

# Terms and Conditions of Hire



## DEFINITIONS

"**Onsite**" is Onsite Rental Group Operations Pty Ltd (ABN 74 126 102 485) or any of its Related Bodies Corporate and is the owner of the Equipment.

"**Amount Owing**" means all amounts owing by the Customer to Onsite under or in connection with this Agreement.

"**Business Day**" means a day that is not a Saturday, Sunday or public holiday in the State or Territory in which the Hire Equipment was hired from Onsite.

"**Claims**" means any claim (whether actual or contingent) including a claim for loss, damages and expenses (including legal fees) arising out of tort, breach of statute, breach of warranty or guarantee or breach of this Agreement

"**Customer**" refers to the person, firm, organisation, partnership, corporation or other entity (including trust) hiring the Equipment from Onsite as identified in the Credit Application or Hire Contract

"**Customer's Premises**" means the premises nominated by the Customer as the location for the delivery and collection of the Hire Equipment by Onsite.

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

"**Equipment**" means all equipment including tools, portable buildings, vehicles, accessories and parts hired to the Customer.

"**Hire Agreement**" means the agreement between Onsite and Customer for the hire of Equipment which includes:

- a) any Commercial Credit Application;
- b) the Hire Contract; and
- c) these Standard Terms and Conditions of Hire; and
- d) any applicable Special Conditions of Hire

"**Hire Contract**" means the Onsite contract which sets out the specific equipment and daily hire rate to be hired to the Customer pursuant to these Terms and Conditions of Hire.

"**Hire Equipment**" means the Equipment specified in the Hire Contract and any ancillary equipment.

"**Hire Period**" means the period of hire for the Hire Equipment as described in clause 2

"**Insolvency Event**" means an event where a petition is presented for the winding up of the Customer, an administrator, receiver or receiver and manager is appointed, the Customer is deregistered or makes or proposes to make an arrangement with its creditors, or execution is levied upon the assets of the Customer and is not satisfied within 7 days or the Customer is unable to pay all its debts, as and when they become due and payable.

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

"**Long Distance Location**" means any location in excess of 50km of the nearest Onsite local branch.

"**Off-Hire Date**" means the date the Customer advises Onsite the Hire Equipment is no longer required and Onsite issues the Customer with an Off-Hire Number in accordance with clause 5.3

"**Onsite's Premises**" means the premises nominated by Onsite as the location for the collection and return of the Hire Equipment by the Customer.

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

"**Related Bodies Corporate**" has the meaning it has in the *Corporations Act 2001* (Cth).

"**Return Date**" means the date on which the Hire Equipment is returned to the physical possession of Onsite's at its Premises.

"**Start Date**" means when the date when (a) if the Customer is collecting the Hire Equipment, when it collects the Hire Equipment from Onsite's Premises or (b) if Onsite is delivering the Hire Equipment, when Onsite loads the Equipment onto any vehicle for delivery to the Customer's Premises as set out in the Hire Contract.

"**Unforeseen Events**" means an event beyond the control of Onsite including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations or governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation or inability to access the Customer's Premises.

## 1 HIRE OF EQUIPMENT

- 1.1 Onsite agrees to hire the Hire Equipment to the Customer for the Hire Period and at the hire rates set out in the Hire Contract.
- 1.2 The Customer is to be charged for the Hire Period and the Customer is entitled to use the Hire Equipment for the Hire Period. Any variation to the Hire Period must be agreed to by Onsite in writing.
- 1.3 The Hire Contract will specify the hire rates applicable. Hire Equipment hired for at least 5 days in a seven day continuous period, will be charged at the 'weekly rate'.
- 1.4 Onsite reserves the right to charge a minimum period of hire for certain types of Hire Equipment. If Onsite exercises its right to charge a minimum period of hire of one day, the Hire Equipment is taken as hired between the hours of 9.00 am and 5.00 pm.
- 1.5 Onsite hires the Hire Equipment to the Customer at its absolute discretion and may refuse to hire to the Customer for reasons including but not limited to failing to provide adequate identification and perceived safety risks.

## 2 HIRE PERIOD

- 2.1 The Hire Period commences on the Start Date and ends:
  - (a) Subject to clauses 5.3 and 5.4, where Onsite is collecting the Hire Equipment, when the Customer obtains an Off-Hire Number; or
  - (b) If the Customer is returning the Hire Equipment, when the Equipment is back in the possession of Onsite at its Premises and includes weekends and public holidays and is irrespective of the time the Hire Equipment is being used.

## 3 COLLECTION AND DELIVERY OF HIRE EQUIPMENT

- 3.1 The Customer may:
  - (a) collect from and return to Onsite's Premises the Hire Equipment; or
  - (b) request Onsite to collect from and deliver to the Customer's Premises the Hire Equipment .
- 3.2 If the Customer wishes Onsite to collect the Hire Equipment, the Customer must obtain an off-hire number from Onsite and provide access for collection of the Hire Equipment.
- 3.3 Onsite:
  - (a) May decline a request by the Customer to either deliver or collect the Hire Equipment, in which case the Customer must collect from, and return to Onsite's Premises, the Hire Equipment.
  - (b) agrees to use its reasonable endeavours to collect the Hire Equipment at the time and date specified by the Customer;
- 3.4 Delivery times and dates are estimates only. Onsite is not responsible for the failure or delays in delivery or installation due to an Unforeseen Event. If delivery, installation or collection of the Hire Equipment is suspended or delayed due to the Customer's action or inaction, the Customer must reimburse Onsite for its loss and expenses for any delay.
- 3.5 Onsite will use its reasonable endeavours to promptly notify the Customer of any delay in delivering, collecting or installing the Hire Equipment.

## 4 INSPECTION OF THE HIRE EQUIPMENT

- 4.1 The Customer must inspect all Hire Equipment either at the time the Customer collects or at the time Onsite delivers the Equipment (as applicable). The Customer must give notice to Onsite of any defect or any departure from the Hire Agreement within 24 hours of collection or delivery of the Hire Equipment (as applicable).
- 4.2 If no notice is given pursuant to clause 4.1, Onsite is entitled to assume the Hire Equipment was received in good working order and condition.
- 4.3 Onsite will inspect the Hire Equipment upon its return to Onsite's Premises and notify the Customer of any defect or damage to the Hire Equipment or any fuel charge.

## 5 HIRE CHARGES

- 5.1 **Hire:** The Customer must pay Onsite the hire charges set out in the Hire Contract and for the full Hire Period. Onsite reserves the right to amend the hire charges in accordance with any change to its standard pricing for the Hire Equipment.
- 5.2 Additional hire charges may apply if the Hire Equipment is used more than 8 hours a day or more than 48 hours per week.
- 5.3 **Off-hire:** When the Customer no longer requires the Hire Equipment and it is available for collection by Onsite, it must contact the local branch of Onsite by 9.00am of the Off-Hire Date. Onsite will issue an Off-Hire Number which must be recorded and kept by the Customer.
- 5.4 Provided the Off-Hire Number is allocated no later than 9.00am on the Off-Hire Date and access is granted to enable collection of the Hire Equipment, hire charges will cease from the Off-Hire Date. If access is not granted to Onsite to collect the Hire Equipment, Hire Charges will continue to apply until Onsite is able to collect the Hire Equipment.

## 6 OTHER CHARGES

- 6.1 In addition to the Hire Charges, the Customer agrees to pay:
- for any operational guidance, instructions or training or instruction of the Hire Equipment or other services provided by Onsite at the rates agreed with the Customer;
  - for any additional or special conditions to permit and gain access to the Customer's site including but not limited to site inductions.
  - for any consumables and trade materials included but not limited to fuel charges;
  - Tax and Government charges, levies or fines (including any environmental levy) in relation to the hire of the Hire Equipment;
  - GST subject to a taxable invoice (All amounts payable in the Hire Agreement are exclusive of GST unless otherwise specified). The Customer acknowledges and agrees that there is no sale or other disposal of title to fuel under this Hire Agreement and that Onsite shall be exclusively entitled to claim any fuel tax credits;
  - charges for payments made by credit card;
  - charges for delivery and collection and installation;
  - if applicable, Damage Waiver charge;
  - for cleaning and repair of Hire Equipment if not returned in clean, good working condition
  - costs for changing out Equipment and mobilisation and demobilisation costs;
  - for any variations that are necessary or requested by the Customer;
  - the cost passed on by Onsite arising out of a change in law, code, regulations or Customer policy or guideline

## 7 PAYMENT

- 7.1 **Early Return of Hire Equipment:** If the Customer wants to return the Hire Equipment before the end of the Hire Period, Onsite may revise the hire charges payable by the Customer from the start of the Hire Period to account for the reduction to the Hire Period.
- 7.2 **Payment Due Date:** The Customer is required to pay all fees, charges and costs within 30 days of the invoice date in full.
- 7.3 **Late Payment:** If a Customer fails to pay by the due date, a late payment fee of 2% per month, compounding monthly, may be imposed. In addition, the Customer indemnifies Onsite for all expenses in recovering any unpaid amounts (on a full indemnity basis).
- 7.4 **Set-off:** Onsite may set-off any monies owing by it to the Customer against any monies owing by the Customer to Onsite.

## 8 CUSTOMER'S HIRE OBLIGATIONS

- 8.1 **Possession and Use by Customer:** The Customer must not allow nor authorise any other person or entity to use, re-hire or have possession of the Hire Equipment at any time during the Hire Period without the prior-written approval of Onsite.
- 8.2 The Customer remains responsible and liable to Onsite irrespective of any sub-hire agreement or arrangement entered into by the Customer.

- 8.3 The Customer is liable to Onsite for the acts and omissions of any Sub-Hirer and the employees, agents, contractors and officers of the Sub-Hirer as if they were acts or omissions of the Customer.
- 8.4 **Suitability:** The Customer agrees that before accepting the Hire Equipment it has satisfied itself as to the suitability, condition and fitness for purpose of the Hire Equipment without relying upon the skills or judgment of Onsite or any person purporting to act on its behalf. The Customer acknowledges that, to the extent permitted by law, Onsite has not made any representation or warranty (other than as expressly set out in writing) as to the suitability, condition and fitness for purpose of the Hire Equipment or any other matter.
- 8.5 **Operation of Hire Equipment:** The Customer warrants that at all times it will:
- operate the Hire Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
  - ensure persons operating or erecting the Hire Equipment are suitably instructed, trained and qualified in its safe and proper use and comply with all relevant laws relating to the use of the Hire Equipment;
  - hold all licences, permits and approvals necessary to hire and use the Hire Equipment and that no restriction of any kind prevents the Customer from entering into an agreement or arrangement for the hire of the Hire Equipment
  - display and maintain all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Hire Equipment;
  - ensure all persons operating the Hire Equipment wear suitable clothing and protective equipment as required or recommended by relevant law, applicable industry standards and the manufacturer of the Hire Equipment or Onsite;
  - ensure that no persons operating the Hire Equipment are under the influence of drugs or alcohol;
  - conduct a job safety analysis prior to using the Hire Equipment at a site;
  - insure the Hire Equipment during the Hire Period (if not electing the damage waiver);
  - ensure that no persons carry illegal, prohibited or dangerous substances in or on the Hire Equipment; and
  - comply with all Environmental Laws applying from time to time and immediately rectify any breach of an Environmental Law caused by the use, possession or storage of the Hire Equipment.
- 8.6 **Cleaning and Maintenance:** The Customer must:
- clean, fuel, lubricate and maintain the Hire Equipment in good condition and in accordance with the manufacturer's and Onsite's instructions at the Customer's cost, and
  - not in any way alter, modify, tamper with, damage or repair the Hire Equipment without Onsite's written consent.
  - Provide access to Onsite to maintain and service the Equipment and undertake statutory inspections when necessary during normal business hours, failing which additional charges for out of hours service and maintenance may apply.
  - return the Hire Equipment to Onsite in the same good and clean condition it was in when the Customer received it, ordinary fair wear and tear excepted
- 8.7 **Safekeeping:** The Customer must ensure that during the Hire Period the Hire Equipment is:
- stored safely and securely and is protected from theft, vandalism, seizure and damage or subject to adverse climatic or environmental conditions which may damage the Hire Equipment (ie corrosion, sea-salt and flooding);
  - not exposed to any hazardous substance including asbestos without prior written consent;
  - not altered, defaced, removed or any notices, safety information, identifying mark, plate or number on the Hire Equipment is removed;
- 8.8 **Hazardous substances:** The Customer must advise Onsite of any risks of hazardous substance contamination to the Hire Equipment as soon it becomes apparent (or should have become apparent). The Customer will:
- provide to Onsite its Asbestos Register upon request; and
  - decontaminate the Hire Equipment and provide to Onsite details of the process applied.

- 8.9 If the Hire Equipment has not been properly decontaminated (or not capable of being decontaminated) the Customer may be charged for new Hire Equipment.
- 8.10 **Inspections:** The Customer consents to Onsite inspecting the Hire Equipment from time to time without prior notice during the Hire Period. In addition, the Customer may arrange a joint inspection with Onsite.
- 8.11 **Safe Loading and Transport:** The Customer must ensure the safe loading, securing and transporting of all Hire Equipment in accordance with all laws, industry guidelines and manufacturer's guidelines. The Customer must, and must ensure that any transporting contractor will, observe any safety directions advised by Onsite and/or manufacturer of the Hire Equipment for its loading and safe handling.
- 8.12 **Location:** The Customer:
- must not remove the Hire Equipment from the Australian State or Territory in which it was hired without Onsite's prior written consent. If consent is provided, the Hire Equipment must be returned to the original Onsite Premises from where the Equipment was hired.
  - agrees to pay any costs associated with Onsite's attendance if a breakdown occurs at a Long Distance Location.
  - Must not use the Hire Equipment off-shore, underground or in a mine without consent of Onsite.
- 8.13 **Electrical and Fire Suppression Equipment re-testing and re-tagging:** The Customer is responsible for arranging at its cost the re-testing and re-tagging of any electrical and fire extinguisher and/or suppression units and equipment comprising the Hire Equipment by the manufacturer's agent in accordance with the manufacturer's instructions, relevant law, applicable Australian Standards and regulatory authority requirements. Onsite is able to arrange, at the Customer's cost, for such re-testing and re-tagging of the electrical equipment comprising the Hire Equipment. Any damage caused to the Hire Equipment resulting from incorrect testing will be at the Customer's cost.
- 8.14 **Fuel:** The Customer is responsible for ensuring any Equipment is returned to Onsite with a full tank of fuel, failing which the Customer acknowledges that additional charges will apply to the Hire Charges for fuel.
- 8.15 **Wear and Tear :** The Customer is responsible for:
- the cost of repairing or replacing flat or damaged tyres and for all wear and tear and damage to tyres and tracks which is caused by use of the tyres and tracks in conditions which Onsite considers are adverse or abnormal. Ordinary wear and tear is considered to be 4,000 SMU hours. At all times the Customer must adhere to the manufacturer's recommended tyre pressure and track tension.
  - the cost of all bucket and blade wear or damage caused by conditions which Onsite considers are abnormal or adverse use.
  - all wear and tear to cutting edges, bucket teeth, hardware, ripper teeth and all other ground engaging tools hired. All ground engaging tools hired by the Customer are to be returned to Onsite at the end of the Hire Period in the same condition in which they were supplied. Usage of ground engaging tools will be measured by comparing the percentage of use at the commencement of the Hire Period with the percentage of use at the end of the Hire Period.
- 8.16 See "Wear and Tear at [www.onsite.com.au](http://www.onsite.com.au) for further examples and exclusions to wear and tear.

## 9 TITLE TO HIRE EQUIPMENT

- 9.1 The Customer acknowledges that in all circumstances Onsite retains title to the Hire Equipment (even if the Customer goes into liquidation, external administration of any kind or becomes bankrupt during the Hire Period) and in no circumstance will the Hire Equipment be deemed to be a fixture. The Customer has no interest in the Hire Equipment of any kind whatsoever other than an interest as a bailee.
- 9.2 Except with the prior written consent of Onsite, the Customer will not be entitled to offer, transfer, sell, assign, sub-let, encumber, charge, mortgage, pledge or otherwise deal with the Hire Equipment in any way whatsoever.
- 9.3 **PPSA:** If Onsite determines, in its absolute discretion, that the PPSA applies to any transaction under this Hire Agreement, the Customer agrees that:

- it grants a first ranking security interest and purchase money security interest in the Hire Equipment for the purposes of the PPSA, as security for all Amounts Owing now or in the future, which is a continuing security despite any settlement of account or other matter or thing until a final discharge is given to Onsite (where applicable), and that it waives the right to receive any verification statement;
- it will do all things necessary to enable Onsite to register and perfect its security interest in the Hire Equipment and, if requested by Onsite, will not take possession of the Hire Equipment unless Onsite has registered a financing statement designating a purchase money security interest over them;
- Onsite may appropriate (or re-appropriate despite any prior appropriation) moneys received in respect of the Customer in its absolute discretion toward any part of the Amounts Owing, including in order to maximise the extent to which it can have recourse to its security interest in the Hire Equipment held by the Customer;
- To notify Onsite of any change in writing of the Customer's details set out in the Credit Application; and
- the terms of this clause 9.3 prevail over any other term in the Hire Agreement to the extent of any inconsistency.

## 10 RESPONSIBILITY FOR THE HIRE EQUIPMENT

- 10.1 Risk in and responsibility for the Hire Equipment passes to the Customer when the Hire Equipment is loaded onto any vehicle for transport at Onsite's Premises commences (regardless of whether the Customer collects the Hire Equipment from Onsite's Premises or Onsite delivers the Hire Equipment to the Customer's Premises).
- 10.2 Risk in and responsibility for the Hire Equipment passes back to Onsite when the Hire Equipment is back in the possession of Onsite at its Premises.

## 11 EQUIPMENT BREAKDOWN

- 11.1 **Obligations of Customer:** In the event that the Hire Equipment breaks down or becomes unsafe to use during the Hire Period the Customer must:
- immediately stop using the Hire Equipment and notify Onsite;
  - take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Hire Equipment;
  - take all steps necessary to prevent any further damage to the Hire Equipment; and
  - not repair or attempt to repair the Hire Equipment without Onsite's prior written consent.
- 11.2 **Obligations of Onsite:** In the event that the Hire Equipment breaks down or becomes unsafe to use (through no act or omission of the Customer including misuse, recklessness and negligence), Onsite will:
- repair the Hire Equipment or provide suitable substitute Hire Equipment when reasonably possible after being notified by the Customer;
  - not impose a hire charge for that portion of the Hire Period the Equipment could not be used, nor charge the costs associated with any repair or replacement of the Hire Equipment; and
  - not be liable for any expenditure, damages, losses, costs or inconvenience incurred by the Customer arising from a breakdown of Hire Equipment, however caused, including as a result of Onsite requiring time to assess, repair and/or replace the Hire Equipment.

## 12 LOST, STOLEN OR DAMAGED HIRE EQUIPMENT

- 12.1 The Customer is responsible for the Hire Equipment and any accessory and tools during the Hire Period. If the Hire Equipment is lost, stolen or damaged during the Hire Period or becomes unsafe to use due to any act or omission of the Customer, the Customer is liable to Onsite for and must indemnify Onsite for:
- the full cost of either:
    - repairing the Hire Equipment; or
    - replacing the Hire Equipment with new equipment, as determined by Onsite in its sole and absolute discretion; and
  - any other costs whatsoever arising from or in connection with the loss, theft or damage to the Hire Equipment; and
  - any lost revenue to Onsite arising from or in connection with the loss, theft or damage to the Hire Equipment.

12.2 If, the Customer has paid the Damage Waiver, the Customer's liability is limited as provided in clause 13 below.

### 13 DAMAGE WAIVER FEE

13.1 The Customer may elect to either pay a fee for loss, theft or damage of the Hire Equipment ("Damage Waiver Fee") or obtain insurance covering the full replacement value of the Hire Equipment. Subject to clause 13.13, where the Customer elects to pay the Damage Waiver fee, Onsite agrees to limit the Customer's liability for loss, theft or damage to the Hire Equipment during the Hire Period if:

- (a) the Customer submits to Onsite within 5 Business Days:
  - (i) a written Police report of the loss or damage to the Hire Equipment (unless Onsite provides written confirmation that such report is not required); and
  - (ii) any other written or photographic evidence requested by Onsite (which may include sworn statements and statutory declarations); and
- (b) the Customer pays to Onsite the Damage Waiver excess which is the greater of:
  - (i) \$500 per item of Hire Equipment (or the actual cost of replacement or repair if less than \$500); or
  - (ii) the amount equal to 15% of the cost of the repairs (if the Hire Equipment can be repaired); or
  - (iii) the amount equal to 15% of the new replacement cost of the Hire Equipment (if the Hire Equipment is lost, stolen or damaged beyond repair).

13.2 The Damage Waiver fee will be automatically added to the Hire Charges and will appear on the invoice issued to the Customer.

13.3 Even if the Customer pays the Damage Waiver Fee, the Customer is liable for and indemnifies Onsite for all loss and damage to the Hire Equipment if:

- (a) the Customer has paid the Damage Waiver Fee after the loss or damage occurred;
- (b) Onsite reasonably believes that the Customer failed to take reasonable precautions to protect and secure the Hire Equipment;
- (c) the Hire Equipment is, or is ordinarily, used off-shore, over water or in underground mines or is located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
- (d) the loss or damage is:
  - (i) to tyres and tubes, including punctures, blowouts, bursts, bruises or cuts;
  - (ii) glass, including breakage;
  - (iii) caused by vandalism, including graffiti on the Hire Equipment;
  - (iv) to Hire Equipment's paintwork;
  - (v) due to wrongful conversion of the Hire Equipment or any components of the Hire Equipment;
- (e) the loss or damage was caused, or contributed to, by:
  - (i) a breach of the Hire Agreement;
  - (ii) an act or omission of the Customer;
  - (iii) the use of the Hire Equipment in violation of any relevant laws or regulations or contrary to Onsite's or the manufacturer's instructions;
  - (iv) a lack of, or faulty lubrication or general servicing of the Hire Equipment;
  - (v) the misuse, abuse, the overloading of or incorrect loading of the Hire Equipment or any of its components
  - (vi) the overloading or artificial electrical current to motors or other electrical appliances or devices, including use of under-rated or excessive length of extension leads on electrical powered tools and machines;
  - (vii) an exposure to any corrosive or caustic substance, such as cyanide, salt water, acid, etc; and
  - (viii) the transport of the Hire Equipment, except where transported by Onsite

### 14 INSURANCE

14.1 If the Customer elects not to pay the Damage Waiver fee, it must take out and maintain a policy of insurance that covers loss or damage to the Hire Equipment during the Hire Period for not less

than the full new replacement cost of the Hire Equipment ("Hire Equipment Insurance").

14.2 Evidence in the form of a certificate of currency for the policy and any renewal must be given to Onsite at its request and in any event no later than 7 days after the expiry date of the previous Certificate of Currency (where applicable).

14.3 **Over-Water, off-shore and underground mines:** If required by Onsite, the Customer must also take out and maintain, for the duration of the Hire Period, insurance for Hire Equipment which will be used off-shore, over water or in underground mines. Such insurance cover must:

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

### 15 STATUTORY GUARANTEES

15.1 Clauses 15.2 and 15.3 only apply if the Customer is deemed a "Consumer" for the purposes of section 3 of the Australian Consumer Law ("ACL").

15.2 Onsite's Equipment comes with guarantees that cannot be excluded under the ACL. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

15.3 To the extent Onsite's Equipment is not of a kind ordinarily acquired for personal, domestic or household use or consumption, Onsite may limit its liability to repair or replacement of the Equipment or the payment of the cost of repairing or replacing the Equipment, or supplying services again or payment for the cost of supplying services again, in accordance with section 64A of the Australian Consumer Law

### 16 INDEMNITIES AND EXCLUSIONS OF LIABILITY

16.1 Nothing in this Hire Agreement is intended to exclude, restrict or modify any guarantee, term, condition or warranty implied or imposed by law (including the ACL) which cannot be lawfully excluded or limited.

16.2 To the extent permitted by law (unless otherwise expressly set out in this Agreement), all terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to Onsite's obligations under the Hire Agreement are excluded.

16.3 The total liability of Onsite (subject to clause 15.1) for any Claim is the total Hire Charges payable by the Customer at the site at which the Claim arose.

16.4 Onsite is not liable for:

- (a) consequential loss or damage (including but not limited to loss of actual or anticipated revenue, business interruption, loss of production or economic loss of any kind) in contract, tort, under statute or otherwise and
- (b) any Claims for personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever

caused by or arising from or in relation to the Hire Equipment or this Hire Agreement.

16.5 The Customer is liable for and indemnifies Onsite against all Claims arising out of or in connection with Customer's hire and use of the Hire Equipment or breach of the Hire Agreement.

16.6 Each indemnity is a continuing obligation and survives termination or expiration of this Hire Agreement. It is not necessary for Onsite to incur expense or make any payment before enforcing a right of indemnity under this Hire Agreement. The Customer must pay on demand under this Hire Agreement.

16.7 For the purposes of clause 16, use of Hire Equipment operated by a person supplied by Onsite will be deemed to be use of the Hire Equipment by the Customer

16.8 Except where Clause 4.1 applies, the Customer may not make a Claim under or in connection with this Hire Agreement (including but not limited to any Claim in connection with an invoice issued

by Onsite) unless the Claim has been notified to Onsite in writing (by post, email or fax) within 2 weeks of the earlier of:

- (a) the relevant facts, matters or circumstances on which the Claim is based occurring; or
- (b) if the Claim relates to an invoice, the date of the invoice

## 17 TERMINATION

17.1 Onsite may terminate the Hire Agreement with immediate effect by serving a written notice on the Customer if the Customer:

- (a) becomes unable to lawfully perform the Hire Agreement;
- (b) suffers an Insolvency Event; or
- (c) commits a breach of the Hire Agreement which it does not remedy (if capable of remedy) within 5 Business Days of receiving written notice of breach.

17.2 Onsite may also terminate the Hire Agreement at any time for convenience by giving the Customer at least 24 hours notice.

17.3 The right of termination is in addition to any other rights under the Hire Agreement.

## 18 RECOVERY OF HIRE EQUIPMENT

18.1 If Onsite has terminated the Hire Agreement with the Customer pursuant to clause 17, Onsite may take all steps necessary (including legal action) to recover the Hire Equipment, including entering any site occupied by the Customer without prior notice to the Customer.

## 19 MISCELLANEOUS

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

19.2 **Governing Law and Jurisdiction:** The Hire Agreement is governed by the laws of New South Wales and each party submits to the non-exclusive jurisdiction of that jurisdiction.

19.3 **Disputes:** In the event there is a dispute between the parties to this Hire Agreement or the Customer wishes to make a Claim, the Customer must notify Onsite in writing (to the Branch from which the Equipment was hired) of the reasons for the dispute or details of the Claim (including reference to any invoice) within 7 Business Day from the date the Claim or dispute arose (or date of invoice).

19.4 The Customer acknowledges and agrees that failure to comply with the time frame for notification of any Claim or dispute will mean the Customer is barred from raising any Claims or dispute with Onsite after that time period has passed.

19.5 Within 14 Business Day of notification of any dispute or Claim, representatives of both parties shall meet to endeavour to resolve the Claim or dispute.

19.6 If the Claim or dispute cannot be resolved, the chief executive officers of each party shall confer within 14 days of any meeting referred to in clause 19.5 to endeavour to resolve the Claim or dispute.

19.7 If the parties fail to resolve the Claim or dispute pursuant to this clause, and prior to commencing proceedings, the Claim or dispute must first be referred to arbitration and subject to the Institute of Arbitrators and Mediators Australia for the Conduct of Commercial Arbitration.

19.8 **Security of Obligations:** As security for the obligations and liabilities of the Customer under the Hire Agreement, the Customer (and any guarantors) charge for its performance of its obligations and liabilities, all of its legal and equitable interest (both present and future) of whatever nature held in any and all real property and any other assets. The Customer (any its guarantors) agree, on request by Onsite, to execute any documents and do all things necessary required by Onsite to register a mortgage security or other security interest over any real property or other asset. The Customer (and its guarantors) must indemnify Onsite against all costs and expenses incurred by Onsite in connection with the preparation and registration of any such mortgage or security documents. The Customer (and its guarantors) also consents unconditionally to Onsite lodging a caveat or caveats noting its interest in any caveatable property.

19.9 **Entire Agreement:** The Hire Agreement comprises the entire agreement between the parties. No additional terms and conditions proposed by the Customer (including in the Purchase Order) apply to the hire of the Hire Equipment unless agreed in writing by Onsite.

19.10 **No Reliance:** The Customer acknowledges that Onsite or any person on Onsite's behalf has not made any representation or inducement to the Customer to enter into the Hire Agreement and the Customer has not relied on any representations or inducements except for those representations or inducements contained in this Hire Agreement.

19.11 **Variation:** Onsite may at any time vary these Terms and Conditions of Hire which will come into effect 14 days after notice is given to the Customer where possible by email or otherwise by notice through Onsite's website. Any other variation of the Hire Agreement must be agreed in writing by Onsite and the Customer.

19.12 **Privacy:** Onsite may collect personal information about a Customer and Onsite will treat this information in accordance with National Privacy Principles.

19.13 The information may be used to provide services to the Customer, to fulfil administrative functions associated with these services (for example assessment of credit worthiness), to enter into contracts with the Customer or third parties and for marketing and client relationship purposes. If the Customer does not provide all personal information required by Onsite, Onsite may not be able to hire the Equipment or provide the associated services to the Customer. Onsite may disclose the Customer's information to Onsite's service providers and contractors from time to time to help provide and market Onsite's services to the Customer. Generally the Customer has a right to access personal information Onsite holds about the Customer.

19.14 The Customer consents to and authorises Onsite to use and disclose the Customer's personal information to any credit provider or credit reporting agency and to Onsite's service providers, contractors and affiliated companies from time to time to help Onsite's services to the Customer.

19.15 **Notice to Customer:** Any document or notice under this Hire Agreement may be given by:

- (a) In the case of a Notice to Onsite – by posting it to Onsite's registered office and branch address;
- (b) In the case of a Notice to the Customer – by posting to the Customer's address (as stated in the Credit Application or last notified by the Customer in writing to Onsite) or by email to the Customer's address.

19.16 Any Notice given by post will be deemed to have been delivered on the third Business Day after posting and if by email on the day of transmission if before 5.00pm or the following business day if sent after 5.00pm.

19.17 **No Waiver:** No delay or omission to exercise any right, power or remedy accruing to Onsite upon any continuing breach or default under the Hire Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of any right of Onsite to take action or make a claim in respect of a continuing breach or default or to be acquiescence to it.

19.18 **Withdrawal of Credit Accommodation:** Any credit accommodation granted by Onsite to the Customer may be reviewed at any time without notice and credit withdrawn. The Hire Agreement may be terminated and the Customer will owe to Onsite any outstanding amounts until the Hire Equipment is back in the possession of Onsite.

19.19 **Authority of Customer:** The Customer warrants and agrees that the person signing the Hire Agreement for and on behalf of the Customer has the authority of the Customer to enter into and bind the Customer to the Hire Agreement. The Customer indemnifies Onsite against all Claims arising out of a breach of the warranty contained in this clause.

19.20 **Previous Editions:** This edition of the Standard Terms and Conditions of Hire replaces and supersedes all previously issued terms and conditions of hire by Onsite.

19.21 **Time of the Essence:** Time is to be of the essence of all obligations of the Customer in the Hire Agreement.

19.22 **Survival:** Any provision of the Hire Agreement which is capable of having effect after the expiry or termination of these Standard Terms and Conditions of Hire survive and remain in full force and effect.

**Special Conditions:** Special Conditions apply where the Customer is hiring Motor Vehicles, Portable Buildings, Power Generators, Pumps and dewatering Equipment and Earthmoving and Compaction Equipment which (where relevant) are attached to these Terms and Conditions of Hire or available on the website of Onsite at [www.onsite.com.au](http://www.onsite.com.au)