

# **AJM HIRE CO**

## **TERMS AND CONDITIONS OF HIRE**

All orders are accepted, and Hire made subject only to the Terms and Conditions of Hire hereinafter stipulated. The placing of or proceeding in any manner with any order by the Client shall be deemed acceptance by the Client of such Terms and Conditions of Hire.

### **1. DEFINITIONS**

- 1.1. "Agreement" means this agreement, comprising:
  - (a) the Order; and
  - (b) these Terms and Conditions of Hire.
- 1.2. "Agreement Price" means the Rates, delivery charges and other sums payable by the Client, in accordance with the Agreement, which is exclusive of GST.
- 1.3. "Australian Consumer Law" and "ACL" means Schedules 1 and 2 of the Competition and Consumer Act 2010 (Cth) and any other relevant provisions contained in that Act.
- 1.4. "Client" means the person, business or company described (or any person acting on behalf of and with authority of the Client) in the Agreement or on the order given by the Client to the Principal in respect of Equipment, or to which an order relates.
- 1.5. "Commencement Date" means the date stated in the Order or otherwise a date agreed in writing by the parties.
- 1.6. "Consumer" means:
  - (a) a natural person ("Individual") hiring Equipment for personal, domestic or household use or consumption;
  - (b) an Individual or a corporation ("Person") hiring Equipment at a price not exceeding \$40,000; or
  - (c) a Person hiring Equipment of a kind ordinarily acquired for personal, domestic or household use or consumption, but excludes a Person hiring Equipment, or holding himself or herself out as hiring Equipment, for the purpose of:
  - (d) resupply; or
  - (e) using them up or transforming them, in trade or commerce in the course of a production or manufacture, or in the course of repairing or treating other goods or fixtures on land.
- 1.7. "End Date" means the later of the date that the Equipment is returned to the Principal in accordance with the requirements of the Agreement, and the date specified in the Agreement as the date on which the Hire shall terminate, unless agreed otherwise by the parties.
- 1.8. "Equipment" means the equipment set out in the Order Form and any other equipment provided by the Principal to the Client.
- 1.9. "GST" has the meaning given to it under A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 1.10. "Hire" means the hire of Equipment in accordance with the Agreement and includes any variations to such hire.
- 1.11. "Order" means the document entitled "Order Form" attached to these Terms and Conditions of Hire or otherwise as agreed by the parties.
- 1.12. "Principal" means Amy Mulligan trading as AJM Hire Co, and any successors in title and permitted assigns or any person acting on behalf of the Principal.
- 1.13. "Rates" means the rates payable by the Client during the Term, being the rates of the Principal as at the Commencement Date unless otherwise agreed by the parties.
- 1.14. "Security Agreement" means the security agreement under the Personal Property Securities Act 2009 (Cth) ("PPSA") created between the Principal and the Client by the Agreement and the following words have the meaning given to them by the PPSA:
  - (a) "Security Interest";
  - (b) "Purchase Money Security Interest";
  - (c) "Financing Statement";
  - (d) "Financing Change Statement";
  - (e) "Proceeds";
  - (f) "Accessions";
  - (g) "Verification Statement"; and
  - (h) "Register".
- 1.15. "Site" means the place designated in the Agreement for the use of the Equipment during the Term.
- 1.16. "Term" means the period of Hire that commences on the Commencement Date and terminates on the End Date unless extended in writing by the Principal at its absolute discretion.
- 1.17. "Terms and Conditions of Hire" means these standard terms and conditions of hire.

### **2. GENERAL**

- 2.1. The Client agrees that these Terms and Conditions of Hire are incorporated into the Agreement.

### **3. COMPETITION AND CONSUMER ACT 2010 ("CCA")**

- 3.1. If the Client is not a Consumer, then to the extent permitted by law, all conditions, warranties and liabilities, implied, statutory or otherwise not contained in the Agreement or in any written warranty statement provided by the Principal with the Goods ("Principal Warranty"), are excluded.
- 3.2. If the Client is not a Consumer, then to the extent permitted by law the Principal is not liable to the Client for any loss, however caused (including by negligence of the Principal), suffered or incurred by the Client in relation to any defect or deficiency in the Equipment (other than as set out in any Principal Warranty).
- 3.3. This clause does not limit the Principal's liability to a Client who is a Consumer.
- 3.4. If the Client is a Consumer, nothing in the Agreement excludes, restricts or modifies its rights or remedies against the Principal for failure to comply with a guarantee under the ACL, however and subject to section 64A(3) of the ACL, to the extent that the Equipment the subject of the Hire is not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Principal limits its liability for failure to comply with a guarantee under the ACL (other than a guarantee under section 51, 52 or 53 of the ACL) at the Principal's option to provide replacement Equipment for Hire.
- 3.5. If clause 3.4 does not apply, then other than as stated in the Agreement, the Principal is not liable to the Client in any way arising under or in connection with the Hire to the Client or to any other person or entity.
- 3.6. Nothing in this clause 3 is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the Hire which cannot be excluded, restricted or modified.
- 3.7. Subject to clause 3.1, the Principal shall not be liable to the Client its servants or agents or contractors for any direct, indirect, incidental, consequential or punitive or special losses, expenses or damages of any nature howsoever caused (whether based on tort or contract or otherwise) suffered by the Client or any other persons or entity howsoever caused including but not limited to loss of turnover, loss of profits, loss of production, loss of sales opportunity, loss of business reputation, loss of goodwill, delay costs, increased financing costs, or direct or indirect labour costs and overhead expenses and damage to equipment or property, or any liability to any other person or entity or any other claim whatsoever arising directly or indirectly out of or in any way connected to the Agreement, except to the extent of any liability imposed by the ACL.

#### 4. ORDERS

- 4.1. No order accepted by the Principal may be altered without the Principal's express written consent.
- 4.2. If the Client cancels an order, other than in accordance with the Agreement, the Client shall pay the Principal any and all loss, damage and expense incurred by the Principal in relation to the Hire, including the total amount that would have been payable for the Term of the Agreement in the event that the order had not been cancelled.

#### 5. DESCRIPTION

- 5.1. Any description of Equipment is given by way of identification only and use of such description shall not constitute and shall not be construed as constituting a sale by description.
- 5.2. Any reference in the Agreement to "fair wear and tear" expressly excludes:
  - (a) dents or other impact damage to the Equipment;
  - (b) damage to glass or instrumentation; and
  - (c) panel or structural damage.

#### 6. FITNESS FOR PURPOSE

- 6.1. Subject to clause 3 hereof, the Client acknowledges that neither the Principal nor any person acting or purporting to act on its behalf has made representation or given any promise or undertaking which is not expressly set out in writing whether as to the fitness of the Equipment for any particular purpose or any other matter.
- 6.2. The Client acknowledges and warrants that it has relied on its own skill and judgement or alternatively on the skill and judgement of tradesmen and professional advisers retained by it to provide advice and assistance on the suitability of the Equipment for specific purposes and procedures and in this respect shall hold the Principal harmless and indemnified from and against any suit claim, demand, or compensation which but for the Agreement the Client may have had against the Principal.

#### 7. QUOTATION AND PRICE

- 7.1. GST and other taxes, levies and duties that may be applicable shall be added to the Agreement Price, except when they are expressly included.

#### 8. TITLE AND RISK

- 8.1. Ownership and title in the Equipment shall remain vested in the Principal at all times.
- 8.2. Nothing contained in the Agreement will confer on the Client any right or property or security interest in the Equipment other than the rights specified in the Agreement or by law as hirer of the Equipment.
- 8.3. Risk in the Equipment passes to the Client at the time the Equipment is collected by the Client or delivered to the Site (as the case may be).
- 8.4. Risk in the Equipment shall revert to the Principal at the time the Principal takes possession of the Equipment and it is accepted by the Principal.
- 8.5. If the Client defaults any term of the Agreement, the Principal may take possession of the Equipment wherever the Equipment is located and the Client agrees that representatives of the Principal may ingress and egress the Site or the Client's premises (without notice as invitee of the Client) owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment.
- 8.6. The Client covenants with the Principal not to charge, pledge, mortgage or otherwise encumber the Equipment in any way or grant nor otherwise give any Security Interest in the Equipment and the Equipment shall remain the property of the Principal at all times.

#### 9. DELIVERY

- 9.1. Any times quoted for delivery of Equipment and/or the performance of services by the Principal are estimates only and the Principal shall not be responsible nor liable for any loss, damage, claim or demand howsoever arising as a result of or consequent upon any failure to deliver Equipment or perform services or for any delay in delivery of Equipment or performance of services, by either act or omission, including without limitation, the Force Majeure events identified in clause 12. The Client shall not be relieved of any obligation to accept or pay for Equipment by reason of any delay in delivery, dispatch or performance.
- 9.2. In addition to the Rates payable for the hire of the Equipment, the Client shall pay the delivery charges as at the Commencement Date.

#### 10. LICENSES

- 10.1. All Equipment is Hired by the Principal on the basis that all licenses and permits under all relevant statutes, ordinances, rules and regulations have been obtained by or complied with by the Client and the Client shall hold the Principal indemnified from and against any action, claim, demand suit or proceeding by any relevant authority with respect to the Hire of any Equipment.

#### 11. DEFAULT

- 11.1. The Client will be in default if:
  - (a) the Client breaches any term of the Agreement; or
  - (b) payment for the Equipment has not been received by the Principal by the due date of payment; or
  - (c) the Client being an individual commits an act of bankruptcy or becomes an insolvent under administration; or
  - (d) the Client being a body corporate becomes an externally-administered body corporate or has an application for winding up filed against it; or
  - (e) the Principal forms the opinion that the Client's credit worthiness or credit standing alters from that indicated in its credit application.
- 11.2. If one of the events described in clause 11.1 occurs, the Principal may without prejudice to any other rights and without notice to the Client do any one or more of the following:
  - (a) treat the whole of the Agreement and any other agreement with the Client as repudiated and terminate the Agreement;
  - (b) refuse to hire any Equipment to the Client;
  - (c) claim the return of any Equipment in the Client's possession, power, authority, custody or control; and
  - (d) make all monies owing by the Client to the Principal on any account immediately due and payable.
- 11.3. In addition to any lien which the Principal may by statute or otherwise be entitled, the Principal shall, in the event of the Client's insolvency, bankruptcy or winding up, be entitled to a general lien on all property or goods belonging to the Client, for the unpaid price of any other Equipment hired to the Client under this or any other agreement.

#### 12. FORCE MAJEURE

- 12.1. Should the Principal's performance of any obligation in the Agreement be affected by war, terrorism, riot, flood, subsidence, inundation, storm, fire, lightning, tempest, strike, lock-out, industrial action, labour dispute action or shortage, raw material shortage, breakdown of plant, transport or equipment, restrictions of Government or other statutory authorities, epidemics, failure or fluctuation in any electrical power supply, earthquake, accident, the change or introduction of any law or regulation or an act or omission of a supplier to the Principal, act of god, other force majeure event or similar disturbance the Principal may, at its option may terminate the Agreement.

#### 13. WAIVER

- 13.1. Any failure by the Principal to insist upon strict performance of any clause contained in the Agreement shall not be deemed a waiver thereof of any right that the Principal may have and shall not be deemed a waiver of any subsequent breach of any term or condition.

#### 14. COLLECTION AND RETURN OF GOODS

- 14.1. On the Commencement Date, the Client must collect the Equipment from the Principal unless the Order states the Principal will deliver the Equipment to the Site.
- 14.2. On the End Date, the Client must return the Equipment to the Principal unless the Order states the Principal will collect the Equipment from the Site.
- 14.3. The Client must return the Equipment to the Principal:
  - (a) in the same condition of the Equipment as at the Commencement Date (fair wear and tear excepted), as determined by the Principal, and clean; and

- (b) with all lubricants and other consumables fully replenished (fair wear and tear excepted), and fuels fully replenished.
- 14.4. In the event of the Client failing to return any Equipment with fuel tanks fully replenished, the Client shall pay the Company \$4 per litre for the replenishment of the fuel.
- 14.5. If the Principal is responsible for the collection of the Equipment pursuant to clause 14.2, the Client must provide written notice requesting the Principal to collect the Equipment from the Site at least 7 days prior to the End Date.
- 14.6. Subject to clause 3, Equipment will not be accepted for return prior to the End Date without the prior agreement of the Principal.

#### 15. SUB-CONTRACTING

- 15.1. The Principal reserves the right to sub-contract the hire of the Equipment or any part thereof.

#### 16. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")

- 16.1. The Client acknowledges and agrees that the Agreement (including the credit application form):
- (a) constitutes a Security Agreement for the purposes of the PPSA; and
  - (b) creates a Security Interest in all Equipment (including but not limited to all Accessions and serial numbered goods) and their Proceeds to secure the obligations of the Client to the Principal under the Agreement.
- 16.2. The Client irrevocably consents to the Principal at any time affecting and maintaining a registration on the Register (in any manner the Principal considers appropriate) in relation to any Security Interest (including any Purchase Money Security Interest) contemplated or constituted by the Agreement in the Goods, any Accession and the Proceeds.
- 16.3. The Client undertakes to:
- (a) promptly and at its own expense do all things and sign any further documents and/or provide any further assistance and/or provide any further relevant information (such information to be complete, accurate and up-to-date in all respects) which the Principal may reasonably require to:
    - (i) obtain and/or register and/or maintain and/or perfect a Financing Statement or Financing Change Statement in relation to a Security Interest on the Personal Property Securities Register and/or enforce the Principal's Security Interest in respect of the Equipment Hired in accordance with the PPSA;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 16(a)(i) or 16(a)(ii).
  - (b) indemnify, and upon demand reimburse, the Principal for all expenses howsoever incurred in registering a Financing Statement or Financing Change Statement on the Register or releasing any Equipment charged;
  - (c) not register, procure or permit to be registered a Financing Statement or Financing Change Statement in respect of a Security Interest contemplated or constituted by the Agreement;
  - (d) not register, procure or permit to be registered a Financing Statement or Financing Change Statement in respect of the Equipment or a Security Interest in favour of a third party;
  - (e) not to change its name and or its details (including, but not limited to, changes in the Client's registered office address, facsimile number, trading name or business practice); without first notifying the Principal of the new name or change in details not less than 14 days before the change takes effect; and
  - (f) immediately advise the Principal of any material change in its business practices which would result in a change in the nature of the Hire of the Equipment;
- 16.4. The Principal and the Client agree to contract-out of the PPSA in accordance with Section 115 to the extent that Section 115 applies for the benefit of, and does not impose a burden on, the Principal.
- 16.5. The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 16.6. To the fullest extent permissible by law the Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 16.7. The Client warrants that the Equipment is of a commercial nature and is not Hired for use primarily for personal, domestic or household purposes.
- 16.8. Unless otherwise expressly agreed to in writing by the Principal, the Client waives its right to receive a Verification Statement in accordance with section 157(3)(b) of the PPSA.
- 16.9. Unless otherwise expressly agreed to in writing by the Principal, the Client must not disclose any information of the kind referred to in section 275(1) of the PPSA to an interested person, or any other person required by an interested person.
- 16.10. The Client shall not sell or grant a Security Interest in the Equipment.
- 16.11. The Client shall unconditionally ratify any actions taken by the Principal under this clause 16.

#### 17. CREDIT

- 17.1. The Principal may, in its sole discretion, grant the Client credit for the hire of the Equipment.
- 17.2. Until the Principal grants the Client credit by express notice in writing, the Principal will only Hire to the Client on the basis of cash on delivery for the agreed Term.
- 17.3. The granting of credit does not oblige the Principal to extend any particular amount of credit to the Client.
- 17.4. The Client must immediately notify the Principal in writing if there is any change in the Control (as defined by Section 50AA of the Corporations Act 2001), shareholding or ownership of the Client or any material change in the Client's financial position.
- 17.5. Subject to clause 17.7, the Client irrevocably authorises the Principal to charge the credit card for which details have been provided to the Principal for the Agreement Price and all other amounts payable by the Client in connection with the Agreement. The Client acknowledges that it will be liable for any fees charged in relation to the use of the credit card. The Client must not take any steps to restrain any issuer of any credit card provided in connection with the Agreement from paying the Principal for any charges claimed by the Principal.
- 17.6. If any money payable by the Client under the Agreement is not paid to the Principal in accordance with the Agreement then the Client must pay to the Principal interest at the rate of 10% per annum for the amount unpaid and for the period of non-payment.
- 17.7. In the event of the Principal granting the Client credit, unless otherwise expressly agreed by the Principal in writing, terms of payment for the Hire shall be net fourteen (14) days from the date of invoice.
- 17.8 In the event of

#### 18. USE IN EXCESS OF HOUR ALLOWANCE

- 18.1. In the event of the Client operating any Equipment for a period of greater than the hour allowance, the Client shall pay the Principal an amount of the daily rate divided by 8 for up to every hour over the allowance.
- 18.2. Equipment hour allowance is limited to 8 hours per 24 hour rate paid and 40 hours per weekly rate paid.
- 18.3. The parties agree that any hour meter on the Equipment shall be conclusive evidence of the hours of operation of the Equipment.

#### 19. ASSIGNMENT

- 19.1. None of the rights or obligations of the Client under the Agreement may be novated, assigned or transferred in whole or in part without the prior express written consent of the Principal.

#### 20. APPLICABLE LAW

- 20.1. The Agreement (and any proceedings whereby one party might be entitled to join the other as a third party) shall in all respects be governed by and construed in accordance with Western Australian law and the parties hereby submit to the non-exclusive jurisdiction of the Western Australian courts

#### 21. INSURANCE

- 21.1. Unless otherwise agreed to by the Principal, the Client is responsible for insuring the Equipment ex the Principal's works.
- 21.2. The Client must maintain with a reputable insurer:
- (a) an insurance policy covering the full replacement value of the Equipment in the event of total or partial loss or theft, noting the Principal as an insured party; and

(b) public liability insurance in the amount of not less than \$20 million for each occurrence and unlimited in the aggregate arising out of the use of the Equipment, noting the Principal as an insured party.

21.3. The Principal shall not be liable for any insurance excess payments or damage waiver fees (or similar) in relation to the insurances effected pursuant to clause 21.2.

21.4. The Client must provide a certificate of currency for any insurance policy required to be effected pursuant to clause 21.2, upon request by the Principal.

21.5. In the event that the Client fails to provide a certificate of currency to the Principal within 5 business days of being requested pursuant to clause 21.4, the Rates shall be subject to 10% surcharge until the date on which the Client provides a certificate of currency.

## 22. ENTIRE AGREEMENT

22.1. The Agreement represents the entire agreement between the Principal and the Client with respect to the Hire or the performance of services produced. The Agreement may not be varied, modified, amended or altered without the express written consent of the Principal.

22.2. The Client hereby acknowledges that any terms and conditions attached to any order made by the Client shall not form part of the Agreement, shall be deemed to be an acceptance of these Terms and Conditions of Hire and shall not constitute a counter-offer to the Principal.

22.3. If the Client continues to hire any Equipment beyond the Term or termination of the Agreement, the Agreement shall continue to apply to the hire of the Equipment by the Client.

22.4. If a provision of the Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any provision or part of the Agreement is illegal, unenforceable or invalid, that provision or part is to be treated as removed from this document, but the rest of this document is not affected.

## 23. HIRE AND ACCESS

23.1. The Client upon request must grant the Principal access (or procure that the Principal is granted access) for the purpose of inspection, servicing or, following termination or expiry of the Agreement, repossessing the Principal's Equipment.

## 24. RATES AND CHARGES

24.1. The Client must pay the Principal the Rates in accordance with the Agreement for the duration of the Term.

24.2. The Client acknowledges and agrees that the Rates will be subject to a 3.5% increase on the first day of each calendar year.

## 25. EQUIPMENT CONDITION

25.1. Condition of the Equipment

(a) The Principal must ensure that at the time of delivery of the Equipment by the Principal to the Site (as applicable), the Equipment is as described in the Agreement.

(b) Without limiting the Principal's obligations in clause 25.1(a), the Client acknowledges that the Principal gives no warranty that the Equipment:

- (i) is fit for the specific use intended by the Client;
- (ii) as designed, manufactured and supplied complies with all laws and applicable codes and standards; and
- (iii) is free from any charges or encumbrances.

25.2. Pre-Delivery / Return Inspection

(a) Prior to the Client collecting the Equipment or the Principal delivering the Equipment to Principal (as the case may be), the Principal may undertake an inspection of the Equipment (Pre-delivery Inspection) and prepare a written report that records the condition of the Equipment (Pre-delivery Inspection Report). The condition of the Equipment as set out in the Pre-delivery Inspection Report shall be conclusive evidence of the condition of the Equipment as at the Commencement Date.

(b) At the time the Client returns the Equipment to the Principal or the Principal collects the Equipment (as the case may be), the parties must undertake a joint inspection of the Equipment (Return Inspection).

(c) If the Return Inspection discloses that the Equipment is not in the same condition as that evidenced in the Pre-delivery Inspection Report (fair wear and tear and any other exceptions noted in the Agreement excepted), then the Principal may invoice the Client for all direct and indirect costs incurred by the Principal in effecting repairs to the Equipment and necessary for returning it to that evidenced in the Pre-delivery Inspection Report (fair wear and tear and any other exceptions noted in the Agreement excepted) and that the Client must continue to pay the Rates until such time that the Equipment is returned to the condition evidenced in the Pre-delivery Inspection Report.

## 26. REPAIR, MAINTENANCE & SERVICING

26.1. Breakdown of Equipment

(a) Subject to clause 26.1 (b), if the Equipment is rendered non-operational or cannot be used or operated for its intended purpose, the Principal may in its sole discretion:

- (i) repair the Equipment;
- (ii) supply replacement equipment that is capable of satisfying the requirements of the Agreement in which case the Principal must supply the replacement equipment at its cost as soon as practicable and the Client shall continue to pay to the Principal the Rates; or
- (iii) terminate the Agreement with immediate effect in which case the Principal may arrange for the collection of the Equipment.

(b) In the event that the Equipment is rendered non-operational or cannot be used or operated for its intended purpose by virtue of any act or omission of the Client or a third party, the Principal may in its sole discretion elect to give a written notice to the Client:

- (i) requiring the Client to repair the Equipment in which case the Client must immediately and at its own cost repair the Equipment; or
- (ii) terminating the Agreement with immediate effect in which case the Principal may collect the Equipment and the Client shall be liable for all direct and indirect costs incurred by the Principal in effecting the necessary repairs to the Equipment or replacing the Equipment, as well as for payment of the Rates until the Equipment is repaired.

## 27. OTHER OBLIGATIONS OF THE CLIENT

27.1. The Client must not, without the prior written consent of the Principal:

- (a) interfere with any GPS location devices installed on the Equipment;
- (b) alter or dismantle or make any additions to the Equipment including defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (c) permit any person other than its personnel to use or otherwise possess the Equipment;
- (d) fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold property;
- (e) use the Equipment other than in the ordinary course of its business;
- (f) assign, dispose of, or permit any person to acquire, any of the Principal's rights or interest under the Agreement or in respect of the Equipment; or
- (g) sell, transfer, assign, sub-lease or otherwise dispose of the Equipment or permit the Equipment to be temporarily or permanently removed from the Site other than for the purposes of repair or servicing in accordance with the Agreement.

27.2. The Client must observe and comply with all manufacturer operational guidelines and limits, such as load or gradient limits, in relation to the use and operation of the Equipment.

27.3. During the Term the Client must maintain the Equipment in accordance with manufacturer operational guidelines.

## 28. LOST OR DAMAGED EQUIPMENT

28.1. If any items of the Equipment are lost, damaged beyond reasonable repair or destroyed for any reason including as a result of any act or omission of the Client during the Term the Client must immediately notify the Principal and:

- (a) the Client shall be liable to the Principal for all direct and indirect costs incurred by the Principal in replacing the relevant item of Equipment; or
- (b) at the Principal's sole and absolute discretion, the Principal may direct the Client to replace the relevant item of Equipment with equipment of the same or similar nature, age and condition, at the Client's sole cost.

28.2. If any items of the Equipment are not cleaned upon return to the Principal, the Client shall pay the Principal a cleaning fee.

## 29. INDEMNITY

The Client will indemnify the Principal and keep the Principal indemnified from and against all liabilities, losses, damages, actions, suits, proceedings, claims, costs and expenses in respect of:

- (a) any breach of the Agreement by the Client;
- (b) injury to (including illness or disability), or death, of any persons caused or contributed to by any act or omission of the Client or its directors, officers, employees, agents or contractors; and
- (c) loss or destruction of, or damage to or loss of use of, any property (including the Equipment), caused or contributed to by any act or omission of the Client or its directors, officers, employees, agents or contractors.

## 30. PERMITS AND LICENCES

30.1. The Client shall obtain and bear the costs of any permits and/or licences required by law or any Government Authority in connection with the use and operation of the Equipment at the site.

## 31. TERMINATION

31.1. The Principal may for any reason and at any time in its absolute discretion, terminate the Agreement upon written notice to the Principal of not less than 48 hours. In the event that the Agreement is terminated pursuant to this clause 31.1, the Principal shall pay the Client \$1.00 (one dollar) as the sole and exclusive remedy for any and all loss, damage and expense incurred by the Client in relation such termination.

31.2. Other than for termination in accordance with clauses 26.1(a) or 31, in the event that the Agreement is terminated for any reason whatsoever, the Client shall pay the Principal any and all loss, damage and expense incurred by the Principal in relation to the Hire, including any amount that would have been payable for the Term of the Agreement in the event that the Agreement had not been terminated.

## 32. LIMITATION OF LIABILITY

32.1. Notwithstanding any other provision of the Agreement, but subject to clause 32.2, and to the maximum extent permitted by law, the Principal's overall liability:

- (a) under, or arising out of, or in connection with the Agreement;
- (b) otherwise at law or in equity, including by statute, to the extent permitted by law:
  - (i). in tort for negligence or otherwise;
  - (ii) on any other basis whatsoever, shall not exceed ten per cent (10%) of the Agreement Price.

32.2. The limitation of liability referred to in clause 32.1 does not apply to liability for direct loss arising from liability which, by law, the Principal cannot contract out of.

## 33. DAMAGE WAIVER

33.1 Upon payment by the hirer up to date of the damage waiver fee, the owner waives any claim it may have against the hirer for the cost of repairs or replacement of the equipment due to damage occurring during its use under this agreement. The limitation is subject to payment of any excess payable by the hirer and the other terms of this document. This clause in no way entitles the hirer to, or implies the availability of, compensation from the owner for any liability incurred by the hirer to any third party in relation to the use of the hired equipment.

33.2 This clause ceases to operate at the end of the hire period unless an extension by the owner is granted in writing and an additional agreed fee is paid.

33.3 This clause will not apply to loss or damage which arises from:

- (a) breach of this agreement where the breach increased the risk of or caused the loss or damage;
- (b) breach of any statute or other law or regulations in connection with the use of the equipment by the hirer where the breach increased the risk of or caused the loss or damage;
- (c) misuse, abuse, wilful and/or malicious acts, negligent and/or reckless use and/or overloading of the equipment;
- (d) theft, loss or damage by whatever cause to tools and/or accessories supplied with the equipment including but not limited to; hoses, drills, bits, grease guns, electric leads, tyres and tubes;
- (e) lack of lubrication or non-adherence to other normal maintenance requirements that are required by or could reasonably be expected of the hirer under this agreement;
- (f) disregard for instructions given to the hirer by the owner in respect of the proper use of the equipment or in contradiction of the manufacturer's instructions if supplied with the equipment at the commencement of hire;
- (g) unexplained disappearance of the equipment;
- (h) theft of the equipment in circumstances where site security is available including, but not limited to, locked yards, buildings and sheds, where that security is not properly used by the hirer to secure the equipment whilst it is left unattended; or
- (i) loading or off-loading equipment from maritime vessels, transportation of equipment on maritime vessels or the use of equipment on any wharf or bridge or over any body of water.