

PLANT HIRE SOLUTIONS AUSTRALIA

ABN: 84 601 967 097

PO Box 1612

Preston South, VIC 3072



www.planthiresolutions.com.au

admin@planthiresolutions.com.au

CREDIT ACCOUNT APPLICATION

Please complete all sections and read the Terms and Conditions of trade overleaf or attached.

Date: _____ Ref No: _____

Customer's Trade Name: _____

Customer's Full or Legal Name: _____

Phone: _____ Fax: _____

Mobile: _____ Email: _____

Billing Address: _____ Physical Address: _____

State: _____ Post Code: _____ State: _____ Post Code: _____

ABN: _____ ACN: _____

Requested Credit Limit: _____ Date Established: _____

Contact 1: _____ Contact 2: _____

Position: _____ Position: _____

Phone: _____ Phone: _____

DETAILS OF OWNER/S (if Sole Trader) PARTNERS (if Partnership) or DIRECTORS (if company) or TRUSTEE (if a Trust)

Full Name: _____ Full Name: _____

Home Address: _____ Home Address: _____

Post Code: _____ Date of Birth: _____ Post Code: _____ Date of Birth: _____

Home Phone: _____ Home Phone: _____

TRADE REFERENCES

Business Name 1: _____ Business Name 1: _____

Address or A/C No: _____ Address or A/C No: _____

Phone: _____ Phone: _____

Email: _____ Email: _____

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the Terms and Conditions of trade (overleaf or attached) of Plant Hire Solutions Australia Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. **I agree that if i am a director/owner/partner/trustee of the Customer I shall be personally liable for the performance of the Customer's obligations under this contract.**

SIGNED (PHSA): _____ SIGNED (Customer): _____

Name: _____ Name: _____

Position: _____ Position: _____

WITNESS TO CUSTOMER'S SIGNATURE:

Signed: _____ Name: _____ Date: _____

PLANT HIRE SOLUTIONS AUSTRALIA PTY LTD - TERMS & CONDITIONS OF TRADE

1. Definitions

- 1.1 "PHSA" means Plant Hire Solutions Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Plant Hire Solutions Pty Ltd.
- 1.2 "Customer" means the person/s buying the Goods, hiring Equipment, or hiring Labour (each as applicable) as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by PHSA to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other, for the purposes of this agreement where the context so permits 'Services' shall also include the supply of "Labour").
- 1.4 "Equipment" means all Equipment including any accessories supplied on hire by PHSA 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 form provided by PHSA to the Customer.
- 1.5 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by PHSA to the Customer.
- 1.6 "Labour" or "Candidate" shall mean any individual sent by PHSA to the Customer for employment by the Customer on a temporary, casual, or part time basis.
- 1.7 "Price" means the Price payable for the Goods/Equipment or Labour hire as agreed between PHSA and the Customer in accordance with clause 4 below.

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 Goods/Equipment.
- 2.2 These terms and conditions may only be amended with PHSA's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and PHSA.

3. Change in Control

- 3.1 The Customer shall give PHSA 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, or business practice). The Customer shall be liable for any loss incurred by PHSA as a result of the Customer's failure to comply with this clause.

4. Price and Payment

- 4.1 At PHSA's sole discretion the Price shall be either:

(a) as indicated on any invoice provided by PHSA to the Customer; or

(b) PHSA's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

4.2 PHSA reserves the right to change the Price if a variation to PHSA's quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties such as hard rock barriers below the surface or iron reinforcing rods in concrete or as a result of increases to the Seller in the cost of materials and labour) will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.

4.3 At PHSA's sole discretion a non-refundable deposit may be required.

4.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by PHSA, which may be:

(a) on delivery of the Goods/Equipment;

(b) before delivery of the Goods/Equipment;

(c) by way of instalments/progress payments in accordance with PHSA'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 thirty (30) days following the date of any invoice given to the Customer by PHSA.

4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Customer and PHSA.

4.6 PHSA may submit a detailed payment claim at intervals not less than monthly for work performed up to the end of each month. The value of work so performed shall include the reasonable value of authorised variations and the value of materials delivered to the site but not installed.

4.7 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, PHSA reserves the right to treat retentions as placing the Customer's account into default.

4.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to PHSA an amount equal to any GST PHSA must pay for any supply by PHSA under this or any other agreement for the sale of the Goods/hire of the 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 Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of Goods/Equipment

5.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that PHSA (or PHSA's nominated carrier) delivers the Goods/Equipment to the Customer's nominated address even if the Customer is not present at the address.

5.2 At PHSA's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.

5.3 Any time or date given by PHSA to the Customer is an estimate only. The Customer must still accept delivery of the Goods/Equipment even if late and PHSA will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

6. Risk to Goods

6.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.

6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, PHSA is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by PHSA is sufficient evidence of PHSA's rights to receive the insurance proceeds without the need for any person dealing with PHSA to make further enquiries.

6.3 If the Customer requests PHSA to leave Goods outside PHSA's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

7. Access

7.1 The Customer shall ensure that PHSA has clear and free access to the work site at all times to enable them to undertake the works. PHSA shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of PHSA.

8. Underground Locations

8.1 Prior to PHSA commencing any work the Customer must advise PHSA of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

8.2 Whilst PHSA will take all care to avoid damage to any underground services the Customer agrees to indemnify PHSA in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 8.1.

9. Title to Goods

9.1 PHSA and the Customer agree that ownership of the Goods shall not pass until:

(a) the Customer has paid PHSA all amounts owing to PHSA; and

(b) the Customer has met all of its other obligations to PHSA.

9.2 Receipt by PHSA 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.

9.3 It is further agreed that:

(a) until ownership of the Goods passes to the Customer in accordance with clause 9.1 that the Customer is only a bailee of the Goods and must return the Goods to PHSA on request.

(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for PHSA and must pay to PHSA the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.

(c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for PHSA and must pay or deliver the proceeds to PHSA on demand.

(d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of PHSA and must sell, dispose of or return the resulting product to PHSA as it so directs.

(e) the Customer irrevocably authorises PHSA to enter any premises where PHSA believes the Goods are kept and recover possession of the Goods.

(f) PHSA may recover possession of any Goods in transit whether or not delivery has occurred.

(g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of PHSA.

(h) PHSA may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

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

10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

10.2 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 Goods/Equipment that has previously been supplied and that will be supplied in the future by PHSA to the Customer.

10.3 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 PHSA 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 10.3(a)(i) or 10.3(a)(ii);

(b) indemnify, and upon demand reimburse, PHSA 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 Goods/Equipment charged thereby;

(c) not register a financing change statement in respect of a security interest without the prior written consent of PHSA;

(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment in favour of a third party without the prior written consent of PHSA;

(e) immediately advise PHSA of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.

10.4 PHSA 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.

10.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

10.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

10.7 Unless otherwise agreed to in writing by PHSA, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

10.8 The Customer must unconditionally ratify any actions taken by PHSA under clauses 10.3 to 10.5.

10.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

11. Security and Charge

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11.1 In consideration of PHSA agreeing to supply the Goods/Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, reality or other assets capable of being charged, owned by the Customer either now or in the future, 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).

11.2 The Customer indemnifies PHSA from and against all PHSA's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising PHSA's rights under this clause.

11.3 The Customer irrevocably appoints PHSA and each director of PHSA as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.

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

12.1 The Customer must inspect the Goods/Equipment on delivery and must within forty-eight (48) hours of delivery notify PHSA 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 the Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow PHSA to inspect the Goods/Equipment.

12.2 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).

12.3 PHSA acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, PHSA makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. PHSA's liability in respect of these warranties is limited to the fullest extent permitted by law.

12.5 If the Customer is a consumer within the meaning of the CCA, PHSA's liability is limited to the extent permitted by section 64A of Schedule 2.

12.6 If PHSA is required to replace any Goods under this clause or the CCA, but is unable to do so, PHSA may refund any money the Customer has paid for the Goods.

12.7 If PHSA is required to rectify, re-supply, or pay the cost of re-supplying any Services/Equipment under this clause or the CCA, but is unable to do so, then PHSA may refund any money the Customer has paid for the Services/Equipment but only to the extent that such refund shall take into account the value of Services/Equipment which have been provided to the Customer which were not defective.

12.8 If the Customer is not a consumer within the meaning of the CCA, PHSA's liability for any defect or damage in the Goods is:

(a) limited to the value of any express warranty or warranty card provided to the Customer by PHSA at PHSA's sole discretion;

(b) limited to any warranty to which PHSA is entitled, if PHSA did not manufacture the Goods;

(c) otherwise negated absolutely.

12.9 Subject to this clause 12, returns will only be accepted provided that:

(a) the Customer has complied with the provisions of clause 12.1; and

(b) PHSA has agreed that the Goods are defective; and

(c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and

(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

12.10 Notwithstanding clauses 12.1 to 12.9 but subject to the CCA, PHSA 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 or store any Goods/Equipment;

(b) the Customer using the Goods/Equipment for any purpose other than that for which they were designed;

(c) the Customer continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;

(d) the Customer failing to follow any instructions or guidelines provided by PHSA;

(e) fair wear and tear, any accident, or act of God.

12.11 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by PHSA as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that PHSA has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 12.11.

12.12 PHSA may in its absolute discretion accept non-defective Goods for return in which case PHSA may require the Customer to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.

12.13 Notwithstanding anything contained in this clause if PHSA is required by a law to accept a return then PHSA will only accept a return on the conditions imposed by that law.

13. Default and Consequences of Default

13.1 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 a half percent (2.5%) per calendar month (and at PHSA's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

13.2 If the Customer owes PHSA any money the Customer shall indemnify PHSA from and against all costs and disbursements incurred by PHSA in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, PHSA's collection agency costs, and bank dishonour fees).

13.3 Without prejudice to any other remedies PHSA may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions PHSA may suspend or terminate the supply of Goods/Equipment to the Customer. PHSA will not be liable to the Customer for any loss or damage the Customer suffers because PHSA has exercised its rights under this clause.

13.4 Without prejudice to PHSA's other remedies at law PHSA shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to PHSA shall, whether or not due for payment, become immediately payable if:

(a) any money payable to PHSA becomes overdue, or in PHSA's opinion the Customer will be unable to make a payment when it falls due;

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(b) 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

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

14. Dispute Resolution

14.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

(a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and

(b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

15. Cancellation

15.1 PHSA may cancel any contract to which these terms and conditions apply or cancel delivery of the Goods/Equipment or the supply of Labour at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice PHSA shall repay to the Customer any money paid by the Customer for the Goods/Equipment or the supply of Labour. PHSA shall not be liable for any loss or damage whatsoever arising from such cancellation.

15.2 In the event that the Customer cancels delivery of Goods/Equipment or the supply of Labour the Customer shall be liable for any and all loss incurred (whether direct or indirect) by PHSA as a direct result of the cancellation (including, but not limited to, any loss of profits).

15.3 Cancellation of orders for Goods/Equipment made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

16. Privacy Act 1988

16.1 The Customer agrees for PHSA to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by PHSA.

16.2 The Customer agrees that PHSA may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

(a) to assess an application by the Customer; and/or

(b) to notify other credit providers of a default by the Customer; and/or

(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or

(d) to assess the creditworthiness of the Customer.

The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

16.3 The Customer consents to PHSA being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

16.4 The Customer agrees that personal credit information provided may be used and retained by PHSA for the following purposes (and for other purposes as shall be agreed between the Customer and PHSA or required by law from time to time):

(a) the provision of Goods/Equipment; and/or

(b) the marketing of Goods/Equipment by PHSA, its PHSAs or distributors; and/or

(c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or

(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or

(e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.

16.5 PHSA may give information about the Customer to a credit reporting agency for the following purposes:

(a) to obtain a consumer credit report about the Customer;

(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

16.6 The information given to the credit reporting agency may include:

(a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);

(b) details concerning the Customer's application for credit or commercial credit and the amount requested;

(c) advice that PHSA is a current credit provider to the Customer;

(d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;

(e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;

(f) information that, in the opinion of PHSA, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);

(g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;

(h) that credit provided to the Customer by PHSA has been paid or otherwise discharged.

17. Confidentiality

17.1 PHSA and the Customer agree to keep confidential any information in relation to the other party which is not in the public domain (including, but not limited to, trade secrets, processes, formulae, accounts, marketing, designs, databases and all other information held in any form).

18. General

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18.1 The failure by PHSA to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect PHSA'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.

18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which PHSA has its principal place of business, and are subject to the jurisdiction of the courts in that state.

18.3 Subject to clause 12 PHSA 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 PHSA of these terms and conditions (alternatively PHSA's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).

18.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by PHSA nor to withhold payment of any invoice because part of that invoice is in dispute.

18.5 PHSA may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

18.6 The Customer agrees that PHSA may amend these terms and conditions at any time. If PHSA makes a change to these terms and conditions, then that change will take effect from the date on which PHSA notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for PHSA to provide Goods/Equipment to the Customer.

18.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

18.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

Additional Terms & Conditions Applicable to Equipment Hire Only

19. Hire Period

19.1 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.

19.2 Where the Equipment does not have a timing device installed hire charges shall commence from the time the Equipment is collected by the Customer from PHSA's premises and will continue until the return of the Equipment to PHSA's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

19.3 If PHSA agrees with the Customer to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves PHSA's premises and continue until the Customer notifies PHSA that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last

19.4 The date upon which the Customer advises of termination shall in all cases be treated as a full day's hire.

19.5 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless PHSA confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Customer notifies PHSA 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.

20. Risk to Equipment

20.1 PHSA retains property in the Equipment, nonetheless all risk for the Equipment passes to the Customer on delivery.

20.2 The Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies PHSA 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.

20.3 The Customer will insure, or self insure, PHSA'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.

20.4 The Customer accepts full responsibility for and shall keep PHSA 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 the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Customer or any other persons.

21. Title to Equipment

21.1 The Equipment is and will at all times remain the absolute property of PHSA.

21.2 If the Customer fails to return the Equipment to PHSA when requested then PHSA or PHSA's nominated agent may (as the invitee of the Customer) enter upon and into 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.

21.3 The Customer is not authorised to pledge PHSA's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

22. Customer's Responsibilities

22.1 The Customer shall:

(a) maintain the Equipment as is required by PHSA (including, but not limited to, maintaining water, oil and fluid levels and tyre pressures);

(b) notify PHSA immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification;

(c) satisfy itself at commencement that the Equipment is suitable for its purposes;

(d) 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 PHSA or posted on the Equipment;

(e) ensure that 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 to operate the Equipment and shall provide evidence of the same to PHSA upon request;

(f) comply with all occupational health and safety laws relating to the Equipment and its operation;

(g) 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 PHSA;

(h) 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;

(i) not 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;

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- (j) 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;
- (k) not exceed the recommended or legal load and capacity limits of the Equipment;
- (l) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
- (m) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;

22.2 Immediately on request by PHSA the Customer will pay:

- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to PHSA;
- (b) all costs incurred in cleaning the Equipment;
- (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;
- (d) the cost of repairing any damage to the Equipment caused by the negligence of the Customer or the Customer's PHSA;
- (e) the cost of repairing any damage to the Equipment caused by vandalism, or (in PHSA's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Customer;
- (f) the cost of fuels and consumables provided by PHSA and used by the Customer.

23. Wet Hire

23.1 In the event of "wet" hire of the Equipment the operator of the Equipment remains an employee of PHSA and operates the Equipment in accordance with the Customer's instructions. As such PHSA shall not be liable for any actions of the operator in following the Customer's instructions.

Additional Terms & Conditions Applicable to Labour Hire Only

24. Services

24.1 PHSA undertakes to:

- (a) use its best endeavours to provide suitably qualified Candidates to undertake work duties in compliance with the Customer's requirements; and
- (b) make the payment of all amounts due to the Candidate under the terms of any relevant industrial instrument or contract; and
- (c) make the payment of all leave entitlements (including, but not limited to, annual leave, sick leave, parental leave and long service leave) if the Candidate is a fulltime employee; and
- (d) deduct the requisite amounts of income tax, fringe benefits tax, pay roll tax and all other applicable deductions as required by Australian law; and
- (e) ensure payment of any other statutory taxes, superannuation contributions and/or levies as required by Australian law; and
- (f) maintain workers compensation insurance for all Candidates, except where state laws specify otherwise.

24.2 PHSA's quotation shall specify:

- (a) the Services to be provided by each Candidate;
- (b) the job description of each Candidate;
- (c) the commencement and termination dates of the Services;
- (d) the location where Services shall be performed;
- (e) the Price payable by the Customer for the Services.

24.3 PHSA must be advised by the Customer of any specific site or project allowances which may be applicable. All such allowances (including, but not limited to, meal, travel or tool allowances) shall be on-charged to the Customer accordingly.

24.4 The Customer acknowledges that only lunch breaks shall be deducted from total hours charged by PHSA to the Customer.

24.5 The Customer acknowledges and agrees that the Customer's obligations to PHSA for the supply of Services shall not cease until:

- (a) the Customer has paid PHSA all amounts owing for the particular Services; and
- (b) the Customer has met all other obligations due by the Customer to PHSA in respect of all contracts between PHSA and the Customer.

25. Customer's Responsibilities / Agreements

25.1 The Customer agrees that they shall supply to PHSA (on the day specified by PHSA) a duly authorised timesheet to enable PHSA to pay the Candidate when due.

25.2 It is the responsibility of the Customer to:

- (a) provide supervision of Candidates to ensure that work is carried out to a satisfactory standard; and
- (b) provide Candidates with appropriate information, supervision and training to enable them to work safely; and
- (c) provide Candidates with workplace specific and job specific induction if necessary. This induction is to be completed before the Candidate commences work with the Customer; and
- (d) familiarise the Candidate with the Customer's operations, facilities, policies and procedures, and properly inform PHSA of any specific requirements of the job which the Candidate will be required to undertake; and
- (e) provide safe working conditions and to comply with all statutory and other obligations that are applicable pursuant to Australian law (including but not limited to, Occupational Health and Safety legislation) applicable to employers and otherwise to treat Candidates as if they were employed by the Customer; and

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(f) effect and maintain insurance cover in respect of any claims which may be made against the Customer by a Candidate that arises as a result of the Customer's occupation of premises, and otherwise in respect of any act or omission in respect of machinery, equipment or vehicle(s) used by the Candidate, and to indemnify PHSA against any such claims; and

(g) properly maintain plant and equipment; and

(h) provide where a candidate may be required to 'stand down' because of adverse weather conditions a minimum 'stand down' payment of not less than four (4) hours per Candidate, unless an alternative minimum payment has been agreed between PHSA and the Customer in writing.

25.3 The Customer agrees that it will not request a Candidate to engage in any works or use any equipment that a Candidate is unfamiliar with, or unqualified to use or perform, or have not received adequate training for.

25.4 The Customer agrees that they will immediately notify PHSA of any variation of duties given to a Candidate that may affect the remuneration payable to the Candidate or may involve additional risk to the Candidate.

25.5 The Customer agrees that it will immediately notify PHSA of any injury sustained by the Candidate.

25.6 The Customer acknowledges that they remain responsible for controlling the manner, time and place in which the Candidate shall carry out their duties as assigned by the Customer and that in doing so the Customer shall be liable for all acts and omissions of the Candidate the same as they would be for any of their own employees.

25.7 In no circumstances shall PHSA be liable for any personal injury resulting in injury or death, loss and/or damage or expense arising out of, or caused by, any act or omission of a Candidate whether or not any such act or omission is negligent, and the Customer acknowledges and agrees to indemnify PHSA against all such liability whether alleged or proved. The Customer is to include all Candidates in the Customer's own public liability insurance cover.

25.8 If any event arises which is likely to lead to any dispute or claim, the Customer must notify PHSA of the same within thirty (30) days of the event. If the Customer shall fail to comply with this provision then all Services provided by PHSA shall be deemed to have been provided in accordance with these terms and conditions, and free from any disputes or claims.

25.9 The Customer agrees that any working environment in which a Candidate is placed during the period of the engagement will comply with all applicable equal opportunity legislation or regulations. The Customer agrees to immediately notify PHSA if a Candidate is involved in a sexual harassment or discrimination claim during the performance of the Services.

25.10 The Customer acknowledges that PHSA makes no representation or guarantee that any Candidate will achieve a certain level of performance, achieve a certain outcome, solve a particular problem or attain a specific goal.

26. Employees of PHSA

26.1 The Customer agrees not to employ, contract, subcontract or utilise in any way an employee or past employee of PHSA (other than through PHSA) for a period of no less than twelve (12) months after that employee's last employment with PHSA.

26.2 The Customer agrees that if clause 26.1 is contravened PHSA will be able to invoice the Customer at its current hourly rate the hours that the employee has been employed, contracted, subcontracted or utilised in any way by the Customer and agrees to pay said invoice in accordance with the standard payment terms contained in this contract.