



QM.12 IPB HIRE AGREEMENT – TERMS OF TRADE

1. ACCEPTANCE OF THIS HIRE AGREEMENT

- 1.1. IPB offers to hire the Equipment to the Customer on the terms of this Agreement and will:
- (a) provide the Equipment to the Customer in good working order; and
 - (b) allow the Customer to exclusively use the Equipment during the Hire Period.
- 1.2. The Customer and IPB each acknowledge and agree that this Hire Agreement binds each of the parties to the rights and obligations contained herein upon the Customer accepting the terms by:
- (a) signing a copy of this Hire Agreement and delivering it to IPB; or
 - (b) otherwise agreeing to this Hire Agreement in writing (including but not limited to letters and e-mails); or
 - (c) accepting any Equipment from IPB where IPB has given the Customer a copy of this Hire Agreement or offered to give the Customer a copy of this Hire Agreement prior to the delivery or collection of any Equipment and the Customer has declined.
- 1.3. Where more than one Customer has entered into this Hire Agreement, the Customers shall be jointly and severally liable for all payments pursuant to this Hire Agreement.
- 1.4. Upon acceptance of this Hire Agreement by the Customer, the terms of this Agreement are legally binding and can only be amended or varied by agreement in writing between the parties.

2. INTERPRETATION

- 2.1. In this Hire Agreement, unless the context otherwise requires:

'Business Day' means any day that is not a Saturday, Sunday or a public holiday in New South Wales;

'Credit' means any credit approved by IPB for the Customer pursuant to the Credit Application and clause 7 of this Agreement.

'Credit Account' means a 30-day credit account with IPB pursuant to a Credit Application approved by IPB in its absolute discretion.

'Credit Application' means an application to open a Credit Account with IPB in the form set out in Schedule 2 of this Hire Agreement which is completed and submitted to IPB by the Customer.

'Customer' refers to the person, firm, organisation, partnership, corporation, trust or other entity hiring Equipment from IPB, as named in the Credit Application or the Schedule of Essential Particulars (where the Customer does not hold a Credit Account). The reference to 'the Customer' may include any employees, agents and contractors of the Customer where context permits.

'Customer's Site' means the premises or work site of the Customer as specified in the Schedule of Essential Particulars or as otherwise provided in writing by the Customer to IPB.

'Damage Waiver' has the meaning set out in clause 14.

'Damage Waiver Amount' means an amount equal to ten percent (10%) of the monthly invoiced Hire Charges for a Customer in accordance with the terms of this Hire Agreement;

'Distant Site' is any site outside of the Sydney, Central Coast and Newcastle metropolitan areas.

'Environmental Laws' means any statute, regulations, orders or policies of a regulatory body or government regulating or otherwise relating to the environment including without limitation the use or protection of the environment.

'Equipment' means the equipment set out in the Schedule of Essential Particulars.

'Estimated End Hire Date' means the date the Customer advised IPB at the commencement of the hire that the Customer would no longer require the hire of Equipment. This date is set out in the Schedule of Essential Particulars. For the avoidance of doubt, this date is not the same as the End Hire Date.

'Hire Charges' means the charges and fees under clauses 4 and 5 (as applicable).

'Hire Period' means for Equipment specified in a Schedule of Essential Particulars the period described in clause 3.

'IPB' means Independent Portable Buildings Pty Limited (ABN 28 064 198 072)

'Loss' includes but is not limited to:

- (a) costs (including party/party legal costs and IPB's legal costs);
- (b) expenses;
- (c) lost profits;



- (d) awards and damages against the party alleging the loss;
- (e) personal injury; and
- (f) property damage.

'End Hire Date' has the meaning set out in clause 4.8.

'PPSA' means the *PPS Act* and any other legislation and regulations in respect of it and the following words in clause 9.3, 10 and 27 have the respective meanings given to them in the *PPS Act: collateral, financing change statement, financing statement, interested person, purchase money security interest, register, registration, security agreement, security interest and verification statement.*

'PPS Act' means the *Personal Property Securities Act 2009* (Cth) (as amended).

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

'Schedule of Essential Particulars' means the document as set out in Schedule 1 of this Hire Agreement provided by IPB to the Customer.

'WHS Legislation' means, as amended, consolidated, replaced or re-enacted from time to time:

- (a) *Work Health and Safety Act 2011 (NSW)*;
- (b) *Work Health and Safety Regulation 2011 (NSW)*;
- (c) Model Codes of Practice (by Safe Work Australia); and
- (d) Any other relevant legislation, principles, industry codes, standards and policies relating to work, health and safety for the purposes of this Hire Agreement.

2.2. In this Hire Agreement, unless the context otherwise requires:

- (a) a reference to writing includes email and other communication established through IPB's established correspondence channels;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a clause is a reference to a clause of this Hire Agreement;
- (d) a reference to a party to this Hire Agreement or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings are for ease of reference only and do not affect the meaning or interpretation of this Hire Agreement;
- (g) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
 - (i) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
 - (ii) in all other cases, must be done on the next Business Day.

3. THE HIRE PERIOD

3.1. The Hire Period commences on the earlier of:

- (a) the Customer taking possession of the Equipment; or
- (b) if the Customer requests delivery of the Equipment, the time IPB delivers the Equipment to the Customer's Site.

3.2. The Hire Period is for an indefinite term and ends when the Equipment is back in IPB's custody and possession and **NOT** necessarily on the Estimated End Hire Date (see clause 4.8).

3.3. The Hire Period includes weekends and public holidays.

3.4. The Hire Period can only be changed if the Customer requests a variation and IPB agrees to that variation in writing.

4. HIRE CHARGES

4.1. Subject to clauses 4.2 and 4.3, the Customer will pay IPB for the hire of the Equipment at the hire charge rates and fees set out in the Schedule of Essential Particulars.

4.2. IPB acting reasonably may vary the existing hire charge rates and fees set out in the Schedule of Essential Particulars in the event of any fluctuations in the running costs associated with the provision of the Equipment to the Customer under



this Hire Agreement. IPB must notify the Customer in writing of any variations to be made pursuant to this clause at its earliest convenience.

- 4.3. In the event that the Customer hires Equipment for a Hire Period in **excess of two (2) years** under this Hire Agreement, then the Customer acknowledges that IPB acting reasonably may adjust the hire charge rates and fees set out in the Schedule of Essential Particulars to take account of changes to the Consumer Price Index.
- 4.4. The Schedule of Essential Particulars may specify the method of calculation which will apply to the rates applicable to the Customer.
- 4.5. The Schedule of Essential Particulars will also specify any fees which may apply to the Customer.
- 4.6. IPB reserves the right to charge for a minimum period of hire for certain types of Equipment, but IPB shall advise the Customer of any applicable minimum periods of hire prior to the commencement of the Hire Period.
- 4.7. Except in the circumstances set out in clause 4.8, the Customer will be charged for the hire of Equipment for the full Hire Period. For the avoidance of doubt, the Customer will continue to incur hire and other charges and/or fees after the Estimated End Hire Date if the Customer has not returned the Equipment to IPB by that date.
- 4.8. If the Customer has requested that IPB collect the Equipment and IPB has agreed, Hire Charges will continue until the date as notified by the Customer in writing to IPB **at least 21 days prior** to the date that the Customer no longer requires the Equipment and that the Equipment is available for collection (the *'End Hire Date'*). For the avoidance of doubt, the Estimated End Hire Date set out in the Schedule of Essential Particulars is not considered to be the Customer's notice to IPB that the Equipment is available for collection and the 21 days' notice to be given under this clause is required in all cases to allow IPB sufficient time to make arrangements for the removal and collection of Equipment from the Customer's Site.

5. **ADDITIONAL CHARGES**

In addition to the hire charges under clause 4, the Customer acknowledges and agrees that they will be required to pay:

- (a) for any consumables or trade materials IPB supplies to the Customer;
- (b) if the Customer requires IPB to deliver, collect or install the Equipment, the cost of delivery, collection or installation (which may also include crane and/or vehicle hire), as detailed in the Schedule of Essential Particulars;
- (c) any costs of and incidental to any site removal works, as required by the Customer and detailed in the Schedule of Essential Particulars;
- (d) any costs of and incidental to any additional maintenance of the Equipment to be provided by IPB during the Hire Period, as required by the Customer and detailed in the Schedule of Essential Particulars. For the avoidance of doubt, this does not include any regular maintenance required by legislation;
- (e) if the Customer does not return the Equipment in clean and good working condition, charges for the cleaning and repair of the Equipment;
- (f) any duty, GST or other taxation liability arising out of this Hire Agreement;
- (g) any other applicable levies, fines, penalties and government charges (including but not limited to application fees) arising out of the Customer's use of the Equipment;
- (h) charges for payment made by credit card, as detailed in the Schedule of Essential Particulars;
- (i) an environmental charge in relation to any item of Equipment, as detailed in the Schedule of Essential Particulars;
- (j) any costs and service charges of operational guidance or training on the use of the Equipment provided by IPB, the costs of which are to be agreed in writing between the parties;
- (k) charges incidental to the administration of the Customer's account with IPB, as detailed in the Schedule of Essential Particulars, which may include printing and postage costs; and
- (l) if applicable, The Damage Waiver Amount as set out in clause 14 of this Hire Agreement;
- (m) any charges applicable under clause 13 in relation to the loss, theft or damage of Equipment (the Customer's liability is subject to the terms of clause 14);
- (n) any costs incurred by IPB as a result of reliance on inadequate or incorrect information or material provided by the Customer; and
- (o) charges for the Customer's late cancellation of a hire booking where reasonable written notice of **at least 7 days** has not been given to IPB and the cancellation results in a Loss to IPB;



- (p) any additional charges as set out in the Schedule of Essential Particulars which applies if the Equipment is used for **more than 8 hours per day** (only applicable to certain types of Equipment); and
- (q) any interest, costs and expenses incurred under clauses 6.2 and 7.6 of this Hire Agreement.

6. PAYMENT

- 6.1. All fees, charges and costs under this Hire Agreement shall become due and payable as noted on the relevant invoice or otherwise in accordance with the terms of this Agreement (see clause 7.4 if a Credit Account applies) ("the due date"). If the due date is not specified or uncertain for any reason whatsoever then any payment under this Hire Agreement shall be **due seven (7) days following the date of invoice**.
- 6.2. If the Customer does not pay the invoice in full by the due date, IPB reserves the right to charge, in addition to any other costs recoverable under this Hire Agreement:
 - (a) interest, calculated daily and paid monthly, on the total outstanding balance. The interest rate used to calculate the interest payable for the month is the rate equal to the then current Cash Rate Target published by the Reserve Bank of Australia plus 6%; and
 - (b) any costs and expenses (including any commission payable to any commercial or mercantile agents and legal costs) incurred by IPB in recovering any unpaid amounts under this Hire Agreement.
- 6.3. Time of payment will be of the essence.

7. CREDIT

- 7.1. At IPB's sole discretion it may approve or reject an application for a Credit Account by Customers under this clause.
- 7.2. The Customer must make an application for a Credit Account in the approved form set out in Schedule 2 ('Credit Application') and arrange for a Guarantor to execute the Deed of Guarantee set out in Schedule 3 of this Hire Agreement.
- 7.3. IPB may request any relevant documentation from a Customer (and its Guarantor(s)) making an application for a Credit Account for the purpose of due diligence provided it is done in accordance with clause 19 ('Privacy') of this Hire Agreement.
- 7.4. A Customer in whose favour a Credit Account has been opened must make any progressive payments against the Credit Account **within 30 days** of the issue of each progressive invoice unless otherwise agreed in writing between the parties ("the due date").
- 7.5. In the event of a default by the Customer under any Credit arrangement pursuant to this Hire Agreement, the Customer will be required to make payment of any outstanding debts to IPB within a period of **seven (7) days** of IPB serving a written notice to the Customer in respect of the default and IPB may, in its absolute discretion, withhold the provision of any further goods or services under this Hire Agreement (or any other agreement between the parties) until such time the default has been rectified (including but not limited to the payment of any outstanding monies).
- 7.6. The Customer will incur interest calculated daily on any monies owing under preceding clause 7.5 at a rate equal to the then current Cash Rate Target published by the Reserve Bank of Australia plus 6% calculated daily if the debt owing to IPB is not paid within seven (7) days of the written notice referred to in that clause.
- 7.7. Time of payment will be of the essence.

8. THE CUSTOMER'S OBLIGATIONS TO IPB

- 8.1. This Hire Agreement is personal to the Customer and the Customer must not allow nor authorise any other person or entity to use or have possession of the Equipment at any time, unless expressly agreed by IPB in writing.
- 8.2. The Customer agrees that before accepting the Equipment, the Customer has relied on its own enquiries and satisfied themselves as to the suitability, condition and fitness for purpose of the Equipment for the job the Customer intends to use it for. The Customer acknowledges that they have not relied on any warranty, representation or statement, whether oral or written, made by IPB or any of its employees or agents relating to or in connection with the subject matter of this clause and indemnifies IPB against all liability, claims, damage, loss, costs and expenses arising from or incurred in connection with the subject matter of this clause.
- 8.3. If the Customer collects or receives the Equipment (as the case may be) and finds that it is broken, damaged and/or defective, the Customer must notify IPB within 24 hours after the Customer collect or receive the Equipment. If the Customer does not notify IPB within this time period, IPB are entitled to assume that the Equipment the Customer collected or received was in good working order and condition.
- 8.4. In respect of safe use of the Equipment, the Customer including its employees, agents and contractors, agree to:
 - (a) operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;



- (b) ensure that any persons operating or erecting the Equipment are suitably trained on its safe and proper use, qualified to use the Equipment and where necessary, hold any licences required under WHS Legislation;
 - (c) wear suitable clothing and protective equipment when operating the Equipment as required or recommended by IPB or the manufacturer;
 - (d) ensure that no persons operating the Equipment are under the influence of drugs or alcohol;
 - (e) conduct a job safety analysis prior to using the Equipment;
 - (f) ensure that no persons carry illegal, prohibited or dangerous substances in or on the Equipment; and
 - (g) display all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Equipment.
- 8.5. In respect of maintenance of the Equipment, the Customer agrees to:
- (a) keep the Equipment in good condition and in accordance with the manufacturer's and IPB's instructions at the Customer's own costs;
 - (b) not in any way alter, modify, tamper with, damage or repair the Equipment without IPB's prior written consent; and
 - (c) not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment.
- 8.6. The Customer acknowledges and agrees that they are responsible for the Equipment for the Hire Period.
- 8.7. At all times during the Hire Period, the Customer agrees to store the Equipment safely and securely and protected from theft, seizure, loss or damage.
- 8.8. The Customer shall allow IPB to enter the Customer's Site and inspect the Equipment from time to time during the Hire Period. Except in the case of an emergency, IPB shall provide reasonable notice if they wish to inspect the Equipment pursuant to this clause.
- 8.9. In respect to moving the Equipment, the Customer must ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturer's guidelines. The Customer (or any contractor the Customer engage) must observe any safety directions advised by IPB and/or the manufacturer of the Equipment to ensure its safe loading and handling.
- 8.10. The Customer must not remove the Equipment from the State or Territory in which the Customer hired it without IPB's written consent. Where the Customer has hired a portable building under this Hire Agreement then the Customer must not remove the portable building from the Customer's Site without the prior written consent of IPB. In that regard, the Customer must provide IPB with a written notice requesting IPB's consent to the relocation of the portable building before the written consent of IPB can be given and the parties acknowledge that such consent may be withheld by IPB in its absolute discretion.
- 8.11. The Customer must not use or store the Equipment in any area where the Equipment may be exposed to any hazardous substances (including but not limited to asbestos) without IPB's prior written consent.
- 8.12. The Customer must not use or store the Equipment in a mine or any off-shore work site without the express written consent of IPB.
- 8.13. The Customer warrants that they will comply with all Environmental Laws from time to time and immediately rectify any breach of an Environmental Law caused by the use of the Equipment (including but not limited to the removal and disposal of contaminated materials).
- 8.14. The Customer must use best endeavours to ensure that the Equipment is not contaminated with any hazardous substances (including asbestos). Subject to clause 8.11, the Customer must advise IPB of any risks of hazardous substance contamination to the Equipment as soon as they become apparent. Where Equipment may have been subjected to contamination, the Customer must effectively decontaminate the Equipment, as well as provide IPB with written details of decontamination processes applied. If, in IPB's reasonable opinion, the Equipment has not been properly decontaminated or is not capable of being decontaminated, the Customer agrees to pay for the new replacement cost of the Equipment.
- 8.15. Any electrical Equipment (or electrical goods forming part of the Equipment) provided by IPB will be tested and tagged before it is hired to the Customer, but the Customer is responsible for arranging any re-testing and re-tagging of any electrical Equipment in accordance with the manufacturer's instructions and the applicable Australian Standard(s) and Regulatory Authority requirements at the Customer's cost. IPB are able to arrange for such re-testing and re-tagging of the electrical Equipment at the Customer's cost. Except where IPB arrange for re-testing and re-tagging of the electrical Equipment, any damage caused to the Equipment resulting from incorrect testing arranged by the Customer will be at the Customer's cost.



9. IPB RETAINS TITLE TO OWNERSHIP OF THE EQUIPMENT

- 9.1. The Customer acknowledges and agrees that IPB owns the Equipment and IPB shall retain title to the Equipment under all circumstances (even if the Customer enters into liquidation or become bankrupt during the Hire Period).
- 9.2. The Customer's rights to use the Equipment are strictly as a bailee only.
- 9.3. Except in the circumstances set out in clause 10, the Customer is not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Equipment in any way.
- 9.4. In no circumstances will the Equipment be deemed to be a fixture and the Customer shall not do anything which may render the Equipment a fixture by law.
- 9.5. The Customer must at all times be able upon demand by IPB to separate and identify the Equipment belonging to IPB from any other equipment held by the Customer.
- 9.6. In the event of any default by the Customer under the terms of this Hire Agreement, the Customer expressly and irrevocably agrees that IPB shall be entitled to enter any premises where the Equipment of IPB is located to repossess such Equipment. The Customer (its successors and assigns, including any external manager or administrator) shall not object to IPB, or its agents, entering any premises for the purpose of this clause and agrees to indemnify and keep IPB indemnified in respect of any all liability, claims, damage, loss, costs and expenses arising from or incurred in connection with the repossession of Equipment pursuant to this Hire Agreement including any claims brought by third parties.

10. PPSA

- 10.1. The Customer consents to IPB creating and maintaining one or more registration on the PPS register (in any manner IPB consider appropriate) in relation to any security interest contemplated or constituted by this Hire Agreement in the Equipment and the proceeds arising in respect of any dealing in the Equipment and the Customer agrees to do all things reasonably required, including signing any documents and providing any information to IPB required to ensure IPB acquires and is able to maintain a perfected security interest. The Customer waives the right to receive notice of a verification statement in relation to any registration on the PPS register of a security interest in respect of the Equipment.
- 10.2. The Customer shall not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of the Customer or a third party without IPB's prior written consent.
- 10.3. If Chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising under or in connection with this Hire Agreement and:
- (a) section 115(1) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and the Customer will have no rights under them:
 - section 95 (to the extent that it requires the secured party to give notices to the grantor);
 - section 96;
 - section 118 (to the extent that it allows a secured party to give notices to the grantor);
 - section 121(4);
 - section 125;
 - section 130;
 - section 132(3)(d);
 - section 132(4);
 - section 135;
 - section 142; and
 - section 143; and
 - (b) section 115(7) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and the Customer will have no rights under them:
 - section 127;
 - section 129(2) and (3);
 - section 130(1);
 - section 132;
 - section 134(2);
 - section 135;
 - section 136(3), (4) and (5); and
 - section 137.
- 10.4. Unless otherwise agreed and to the extent permitted by the PPSA, the Customer and IPB agree not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. the Customer waive any right the Customer may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.
- 10.5. For the purposes of section 20(2) of the PPS Act, the collateral is Equipment including any Equipment which is described in any Schedule of Essential Particulars provided by IPB to the Customer from time to time.



- 10.6. This Hire Agreement is a security agreement for the purposes of the PPS Act.
- 10.7. IPB may apply amounts received in connection with this Hire Agreement to satisfy obligations secured by a security interest contemplated or constituted by this Hire Agreement in any way IPB determine in IPB's absolute discretion.
- 10.8. The Customer agrees to notify IPB in writing of any change to the Customer's details set out in the Credit Application, within 5 days from the date of such change.
- 10.9. For the avoidance of doubt, these terms regarding the PPS Act apply even where the Customer is a Consumer.

11. RETURN OF EQUIPMENT

- 11.1. The Customer must return the Equipment to IPB in the same clean condition and good working order it was in at Commencement of the Hire Period except for any ordinary fair wear and tear excluded. If the Customer does not properly clean the Equipment, IPB will charge the Customer a cleaning cost in accordance with clause 5(e).
- 11.2. Except in the circumstances set out in clause 11.3 below, it is the Customer's responsibility to return the Equipment in good working condition to IPB's premises where the Customer hired it from during normal business hours.
- 11.3. If the Customer has requested, and IPB have agreed in writing, to collect the Equipment from the Customer, the Customer must ensure it is kept safe and secure until the time of collection and comply with the notice requirements under clause 4.8.

12. PROCEDURE TO BE FOLLOWED IN CASE OF EQUIPMENT FAILURE

- 12.1. In the event that the Equipment breaks down or becomes unsafe to use during the Hire Period the Customer must:
- (a) immediately stop using the Equipment and notify IPB orally and in writing;
 - (b) take all reasonable steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
 - (c) take all reasonable steps necessary to prevent any further damage to the Equipment itself (only if it does not present danger to persons); and
 - (d) not repair or attempt to repair the Equipment without IPB's written consent.
- 12.2. Except where clause 13.1 applies, upon receiving notice from the Customer under clause 12.1 IPB will:
- (a) take all steps necessary to repair the Equipment or provide suitable substitute Equipment as soon as reasonable possible after being notified by the Customer; and
 - (b) not impose any hire charge under clause 5 for that portion of the Hire Period for which the Equipment was broken down or unsafe, nor the costs associated with any repair or replacement of the Equipment.

13. PROCEDURE TO BE FOLLOWED IF EQUIPMENT IS LOST, STOLEN OR DAMAGED

- 13.1. If the Equipment has broken down or become unsafe to use as a result of the Customer's negligence, act or omission, or if the Equipment is lost, stolen or damaged beyond fair wear and tear during the Hire Period, the Customer will be liable for:
- (a) any costs incurred by IPB to recover and repair or replace the Equipment; and
 - (b) the Hire Charges for that portion of the Hire Period during which the Equipment is being recovered and repaired or replaced,

except where the Customer has paid a Damage Waiver Amount, in which case the Customer's liability is subject to clause 14 below. The Customer acknowledges that the costs which may be incurred by IPB under this clause includes the new replacement cost for Equipment where IPB (at its absolute discretion) considers it necessary.

- 13.2. Provided that the Customer pay the costs and charges described in clause 13.1, IPB will return the Equipment to the Customer once it has been repaired or replaced, and the Customer will continue to pay the Hire Charges for the remainder of the Hire Period.

14. DAMAGE WAIVER

- 14.1. The Damage Waiver limits the Customer's liability in **certain circumstances** for loss, theft or damage to IPB's Equipment provided the Customer has paid the Damage Waiver Amount (or complied with the requirements under clause 14.3).
- 14.2. Subject to clause 14.3 applying to a particular Customer, IPB may (in its absolute discretion) charge the Damage Waiver Amount to the Customer in addition to the Customer's Hire Charges. If IPB does not charge the Damage Waiver Amount to the Customer for any reason whatsoever then the Customer shall remain fully liable for any costs incurred under clause 13 of this Hire Agreement.



- 14.3. The Customer cannot be required to pay the Damage Waiver Amount if the Customer produces a certificate of currency (prior to the commencement of the Hire Period) for an appropriate policy of insurance which acknowledges the proprietary interest of IPB and covers loss, theft and damage to the Equipment during the Hire Period for an amount not less than the full (new) replacement value of the Equipment.
- 14.4. In the event the Customer has paid the Damage Waiver Amount or complied with preceding clause 14.3, IPB will waive its right to claim against the Customer for loss, theft or damage to the Equipment if:
- (a) the Customer has promptly reported the incident to the police and provided IPB with a written police report;
 - (b) the Customer has co-operated with IPB and provided IPB with the details of the incident, including any written or photographic evidence IPB require; and
 - (c) the loss, theft or damage does not fall into one or more of the circumstances set out in clause 14.6.
- 14.5. Even if the Customer has paid the Damage Waiver Amount, IPB will not waive IPB's rights to claim against the Customer for loss, theft or damage to the Equipment and Damage Waiver **will not apply** if the loss, theft or damage:
- (a) has arisen as a result of the Customer's breach of a clause of this Hire Agreement;
 - (b) has been caused or contributed to by the Customer's negligent act or omission;
 - (c) has arisen as a result of the Customer's use of the Equipment in violation of any laws;
 - (d) has been caused by the Customer's failure to use the Equipment for its intended purpose or in accordance with IPB's instructions or the Manufacturer's instructions;
 - (e) occurs to the Equipment whilst it is located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
 - (f) has been caused by a lack of lubrication or a failure to properly service or maintain the Equipment;
 - (g) has been caused by collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object due to insufficient clearance;
 - (h) has been caused by the overloading of the Equipment or any components thereof;
 - (i) is to motors or other electrical Equipment or components within the Equipment caused by electrical overload, a surge in electrical current or the use of under-rates or excessive lengths of extension leads with the electrical Equipment;
 - (j) is caused by exposure to any corrosive or caustic substance, such as cyanide, sea water, acid, etc;
 - (k) is caused by vandalism;
 - (l) is to tyres or tubes; OR
 - (m) is to glass.

15. INDEMNITIES AND EXCLUSION OF LIABILITIES

- 15.1. Subject to clause 15.3 and except as expressly provided to the contrary in this Hire Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express of implied, statutory or otherwise, relating to this Hire Agreement or its subject matter are excluded to the maximum extent permitted by law.
- 15.2. Nothing in this Hire Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Australian Consumer Law, which contains guarantees that protect the purchasers of goods and services in certain circumstances.
- 15.3. Where any legislation implies or imposes a guarantee, term, condition, warranty, undertaking, inducement or representation in relation to this Hire Agreement and IPB are not able to exclude that guarantee, term, condition, warranty, undertaking, inducement or representation and IPB are able to limit the Customer's remedy for a breach of such legislative provision, then IPB's liability for breach of such legislative provision is limited to (at IPB's election):
- (a) in the case of goods, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or
 - (b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- 15.4. Subject to IPB's obligations under the legislative provisions described in clause 15.3 and to the maximum extent permitted by law, IPB's maximum aggregate liability for all claims under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity,



based on fundamental breach or breach of a fundamental term or on any other basis, is limited to an amount equal to the charges and fees paid by the Customer under this Hire Agreement. In calculating IPB's maximum liability under this clause, the parties must include any amounts paid or the value of any goods or services replaced, repaired or supplied by IPB for a breach of any legislative provision as described in clause 15.3.

- 15.5. Subject to clauses 15.3 and 15.4, IPB will not be liable to the Customer for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs the Customer has incurred, amounts that the Customer is liable to their customers for or any loss suffered by third parties under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.
- 15.6. The Customer is liable for and indemnifies IPB against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against IPB and any environmental loss, cost, damage or expense) in respect of:
- (a) personal injury;
 - (b) damage to tangible property; or
 - (c) a claim by a third party,

where it arises out of or relates to any of the Customer's acts or omissions in respect of the Customer's hire or use of the Equipment or the Customer's breach of the Hire Agreement.

- 15.7. IPB will not be liable to the Customer for any acts or omissions of any person supplied by IPB where that person is acting under the Customer's direction and control during the Hire Period and the Customer indemnifies IPB against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against IPB and any environmental loss, cost, damage or expense) arising from or incurred in connection with such acts or omissions.
- 15.8. This clause shall survive termination.

16. TERMINATION

- 16.1. Either party may terminate this Hire Agreement and any Hire Period immediately by giving written notice to the other party, if:
- (a) that other party breaches any term of the Hire Agreement and fails to remedy the breach within **14 days** of written notification of the breach; or
 - (b) that other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business.
- 16.2. IPB may terminate the Hire Agreement and any Hire Period for any other reason on **24 hours** notice.
- 16.3. These rights of termination are in addition to any other rights either party has under the Hire Agreement and does not exclude any right or remedy under law or equity.

17. MAINTENANCE AT DISTANT SITE

- 17.1. If the Customer has hired Equipment for use at a Distant Site, then this clause 17 shall apply.
- 17.2. Any regular maintenance required (by legislation or agreement) for Equipment operating in a Distant Site will be subject to a per kilometre charge both to and from the Customer's Site. There will be no charge for any regular maintenance within the Sydney, Central Coast and Newcastle metropolitan areas.
- 17.3. For the avoidance of doubt, the Customer shall remain responsible for daily maintenance and care of all Equipment in accordance with clause 8.
- 17.4. If the Equipment breaks down or malfunctions at a Distant Site, the Customer will also pay IPB the costs associated with any attendance to the Distant Site in addition to any other costs payable under this Hire Agreement.

18. WORK HEALTH AND SAFETY

- 18.1. IPB and the Customer each acknowledge and agree to comply with any statutory requirements under WHS Legislation in respect of its own employees, agents and/or subcontractors in respect of any work undertaken under this Agreement.

19. PRIVACY

- 19.1. The Customer agrees for IPB to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to a Credit Account to be provided by IPB.



- 19.2. The Customer agrees that IPB may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report by a credit reporting agency for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of the Customer.
- 19.3. The Customer consents to IPB being given a consumer credit report to collect overdue payment on commercial credit.
- 19.4. The Customer agrees that personal credit information provided may be used and retained by IPB for the following purposes and for other purposes as agreed between IPB and the Customer or required by law from time to time:
- (a) provision of services to the Customer;
 - (b) marketing of services by IPB, its agents or distributors in relation to the services;
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of services;
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (e) enabling the daily operation of the Customer's account in relation to the services.
- 19.5. IPB may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer
- 19.6. The Customer has the right to access the personal information IPB hold about the Customer.

20. NOTICES

- 20.1. A notice or other communication required or permitted to be given by one party to another must be in writing to the registered office address in Schedule 1 (or as varied pursuant to this clause) and:
- (a) delivered personally;
 - (b) sent by pre-paid mail to the registered office address of the addressee specified in the Schedule of Essential Particulars;
 - (c) sent by facsimile transmission to the facsimile number of the addressee specified in the Schedule of Essential Particulars, with acknowledgment of receipt from the facsimile machine of the addressee; or
 - (d) sent by e-mail to the e-mail address of the addressee specified in this Agreement with acknowledgement of delivery.
- 20.2. A notice or other communication is taken to have been given (unless otherwise proved):
- (a) if mailed, on the second Business Day after posting; or
 - (b) if sent by facsimile or e-mail before 4 pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
 - (c) In the case of an e-mail:
 - (i) production of a delivery notification statement from the computer from which the e-mail was sent which indicates that the e-mail was sent in its entirety to the e-mail address of the recipient shall be prima facie evidence that the e-mail has been received; and
 - (ii) where there is no delivery notification statement from the computer from which the e-mail was sent, the date and the time of dispatch of the e-mail shall be prima facie evidence of the date and time that the e-mail was received; and
 - (iii) where an "Out of Office" reply or similar response is delivered to the computer from which the e-mail was sent, the e-mail will not be taken to be received and the sender shall use the alternative methods of sending the notice by post or facsimile in accordance with this clause 20.
- A party may only change its postal or email address or fax number for service by giving notice of that change in writing to the other party.



21. FORCE MAJEURE

21.1. Subject to the following clause 21.2, neither party will be responsible for any delays in delivery, installation or collection due to causes beyond their control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.

21.2. Nothing in preceding clause 21.1 will limit or exclude the Customer's responsibility and liability under the Hire Agreement for Equipment that is lost, stolen or damaged beyond fair wear and tear during the Hire Period, or has broken down or become unsafe to use as a result of the Customer's conduct or negligence.

22. VOID, VOIDABLE OR UNENFORCEABLE PROVISIONS

If any provision of this Hire Agreement at any time is or becomes void, voidable or unenforceable, the remaining provisions of this Hire Agreement shall continue to have full force and effect.

23. GOVERNING LAW

This Hire Agreement is governed by the laws of New South Wales and each party irrevocably submits to the non-exclusive jurisdiction of the courts of such state.

24. ENTIRE AGREEMENT

24.1. This Hire Agreement represents the whole agreement between the Customer and IPB relating to the subject matter of this Agreement.

24.2. This Hire Agreement supersedes all oral and written negotiations and communications by and on behalf of either of the parties.

24.3. No additional terms and conditions (including any terms contained in any purchase order) apply to the hire of the Equipment unless agreed in writing by the parties.

25. NO RELIANCE

Subject to clauses 15.1 and 15.3, by entering into this Hire Agreement the Customer acknowledges that they have not relied on any warranty, representation of statement, whether oral or written, made by IPB or any of its employees or agents relating to or in connection with the subject matter of this Hire Agreement.

26. NO WAIVER OF RIGHTS

Subject to clause 8.3, a party's failure or delay to exercise a power or right under this Hire Agreement will not operate as a waiver of that power or right.

27. REVIEW OF CUSTOMER'S CREDIT APPROVAL

27.1. From time to time IPB may review any Credit Account granted to the Customer without notice.

27.2. IPB may, at its discretion, decide to withdraw Credit for any reason, including but not limited to if the Customer's circumstances change, the Customer fails to make payments on time or the Customer fails to use the Equipment in accordance with the terms of the Hire Agreement.

27.3. If IPB withdraws Credit the Customer may terminate this Hire Agreement immediately by giving IPB written notice. However, if the Customer does so the Customer must:

- (a) pay amounts that were subject to Credit in accordance with the terms on which that Credit was provided; and
- (b) still pay all amounts due to IPB under this Hire Agreement, including Hire Charges until the Equipment is back in IPB's custody and possession.

28. AUTHORITY TO SIGN FOR THE CUSTOMER

28.1. The person signing any document which forms part of the Hire Agreement for and on behalf of the Customer hereby warrants that he or she has the Customer's authority to enter into the Hire Agreement on the Customer's behalf and grant the security interests in connection with it and is empowered to bind the Customer to the Hire Agreement and each security interest granted in connection with it.

28.2. The person signing this Hire Agreement indemnifies IPB against all losses, costs, demands, actions and/or claims incurred by IPB arising out of the person so signing this Hire Agreement not in fact having such power and/or authority.

29. BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT

29.1. At IPB's sole discretion, if there are any disputes or claims for unpaid goods and/or services under this Hire Agreement then the provisions of the *Building and Construction Industry Security of Payment Act 1999* (NSW) ('Security of Payment Act') may apply.

29.2. Nothing in this Hire Agreement is intended to have the effect of contracting out any applicable provisions of the Security of Payment Act, except to the extent permitted by that Act where applicable.



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