



Fence Hire Australia Trading Pty Ltd ACN 613 073 788
 14 Rielly Street, Torrington QLD 4350
 Phone: 1300 083 673
 Email: admin@fencehireaustralia.com.au

CREDIT APPLICATION

In order to establish a 30 day trading account with Fence Hire Australia Trading Pty Ltd ACN 613 073 788 (**the Company**), we require the following information as well as the attached Guarantee to be completed.

Date Application Completed	/ /
Applicant Name (Legal Entity)	
Trading Name	
Type of Entity	<input type="checkbox"/> Sole Trader <input type="checkbox"/> Partnership <input type="checkbox"/> Private Company <input type="checkbox"/> Public Company <input type="checkbox"/> Trust
Do you have an ARSN (Australian Registered Scheme No.)?	<input type="checkbox"/> No <input type="checkbox"/> Yes _____
Do you have an ACN (Australian Company No.)?	<input type="checkbox"/> No <input type="checkbox"/> Yes _____
Do you have an ARBN (Australian Registered Body No.)?	<input type="checkbox"/> No <input type="checkbox"/> Yes _____
Do you have an ABN (Australian Business No.)?	<input type="checkbox"/> No <input type="checkbox"/> Yes _____
Date business began trading	
Nature of Business	
Trading Address	
Postal Address	
Phone	
Fax	
Mobile	
Accounts Contact	
Accounts Email Address	

Directors/Partners/Trustees/Proprietors of Applicant:

1	Name		D.O.B.	
	Residential Address			
	Drivers Licence No:		Mobile:	

Please attach a copy of Drivers Licence with this application

2	Name		D.O.B.	
	Residential Address			
	Drivers Licence No:		Mobile:	

Please attach a copy of Drivers Licence with this application

If more than two, please complete on a separate page and attach to this application.



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Are any of the Directors, Trustees or Proprietors an undischarged bankrupt? No Yes

If Yes, please provide details: _____

Have any of the Directors, Trustees or Proprietors ever held the office of Director, Secretary or Public Officer of any private or public company which has been subject to liquidation, administration, external management, been insolvent or ceased trading? No Yes

If Yes, please provide details: _____

Trade References (Major Suppliers)

1	Name		Email	
	Phone		Fax	
	Contact Person:			
2	Name		Email	
	Phone		Fax	
	Contact Person:			
3	Name		Email	
	Phone		Fax	
	Contact Person:			

Terms for payment

The Company's terms of payment are as per the attached Hire Terms & Conditions.

Privacy

The Company advises that the information supplied in this application will be collated, used, disclosed and stored in accordance with the Australian Privacy Principles set out in Schedule 1 of the *Privacy Act 1988* (Cth). If you require further information regarding our Privacy Policy, please contact the Company.

Credit Information

The Applicant agrees that the Company may:

- disclose the information contained in this application and any relevant trading information regarding the Applicant received from the trade references referred to in this application to a credit reporting agency in accordance with the *Privacy Act 1988* (Cth); and
- give or obtain a report regarding the Applicant's commercial activities and commercial credit worthiness from a credit reporting agency or from any credit provider named in this application or disclosed by a credit reporting agency.

If at any time there is a change to any of the information or details given to the Company in this application, the Applicant must immediately notify the Company of that change.



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Signatory and Applicant's Acknowledgments

By signing this Credit Application, the Applicant hereby acknowledges and agrees that:

- the information provided in this Credit Application is accurate, honest, true and correct and acknowledges that it may be relied upon by the Company to determine whether to grant the Applicant credit;
- they have received a copy of the Terms & Conditions and have read and understood them;
- the Terms & Conditions set out the basis upon which the Company shall provide credit and/or supply and/or hire of equipment, goods and/or services to the Applicant and the attached Terms & Conditions apply to that supply;
- the transactions contemplated by this Credit Application and the Terms & Conditions may be "Security Agreements" (as defined in the *Personal Property Securities Act 2009* (PPSA) which create security interests which the Company may choose to register on the Personal Property Securities Register (PPSR);
- that the Company may register on the PPSR its security interest in all equipment and goods that the Company supplies to the Applicant under its Terms & Conditions on a retention of title or on a hire basis;
- the Company may vary the Terms & Conditions from time to time. Any amendment to the Terms & Conditions will have effect on and from the date on which the Company gives notice to the Customer of such change;
- the Customer is not aware of any information, notice or court proceedings that may lead to bankruptcy, appointment of an administrator of an administrator, controller or managing controller, receiver or receiver manager or liquidator;
- the Customer does not intend to enter into any scheme or arrangement with creditors either formally through a court or otherwise;
- if the Customer completes this Credit Application as a trustee, the person or entity on whose behalf the person is signing this Credit Application is duly appointed as trustee of the trust and has full power pursuant to the Trust Deed to act when entering into this agreement and any contract under the Credit Application; and
- the Applicant, requests that the Company opens an account in the Applicant's name on the basis of the Terms & Conditions and agrees to be bound by them and any amendment to them from time to time.

Note: The person/s signing this document confirms that they are authorised to complete this Credit Account Application on behalf of the Customer.

Signed by the Customer (unless the Customer is a company - please see below)

Signature: _____ Date: _____

Full Name: _____ Individual Customer Partner in Partnership
(one partner will bind partnership)

Signed by the Customer (if the Customer is a company)

Executed in accordance with s 127 of the Corporations Act 2001 (Cth) by its authorised officers:

Signature: _____ Signature: _____

Full Name: _____ Full Name: _____

Director Sole Director Secretary Director Sole Director Secretary

General Manager CEO Managing Director General Manager CEO Managing Director

Date: _____ Date: _____

Signed by the Company

Signature: _____ Date: _____

Full Name: _____ Position: _____



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Guarantee and Indemnity

To: Fence Hire Australia Trading Pty Ltd ACN 613 073 788 ("the Company") In

consideration of the Company agreeing to supply or hire to:

_____ ("The Applicant")

I/we _____

of _____

and _____

of _____ ("the Guarantors")

GUARANTEE the due and punctual payment of all monies which may now or in the future be or become due and payable to the Company by the Applicant under or in connection with the Credit Application and the Company's Terms & Conditions ("**the Terms**") including without limitation in relation to any contract formed between the Applicant and the Company on the Terms, or whether arising in any other way on any account whatsoever operated by the Applicant with the Company.

- a. The Guarantors warrant that before execution hereof they have been directed by the Applicant to seek and have sought such advice (including, but not limited to, legal and financial advice) as they deem necessary to understand fully their responsibilities under this guarantee and in particular the financial impositions on them consequential on default by the Applicant in payment of any monies due hereunder or any breach of this agreement. They have satisfied themselves as to the financial position of the Applicant and the Applicants and their own capacity to comply with the terms of this agreement.
- b. The Guarantors (and if more than one then jointly and severally) guarantee to the Company the due and punctual performance of all the obligations of the Applicant under the Credit Application and Terms and hereby indemnify the Company against all losses expenditures costs and expenses of whatever nature suffered or incurred directly or indirectly by the Company in recovering any monies owing as a result of default in such performance, including all costs, fees, charges or expenses including legal costs on a solicitor and own client basis incurred by the Company in connection with the performed or failure to perform by the Applicant or the Guarantors their obligations under the Credit Application, the Terms or this Guarantee.
- c. This Guarantee and Indemnity is continuing and irrevocable and the obligations of the Guarantors are absolute and unconditional in all circumstances and must continue notwithstanding that there is any change in the name, style, constitution or otherwise of any of the Applicant.
- d. This Guarantee continues despite the payment of any part of the amount owing and despite any time or other concession or compromise extended by the Company to the Applicant or any other person.
- e. The Guarantors hereby consent to any variation of this agreement, including any variation to extend the term of this agreement or to extend any period for repayment of any amounts owing hereunder.
- f. This Guarantee will not be affected by the neglect or omission of the Company to enforce any of its rights in relation to any security or releasing any security in whole or in part or if an Applicant dies or become of unsound mind or bankrupt or being a Company goes into liquidation or any other obligation of the Applicant for any reason becoming unenforceable in whole or in part.
- g. This Guarantee and Indemnity is a principal obligation and is not to be treated as ancillary or collateral to any obligation to the intent that this Guarantee and Indemnity will be enforceable notwithstanding that any of the agreements and other obligations arising between the Company and the Applicant are in whole or part unenforceable for any reason.
- h. The Company need not first exercise its rights against any of the Applicant or against the Applicant's security before exercising its rights hereunder against the Guarantors.



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- i. If any provision of this Guarantee and Indemnity is void, voidable or otherwise unenforceable, it may be severed from this Guarantee and Indemnity and the other provisions of this Guarantee and Indemnity remain enforceable.
- j. This Guarantee and Indemnity is governed by the laws of the state of Queensland.
- k. Until the Company has received all of the monies owing under the Credit Application, the Terms or this Guarantee, the Guarantor agrees:
 - (a) in the event of any bankruptcy or other administration of the Applicant's estate or any winding up, receivership or scheme of arrangement of the Applicant, that the Guarantor will not, without the Company's prior consent, lodge any proof of debt or similar claim in respect of any debt or liability to the Guarantor on any account whatsoever, nor enforce any security held by the Guarantor in respect of the Applicant and shall hold any such debt, liability or security and any rights or benefits in respect thereof on trust for the Company;
 - (b) if requested by the Company, lodge a proof of debt or similar claim in any such administration and enforce any such security and execute all such documents and do all such things as the Company may require to enable the Company to have and receive the benefit of or arising from any such proof, claim or security;
 - (c) not to attempt or purport to be subrogated to the Company; and
 - (d) that the Guarantor's liability under this Guarantee shall be that of principal debtor.
- l. The Guarantor irrevocably appoints the Company as the Guarantor's attorney with authority to do on behalf of the Guarantor anything the Guarantor may lawfully authorise an attorney to do, including without limitation the following:
 - (a) to make, sign, execute, seal and deliver any document; and
 - (b) to take possession of, use, sell or otherwise dispose of any asset of the Guarantor.
- m. The Guarantor further agrees that:
 - (a) the Guarantor has signed this Guarantee voluntarily;
 - (b) before entering this Guarantee, the Guarantor was advised by the Company to consult and receive advice as to the purpose, effect and consequences of, and obligations created by, this Guarantee from a legal advisor independent of the Company.

Executed as a Deed

Signed, sealed and delivered by:

Signature: _____ Date: _____

Full Name: _____

Address: _____

Witness Signature: _____ Witness Name: _____

Signed, sealed and delivered by:

Signature: _____ Date: _____

Full Name: _____

Address: _____

Witness Signature: _____ Witness Name: _____



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Fence Hire Australia Trading - Hire Terms & Conditions

1. Definitions and Interpretation / Agreement

(a) In these Terms & Conditions:

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

- The Hirer's Credit Application,
- These Terms & Conditions,
- Any quotation provided by the Company (if any) and
- Any other Hire agreement or arrangement provided to or made with the Hirer by the Company, whether signed or not.

"**Australian Consumer Law**" means Schedule 2 of the Competition and Consumer Act 2010 (Cth);

"**BIFA**" means the Building Industry Fairness (Security of Payment) Act 2017 (Qld).

"**CCA**" means the Competition and Consumer Act 2010 (Cth);

"**Company**" means Fence Hire Australia Trading Pty Ltd (ABN 42 128 519 862)

"**Company's Website**" means www.fencehireaustralia.com.au.

"**Consumer**" means a person acquiring Goods:

- of a kind ordinarily acquired for personal, domestic or
- household use or consumption; or
- at a price not exceeding \$40,000; or
- of a kind ordinarily acquired for personal, domestic or
- household use or consumption; or
- that consist of a vehicle or trailer acquired for use principally in the transport of goods on public roads,

but excludes a person acquiring the Goods, or holding himself or herself out as acquiring the Goods for the purpose of:

- re-supply; or
- using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land.

"**Consumer Goods**" means 'goods of a kind ordinarily acquired for personal, household or domestic use or consumption', as that expression is used in section 3 of the Australian Consumer Law.

"**Consumer Guarantee**" means a consumer guarantee applicable to this contract under the Australian Consumer Law, including any Express Warranty.

"**Consumer Services**" means 'services of a kind ordinarily acquired for personal, household or domestic use or consumption', as that expression is used in section 3 of the Australian Consumer Law.

"**Equipment**" means any of the Company's fencing, shadecloth, crowd barrier control hoarding and any other equipment and goods (including any associated or attached tools, accessories and parts) that are hired to the Hirer under these Terms & Conditions.

"**Express Warranty**" has the same meaning as in section 2(1) of the Australian Consumer Law.

"**Fair or Reasonable**" means 'fair or reasonable' for the purposes of section 64A of the Australian Consumer Law.

"**Fencing**" means all fencing including Panels, Gates, Crowd Barriers and Hoarding and other fencing components supplied to the Hirer pursuant to the Agreement.

"**Financing Statement**" and "**Financing change statement**" means a "financing statement" and a "financing change statement" within the meaning of s.10 of the PPSA.

"**Goods**" means any Equipment and goods supplied by the Company to the Hirer under these Terms & Conditions.

"**GST**" means "GST" within the meaning of the GST Act.

"**GST Act**" means the A New Tax System (Goods and Services Tax) Act 1999 (as amended) (Cth) (in Australia) and Goods and Services Tax Act 1985 (in New Zealand) and the following expressions bear the same meaning as in the GST Act: "tax invoice", "taxable supply" and "value".

"**Hirer**" means the person, company or other legal entity hiring the Equipment from the Company. Where the context permits, it includes Hirer's employees and contractors.

"**Hire Fees**" means the amount the Company charges for the hire of the Equipment calculated in accordance with the Rates.

"**Hire Period**" means the term specified in clause 2.

"**Insolvency Event**" means, in relation to a party, that one of the events specified in clause 15 has occurred in relation to that party.

"**Intellectual Property**" means any intellectual property including without limitation patents, trademarks, copyright, designs, layouts, circuit boards, knowhow, software, object.

"**PMSI**" means a purchase money security interest as defined in section 14 of the PPSA.

"**PPSA**" means the Personal Property Securities Act 2009 (Cth) (in Australia) and the Personal Properties Security Act 1999 (in New Zealand)

"**Proceeds**" means "proceeds" within the meaning of section 31 of the PPSA.

"**Rates**" means the rates notified by the Company to Hirer from time to time.

"**Register**" means the Personal Property Securities Register established under the PPSA.

"**Security Agreement**" means a "security agreement" within the meaning of s.10 of the PPSA.

"**Security Interest**" means a "security interest" within the meaning of section 12 of the PPSA.

"**Site**" means the land or premises located at the address on which Equipment is to be installed as requested by the Hirer.

(b) Terms and expression defined in or for the purposes of the CCA or the PPSA have the same meaning when used in these Terms & Conditions.

1. General

(a) These Terms & Conditions apply to:

- the establishment, operation and use of any account of the Hirer with the Company;
- all transactions effected by the Hirer with the Company for the supply of Equipment and Goods or services on its account or on a cash basis unless otherwise expressly agreed in relation to any particular supply of Equipment, Goods and services; and
- the exclusion of all others including any Terms & Conditions of the Hirer.

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

2. Rates and Hire Period

(a) The Hire Period will commence upon the Date of the delivery/installation of the Equipment and continue for the Initial Hire Period and any extensions of that period and the Hire Period will end when the Equipment is back in the possession of the Company.

(b) The Hire Period includes weekends and public holidays and is irrespective of the time the Equipment is being used.

(c) Unless otherwise instructed by the Hirer, at the end of the Initial Hire Period and each extension of the Hire Period, the Company will automatically extend the Hire Period and invoice the Hirer for all extensions of the Hire Period. Extensions of the Hire Period will continue until the Hirer instructs the Company with at least 5 business days notice to pick up the Equipment, it is returned by the Hirer to the Company, or the Company decides to terminate the hire arrangements.

(d) Where the Hirer instructs the Company to pick up the Equipment under paragraph (c), the instructions will be given by the Hirer in time for the Equipment to be picked up and returned to the Company's premises within the Company's normal business hours. In the event of insufficient notice being given, hiring charges will continue to apply at the Company's absolute discretion until the Equipment is received by the Company. The Hire Period noted on the Agreement will not be deemed notice to the Hirer that the Equipment is available for collection. Where the Company agrees to collect the Equipment, the Hirer remains responsible for any theft, loss or damage to the Equipment and all risk in the Equipment remains with the Hirer until the Equipment is collected by the Company.

(e) During the Hire Period, the Hirer must pay the Company all hire-fees Hire Fees as calculated in accordance with the Rates.

(f) All Rates are subject to change and may increase without notice.

(g) The Hirer is not permitted to claim a reduction or refund in hire-fees Hire Fees for Equipment returned before the end of the Initial Hire Hired-Period or any extensions of that Hire Period.

3. Payment and default arrangements

(a) The hire-fee Hire Fees must be paid in the manner and in accordance with the payment terms specified on any invoice issued by the Company or otherwise notified to Hirer from time to time.

(b) For the purposes of BIFA a reference date accrues:

- Each time the Hirer places an order with the Company;
- Each time Goods are delivered to the Hirer;
- Each time the Hire Period is extended; and

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iv. On the last day of each calendar month,
(c) Hire Fees will be invoiced to the Hirer on or after a reference date.

(b) .
(d) Unless the Hirer has an account with the Company and the Company agrees to hire the Equipment and charge the account of the Hirer, the Hirer agrees to pay all hiring charges on or before the commencement date of the Hire Term (unless agreed to the contrary by the Company) including delivery fees, pick up fees, ~~hire fees~~Hire Fees, service fees and all taxes and charges incidental to the hire.

(c) .
(e) For the purposes of BIFA any payment schedule must be given within 15 business days from the date of receipt of invoice. Unless full payment is received within 15 business days from the date of invoice, The Hirer must provide a payment schedule to the Company within 15 business days of receipt of invoice. The payment schedule must (i) identify the invoice to which it responds; (ii) state the amount of payment the Hirer proposes to make; and (iii) if the amount to be paid is less than the amount stated in the invoice, state why the amount proposed to be paid is less, including the reasons for withholding payment, notify the Company within seven (7) days of any errors with the invoice.

(d)(f) Any payment schedule must be provided by email to admin@fencehireaustralia.com.au.

(g) All invoices must be paid without deduction or set-off.

(e)(h) The Hirer must not deduct any part of the Hire Fee as retention money.

(f)(i) In the event that the Hirer does not pay any monies owing to the Company by the due date for payment, interest shall be applied on the amount of monies outstanding from the date due for payment until the date payment is made at the penalty rate set out in section 67P of the Queensland Building and Construction Commission Act 1991 (Qld).

(g)(i) In the event of the Hirer being in default of its obligation to pay and the overdue account is then referred to a debt collection agency and/or law firm for collection the Hirer shall be liable for the recovery costs incurred and if the agency charges commission on a contingency basis the Hirer shall be liable to pay as a liquidated debt, the commission payable by the Supplier to the agency, fixed at the rate charged by the agency from time to time as if the agency has achieved one hundred per cent recovery. In the event where the Company or the Company's agency refers the overdue account to a lawyer the Hirer shall also pay as a liquidated debt the charges reasonably made or claimed by the lawyer on the indemnity basis.

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

4. Credit Card Payments

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

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

5. GST

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

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

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

6. Cancellations of Orders

The Hirer may not cancel any order that it places for supply of Equipment after that order is accepted by the Company unless the Company gives its consent in writing. The Company may give or withhold its consent in its absolute discretion. The Company may give its consent subject to conditions that may include payment of money to the Company up to the amount payable by the Hirer if the order proceeded. If notice is provided to the Company no later than 7 clear days prior to the date that the Company was first required to supply the Equipment as ordered by the Hirer, the amount payable by the Hirer shall not exceed 10% of the total amount payable by the Hirer if the order proceeded.

7. Suspension of Credit

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

8. Delivery, Installation and Removal

- (a) The Company will arrange delivery of the Equipment to the Site and will install the Equipment as far as possible in accordance with the Hirer's sketch plan or verbal directions. The Hirer acknowledges that the Company may need to alter the position of the Equipment to accommodate services to the Site or other obstacles.
- (b) The Hirer may request the Company to install additional Equipment or to remove part of the Equipment before the expiration of the Hire Period, subject to payment of the extra charges.
- (c) If the Company is delayed from delivering or removing the Equipment from any location for any reason beyond its reasonable control, it may charge the Hirer additional delivery charges. The additional delivery charges will be based on the duration of the delay and will be calculated for every 15 minute period (or part) using the rates published on the Company's Websites from time to time.
- (d) No refunds will apply in the event that the Equipment is returned/collected at the Hirer's request prior to the expiration date of any Hire Period.
- (e) Traffic management is not included on any standard quote from the company but can be arranged for an additional fee.
- (f) The Hirer shall:
- (i) ensure a level, clear, defined and accessible site;
 - (ii) arrange connection of any applicable services the Hirer requires;
 - (iii) obtain all necessary approvals and clearances from councils and other statutory authorities;
 - (iv) comply with all relevant building laws, standards and practices;
 - (v) arrange tie downs as required – note that tie downs incur extra cost;
 - (vi) ensure the Company has access to the Equipment for servicing and maintenance at all times.
- (g) Additional charges will be charged to the Hirer if the delivery/installation/removal exceeds a radius of 30 metres from a truck access point or if the terrain is rough/step or on boggy ground.

9. Extra Charges

- (a) Additional Equipment requested by the Hirer will incur additional charges for hire and delivery/installation. The removal of Equipment will not excuse the Hirer from the payment of the agreed hire charges for the Equipment.
- (b) The Hirer is entitled to one pick up included in the Hire Fees. Any additional pick ups will incur additional charges.

10. Use of Equipment

- (c) The Hirer must ensure that the Equipment is used strictly in accordance with the Company's instructions and any procedures recommended by the Company from time to time.
- (d) The Hirer must at all times keep the Equipment in good condition and must not, without the Company's prior written consent, alter or make additions to the Equipment, or deface, remove or conceal any Company logo, identifying mark or number, or indication of the Company's ownership of the Equipment.
- (e) The Hirer must at all times ensure that the Equipment is used in a safe manner, and must not deliberately damage, abuse or mistreat the Equipment or allow the Equipment to be deliberately damaged, abused, or mistreated.



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- (f) If any damage, loss, theft or destruction of the Equipment occurs, whether the Hirer was responsible or not, the Hirer must immediately notify the Company and provide full details of the damage, loss theft or destruction.
- (g) The parties agree that risk in the Equipment remains with the Hirer at all times while the Equipment is in the possession or under the control of the Hirer.
- (h) The Hirer must ensure that the Equipment is used at all times strictly in accordance with:
 - (i) all applicable laws, and
 - (ii) any relevant industry usage, custom and standards for goods similar to the Equipment.
- (i) The Hirer must obtain and maintain, at its own expense, any insurance, permit or licence that may be required under any law or by any statutory or other authority for the use of the Equipment, including its installation or removal. Without limiting the Hirer's obligations under this clause, the Hirer must obtain all permits required under any relevant planning, environment or health and safety legislation, and must ensure that its personnel are appropriately inducted, trained and supervised so as to ensure the safe and lawful use of the Equipment.

11. Movement of Equipment

- (a) The Hirer may at its own risk move or alter the position of the Equipment on the Site. The Hirer indemnifies the Company against all claims for any loss or damage, howsoever arising, as a result of any movement of, or alteration to the Equipment.
- (b) The Hirer may engage the Company to move/relocate the Equipment on the Site.
- (c) The Company will charge a rate per metre/per item and/or a labour charge (at the sole discretion of the Company) for this service, which the Hirer can obtain on request and which the Hirer shall pay in accordance with the Company's usual terms for moving/relocating Equipment.

12. Location and Use of the Equipment

- (a) The Hirer must expressly inform the Company of the location of the Equipment during the Hire Period.
- (b) The Hirer must not:
 - (i) part with possession of the Equipment;
 - (ii) allow any other person to use the Equipment; or
 - (iii) permit the removal of the Equipment from the location at which the Hirer represented it would be located without the prior written consent of the Company.
- (c) The Hirer must store the Equipment in a safe place, and do all other things necessary to ensure the continued safety and preservation of the Equipment.

13. Missing and Damaged Equipment

- (a) The Hirer is responsible for any stolen, missing or damaged Equipment while on hire to it, and the cost of replacement or repairs of that Equipment.
- (b) If the Equipment is returned or collected in a damaged condition or a condition which in the reasonable opinion of the Company renders it unusable for hire, or if the Equipment is stolen or missing, the Hirer must pay the Company on demand the cost of replacement of the Equipment calculated in accordance with the relevant Damaged & Lost Materials price list as published on the Company's Websites, from time to time. In no circumstances will title to the Equipment or any part of it pass to Hirer and the provisions set out in clause 12 relating to the Company's title rights shall apply.
- (c) Other than for the cost of replacing or repairing the Equipment, the Hirer will be liable for all costs, expenses, damages and loss (including consequential loss), incurred by the Company arising out of the Equipment not being returned or collected, including where the Equipment has been stolen or missing.

14. Hirer's Obligations

The Hirer will:

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

- (b) Accept full responsibility for and indemnify the Company against all claims in respect of any injury to persons, or loss or damage to property, arising out of the possession or use of the Equipment during the Hire Period however arising, whether from the negligence of the Hirer or the Company or other party and limiting the generality of the foregoing whether or not the Equipment was being operated by an employee, servant or agent of the Hirer or any person for whose acts the Company might be or is held to be responsible in connection with the use of the Equipment.
- (c) Not be entitled to sell, transfer, mortgage, charge or encumber in any way the Equipment nor, without the Company's management prior written consent, part with the possession of the Equipment nor assign the benefit of this Agreement.
- (d) Not be entitled to remove the Equipment from the Site or allow it to be removed without the Company's permission.
- (e) Ensure that the Equipment is returned to the Company in the same condition as it was delivered.
- (f) Pay to the Company all hire and related charges and other costs as stipulated in accordance with the Company's Terms & Conditions and payment terms.
- (g) Inform the Company of the location of the Equipment at all times whilst the Equipment is under the possession and control of the Hirer.
- (h) The Company may inspect the Equipment from time to time during the Hire Period and the Hirer shall permit or procure permission for representatives of the Company to enter the Site.
- (i) The Hirer shall inspect the Equipment within 48 hours of installation/delivery and immediately notify the Company in writing of any objection to or defect in the Equipment. The Hirer's failure to do so shall constitute an acceptance of the equipment "as is" and a deemed acknowledgement that the Equipment is in good repair and condition, of an acceptable quality, is fit for the purpose of supply, is safe, is durable, is free from defects and the quantity installed is correct.
- (j) In no event shall the Company be responsible for any loss of, or damage to property, death or injury to persons caused by the Equipment, arising out of the use thereof during the period of hire and the Hirer shall indemnify the Company from and against all claims which may be made against the Company for damages or otherwise, in respect of or arising directly or indirectly out of any loss, damage, death or injury whatsoever caused directly or indirectly by or arising directly or indirectly out of the use of any Equipment whilst on hire to the Hirer which indemnity shall extend to and include all costs and expenses incurred by the Company in investigating and/or defending any such claim with all legal fees to be paid on a solicitor and own client basis.
- (k) Unless otherwise agreed, the Company does not warrant that the Equipment will not be affected by extreme weather conditions or other factors beyond their control. In the event of extreme weather conditions or an unforeseen event, which causes the Equipment to move, the Hirer will be charged a fee determined by the Company to relocate or repair the Equipment.

15. Exclusions of Warranties and Limitations of Liability

- (a) The Company acknowledges that the Australian Consumer Law and similar legislation provides:
 - (i) certain rights for Consumers that cannot be excluded; and
 - (ii) in relation to the supply of goods and services, that in some circumstances the Hirer may be a Consumer.
- (b) Subject to paragraph (c), the Company excludes any and all conditions, warranties, terms and consumer guarantees implied by statute, general law or custom (including without limitation the Australian Consumer Law) applicable to any supply of goods (including all Equipment) and services under these Terms & Conditions.
- (c) The Consumer Guarantees apply to any supply of goods and services where the Hirer is a Consumer, and the liability of the Company in connection with the Consumer Guarantees is not limited except as stated in paragraph (d).
- (d) If the Hirer is a Consumer in relation to the supply of goods and services, and those goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the liability of the Company in connection with the Consumer Guarantees is limited to one of the following (as selected by the Company):
 - In the case of goods
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;



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- (iii) the payment of the cost of replacing the goods or of acquiring goods equivalent to the goods; or
- (iv) the payment of the cost of having the goods repaired, except where it is not fair and reasonable to limit liability in this way.

In the case of services

- (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again.
- (e) The Company:
- (i) excludes any liability in contract, tort (including negligence) or otherwise, in connection with any supply of goods and services and for all claims under or relating to the Equipment for any indirect damages or losses, or for any special, punitive or exemplary damages;
 - (ii) limits its liability in contract, tort (including negligence) or otherwise, in connection with any supply of goods and services and for all claims under or relating to the Equipment and to the sums payable by the Hirer for the hire of the Equipment; and
 - (iii) excludes any liability for or in connection a claim that the Equipment supplied by the Company under these Terms & Conditions is not fit for a particular purpose, except where the Company has a liability as contemplated by paragraph (a) or (d).
- (f) The Hirer is liable for and shall indemnify the Company against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against the Company and any environmental loss, cost, damage or expense) in respect of:
- (i) Personal injury;
 - (ii) Damages to intangible property; or
 - (iii) A claim by a third party in respect of the Hirer's hire or use of the Equipment. The Hirer's liability under this indemnity is diminished to the extent that the Company's breach of the Terms & Conditions (if any) or negligence causes the liability, claims, damage, loss, costs or expenses.
- (g) The indemnity set out in paragraph f) above is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of the term of hire of the Equipment. It is not necessary for a party to incur an expense or make any payment before enforcing a right of indemnity conferred under these Terms & Conditions.
- (h) The Company will not be liable to the Hirer for any acts or omissions of any person supplied by the Company where that person is acting under the Hirer's direction or control during the Hire Period relating to the Equipment and the services provided under these Terms & Conditions and the Hirer shall indemnify the Company against all liability, claims, damages, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis) arising from or incurred in connection with such acts or omissions.
- (i) Subject to the provisions contained in this clause 15, the Company will not be responsible for failure or delay in delivery, pickup, installation or removal and will have no liability to the Hirer or any other person for any loss (including any consequential loss) arising out of such failure or delay.

16. Retention of Title Arrangements

- (a) Property in and title to the Equipment remains with the Company in all circumstances (even if the Hirer goes into liquidation or becomes bankrupt during the hire period).
- (b) The Hirer's right to use the Equipment is as a bailee only.
- (c) The Hirer is not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over or otherwise deal in any way with any of the Equipment.
- (d) Unless otherwise agreed by the Company, the Hirer must identify and store the Equipment in a manner that clearly shows that it is the property of the Company.

17. Equipment supplied will not become fixtures

- (a) The Hirer acknowledges and agrees that it is the intention of the parties that:
 - (i) Where the Equipment is or might be characterized as fixtures to land; or
 - (ii) Where the Equipment rests by its own weight on the land then the following provisions apply.

- (b) The Equipment shall be taken to be personal property of the Company and not fixtures despite having been connected to an electricity point, gas supply outlet, plumbing connection or another appliance or otherwise affixed to land.
- (c) In the event of a default by the Hirer under these Terms & Conditions, that in addition to any other enforcement provisions set out in these Terms & Conditions, if the Equipment can be removed without causing significant damage to the premises on which they are located, the Hirer consents to the Company and any authorized contractor acting on behalf of the Company, entering upon the premises of the Hirer or any premises where they are located or have been installed for the purposes of disconnecting them from an electricity point, plant or generator, gas supply outlet, plumbing connection or another appliance (as the case may be) and removing and retrieving them.
- (d) In the event of the Company exercising its rights under sub paragraph c), the Hirer:
 - (i) must not make any claim against the Company; and
 - (ii) must indemnify the Company against any claim by any third party (including without limitation the owner of the relevant property) in contract, tort (including negligence) or otherwise arising from or in connection with the exercise of those rights including without limitation for the cost of making good the premises arising from or connected with the removal of the Equipment or for any loss or damage (whether direct or indirect) suffered by the Hirer or any third party.

18. Personal Property Securities Act arrangements

Acknowledgement of security agreement and security interest The Hirer acknowledges and agrees that:

- (i) These Terms & Conditions are a security agreement for the purposes of the PPSA;
- (ii) The Company has a security interest in the Equipment and in any present or after acquired property that represents proceeds arising in respect of any dealings with the Equipment; and
- (iii) The security interest secures all amounts owing by the Hirer to the Company in connection with the hire of the Equipment and all obligations arising under these Terms & Conditions.

Acknowledgment of arrangements for financing statements

The Hirer acknowledges and agrees as follows:

Financing statements and financing change statements

- (i) The Company may at any time register a financing statement (or, if relevant, a financing change statement) on the PPS Register in relation to its security interest in the Equipment that may be supplied under these Terms & Conditions that may include terms that:
 - (a) Describe the Company as the "secured party" and the Hirer as the "grantor";
 - (b) Describe the Equipment supplied by the Company to the Hirer from time to time pursuant to these Terms & Conditions as collateral in the class of "other goods" (or in such other class as the Company may reasonably determine is applicable including (without limitation) in the class of "other goods" or, if applicable, the collateral may be described by serial number);
 - (c) Specifies that the security interest that the Company holds in the collateral is a PMSI in accordance with item 7 of the table in section 153(1) of the PPSA to the extent that it secures payment of the amounts owing in connection with that collateral; and
 - (d) Specifies that the security interest affects "proceeds" and, in particular, all present and after acquired property that represents proceeds of all Equipment may be supplied under these Terms & Conditions

(ii) Period of registration

The Company may register a financing statement or financing change statement on the PPS Register for any period that the Company determines (in its discretion)

(iii) Payment of fees and costs

Upon request made by the Company (and in its absolute discretion), the Hirer may be required to pay to the Company all fees, charges and expenses that the Company may reasonably incur in:

- (a) preparing, lodging or registering any financing statement or financing change statement in relation to any security interest that is granted to the Company under these Terms & Conditions;



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- (b) maintaining any such registration; or
- (c) enforcing any security interest granted to the Company under these Terms & Conditions. These fees, charges and expenses may be incurred by or with an agent that acts on behalf of the Company.

(iv) When registration to be effected

The Company may register its security interest on the Register at any time so long as the Company believes on reasonable grounds that it will become a secured party in relation to the Equipment including, without limitation, when the Hirer signs or otherwise adopts or accepts the Terms & Conditions in a manner proposed by the Company.

(v) Attachment

A security interest in the Equipment will attach to the Equipment at the time that the Hirer has rights in the Equipment and not at any later time.

(vi) Do all things necessary

The Hirer must do anything reasonably required by the Company to enable the Company to register the security interest as a PMSI and to maintain that registration.

Confidential Information

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

(obligation to dispose of or retain collateral);section 121(4) (notice of grantor); section 130 (notice of disposal to the extent it requires the Company to give notice to the Hirer);section 129 (2) & (3) (d) (contents of statement of account after disposal); section 132 (4) (statement of account if no disposal);section 135 (notice of retention);section 142 (redemption of collateral);and section 143 (re-instatement of security document).

Notices

PPSA Notices

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

Where default

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

Change of Details

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

Enforcement

If the Hirer fails to pay an amount owing when due or if it fails to perform any of its obligations in connection with the supply Equipment, the Hirer agrees that the Company shall be entitled to exercise its enforcement rights and remedies as a secured party in accordance with the provisions of the PPSA including (without limitation) the rights contained in section 123 of the PPSA to seize the Goods by any method permitted by law. For these purposes, and without limiting any other rights of the Company under the PPSA as a secured party, the Hirer further agrees:

- (i) upon demand made by the Company, to immediately deliver up to the Company the Equipment;
- (ii) to irrevocably authorise the Company to enter any premises occupied by the Hirer in order to search for, retrieve and remove the Equipment to which the Company has title and which are the subject of a security interest as provided for by these Terms & Conditions;
- (iii) to do all things necessary to immediately facilitate the Company's access to the Hirer's premises and to assist the Company to locate and identify the Equipment;
- (iv) to authorize the Company to resell or re-hire the Equipment seized and apply the proceeds of sale or re-hire in payment of any monies that the Hirer owes it;
- (v) that in the event of any inconsistency with the provisions contained in section 123 of the PPSA and the provisions contained in this paragraph, the provisions of this paragraph shall prevail.

Application of certain further PPSA provisions

To the extent they apply, the following provisions of the PPSA: section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134 (1) (retention of collateral) confer rights on the Company. The Hirer agrees that in addition to those rights, the Company shall if there is default by the Hirer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any Goods, not only under those sections but also, as additional and independent rights, under this document and the Hirer agrees that the Company may do so in any manner it sees fit including (in respect of dealing or disposing) by private or public sale, lease or licence.

Contracting out provisions

To the extent that Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest under or in connection with this Agreement the following provisions of the PPSA do not apply and for the purposes of section 115 of the PPSA are "contracted out" of this document in respect of all Goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires the Company to give a notice to the Hirer); section 96 (retention of accession); section 125

19. Termination of Hire

The Company may terminate the Agreement without notice to the Hirer, if the Hirer:

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

20. Changes to Terms & Conditions

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

21. Signatory's Warranties

Any person signing any document on behalf of Hirer in respect of the hire of the Equipment warrants that they:

- (a) have the Hirer's authority to contract with the Company on the Hirer's behalf; and
- (b) have been authorised by the Hirer to bind the Hirer to hire the Equipment on the terms set out in the Agreement, and agrees to indemnify the Company against all losses, costs and claims incurred by the Company if this is not the case.

22. Dispute Resolution

- (a) If there is any dispute between the Hirer and the Company or the Hirer wishes to make a claim against the Company, the Hirer must notify the Company in writing of the dispute, including details of the claim, before proceedings are commenced in any Court or Tribunal.



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- (b) Within 14 days from the date that a notice under subparagraph (a) is received by the Company, representatives of the Hirer and the Company must meet at the premises of the Company in an attempt to resolve the dispute.
- (c) the Hirer agrees that it will not commence proceedings against the Company unless the meeting referred to in subparagraph (b) above fails to resolve the dispute between the parties.

23. Severability

If any part of these Terms & Conditions become null and void then that part shall be severed and the remaining parts of the agreement shall continue to operate and bind the parties.

24. Law and Jurisdiction

- (a) These Terms & Conditions are governed by the law of Queensland and the parties submit to the exclusive jurisdiction of the Court in Toowoomba or Brisbane (if the relevant Court registry is not located in Toowoomba). Neither party will object to that forum for any reason.
- (b) Nothing in these Terms & Conditions is intended to exclude, limit, restrict, alter or modify any terms, conditions, warranties or guarantees that cannot be excluded by law. These Terms & Conditions are incorporated into any quote, invoice, agreement, statement, variation or other written agreement supplied by the Company to the Hirer. These Terms & Conditions supersede any other agreements, arrangements or understandings, including any conditions contained in the Hirer's own purchase order or agreement, whether in writing or oral. Any failure by the Company to enforce any clause of these Terms & Conditions will not be construed as a waiver of the Company's rights under these Terms & Conditions.