

## HIRE TERMS & CONDITIONS

### 1. INTERPRETATION OF WORDS IN THIS CONTRACT;

**Commencement** – the date the Customer takes possession of the equipment.  
**Equipment** – Means any equipment, including but not limited to: lifting, access, air/air compression, earthmoving, compaction, vehicles, floor care and cleaning equipment, including tools, parts and accessories for the previously mentioned.  
**Hire Charge** - the amounts shown on the Hire Schedule payable by the customer to hire the Equipment.  
**Hire Period** - means from commencement until the end of the period shown on the Hire Schedule. The Hire Period may only be extended if the customer requests it and if Pro Hire Group Pty Ltd agrees. Pro Hire Group Pty Ltd may require the Customer to sign an amended Hire Schedule for any extension of the Hire Period.  
**Hire Schedule** – Means a document which Pro Hire Group Pty Ltd may require the Customer to sign (or accept in a way Pro Hire Group Pty Ltd requires) including particulars of the Equipment and the Hire Period and such other information as Pro Hire Group Pty Ltd may decide to require.  
**Pro Hire Group** – the Company listed on the Hire Schedule.  
**PHG** – Pro Hire Group Pty Ltd  
**Kilometre Charge** – the amount payable for the kilometres that a Motor Vehicle has, in reasonable opinion of Pro Hire Group Pty Ltd, travelled during the Hire Period.

### 2. PRO HIRE GROUP OBLIGATIONS

Pro Hire Group:  
 (i) Allow the Customer to take and use the Equipment for the Hire Period;  
 (ii) Provide the Equipment to the Customer clean and in good working order

**NOTE: Customer MUST return the Equipment at their expense when due back unless previously arranged with Pro Hire Group to be picked up.**

### 3. OBLIGATIONS OF THE CUSTOMER

The Customer must:  
 3.1. Deliver the Equipment to PHG when it is due back (unless previously arranged for PHG to have the equipment picked up);  
 3.2. Return the Equipment to PHG clean and in good working order;  
 3.3. Agree that before accepting the Equipment, the Customer is satisfied that the Equipment is suitable for the task it is intended for. PHG makes no statements and gives no guarantee or warranty that the Equipment is suitable for the Customer's intended use.  
 3.4. To stay safe The Customer, it's Employees, Agents and Contractors must: Operate the Equipment safely, strictly in accordance with all laws, only for its intended purpose, and in accordance with any manufacturer's instructions;  
 3.4.1. Indemnify PHG for all injury and/or damage caused to persons and property in relation to the Equipment and its operation and have adequate insurance to cover all liabilities incurred as a result of the use of the Equipment. ;  
 3.4.2. Ensure that any person collecting or taking delivery of Equipment on behalf of the Customer is authorised by the Customer to do so and the Customer will not allege that any such person is not so authorised;  
 3.4.3. Ensure all persons operating the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or hold a current Licence to perform High Risk Work.  
 3.4.4. Conduct necessary hazard and risk assessments prior to using the Equipment and comply with all OH&S laws relating to the Equipment and its operation;  
 3.4.5. Secure all items loaded in/on Equipment, and indemnify Pro Hire Group of any injury, and/or damage caused by items falling from the Equipment or any other vehicle.  
 3.4.6. Wear appropriate clothing and protective equipment when operating the Equipment as required and recommended by PHG or the manufacturer;  
 3.4.7. Visibly display all safety signs and instructions required by law, and ensure that all instructions and signs are observed by operators or the Equipment.  
 3.4.8. Report and provide full details to PHG of any accident or damage to the Equipment within 2 business days of the accident or damage occurring.  
 3.4.9. Ensure no persons operating the Equipment are under the influence of drugs or alcohol.  
 3.4.10. Ensure the person is not carrying any illegal, prohibited or dangerous substances in or on Equipment.  
 3.5. **Taking care of the Equipment during the Hire Period**  
 The Customer must:  
 3.5.1. Clean, fuel, lubricate and keep the Equipment in good condition and in accordance with the manufacturer's and Our instructions at the Customer's own cost;  
 3.5.2. In no way damage, repair, alter, modify or tamper with the Equipment;  
 3.5.3. in no way remove, demolish, vary or erase any identifying marks, plates, numbers, notices or safety information on the Equipment;  
 3.5.4. Not lose or part with custody of the Equipment;  
 3.5.5. Rely upon representation relating to the Equipment or its operation than those contained in this Contract.

3.6. At all times during the Hire Period, the Customer must store the Equipment safely and securely and protect it from theft, seizure, loss or damage.  
 3.7. the Customer will allow PHG to enter their premises and inspect the Equipment during the Hire Period.  
 3.8. Whenever the Customer moves the Equipment, the Customer must ensure the safe loading, securing and transporting of all laws and manufacturers guidelines. The Customer (or any Contractor they engage) must observe any safety directions advised by Pro Hire Group and/or manufacturer of the Equipment to ensure its safe loading and handling.  
 3.9. The Customer warrants that They will comply with all Environmental Laws and immediately rectify any breach of an Environmental Law caused by the use of the Equipment.  
 3.10. Any electrical equipment by PHG will be tested and tagged before it is hired to the Customer; the Customer is responsible for the retesting and re-tagging of any electrical Equipment in accordance with the manufacturer's instructions and the applicable Australian Standards and regulatory Authority requirements at Their own cost.  
 3.11. The Customer must use best efforts to ensure that the Equipment is not contaminated with any hazardous substances (including asbestos). The Customer must advise Pro Hire group of any risks of hazardous substance contamination to the Equipment as soon as they become apparent. If the Equipment may have been subjected to contamination, the Customer will effectively decontaminate the Equipment, and provide PHG details of decontamination process that was applied. If, in Pro Hire' opinion, the Equipment has not been properly decontaminated or is not capable of being decontaminated, the Customer will be charged for the new replacement cost of the Equipment.  
 3.12. **If at the Customer's request, Pro Hire Group supply an operator to operate the Equipment;**  
 3.12.1. the hired Operator will be under the Customer's direction and control at all times during the Hire Period and will comply with the Customer's reasonable directions;  
 3.12.2. PHG will not, while the Operator is working under the Customer's direction, seek to direct or supervise any of the work undertaken by the Operator.  
 3.12.3. PHG will not be liable to the Customer for any acts or omissions of the Operator where they are acting under the Customer's direction and control during the Hire Period;  
 3.12.4. The Customer will not allow any other person to operate the Equipment without Pro Hire Group' written consent.  
 3.13. **The Customer understands that Pro Hire Group own the Equipment.**  
 3.13.1. The Customer acknowledges that PHG remains the owner of the equipment and in all circumstances PHG retain title to the Equipment (even if the Customer goes into liquidation or become bankrupt during the Hire Period). The Customer's rights to use the Equipment are on a hire basis only;  
 The Customer is not entitled to offer, sell, assign, sublet, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Equipment in any way.  
 4. **PAYMENTS BY THE CUSTOMER TO PRO HIRE GROUP**  
 4.1. On Commencement of Hire, the Customer will pay the Hire Charge, unless otherwise agreed with PHG.  
 4.2. One request by PHG the customer will immediately pay;  
 4.2.1. New list prices of any Equipment which is for whatever reason not returned to PHG as scheduled;  
 4.2.2. Any and all costs incurred in cleaning the Equipment;  
 4.2.3. The full cost of repairing any damage to the Equipment, unless agreed otherwise in this Contract;  
 4.2.4. Stamp duties, GST, any other taxes or duties and all tolls, fines, penalties, levies or charges payable in respect of this Contract or arising from Pro Hire Group' supply or the Customer's use of the Equipment;  
 4.2.5. All and any costs incurred by Pro Hire Group in delivering and recovering custody of the Equipment;  
 4.2.6. A late payment fee calculated at 10% per month on all amounts owing by the Customer not paid on time (for 14 Day Trading Accounts Only);  
 4.2.7. The Kilometre Charge and any additional Hire Charges;  
 4.2.8. The cost of fuels and consumables provided by Pro Hire Group and not returned by the Customer;  
 4.2.9. Any expenses and legal costs (including commission payable to a commercial agent) incurred by Pro Hire Group in enforcing this Contract;  
 4.2.10. All costs of repairing or replacing tyres including road service.  
 4.3. Without limiting the ability of Pro Hire Group to recover all amounts owing to it, the Customer authorises Pro Hire Group to charge any amounts owing by the Customer to any credit card or accounts details of which are provided to Pro Hire Group without prior written notice.  
 5. **PPS LAW**  
 5.1. this clause applies to the extent that this Contract provides a 'security interest' for the purposes of the Personal Property Securities Act 2009 9Cth) (PPS Law). References to PPS Law in this agreement include references to amended, replacement and successor provisions or legislation.

By signing this document, I, the Hirer, agree to all pages of the Hire Terms & Conditions and Special Conditions of Hire.

<b>Name:</b>		<b>Title:</b>	
<b>Signature:</b>		<b>Date:</b>	

5.2. If PHG does not have at Commencement a PPS Law registration ensuring a perfected priority security interest in the Equipment, the Hire Period, (including any extension of the Hire Period or the aggregate of consecutive Hire Periods during which the Customer has substantially uninterrupted possession) may not despite anything else in this document or any Hire Schedule be longer than:

- 5.2.1. 90 days in the case of Equipment which may or must be described by serial number in a PPS Law registration; or
- 5.2.2. A year in any other case.

5.3. PHG may register its security interest. The Customer must do anything (such as obtaining consents and signing documents) which Pro Hire Group requires for the purposes of:

- 5.3.1. Ensuring that PHG's security interest is enforceable, perfected and otherwise effective under the PPS Law;
- 5.3.2. Enabling PHG to gain first priority (or any other priority agreed to by PHG in writing) for its security interest;
- 5.3.3. Enabling PHG to exercise rights in connection with the security interest.

5.4. The rights of PHG under this document are in addition to and not in substitution for Pro Hire Group's under other law (including PPS Law) and PHG may choose whether to exercise rights under this document, and/or under such other law, as it seems fit. To avoid any doubt about if PHG's security interest will attach to proceeds.

- 5.4.1. Enabling PHG to gain first priority (or any other priority agreed to by PHG in writing) for its security interest.
- 5.4.2. Enabling PHG to exercise rights in connection with the security interest.

5.5. The rights of PHG under this document are in addition to and not in substitution for PHG' under other law (including PPS Law) and PHG may choose whether to exercise rights under this document, and/or under such other law, as it seems fit. To avoid any doubt about if PHG's security interest will attach to proceeds.

5.6. To the extent that Chapter 4 of the PPSA applies to any security interest under this agreement, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of this agreement in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires PHG to give notice to the Customer); section 96 (retention of accession); section 121(4) (notice of grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires PHG to give notice to the Customer); section 129(2) and 129(3); 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 agreement).

5.7. The following provisions of the PPS Law; section 123 (seizing collateral); 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 PHG. Customer agrees that in addition to those rights, PHG shall, if there is default by Customer, 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 Customer agrees that PHG may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

5.8. The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.

5.9. PHG and the Customer agree not to disclose information of any kind that can be requested under section 275(1) of the PPS Law. The Customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing PHG the benefit of section 275(6)(a) and PHG shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this sub-clause.

5.10. Customer must not dispose or purport to dispose, or create or purport to create or permit to be created any "security interest" (as defined in PPS Law) in the equipment other than with the express written consent of PHG.

5.11. Customer must not lease, hire, bail or give permission ("sub-hire") of the Equipment to anyone else unless PHG (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to PHG and must be expressed to be subjected to the rights of PHG under this agreement. Customer may not vary a sub-hire without the prior written consent of PHG (which may be withheld in its absolute discretion).

5.12. customer must ensure that PHG is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment.

5.13. Customer must take all steps including registration under PPS Law as may be required to:

- 5.13.1. Ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
- 5.13.2. Enabling the Customer to gain (subject always to the rights of PHG) first priority (or any other priority agreed to by PHG in writing) for the security interest;
- 5.13.3. Enabling PHG and the Customer to exercise their respective rights in connection with the security interest.
- 5.13.4. To assure performance of its obligations under this agreement, the Customer hereby gives PHG an irrevocable power of attorney to do anything PHG considers the Customer should do under this agreement. PHG may recover from Customer the cost of doing anything under this clause 5, including registration fees.

## **6. CUSTOMER NOT TO CLAIM DAMAGES**

6.1. The Customer cannot recover from PHG compensation for any damages (including for consequential loss) arising in respect of this Contract or the hiring or the use of the Equipment. NB: this clause does not affect any rights the customer may have under the Australian Consumer Law or other law if, and to the extent that, those rights may not be lawfully extended or modified under this Contract.

## **7. BREACH OF HIRE CONTRACT BY CUSTOMER**

If the Customer breaches any clause whatsoever of this Contract, or becomes bankrupt, insolvent or ceases business then;

7.1. PHG shall be entitled to;

7.1.1. Terminate this Contract, and/or

7.1.2. Sue for recovery of all monies owing by the Customer, and/or

7.1.3. Repossess the equipment (and is authorised to enter any premises where the Equipment is located to do so).

7.2. The Customer indemnifies PHG in respect of any breach by the Customer of any provision of this Contract.

## **8. NO WARRANTIES**

8.1. All warranties and conditions are excluded to the full extent permitted by law and PHG' only obligation resulting from a breach by it or any condition or warranty is limited to the supplying of the Equipment again or to the repair of the Equipment. NB: this clause does not affect any rights the Customer may have under the Australian Consumer Law or other law if, and to the extent that, those rights may not be lawfully excluded or modified under this Contract.

## **9. DISPUTES**

9.1. The Customer must immediately check all Hire Charges, and any disputes in relation to those Hire Charges must be communicated to PHG in writing within 30 days of the Hire Contract date. In the event that no communication is received from the Customer within that 30 day period, the Hire Charges are deemed to be accepted by the Customer.

9.2. If a dispute arises relating to this Contract, the hiring or the use of Equipment (except in regard to payments due to PHG), the parties agree to negotiate to settle the dispute with the assistance of the Hire and Rental Association of Australia before litigation.

## **10. PRIVACY**

PHG will comply with the national Privacy Principles in all dealings with Customers. A copy of the PHG' Privacy Statement is available upon request from the Customer.

## **11. GOVERNING LAW**

11.1. this hire Contract is a payment claim under the Building and Construction Industry of payment Act 1999 NSW, the Building and Construction Industry Security of payment Act 2002 VIC, the Building and Construction Industry Payments Act 2004 QLD, the Building and Construction Industry Security of Payment Act 2009 SA, the Construction Contracts Act 2004 WA, the Building and Construction Industry (Security of payment) Act 2009 ACT, the Building and Construction Industry Security Payment Act 2009 TAS, and/or the Construction Contrasts (Security of Payments) ACT2009 NT.

11.2. Except where PHG in its discretion takes action against the Customer under any of the Building and Construction Industry legislation referred to in this clause, PHG and the Customer agree that this Contract is governed by the law of the state of New South Wales, and the parties submit to the jurisdiction of the courts of that State.

## **12. HOW HIRE CHARGES ARE CALCULATED**

12.1. The Customer will pay PHG for the hire of the Equipment at the Hire Charges rates set out in the Hire Schedule.

12.2. The Hire Schedule will specify the type of rate which will apply to the Customer and the method of calculation.

12.3. Additional rental charges set out in the Hire Schedule will apply if the Equipment is used for more than 8 hours per day.

12.4. PHG reserves the right to charge for a minimum period of hire for certain types of Equipment, but will advise the Customer of any minimum hire periods before the commencement of hire.

12.5. The Customer will be charged for the hire of Equipment for the full Hire Period. For the avoidance of doubt, the Customer will continue to incur hire and other charges after the Expected Off Hire Date if the Customer has not returned the Equipment to PHG by the Expected Off Hire Date.

12.6. If the Customer has requested that PHG to deliver and collect the Equipment and PHG has agreed, hire charges will commence from the time the Equipment leaves PHG' premises and continue until the date the Customer notifies us that They no longer require the Equipment and that Equipment is available for collection (the "Off-Hire Date"). On the Off Hire Date, the Customer must notify PHG that the Equipment is available for collection (e.g. if hire commenced at 10am, then the Customer must notify PHG no later than 10am on the Off Hire Date), otherwise PHG reserve the right to charge an extra day of hire charges. For the avoidance of doubt, the Expected Off Hire Date set out in the Hire Schedule is not considered to be the Customer' notice to PHG that the Equipment is available for collection.

## **13. OTHER CHARGES**

In addition to Hire Charges, the Customer agrees that They will be required to pay:

13.1. For any consumables, fuel or trade materials PHG supply to the Customer;

13.2. If the Customer requires PHG to deliver collect of install the Equipment, the cost of delivery, collection or installation, as detailed in the Hire Schedule;

13.3. If the Customer does not return the Equipment in clean and good working condition, charges for the cleaning and repair of the Equipment;

13.4. Any stamp duty or GST arising out of this Hire Agreement;

Any other applicable levies, fines, penalties and any other government charges arising out of the Customers' use of the Equipment;

13.5. Charges for payment made by credit card, as detailed in the Hire Schedule (credit card surcharge is 1.5%).  
 13.6. If the Customer requests operational guidance or training on the use of the Equipment, and PHG staff are available to provide this, the cost for the provision of these services at rates agreed by PHG.  
 13.7. Charges in connection with the administration of the Customers' account with PHG, as detailed in the Hire Schedule, which may include printing, and postage costs;  
 13.8. Excess fees of \$2500 for any damage to vehicles if the driver is 25 years or older, or \$3500 for any damage to vehicles if the driver is under 25 years.  
 13.9. Security Bonds for vehicles, equipment, tools etc will be charged on hire and any excess charges will be firstly taken from this amount.  
 13.10. Refunds of the security bond will be processed upon hired item being returned and checked for damaged. Refunds will be processed within 72 hours of return of equipment.

**14. PAYMENT**

14.1. The Customer must pay upfront for all fees, charges and costs associated with the Equipment prior to the hire under this Hire Agreement unless the Customer has a 14 Day Trading Account, in which case;

14.1.1. The Customer must pay all fees, charges and costs that become due and payable under this Hire Agreement within 14 days of the date of invoice;  
 14.2. If the Customer does not pay the invoice in full by the payment due date, PHG reserves the right to charge, in addition to any other costs recoverable under this Hire Agreement;

14.2.1. Interest, calculated monthly, on the total outstanding balance. The interest rate used to calculate the interest payable for the month is 2%, and;

14.2.2. Any cost and expenses (including commission payable to any commercial or mercantile agents and legal costs) incurred by PHG in recovering any unpaid amounts under this Hire Agreement.

14.3. PHG can without prior notice to the Customer, charge the Customer's credit card for any outstanding amounts in respect of the hire, including cleaning of the machine, fuel, consumables, damage, extended hire.

**15. RESPONSIBILITY FOR THE EQUIPMENT**

You are responsible for the Equipment for the Hire Period.

**16. RETURN OF THE EQUIPMENT**

16.1. You must return the Equipment to PHG in the same clean condition and good working order it was when the Customer received it, ordinary fair wear and tear excluded. If the Customer does not properly clean the Equipment, PHG Group will charge the Customer a cleaning cost in accordance with clause 14.3.

16.2. Except in the circumstances set out in clause 17.3 below, it is the Customers' responsibility to return the Equipment in good working condition to the PHG premises from where the Customer hired it from during normal business hours.

**17. WHAT TO DO IF EQUIPMENT BREAKS DOWN**

17.1. in the event that the Equipment breaks down or becomes unsafe to use during the Hire period the Customer must:

17.1.1. immediately stop using the Equipment and notify PHG;  
 17.1.2. Take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;  
 17.1.3 Take all steps necessary to prevent any further damage to the Equipment itself; and  
 17.1.4. not repair or attempt to repair the Equipment without PHG written consent.

17.2. Except if clause 19.2. applies, upon receiving notice from the Customer under the clause

17.2, PHG will;

17.2.1. Take all steps necessary to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by the Customer; and

17.2.2. Not impose a hire charge for that portion of the Hire Period for which the Equipment was broken down or unsafe, nor the costs associated with any repair or replacement of the Equipment.

**18. WHAT TO DO IF EQUIPMENT IS LOST, STOLEN OR DAMAGED**

18.1. if the Equipment has broken own or become unsafe to use as a result of the Customers' negligence or if the Equipment is lost, stolen or damaged beyond fair wear and tear during the Hire Period, the Customer will be liable for;

18.1.1. Any costs incurred by PHG to recover and repair or replace the Equipment; and

18.1.2. The Hire Charges for that portion of the Hire Period during which the Equipment is being recovered and repaired or replaced.

18.2. provided that the Customer pay the costs and charges described in clause 19.1, PHG Group will return the Equipment to the Customer once it has been repaired or replaced, and the Customer will continue to pay the hire charges for the remainder of the Hire Period.

**19. INDEMNITIES AND EXCLUSION OF LIABILITIES**

19.1. Subject to Clause 20.3, and except as expressly provided to the contrary in this Hire Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Hire Agreement or its subject matter are excluded to the maximum extent permitted by law.

Nothing in this Hire Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Australian Consumer Law, which contains guarantees that protect the purchase of goods and services in certain circumstances.

**20. WHEN THIS HIRE AGREEMENT TERMINATES**

20.1. Either party may terminate this Hire Agreement and any Hire Period immediately by giving notice to the other party, if;

20.1.1. That other party breaches any term of the Hire Agreement and fails to remedy the breach within 14 days of written notification of the breach; or

20.1.2. that other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business.

20.2. PHG may terminate the Hire Agreement and any Hire Period for any reasons on 24 hours' notice.

20.3. These rights of termination are in addition to any other rights either party has under the Hire Agreement and does not exclude any right or remedy under law or equity.

**21. RECOVERY OF THE EQUIPMENT**

If the Customer is in breach of the Hire Agreement, or if the Hire Agreement or a Hire Period has been terminated under clause 21, PHG may take all necessary steps (including legal action) to recover Equipment, including recover Equipment, including entering the Customer's premises to do so. Upon receiving written notice from PHG, the Customer expressly consents to PHG entering the Customers' premises for the purpose of recovering PHG's Equipment.

**22. SECURITY**

Except where Clause 22 applies:

22.1. As security the Customers' obligations and liabilities under this Hire Agreement, the Customer hereby charge for the due and punctual payment and performance of those obligations and liabilities, all of the Customers' legal and equitable interest (both present and future) of whatsoever nature held in any and real property.

22.2. Without limiting the generality of the charge in this clause, the Customer agrees, on PHG' request, to execute any documents and do all things necessary as required by PHG to register a mortgage security or other instrument of security over any real property and against the event that the Customer fails to do so within reasonable time of being so requested, the Customer irrevocably and by way of security, appoint any credit manager or solicitor engaged by PHG to be the Customers' true and lawful attorney to execute and register instruments.

22.3. The Customer will indemnify PHG on an indemnity basis against all costs and expenses incurred by PHG in connection with the preparation and registration of any such charge and mortgage documents; and

22.4. The Customer also consents unconditionally to PHG lodging a caveat or caveats noting PHG' interest in any of the Customers' real property.

**23. EQUIPMENT THAT IS COLLECTED OR DELIVERED IN A DAMAGED AND/OR DEFECTION CONDITION**

If the Customer collects or receives the Equipment (whichever is applicable) and find that it is broken, damaged and/or defective, the Customer must notify PHG within 24 hours after the Customer has collected or received the Equipment. If the Customer does not notify PHG within this time period, PHG are entitled to assume the Equipment the Customer collected or received was in good order & condition.

**24. LONG DISTANCE MAINTENANCE**

24.1. If the Customer hires Equipment for use at a Long Distance Location, this clause 25 applies to that Customer.

24.2. The PMP for all Equipment operating in a Long Distance Location will be subject to a per kilometre charge both to and from the premises nominated by the Customer, as specified by PHG. There will be no charge for the first 50km either way.

24.3. Multiple items of Equipment the Customer hires from PHG at the Long Distance Location will only be charged as one call out.

24.4. For the avoidance of doubt, the Customer remain responsible for daily maintenance and core of all Equipment in accordance with Clause 3, including but not limited to. Daily checking of all fluids (fuel, oil, water, battery levels etc). General tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points.

24.5. If the Equipment breaks down at a Long Distance Location, the Customer will also pay PHG the costs associated with any attendance to the Long Distance Location in addition to any other costs payable under this Hire Agreement.

**25. PRIVACY**

25.1. At PHG, we take the Customers' privacy seriously. PHG will comply with the National Privacy Principles in all dealings with the Customer.

25.2. PHG may need to collect personal information about the Customer, including but not limited to, the Customers' full name and address, drivers licence, credit card details, date of birth, credit or business history and other personal information. The Customer consents to PHG using their personal information in order to:

25.2.1. Fulfil functions associated with the hire of the Equipment to the Customer, including but not limited to assessing the Customers' credit worthiness, or taking steps in accordance with Clause 5;

25.2.2. Provide services to the Customer;

25.2.3. Prevent theft of PHG' Equipment;

25.2.4. Enter into contracts with the Customer or third parties, and

25.2.5. To market to the Customer and maintain a client relationship with Them.

25.3. The Customer also consents to PHG disclosing the Customers' personal information.

25.3.1. To any credit provider or credit reporting agency for the purpose of obtaining information about the Customers' consumer or commercial credit or business history of the Customers' commercial activities or credit worthiness; and  
 25.3.2. To PHG service providers, contractors and affiliated companies from time to time to help improve and market PHG services to the Customer.  
 25.4. The Customer has the right to access the personal information PHG hold about the Customer.  
 25.5. A copy of PHG Privacy Statement is available upon request to the Customer.

**26. FORCE MEASURE**

26.1. Subject to Clause 26.2. neither party will be responsible for any delays, installation or collection due to causes beyond their control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.

26.2. Nothing in Clause 26.1. will limit or exclude the Customer' responsibility and liability under the Hire Agreement for Equipment that is lost, stolen or damaged beyond fair wear and tear during the Hire Period, or has broken down or become unsafe to use as a result of the Customers' conduct or negligence.

**27. SEVERABILITY**

If any part of this Hire Agreement becomes void or unenforceable for any reason then this part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.

**28. GOVERNING LAW**

The Hire Agreement is governed by the laws of the State or Territory of Australia where the Hire Agreement is entered into by parties and each party submits to the non-exclusive jurisdiction of the courts of that State or Territory.

**29. NO RELIANCE**

Subject to clauses 20.1 and 20.3 the Customer acknowledges that neither PHG nor any person acting on PHG's have made any representation or other inducement to the Customer to enter into the Hire Agreement and the Customer has not entered into the Hire Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those representations contained in this Hire Agreement.

**30. VARIATION**

Except where clause 35 applies, from time to time, PHG may need to vary this Hire Agreement. If PHG intends to do so, Pro Hire Group will give the Customer 30 day's written notice and clearly set out PHGs' amendments. If the Customer has reasonable grounds to believe the change will be detrimental to the Customer's rights, the Customer may terminate this Hire Agreement without penalty within 30 days of receiving PHGs' written notice. Any other variation of these terms and conditions must be agreed in writing by the Customer and PHG.

**31. NO WAIVER OF RIGHTS**

Subject to Clause 24, no delay or omission by party to exercise any right, power or remedy available to that party as a result of continuing breach or default under this Hire Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of that party's rights to take action or make a claim in respect of continuing breach or default.

**32. REVIEW OF YOUR CREDIT APPROVAL**

32.1. From time to time Pro Hire Group may review any Credit Account that Pro Hire Group has granted to the Customer without notice.

32.2. Pro Hire Group may, at our discretion, decide to withdraw credit for any reason, including but not limited to if the Customers' circumstances change, the Customer fails to make payments on time or the Customer fails to use the Equipment in accordance with the terms of the Hire Agreement.

32.3. If PHG withdraws credit the Customer may terminate this Hire Agreement immediately by giving PHG written notice. However, if the Customer does so the Customer must:

32.3.1. Pay amounts that were subject to credit in accordance with the terms on which that credit was provided; and

32.3.2. Still pay all amounts due to PHG under this Hire Agreement, including hire charges until the Equipment is back in PHGs' custody and possession.

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32.3.2. Still pay all amounts due to PHG under this Hire Agreement, including hire charges until the Equipment is back in PHGs' custody and possession.

**33. SIGNING THIS HIRE AGREEMENT**

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

33.2. Except where clause 35 applies, the person signing this Hire Agreement indemnifies PHG against all losses, costs and claimed incurred by PHG arising out of the person so signing this Hire Agreement not in fact having such power and/or authority.

**34. CLAIM FOR PAYMENT**

This Hire Agreement is a claim for payment under the Building and construction Industry Security of Payment Act 1999 (NSW), the Building and Construction Industry of Payment Act 2002 (VIC), the Building and Construction Industry of Payment Act 2004 (QLD), the Building and Construction Industry of Payment Act 2009 (SA), the Construction Contracts Act 2004 (WA), the Building and Construction Industry (Security of Payment) Act 2009 (ACT), the Building and Construction Industry Security of Payment Act 2009 (TAS), and/or the Construction Contracts (Security of Payments) Act 2009 (NT).

**35. PROVISIONS OF THIS AGREEMENT EXCLUDED FROM CONSUMER CONTRACTS**

Where the Customer is an individual acquiring goods or services wholly or predominantly for personal, domestic or household use or consumption, the following provisions of these Terms of Hire will not apply for the purpose of the Customers' Hire Agreement.

35.1. Clause 22 (Security)

35.2. Clause 30 (Variation)

35.3. Clause 33.1 (Signing this Agreement)

**SPECIAL HIRE TERMS & CONDITIONS**

**1. HIRE OF MOTOR VEHICLE**

When you hire a Motor Vehicle from PHG, these additional Special Conditions of Hire form part of Your Hire Agreement. Terms used in these Special Conditions have the same meaning as those used in the Hire Terms & Conditions unless indicated otherwise:

1.1. "Motor Vehicle" means Equipment that is a car, truck, utility, caravan, van, motorbike, bus, prime mover, water-cart, or truck or trailer mounted attenuator.

1.2. In the event that the Motor vehicle is list, stolen or damaged during the Hire Period, for the avoidance of doubt, Your liability is determined in accordance with clauses 18 and 19 of the Hire terms & Conditions.

1.3. The Customer will be liable for the loss, theft or damage to the Motor Vehicle, Excess amounts payable for any claim is the amount equal to:

1.3.1. the first \$2,500 of the cost of any damage if the driver is 25 years or over; OR

1.3.2. the first \$3,500 of the cost of any damage if the driver is under 25 years:

For the avoidance of doubt, the Excess will not cover Your reliability in respect of any claim by a third party arising out of the Motor vehicle being list, stolen or damaged during the Hire Period.

1.4. Excess paid will not waive PHG' rights to claim against You for loss, theft or damage to the Motor Vehicle and the excess will not apply for the additional items;

1.4.1. damage to windscreens, mirrors or glass:

1.4.2. damage to a Pantech;

1.4.3. damage to any crane or its attachments, including but not limited to a truck mounted crane;

1.4.4. damage to or damage caused by a truck mounted device; or

1.4.5. damage caused while the Motor Vehicle is being driven on any road that is unsealed or is not on a public road.

1.5. For the avoidance of doubt, You are liable to pay the cost of repairing or replacing flat or damaged tyres arising as a result of Your use of the Motor Vehicle.

1.6. You warrant that You will not allow a person to drive a Motor Vehicle if the person:

1.6.1. is a learner driver

1.6.2. does not hold an appropriate licence to drive that class of Motor Vehicle;

1.6.3. is under the age of 18 years; or

1.6.4. is affected by, or under the influence of drugs and/or alcohol.

1.7. PHG may require You to provide Us with any information required under the relevant legislation for those persons who will operate the Motor Vehicle. We are also permitted to request and record the details of the licences of any drivers during the Hire Period.

1.8. You will keep a record of all relevant details of any driver of a Motor Vehicle including: name, licence details, date and time that the driver used the Motor Vehicle.

1.9. You will promptly pay all tolls, fines, penalties and other statutory or Government charges arising out of Your use of the Motor Vehicle during the Hire Period. If Pro Hire Group pay any such charges on Your behalf, You must reimburse Us within 7 days of receiving notification of the charges from Us.

1.10. In the event of an accident occurring to the Motor Vehicle during the Hire Period, You will thoroughly record the circumstances of the accident, and fully co-operate with Us or our insurer.

1.11. You must pay a charge for the excess kilometres travelled during the Hire Period.

1.12. you warrant that you will not load the Motor Vehicle in excess of the Motor Vehicle's gross vehicle mass at any time during the Hire Period.

**2. HIRE OF EARTHMOVING & COMPACTION EQUIPMENT**

When You hire Earthmoving or Compaction Equipment from Us, these additional Special Conditions of Hire form part of Your Hire Terms & Conditions. Terms use in these Special Conditions have the same meaning as those used in the Hire Terms & Conditions unless indicated otherwise:

**2.1. Definitions**

2.1.1. "Earthmoving & Compaction Equipment" means any use of Equipment used to move earth, soil, rocks, or compact soil and includes without limitation, excavators and mini excavators, backhoes, skid steer loaders, wheel loaders, motor graders, tractors, articulated trucks, attachment, smooth drum rollers, padfoot rollers and multi-tyre rollers.

2.1.2. "Machine Control and Guidance Devices" means any device designed to guide the operation of the Earthmoving & Compaction Equipment, including but not limited to cross slope, laser, universal tracking systems, global positioning systems or compaction meters.

2.1.3. "Wear Items" includes ground engaging tools, wear on blades/buckets/rippers/tyres, track gear and fuel lubricants.

2.2. You acknowledge that We have made the manufacturer's operating and safety instructions for the Earthmoving & Compaction Equipment You have hired available to You to read.

2.3. You must pay an excess hire charge where You use the Earthmoving & Compaction Equipment in excess of the number of hours specified in the Hire Terms & Conditions. The excess hire charge is payable only in respect of those hours exceeding the specified number of hours.

2.4. Wear to tyres, gear and Wear Items: PHG is responsible for the cost of ordinary wear and tear to tyres, track gear and Wear Items. You are liable for the cost of repairing or replacing flat or damaged tyres and You are responsible for all wear and damage to tyres, track gear and Wear Items which is caused by use of the tyres, track gear and Wear Items in conditions which We reasonably consider adverse or abnormal. At all times You must adhere to the manufacturer's recommend tyre pressure and track tension. You are responsible for replacing Wear Items when they become worn out or used during the Hire Period.

2.5. You are responsible for undertaking the daily "Operator Safety Check" as outlined in the "Safety Check Logbook". These logbooks are located in protective pouches on the Earthmoving & Compaction Equipment.

2.6. You are responsible for the correct installation, calibration and use, as per the manufacturer's instructions of any attachments fitted to the Earthmoving & Compaction Equipment, not supplied or installed by Us. You must seek approval in writing from Us if any attachments apart from those supplied by Us are to be fitted to the machine.

2.7. You are required to use best endeavours to prevent the theft of any Machine Control and Guidance Devices from the Earthmoving & Compaction Equipment. You must remove any detachable operator display or receiver of a Machine Control and Guidance Device from the Earthmoving & Compaction Equipment at the end of every shift and store it in a safe place.

2.8. You are responsible for verifying the accuracy of any Machine Control and Guidance Device during the Hire Period. You must check the calibration of the Machine Control and Guidance Device on the Earthmoving & Compaction Equipment before each use and calibrate it at frequent intervals during due of the Earthmoving & Compaction Equipment.

2.9. If there is any inconsistency between the Hire Terms & Conditions and these Special Conditions of Hire, then these Special Conditions of Hire will prevail to the extent of the inconsistency.

2.10. You warrant that you will not allow a person to operate the Earth Moving & Compaction Equipment if the person:

- 2.10.1. does not hold an appropriate licence to operate that class of Equipment;
- 2.10.2. is affected by drugs and/or alcohol.

**3. ACCESS EQUIPMENT**

When You hire Access Equipment from Us, these additional Special Conditions of Hire form part of Your Hire Terms & Conditions. Terms used in these Special Conditions have the same meaning as those used in the Hire Terms & Conditions unless indicated otherwise:

**3.1. Definitions**

3.1.1. "Access Equipment" means Equipment that is a vertical lift, mast lift, scissor lift, rough terrain scissor lift, telescopic boom, knuckle boom, telehandler, attachments.

3.1.2. "Wear Items" includes tyres, coolant, grease, fuel lubricants.

3.2. You acknowledge that We have made the manufacturer's operating and safety instructions for the Access Equipment You have hired available to You to read.

3.3. You must pay an excess hire charge where You use the Access Equipment in excess of the number of hours specified in the Hire Terms & Conditions. The excess hire charge is payable only in respect of those hours exceeding the specified number of hours.

3.4. Wear to tyres and Wear Items: We are responsible for the cost of ordinary wear and tear to tyres and Wear Items. You are liable for the cost of repairing or replacing flat or damaged tyres and You are responsible for all wear and tear and damage to tyres and Wear Items which is caused by use of the tyres and Wear Items in conditions which We reasonably consider adverse or abnormal.

At all times You must adhere to the manufacturer's recommended tyre pressure and max capacity. You are responsible for replacing Wear Items when they become worn out or used up during the Hire Period.

3.5. You are responsible for undertaking the daily "Operator Safety Check" as outlined in the "Safety Check Logbook". These logbooks are located in protective pouches on the Access Equipment.

3.6. If there is any inconsistency between the Hire Terms & Conditions and these Special Conditions of Hire, then these Special Conditions of Hire will prevail to the extent of the inconsistency.

3.7. You warrant that you will not allow a person to operate the Earth Moving & Compaction Equipment if the person:

- 3.7.1. does not hold an appropriate licence to operate that class of Equipment;
- 3.7.2. is affected by drugs and/or alcohol.

**4. FLOORING, CONCRETE, GENERAL EQUIPMENT & TOOLS**

When You hire Flooring/Concrete/General Equipment & Tools, these Special Conditions of Hire form part of Your Hire Terms & Conditions. Terms used in these Special Conditions have the same meaning as those used in the Hire Terms & Conditions unless indicated otherwise:

**4.1. Definitions**

4.1.1. "Flooring, Concrete General Equipment & Tools" means any Equipment that is a grinder, scarifier, scraper, core hole drill, jackhammer, drill, saw, welder, joiner, vacuum, dust extractor, router, sander, air compressor, screw gun, battery, planer, trimmer and attachments.

4.1.2. "Wear Items" includes but not limited the wear on blades, batteries, discs, drill and jackhammer bits, core hole bits, gas, fuel, lubricants.

4.2. You acknowledge that We have made the manufacturer's operating and safety instructions for the Flooring, Concrete & General Equipment You have hired available to You to read.

4.3. You must pay an excess hire charge where You use the Flooring, Concrete, General Equipment & Tools in excess of the number of hours specified in the Hire Terms & Conditions. The excess hire charge is payable only in respect of those hours exceeding the specified number of hours.

4.4. Wear to Wear Items: We are responsible for the cost of ordinary wear and tear to Wear Items. You are liable for the cost of repairing or replacing damaged batteries, electrical cords and other Wear Items which is caused by the use of these Wear Items in conditions which We reasonably consider adverse or abnormal. At all times you must adhere to the manufacturer's recommended use of the Equipment. You are responsible for replacing Wear Items when they become worn out or used up during the Hire Period.

4.5. If there are any inconsistency between the Hire Terms & Conditions, then these Special Conditions of Hire will prevail to the extent of the inconsistency.