, or injury to, any person of any nature or kind, accident or damage to property, delay, financial Loss or otherwise, arising directly or indirectly from or incidental to a defect in any Equipment or any accident to or involving any Equipment or its use, repair, maintenance or storage (whether occasioned by the Company's negligence or otherwise) or which may otherwise be suffered or sustained in, upon or near any Equipment except where the Claim, Loss or Damage arises because of Yes Equipment Rental Pty Ltd's negligence or breach of these Terms and Conditions.

12.3 The Customer indemnifies and holds Yes Equipment Rental Pty Ltd harmless to the full extent permitted by law for any Loss whatsoever arising in connection with the supply of and use of the Equipment by the Customer, including any breach of this Agreement, except to the extent that the Loss arises because of Yes Equipment Rental Pty Ltd's negligence or breach of these Terms and Conditions.

13 Default Termination

13.1 Each of the following events is an Event of Default, namely:
(a) the Customer fails to perform or observe any of the covenants or provisions of this Agreement and (if capable of remedy) such default continues for more than five (5) Business Days after notice from Yes Equipment Rental Pty Ltd requiring the Customer remedy the breach;

(b) the Customer fails to return any Equipment to Yes Equipment Rental Pty Ltd;

(c) the Customer sells or closes its business or relocates the Equipment without prior written consent of Yes Equipment Rental Pty Ltd; or

(d) the Customer suffers an Insolvency Event or if it is a partnership, is dissolved or if it is a natural person, dies.

13.2 If an Event of Default occurs Yes Equipment Rental Pty Ltd may at its option:

(a) by proceeding by appropriate court action, either at law or in equity, enforce performance of the applicable terms and provisions of these Terms and Conditions or recover damages for the breach concerned; and / or

(b) terminate these Terms and Conditions; and/ or

(c) repossess the Equipment (and is authorised to enter any premises where the Equipment is located to do so).

13.3 Without prejudice to Yes Equipment Rental Pty Ltd's right to pursue the Customer for Loss or Damage arising from the Customer's breach of this Agreement, upon the expiry of this Agreement or early termination under this clause, the Customer must immediately pay Yes Equipment Rental Pty Ltd all Amounts Owed under this Agreement.

13.4 On termination of this Agreement, the Customer must immediately return any Equipment to Yes Equipment Rental Pty Ltd and pay all Hire Charges, Claim, Damage and/or Loss.

13.5 If the Customer does not return the Equipment within fourteen (14) days of termination of the Agreement, Yes Equipment Rental Pty Ltd may take all steps necessary (including legal action) to recover the Equipment, including entering the Delivery Address and/or Sites without prior notice to the Customer. The Customer grants in favour of Yes Equipment Rental Pty Ltd an irrevocable licence to enter upon its premises, without prior notice, to repossess the Equipment for the purposes of this clause.

14 Force Majeure

14.1 Yes Equipment Rental Pty Ltd will not be liable for any Loss incurred as a result of delay or failure to observe any of these Terms and Conditions due to an event of Force Majeure. Yes Equipment Rental Pty Ltd's obligations under these Terms and Conditions will be suspended and will resume as soon as the cause of the Force Majeure has ceased to have effect.

15 Privacy

15.1 Yes Equipment Rental Pty Ltd may provide details of this Agreement to a credit reporting agency for the purpose of:

(a) obtaining a credit report; and

(b) allowing the credit agency to maintain a file, in respect of the Customer.

15.2 Yes Equipment Rental Pty Ltd will endeavour to take reasonable commercial steps to protect all personal information provided by the Customer in accordance with the Australian Privacy Principles of the Privacy Act 1998 (Cth).

16 General

16.1 These Terms and Conditions, the Quote, Invoice and any other documents produced by Yes Equipment Rental Pty Ltd to the Customer constitutes the entire understanding between the parties and supersedes all prior agreements, understandings and communications, whether written or oral. No additional terms and conditions proposed by the Customer (including in an order) apply to the hire of the Equipment unless agreed in writing by Yes Equipment Rental Pty Ltd.

16.2 These Terms and Conditions operate as a 'standing agreement' and each Invoice shall constitute a separate contract for supply of the Equipment between the parties. Yes Equipment Rental Pty Ltd may enforce its rights under these Terms and Conditions or Invoice, multiple Invoices or the Terms and Conditions as a whole.

16.3 If any part of this Agreement becomes void or unenforceable for any reason, then that part will be severed in respect only 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.

16.4 The Hire Agreement is governed by the laws of Queensland and each party submits to the non-exclusive jurisdiction of that jurisdiction.

16.5 All waivers must be in writing. A single or partial exercise or waiver by a party of a right relating to these Terms and Conditions does not prevent any other exercise of that right or the exercise of any other right.

16.6 The Customer warrants and agrees that the person signing the Agreement for and on behalf of the Customer has the authority of the Customer to enter into and bind the Customer to the Agreement. The Customer indemnifies Yes Equipment Rental Pty Ltd against all Claims arising out of a breach of the warranty contained in this clause.

16.7 This edition of the Terms and Conditions replaces and supersedes all previously issued terms and conditions of hire by Yes Equipment Rental Pty Ltd.

16.8 Clauses 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16 and 17 and any Warranties and indemnities survive termination or expiration of these Terms and Conditions.

16.9 Conditions set out in the Quote and/or Invoice prevail to the extent of any inconsistency with these Terms and Conditions.

IMPORTANT NOTE TO CUSTOMERS

Unless expressly provided otherwise in this Agreement, the Customer will be responsible for all damage (including paint damage), loss or theft of the Equipment.