

Wercs Hire Pty Ltd - Terms & Conditions of Hire

1. Definitions

- 1.1 **"Charges"** means the cost of the Services or for the hire of the Equipment (plus any GST where applicable) as agreed between Wercs Hire and the Customer subject to clause 6 of this Contract.
- 1.2 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.3 **"Contract"** means the terms and conditions contained herein, together with any quotation, hire form, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.4 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when using Wercs Hire's website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.5 **"Customer"** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Wercs Hire to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.6 **"Equipment"** means all Equipment (including, but not limited to, any vehicle or trailer hire and any accessories) supplied on hire by Wercs Hire to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by Wercs Hire to the Customer.
- 1.7 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.8 **"Minimum Hire Period"** means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by Wercs Hire to the Customer.
- 1.9 **"Services"** mean all Services supplied by Wercs Hire to the Customer at the Customer's request from time to time.
- 1.10 **"Site"** means the location/s at which the Equipment is to be operated.
- 1.11 **"Wercs Hire"** means Wercs Hire Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Wercs Hire Pty Ltd
- 1.12 **"Damage Waiver Amount"** means 10% of the hire costs as supplied on the hire agreement.
- 1.13 **"Damage Waiver Excess"** means an amount capped at \$500.00 per item of plant or equipment as supplied on the hire agreement but not exceeding the cost to repair or replace the equipment.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, or accepts Delivery of, the Services/Equipment.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges and accepts that:
(a) the supply of Services/Equipment on credit shall not take effect until the Customer has completed a credit application with Wercs Hire and it has been approved with a credit limit established for the account;
(b) in the event that the supply of Services/Equipment requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, Wercs Hire reserves the right to refuse Delivery;
(c) "Good Working Order" means that the Equipment:
(i) is in good condition and good appearance throughout;
(ii) is in a safe and road worthy condition;
(iii) has been properly maintained and serviced in accordance with the original manufacturer's recommendations and requirements.
(d) variations to the Contract requested by the Customer are subject to labour charges, which shall be charged at Wercs Hire's current hourly rate and any applicable Site allowances, unless otherwise stated at the time of the variation request.
- 2.5 It is the Customer's responsibility to ensure that they have completed Wercs Hire's Pre-Hire Inspection Checklist prior to or on delivery of the Equipment. The Customer warrants that by accepting Delivery, the Customer has fully inspected the Equipment and is satisfied that the Equipment complies with its description and is suitable for the Customer's purposes, and any pre-existing damage, is accurately sighted and documented. If there is any discrepancy, it must be made known by the Customer prior to leaving Wercs Hire's premises.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that Wercs Hire shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
(a) resulting from an inadvertent mistake made by Wercs Hire in the formation and/or administration of this Contract; and/or
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Wercs Hire in respect of the Equipment hire and/or Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Wercs Hire; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

Wercs Hire Pty Ltd - Terms & Conditions of Hire

- 3.3 In circumstances where the Customer is required to place an order for Services, in writing, or otherwise as permitted by these terms and conditions, the Customer is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Services ("**Customer Error**"). The Customer must pay for all Services it orders from Wercs Hire notwithstanding that such Services suffer from a Customer Error and notwithstanding that the Customer has not taken or refuses to take delivery of such Services. Wercs Hire is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Customer Errors.
- 4. Change in Control**
- 4.1 The Customer shall give Wercs Hire not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by Wercs Hire as a result of the Customer's failure to comply with this clause.
- 5. Credit Card Information**
- 5.1 Wercs Hire will:
- (a) keep the Customer's personal details, including credit card details for only as long as is deemed necessary by Wercs Hire;
 - (b) not disclose the Customer's credit card details to any third party; and
 - (c) not unnecessarily disclose any of the Customer's personal information, except in accordance with the Privacy Act (clause 21) or where required by law.
- 5.2 The Customer expressly agrees that, if pursuant to this Contract, there are any unpaid Charges, other amounts due and outstanding by the Customer, any Equipment (or any part of them) supplied on hire that are lost or damaged or any other additional Charges are due from the Customer which were not known at the time of the return of the Equipment, Wercs Hire is entitled to immediately charge the Customer's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Customer pursuant to the terms of this Contract.
- 6. Charges and Payment**
- 6.1 At Wercs Hire's sole discretion the Charges shall be either:
- (a) as indicated on invoices provided by Wercs Hire to the Customer; or
 - (b) Wercs Hire's quoted Charges (subject to clause 6.2) which shall be binding upon Wercs Hire provided that the Customer shall accept in writing Wercs Hire's quotation within thirty (30) days.
- 6.2 Wercs Hire reserves the right to change the Charges:
- (a) if a variation to the Equipment which is to be supplied is requested; or
 - (b) if a variation to the Services (including, but not limited to, extensions or decreases of hire period, changes to the Services that are to be conducted etc) originally scheduled is requested; or
 - (c) as a result of increases in the cost of labour, materials or fuel costs which are beyond Wercs Hire's control.
- 6.3 Variations will be charged for on the basis of Wercs Hire's quotation, and will be detailed in writing, and shown as variations on Wercs Hire's invoice. The Customer shall be required to respond to any variation submitted by Wercs Hire within ten (10) working days. Failure to do so will entitle Wercs Hire to add the cost of the variation to the Charges. Payment for all variations must be made in full at the time of their completion.
- 6.4 At Wercs Hire's sole discretion, a deposit (in the form of a bond) shall be required within seven (7) days of the Customer's acceptance of this Contract, which shall be refunded to the Customer by within thirty (30) days of the return of the Equipment, provided that the Customer has complied with their obligations hereunder. The deposit may be used to offset any applicable Charges payable by the Customer under clause 15.3, and any outstanding balance thereof shall be due as per clause 6.5.
- 6.5 Time for payment for the Services/Equipment being of the essence, the Charges will be payable by the Customer on the date/s determined by Wercs Hire, which may be:
- (a) before Delivery of the Equipment; or
 - (b) on completion of the Services; or
 - (c) by way of instalments/progress payments in accordance with Wercs Hire's payment schedule;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Customer by Wercs Hire.
- 6.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply) or by any other method as agreed to between the Customer and Wercs Hire.
- 6.7 Wercs Hire may in its discretion allocate any payment received from the Customer towards any invoice that Wercs Hire determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Wercs Hire may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Wercs Hire, payment will be deemed to be allocated in such manner as preserves the maximum value of Wercs Hire's Purchase Money Security Interest (as defined in the PPSA) in the Services/Equipment.
- 6.8 The Customer shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Customer by Wercs Hire nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Customer must notify Wercs Hire in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as Wercs Hire investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in Wercs Hire placing the Customer's account into default and subject to default interest in accordance with clause 19.1.
- 6.9 Unless otherwise stated the Charges does not include GST. In addition to the Charges the Customer must pay to Wercs Hire an amount equal to any GST Wercs Hire must pay for any supply by Wercs Hire under this or any other agreement for providing Wercs Hire's Services/Equipment. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Charges. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.
- 6.10 Receipt by Wercs Hire of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

Wercs Hire Pty Ltd - Terms & Conditions of Hire

7. Damage Waiver

- 7.1 The Customer understands and accepts that a Damage Waiver Amount will automatically be charged in addition to the Hire Fee. The Damage Waiver set out in this clause, is an agreement to limit your liability in certain circumstances for loss, theft or damage to the Goods to an amount known as the Damage Waiver Fee, and which currently comprises 10% of the hire fees/Price payable on an upfront basis.
- 7.2 You are not required to pay the Damage Waiver Fee from the date you produce a certificate of currency for an appropriate policy of insurance that covers loss, theft or damage to the Goods for an amount not less than the replacement value of the Goods, for the period of hire. For the avoidance of any doubt, you are liable to pay the Damage Waiver Fee for that portion of the hire period where a certificate of currency remains outstanding and you are not entitled to any credit and/or reimbursement of the Damage Waiver Fee charged and/or paid that relates to the uninsured period. You are responsible for any excess and any other costs associated with your insurance and you are responsible for any shortfall in repair or replacement costs of the Goods following payment of any amount received under your insurance, including any loss you suffer as a result of not being able to hire or other utilise the Goods.
- 7.3 In the event that written acknowledgement is received from the Customer, WERCS Hire may, at its discretion, require evidence that the Customer has current insurance policies which insure the Equipment during the Hire Period for its full replacement or reinstatement cost and note WERCS Hire's interest and have a waiver of subrogation against WERCS Hire. When the Customer advises that they have a current insurance policy, they also agree that their insurance policy must remain in full force for the duration of the Hire Period.
- 7.4 Where the Damage Waiver Amount has been charged to the Customer, WERCS Hire agrees to waive its right to claim for loss and damage to the Equipment caused by fire, storm, collision, accident, theft or burglary, provided that the Customer has paid the Damage Waiver Excess promptly, submitted to WERCS Hire a written police report (where necessary) and adequate precautions had been taken to protect the Equipment, including that the Equipment was reasonably locked and secured.
- 7.5 Expressly excluded from clause 7.4 are losses and damage caused by the Customer as defined below:
- (a) loss or damage caused by the negligent act or omission of the Customer;
 - (b) loss or damage caused by the misuse, abuse or overloading of the Equipment of any components thereof;
 - (c) damage caused to tyres and tubes by blow out, bruises, cuts or other causes inherent in the use of the Equipment;
 - (d) glass breakage;
 - (e) loss or damage relating to the lack of lubrication or other normal servicing of the Equipment;
 - (f) loss or damage to the Equipment whilst being loaded, unloaded, transported on or over land, water, wharves, bridges or vessels of any kind;
 - (g) loss or damage to motors or other electrical appliances or devices caused by overloading or artificial electrical current, including use of underrated or excessive length of extension leads on electrical powered tools and machines;
 - (h) damage caused by exposure to any corrosive or caustic substances, such as cyanide, salt water, acid etc;
 - (i) theft of the Equipment unless reasonably locked and secured;
 - (j) loss or damage to Equipment during transport, except where transported by WERCS Hire. This sub-clause shall not apply to trailers, toilet trailers, caravans or trailerised Equipment;
 - (k) loss or damage from use in violation of any statutory laws and regulations; and
 - (l) loss or damage of tools, accessories, grease guns, hoses and similar, electric cords, welding cable, oxy and acetylene bottles, pneumatic tools, steels, shoring equipment, testing plugs, confined space equipment, lifting equipment, harnesses and other similar accessories.
- 7.5 Clause 7.4 shall not apply where WERCS Hire determines that one of the exclusions in Clause 7.5 applies unless the Customer is able to establish to the reasonable satisfaction of WERCS Hire that the exclusion does not apply. The Customer must provide WERCS Hire with all the information requested by WERCS Hire for the purpose of establishing whether one of the exclusions in clause 7.4 applies.

8. Hire Period

- 8.1 The Customer acknowledges and accepts that the vehicle may be hired:
- (a) for a half day (which shall mean four (4) hours and a one hundred (100km) allowance);
 - (b) daily (which shall mean twenty-four (24) hours) and a two hundred (200km) allowance);
 - (c) for the weekend (which shall mean that the vehicle is picked up on a Friday afternoon and returned on a Monday morning with a three hundred (300km) allowance); or
 - (d) weekly (which shall mean seven (7) days with a maximum usage of forty (40) hours) and a one thousand (1000km) allowance).
- 8.2 For Equipment in which a timing device is installed the hire period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Customer's possession.
- 8.3 Where the Equipment does not have a timing device installed hire Charges shall commence from the time the Equipment departs from Wercs Hire's premises and will continue until the return of the Equipment to Wercs Hire's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs. Additional Charges will apply in the event that the Customer requests an extension of the hire period.
- 8.4 The minimum hire period shall be specified on Wercs Hire's quotation and/or invoices.
- 8.5 The date upon which the Customer advises of termination shall in all cases be treated as a full day's hire.
- 8.6 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless Wercs Hire confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Customer notifies Wercs Hire immediately, hiring Charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Customer.
- 8.7 Off-hire receipts will only be issued when the Equipment has been either collected by Wercs Hire or returned to Wercs Hire's premises.

9. Provision of the Services

- 9.1 Delivery ("Delivery") of the Equipment is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Equipment at Wercs Hire's premises; or
 - (b) Wercs Hire (or Wercs Hire's nominated carrier) delivers the Equipment to the Customer's nominated address even if the Customer is not present at the address.
- 9.2 At Wercs Hire's sole discretion, the cost of Delivery is in addition to the Charges.
- 9.3 Any time specified by Wercs Hire for Delivery of the Equipment/Services is an estimate only and Wercs Hire will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable

Wercs Hire Pty Ltd - Terms & Conditions of Hire

the Equipment/Services to be supplied at the time and place as was arranged between both parties. In the event that Wercs Hire is unable to supply the Equipment/Services as agreed solely due to any action or inaction of the Customer, then Wercs Hire shall be entitled to charge a reasonable fee for re-supplying the Equipment/Services at a later time and date, and/or for storage of the Equipment.

10. Risk

- 10.1 Wercs Hire retains ownership of the Equipment nonetheless all risk for the Equipment passes to the Customer on Delivery.
- 10.2 The Customer acknowledges and agrees that the use of the Equipment carries with it dangers and risks of injury, and the Customer accepts full responsibility for, and shall keep Wercs Hire indemnified against, all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of Wercs Hire's possession, use, maintenance, repair, storage and/or transport of the Equipment during the hire term and whether or not arising from any misuse, negligence, failure or omission of the Customer or any other persons. This indemnity shall not apply where it can evidentially be shown by the Customer that the Equipment supplied by Wercs Hire was in a defective state or condition.
- 10.3 The Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies Wercs Hire for all loss, theft, or damage to the Equipment howsoever 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 Customer.
- 10.4 Further to clause 10.2, the Customer will insure, or self-insure, Wercs Hire's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

Vehicle Detailing Risk

- 10.5 The Customer acknowledges and accepts that:
- (a) where the Customer believes that Wercs Hire has scratched and/or damaged the Customer's vehicle whilst conducting the Services, the Customer shall within twenty-four (24) hours of Delivery (time being of the essence) notify Wercs Hire of any alleged damage. The Customer shall afford Wercs Hire an opportunity to inspect the vehicle within a reasonable time following Delivery. If the Customer fails to comply with clause 10.5, the vehicle shall be presumed to be free from any damage;
 - (b) in the event the Customer requests Wercs Hire to undertake the Services on the Customer's vehicle, and leaves the vehicle and/or the keys at Wercs Hire's premises whilst the site is unattended, then Wercs Hire shall not be responsible for the security of the vehicle or the keys, and shall not be held liable for any loss, damages or costs howsoever resulting;
 - (c) Wercs Hire will accept no responsibility for valuables or other items left in the Customer's vehicle. It is the Customer's responsibility to remove any valuables from the Customer's vehicle prior to the Services;
 - (d) Wercs Hire shall not be liable for the loss of or damage to the Customer's vehicle, its accessories or contents while being detailed unless caused by the negligence of Wercs Hire, or Wercs Hire' employees;
 - (e) it is the Customer's responsibility to ensure that the Customer's vehicle is insured against all possible damage (including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) whilst stored at Wercs Hire' premises. The vehicle is at all times stored and serviced at the Customer's sole risk; and
 - (f) Wercs Hire, its employees, agents or contractors may, if requested by the Customer, collect or re-deliver the vehicle prior and upon completion of the Services as this is a service offered by Wercs Hire unless otherwise agreed. Wercs Hire will not be liable to the Customer for any damage which occurs to or is caused by the vehicle during such driving, collection or delivery unless it arises from the reckless or wilful conduct of Wercs Hire, its employees, agents, or contractors.

11. Title

- 11.1 The Equipment is and will at all times remain the absolute property of Wercs Hire, and the Customer must return the Equipment to Wercs Hire upon request to do so.
- 11.2 If the Customer fails to return the Equipment to Wercs Hire as is required under this Contract or when requested to do so, then Wercs Hire or Wercs Hire's agent may (as the invitee of the Customer) enter upon and into any land and premises owned, occupied or used by the Customer, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused. Any costs incurred by Wercs Hire as a result of Wercs Hire so repossessing the Equipment shall be charged to the Customer.
- 11.3 The Customer is not authorised to pledge Wercs Hire's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

12. Personal Property Securities Act 2009 ("PPSA")

- 12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 12.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Services/Equipment that has previously been supplied and that will be supplied in the future by Wercs Hire to the Customer.
- 12.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Wercs Hire may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Wercs Hire for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Equipment charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Wercs Hire;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without the prior written consent of Wercs Hire.

Wercs Hire Pty Ltd - Terms & Conditions of Hire

- 12.4 Wercs Hire and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 12.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by Wercs Hire, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Customer must unconditionally ratify any actions taken by Wercs Hire under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.
- 12.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 12 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 12 will apply generally for the purposes of the PPSA.

13. Security and Charge

- 13.1 In consideration of Wercs Hire agreeing to supply Services/Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, and the Customer grants a security interest in all of its present and after-acquired property for the purposes of, including but not limited to registering Wercs Hire's security interest over the Customer on the PPSA, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Customer indemnifies Wercs Hire from and against all Wercs Hire's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Wercs Hire's rights under this clause.
- 13.3 The Customer irrevocably appoints Wercs Hire and each director of Wercs Hire as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Customer's behalf.

14. Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")

- 14.1 The Customer must inspect the Services on completion and the Equipment on Delivery and must within seven (7) days of Delivery notify Wercs Hire in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in Wercs Hire's Services or Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Wercs Hire to review the Services or inspect the Equipment.
- 14.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
- 14.3 Wercs Hire acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Wercs Hire makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Services/Equipment. Wercs Hire's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Customer is a consumer within the meaning of the CCA, Wercs Hire's liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.6 If Wercs Hire is required to rectify, re-supply, or pay the cost of re-supplying any Services or Equipment under this clause or the CCA, but is unable to do so, then Wercs Hire may refund any money the Customer has paid for the Services or Equipment but only to the extent that such refund shall take into account the value of any Services or Equipment and consumables which have been provided to the Customer which were not defective.
- 14.7 If the Customer is not a consumer within the meaning of the CCA, Wercs Hire's liability for any defect or damage in the Services or Equipment is:
 - (a) limited to the value of any express warranty or warranty card provided to the Customer by Wercs Hire at Wercs Hire's sole discretion;
 - (b) limited to any warranty to which Wercs Hire is entitled, if Wercs Hire did not manufacture the Equipment;
 - (c) otherwise negated absolutely.
- 14.8 Notwithstanding clauses 14.1 to 14.7 but subject to the CCA, Wercs Hire shall not be liable for any defect or damage which may be caused or partly caused by, or arise as a result of:
 - (a) the Customer failing to properly maintain any Services/Equipment or store any Equipment;
 - (b) the Customer interfering with the Equipment in any way without Wercs Hire's written approval to do so;
 - (c) the Customer using the Equipment for any purpose other than that for which it was designed;
 - (d) the Customer continuing the use of the Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (e) the Customer failing to follow any instructions or guidelines provided by Wercs Hire;
 - (f) fair wear and tear, any accident, or act of God.

15. Customer's Responsibilities

- 15.1 The Customer shall:
 - (a) satisfy itself at commencement that the Equipment is suitable for its purposes;
 - (b) notify Wercs Hire immediately by telephone of the full circumstances of any mechanical breakdown failure, accident, theft, or where any warning light appears in the Equipment. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification;
 - (c) secure the Equipment after any accident. In the event of an accident (where a person is injured, the other party has not stopped or exchanged details, the Equipment or any other vehicle is towed, or any driver appears to be influenced by drugs or alcohol), or theft of the Equipment, a report must be made to Police, and Wercs Hire contacted, immediately;

Weracs Hire Pty Ltd - Terms & Conditions of Hire

- (d) maintain the Equipment as is required by Weracs Hire (including, but not limited to, maintaining (where applicable) water, oil and fluid levels and tyre pressures);
- (e) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by Weracs Hire or posted on the Equipment;
- (f) ensure that:
 - (i) all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed ((i.e. holding a valid and current overseas driver's licence, Australian full driver's licence, restricted licence or licence class for the Equipment), to operate the Equipment and shall provide evidence of the same to Weracs Hire upon request;
 - (ii) the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;
 - (iii) no person shall interfere with the distance recorder or speedometer or, except in an emergency, any part of the engine, transmission, braking, or suspension systems of the Equipment; and
 - (iv) all reasonable care is taken by the driver in handling and/or parking the Equipment and that the Equipment is left locked and/or securely stored when not in use and the keys under the control of the Customer, or any authorised driver named in this Contract, at all times.
- (g) be liable for any parking or traffic infringement, toll fees, impoundment, towage and storage costs incurred during the hire period and will supply relevant details as required by the Police and/or Weracs Hire relating to any such matters or occurrences;
- (h) comply with all work health and safety laws relating to the Equipment and its operation;
- (i) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to Weracs Hire;
- (j) refuel the Equipment prior to its return from hire. In the event the Equipment needs to be refuelled upon its return from hire then the costs of refuelling shall be charged to the Customer in addition to the costs of the Equipment hire;
- (k) keep the Equipment in their own possession and control and shall not assign the benefit of the hire Contract nor be entitled to lien over the Equipment;
- (l) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
- (m) indemnify and hold harmless Weracs Hire in respect of all claims arising out of the Customer's use of the Equipment.

15.2 The Customer shall not:

- (a) alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (b) exceed the recommended or legal load and capacity limits of the Equipment (including the recommended number of passengers (if applicable));
- (c) carry any animals, illegal, prohibited or dangerous on, or in, the Equipment supplied without the prior written permission of Weracs Hire;
- (d) use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
- (e) fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.

15.3 Immediately on request by Weracs Hire the Customer will pay:

- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to Weracs Hire;
- (b) all costs incurred in cleaning the Equipment;
- (c) all costs of repairing any damage caused by:
 - (i) the ordinary use of the Equipment;
 - (ii) the negligence of the Customer or the Customer's agent;
 - (iii) vandalism, or (in Weracs Hire's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Customer.
- (d) the cost of fuels and consumables provided by Weracs Hire and used by the Customer;
- (e) any:
 - (i) lost hire fees Weracs Hire would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
 - (ii) costs incurred by Weracs Hire in picking up and returning the Equipment to Weracs Hire's premises if the Customer does not return the Equipment to Weracs Hire's premises or any pre-agreed pickup location when it was originally agreed that the Customer would do so;
 - (iii) insurance excess payable (including, but not limited, windscreen, window damage or water damage caused by immersion of the Equipment in water or from the Equipment being driven in flood waters etc) in relation to a claim made by either the Customer or Weracs Hire in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Customer and irrespective of whether charged by the Customer's insurers or Weracs Hire's.

16. Unclaimed Property

- 16.1 The Customer acknowledges that any property owned by the Customer that is left (or remains) in the Equipment whilst in the possession of Weracs Hire will be held for one (1) month, after which Weracs Hire shall be entitled to dispose of the property. Weracs Hire shall have the power to sell the property to recover any outstanding payment owed by the Customer.

17. Wet Hire

- 17.1 "Wet Hire" shall mean that the Equipment is hired with an operator who shall at all times remain an employee of Weracs Hire.
- 17.2 In the event of Wet Hire, the operator of the Equipment remains an employee of Weracs Hire and operates the Equipment in accordance with the Customer's instructions. As such Weracs Hire shall not be liable for any actions of the operator in following the Customer's instructions.

18. Cancellation

- 18.1 Without prejudice to any other remedies Weracs Hire may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms of hire Weracs Hire may repossess the Equipment as per clause 11.2, or suspend or terminate the supply of Services/Equipment to the Customer and any of its other obligations under the terms and conditions. Weracs Hire will not be liable to the Customer for any loss or damage the Customer suffers because Weracs Hire has exercised its rights under this clause.

Weracs Hire Pty Ltd - Terms & Conditions of Hire

- 18.2 Weracs Hire may cancel these terms and conditions or cancel Delivery of Services/Equipment at any time before the Services are commenced or the Equipment is delivered by giving written notice to the Customer. On giving such notice Weracs Hire shall repay to the Customer any sums paid in respect of the Charges. Weracs Hire shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 The Customer may cancel Delivery of the Equipment and/or Services by providing Weracs Hire with seven (7) days written notice from the date of the placement of the order. In the event that such notice is received outside of this timeframe the Customer acknowledges and accepts that they shall be liable for any and all loss incurred (whether direct or indirect) by Weracs Hire as a direct result of the cancellation (including, but not limited to, any loss of profits). Failure by the Customer to otherwise accept Delivery of the Equipment and/or Services shall place the Customer in breach of this Contract.

19. Default and Consequences of Default

- 19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at Weracs Hire's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Customer owes Weracs Hire any money, the Customer shall indemnify Weracs Hire from and against all costs and disbursements:
- (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Customer would be liable;
- in regard to legal costs on a solicitor and own client basis, internal administration fees, Weracs Hire's contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 19.3 Further to any other rights or remedies Weracs Hire may have under this Contract, if the Customer has made payment to Weracs Hire, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Weracs Hire under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 19.4 Without prejudice to Weracs Hire's other remedies at law Weracs Hire shall be entitled to cancel all or any part of any order of the Customer which remains unperformed and all amounts owing to Weracs Hire shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Weracs Hire becomes overdue, or in Weracs Hire's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer has exceeded any applicable credit limit provided by Weracs Hire;
 - (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

20. Compliance with Laws

- 20.1 The Customer and Weracs Hire shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Equipment /Services.
- Modern Slavery*
- 20.2 For the purposes of clauses 20.2 to 20.7:
- (a) "**Act**" means the *Modern Slavery Act 2018 (cth)*
 - (b) "**Modern Slavery**", "**Modern Slavery Statement**" and "**Reporting Entity**" have the meanings given by the Act.
- 20.3 If the Customer is a Reporting Entity, it shall comply with all of its obligations under the Act.
- 20.4 Whether the Customer is a Reporting Entity or not, the Customer shall:
- (a) use reasonable endeavours to identify, assess and address risks of Modern Slavery practices in its operations and supply chains;
 - (b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery;
 - (c) use its reasonable endeavours to ensure that if at any time the Customer becomes aware of Modern Slavery practices in its operations and supply chains, the Customer must as soon as reasonably practicable take all reasonable steps to address or remove these practices;
 - (d) provide to Weracs Hire a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and
 - (e) within seven (7) days of Weracs Hire's request (or such longer period as Weracs Hire agrees), provide to Weracs Hire any information or assistance reasonable requested by Weracs Hire;
 - (i) concerning the Customer's compliance with the Act;
 - (ii) concerning the Customer's operations and supply chains;
 - (iii) to enable Weracs Hire to prepare a Modern Slavery Statement or otherwise comply with the Act; or
 - (iv) to enable Weracs Hire to assess and address risks of Modern Slavery practices in its operations and supply chains.
- 20.5 The parties agree that in the circumstances a breach arises pursuant to this clause or the terms of the Act, the parties will try and resolve the breach by way of remediation and Weracs Hire will be able to terminate the Contract for any breach by the Customer.
- 20.6 The Customer warrants that any information supplied to Weracs Hire is true and accurate and may be relied upon for the purposes of the Act.
- 20.7 The Customer shall indemnify Weracs Hire against any loss or liability suffered by Weracs Hire as a result of the Customer's breach of this clause 20.

21. Privacy Policy

- 21.1 All emails, documents, images or other recorded information held or used by Weracs Hire is Personal Information, as defined and referred to in clause 21.3, and therefore considered Confidential Information. Weracs Hire acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Weracs Hire

Wercs Hire Pty Ltd - Terms & Conditions of Hire

acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by Wercs Hire that may result in serious harm to the Customer, Wercs Hire will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.

- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to Wercs Hire in respect of Cookies where the Customer utilises Wercs Hire's website to make enquiries. Wercs Hire agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Wercs Hire when Wercs Hire sends an email to the Customer, so Wercs Hire may collect and review that information ("collectively Personal Information")
- If the Customer consents to Wercs Hire's use of Cookies on Wercs Hire's website and later wishes to withdraw that consent, the Customer may manage and control Wercs Hire's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 21.3 The Customer agrees for Wercs Hire to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by Wercs Hire.
- 21.4 The Customer agrees that Wercs Hire may exchange information about the Customer with those credit providers and with related body corporates 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 creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 21.5 The Customer consents to Wercs Hire being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 21.6 The Customer agrees that personal credit information provided may be used and retained by Wercs Hire for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Equipment/Services; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Equipment; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Equipment.
- 21.7 Wercs Hire may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 21.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 21.3 above;
 - (b) name of the credit provider and that Wercs Hire is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults (provided Wercs Hire is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and Wercs Hire has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of Wercs Hire, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 21.9 The Customer shall have the right to request (by e-mail) from Wercs Hire:
- (a) a copy of the Personal Information about the Customer retained by Wercs Hire and the right to request that Wercs Hire correct any incorrect Personal Information; and
 - (b) that Wercs Hire does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 21.10 Wercs Hire will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 21.11 The Customer can make a privacy complaint by contacting Wercs Hire via e-mail. Wercs Hire will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

22. Service of Notices

- 22.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;

Wercs Hire Pty Ltd - Terms & Conditions of Hire

(e) if sent by email to the other party's last known email address.

22.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

23. Trusts

23.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any Trust ("Trust") then whether or not Wercs Hire may have notice of the Trust, the Customer covenants with Wercs Hire as follows:

- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Customer will not without consent in writing of Wercs Hire (Wercs Hire will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

24. General

24.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which Wercs Hire has its principal place of business and are subject to the jurisdiction of the Caboolture Courts in that state.

24.3 Subject to clause 14, Wercs Hire shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Wercs Hire of these terms and conditions (alternatively Wercs Hire's liability shall be limited to damages which under no circumstances shall exceed the Charges).

24.4 Wercs Hire may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.

24.5 The Customer cannot assign or licence without the written approval of Wercs Hire.

24.6 Wercs Hire may elect to subcontract out any part of the provision services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Wercs Hire's sub-contractors without the authority of Wercs Hire.

24.7 The Customer agrees that Wercs Hire may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Wercs Hire to provide Equipment on hire to the Customer.

24.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make a payment to Wercs Hire.

24.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.

24.10 This Contract and any subsequent hire agreement between Wercs Hire and the Customer, shall constitute as the entire agreement between Wercs Hire and the Customer, and the Customer hereby acknowledges that no reliance is placed on any representation made by Wercs Hire that is not embodied in this Contract.

24.11 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.