

## 1. HIRE AGREEMENT BETWEEN YOU AND US

These terms and conditions, together with:

- (a) each Hire Quotation provided to You by Us, whether signed or not;
- (b) the Hire Equipment Return Process; and
- (c) any Special Conditions defined at the end of this document which are specific to the type of Equipment You have hired,

set out the terms of the hire agreement (the **"Hire Agreement"**) between You and Us. The provision or acceptance of a Quotation will not form a separate agreement between You and Us but will constitute part of this Hire Agreement.

Any terms contained in any document supplied by You, including any terms on Your purchase order, will not form part of the Hire Agreement.

## 2. INTERPRETATION

### a. Definitions

When We refer to the following terms in this document:

**"ACL"** means the Australian Consumer Law which is contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**"Agreement"** means the Hire Agreement. **"Consumer"** means a consumer as that term is defined in the ACL.

**"Consumer Guarantees"** means the guarantees relating to the supply of goods and services contained in the ACL.

**"Credit Account"** means any billing arrangement We have extended to You upon Our approval of the Credit Application.

**"Credit Application"** means any application for a Credit Account completed by You.

**"Equipment"** means any equipment provided by Us to You under the Hire Agreement, including any associated or attached tools, accessories and parts available for hire.

**"Expected Off Hire Date"** means the date that You expect the Hire Period to end. This date is set out in the Hire Quotation.

**"Hire Charge"** or **"Hire Charges"** means the rates and charges payable by You for the hire of the Equipment.

**"Hire Equipment Return Process"** means the process You must follow to notify Us of the Off Hire Date and return the Equipment to Us, a copy of which can be found on Our website at [www.sitechsolutions.com.au](http://www.sitechsolutions.com.au).

**"Hire Period"** means the period described in clause 3.

**"Hire Quotation"** means the document provided by Us to You which includes details of the Equipment You have hired, the Hire Charge, any other applicable charges, the Expected Off Hire Date and the address for delivery of the Equipment.

**"Off Hire Date"** means the date You notify Us that You will stop using the Equipment.

**"PPSA"** means the *Personal Property Securities Act 2009* (Cth) (as amended) and any other legislation and regulations in respect of it and the following words in clause 8(b), 9 and 31 have the respective meanings given to them in the PPS Act: collateral, financing change statement, financing statement, interested person, purchase money security interest, register, registration, security agreement, security interest and verification statement.

**"Regulatory Authority"** means any public authority or government agency responsible for regulating the performance of electrical works.

**"Related Body Corporate"** has the same meaning as in the *Corporations Act 2001* (Cth).

**"Relevant Documents"** means the Credit Application and any guarantee, indemnity or charge You agree to which guarantees all monies owing by You to Us. **"Special Conditions"** means the special conditions of hire that form part of this agreement (if any) or as amended from time to time.

**"We/Us/Our"** means SITECH Solutions Pty Ltd and its successors and assigns.

**"You/Your"** refers to the person, firm, organisation, partnership, corporation, trust or other entity hiring Equipment from Us. The reference to "You/Your" includes any of your employees, agents and contractors.

### b. Interpretation

In this document:

- i. a reference to the Agreement or another document means the Agreement or that other document and any document which varies, supplements, replaces, assigns or novates the Agreement or that other document;
- ii. a reference to a clause, schedule, annexure or attachment is a reference to the clause, a schedule or an annexure to or of the Agreement;
- iii. the schedules, annexures and attachments, if any, form part of the Agreement;
- iv. a reference to a party is a reference to a party to the Agreement;
- v. a reference to a person includes its successors and permitted assigns, a natural person, corporation, trust, partnership, a body whether incorporated or unincorporated, Government Agency, any other exempt public authority or corporation sole or other entity whether or not it comprises a separate legal entity;
- vi. an obligation or warranty on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- vii. a reference to legislation means that legislation as amended or replaced; 'including' and 'includes' are not words of limitation; a reference to a time is to that time in the Jurisdiction;
- viii. a singular word includes the plural and vice versa;
- ix. monetary amounts are expressed in Australian dollars;
- x. a reference to a thing includes a reference to a part of that thing; and
- xi. any consent or approval required under this document must be in writing.

### 3. HIRE PERIOD

- a. The Hire Period commences on the earlier of the following:
  - i. when You take possession of the Equipment; or
  - ii. if You request delivery and collection of the Equipment, the time We deliver the Equipment to the address in the Hire Quotation.
- b. The Hire Period is for an indefinite term and ends when the Equipment is back in Our control or possession.
- c. The Hire Period includes weekends and public holidays.
- d. A minimum Hire Period may apply in respect of certain items of Equipment (**"Minimum Hire Period"**). We will advise you at the time of hiring if a Minimum Hire Period applies. If You return the Equipment to Us before the expiration of the Minimum Hire Period, You are required to pay all Hire Charges in respect of the Minimum Hire Period.

## 4. HIRE CHARGES

- a. You will pay Us for the hire of the Equipment at the Hire Charge set out in the Hire Quotation.
- b. The Hire Quotation will specify the type of rate which will apply to You and the method of calculation.
- c. You will be charged for the hire of Equipment for the full Hire Period. For the avoidance of doubt, You must continue to pay the Hire Charges and other charges after the Expected Off Hire Date if You have not returned the Equipment to Us by the Expected Off Hire Date. This obligation survives termination of the Hire Agreement.
- d. Hire Charges will commence from the Hire Period and continue until the Off Hire Date. For the avoidance of doubt, the Expected Off Hire Date is not considered to be Your notice to Us that the Equipment is available for collection.

## 5. OTHER CHARGES

In addition to the Hire Charges, You agree to pay:

- a. if You require Us to deliver, collect or install the Equipment, the cost of delivery, collection or installation, as detailed in the Hire Quotation. Such charge may include a waiting fee (charged at cost) in addition to the delivery and collection fee if the nominated time for delivery or collection of the Equipment is delayed by You;
- b. if You do not return the Equipment in clean and good working condition, charges for the cleaning and repair of the Equipment; any stamp duty or GST arising out of this Hire Agreement;
- c. any other applicable levies, fines, penalties and any other government charges arising out of Your use of the Equipment;
- d. if You request operational guidance or training on the use of the Equipment and Our staff are available to provide this, the cost for the provision of these services at rates agreed with Us;
- e. charges in connection with the administration of Your Credit Account, as detailed in the Hire Quotation, which may include printing and postage costs; and
- f. any reasonable charges incurred by Us if we are unable to inspect or carry out maintenance on the Equipment during normal working hours.

## 6. PAYMENT

- a. You must pay all Hire Charges and other fees, charges and costs that become due and payable under this Hire Agreement in advance by direct debit, unless otherwise agreed and noted in the Hire Quotation.
- b. If You do not pay the invoice in full by the payment due date, We may charge, in addition to any other costs recoverable under this Hire Agreement:
  - i. interest, calculated monthly, on the total outstanding balance. The interest rate used to calculate the interest payable for the month is the 90-day Bank Bill Swap Rate published on the first business day of that month plus 2%; and
  - ii. any costs and expenses (including any commission payable to any commercial or mercantile agents and legal costs) incurred by Us in recovering any unpaid amounts under this Hire Agreement.
- c. We are entitled to set off against any amount We owe You any amount owed to Us by You or any amount owed to Us by any of Your Related Bodies Corporate.

## 7. YOUR OBLIGATIONS TO US

- a. This Hire Agreement is personal to You and You must not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time, unless expressly agreed by Us in writing.
- b. You agree that before taking delivery of the Equipment, You have satisfied Yourself as to the suitability and condition of the Equipment and You will ensure that the Equipment is used only for the purpose for which it was designed by the manufacturer. Subject to clause 15(b), We make no representations and give no guarantee or warranty that the Equipment is suitable for Your intended purpose.

- c. You must:
  - i. operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
  - ii. ensure persons operating or erecting the Equipment are suitably trained on its safe and proper use, qualified to use the Equipment and where necessary, hold a current licence to perform high risk work;
  - iii. wear suitable clothing and protective equipment when operating the Equipment as required or recommended by Us or the manufacturer;
  - iv. ensure that no persons operating the Equipment are under the influence of drugs or alcohol;
  - v. conduct a job safety analysis prior to using the Equipment; and
  - vi. ensure that no persons carry illegal, prohibited or dangerous substances in or on the Equipment.
- d. You must:
  - i. keep the Equipment in good condition and in accordance with the manufacturer's and Our instructions at Your own cost;
  - ii. not in any way alter, modify, tamper with, damage or repair the Equipment without Our prior written consent; and
  - iii. not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment.
- e. At all times during the Hire Period, You must store the Equipment safely and securely.
- f. You will allow Us to enter Your premises and inspect and maintain the Equipment from time to time during the Hire Period during normal working hours. If We cannot inspect or maintain the Equipment during normal working hours, then additional charges may apply. You can also request to conduct a joint inspection of the Equipment with Us at the end of the Hire Period.
- g. Whenever You are moving the Equipment, You must ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturer's guidelines. You (or any contractor You engage) must observe any safety directions advised by Us and/or the manufacturer of the Equipment to ensure its safe loading and handling.
- h. You must not remove the Equipment from the State or Territory in which You hired it without Our written consent.

### 8. OWNERSHIP OF THE EQUIPMENT

- a. Except as detailed in clause 8(d), You acknowledge that We own the Equipment and in all circumstances We retain title to the Equipment (even if You go into liquidation or become bankrupt during the Hire Period). Your rights to use the Equipment are as a bailee only.
- b. Except in the circumstances set out in clause 10, You are not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Equipment in any way.
- c. In no circumstances will the Equipment be deemed to be a fixture.
- d. You acknowledge that We may hire or lease Equipment from a third party if we cannot provide the Equipment to You ("**Third Party Owner**"), and if this occurs, title in the Equipment remains with the Third Party Owner.

### 9. PPSA

- a. We may register any actual or impending security interest (in any manner We consider appropriate) in relation to any security interest contemplated or constituted by this Hire Agreement in the Equipment and the proceeds arising in respect of any dealing in the Equipment.
- b. You undertake to:

- i. do anything that is required by Us:
    - 1. so that We acquire and maintain one or more perfected security interests under the PPSA in respect of the Equipment and its proceeds;
    - 2. to register a financing statement or financing change statement; and
    - 3. to ensure that Our security position, and rights and obligations, are not adversely affected by the PPSA;
  - ii. not register a financing change statement in respect of a security interest contemplated or constituted by this Hire Agreement without Our prior written consent; and
  - iii. not create or purport to create any security interest in the Equipment, nor register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without Our prior written consent.
- c. You:
- i. waive Your right under section 157 of the PPSA to receive a copy of the verification statement relating to a security interest created under the Hire Agreement;
  - ii. agree that to the extent permitted by the PPSA, the following provisions of the PPSA will not apply and are contracted out of : section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and
  - iii. agree that the following provisions of the PPSA will not apply and You will have no rights under them:
    - 1. section 127, section 129(2) and (3);
    - 2. section 130(1), section 132, section 134(2), section 135, section 136(3), (4); and (5); and
    - 3. section 137.
- d. Unless otherwise agreed and to the extent permitted by the PPSA, You and We agree not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. You waive any right You may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.
- e. For the purposes of section 20(2) of the PPSA, the collateral is Equipment including any Equipment which is described in any Hire Quotation provided by Us to You from time to time. This Hire Agreement is a security agreement for the purposes of the PPSA.
- f. You agree to notify Us in writing of any change to Your details set out in the Credit Application, within 5 days from the date of such change.

### 10. RESPONSIBILITY FOR THE EQUIPMENT

You are responsible for any loss, theft or damage to the Equipment from any and every event whatsoever and howsoever and by whosoever caused during the Hire Period except where any such loss, theft or damage was caused by Our actions.

### 11. RETURN OF EQUIPMENT

- a. When You are ready to end Your hire of the Equipment, and in accordance with the Hire Equipment Return Process, You must:
  - i. notify Us of the Off Hire Date; and
  - ii. subject to clause 11(c), return the Equipment to the branch you hired it from within 3 business days of the Off Hire Date.
- b. The Equipment You return to Us in the same clean condition and good working order it was in when You received it, ordinary fair wear and tear excluded. If You do not properly clean the Equipment, We will charge You a cleaning fee.

- c. If We have agreed to collect the Equipment from You, You must ensure it is kept safe and secure until the time of collection.
- d. You acknowledge and agree that You will be liable to pay:
  - i. ongoing Hire Charges if You fail to comply with the Hire Equipment Return Process, and the correct notification of the Off Hire Date and Equipment return in particular; and
  - ii. for the cost to repair or replace any damaged Equipment you return to Us.

### **12. WHAT TO DO IF EQUIPMENT BREAKS DOWN**

- a. In the event that the Equipment breaks down or becomes unsafe to use during the Hire Period You must:
  - i. immediately stop using the Equipment and notify Us;
  - ii. take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
  - iii. take all steps necessary to prevent any further damage to the Equipment itself; and
  - iv. not repair or attempt to repair the Equipment without Our written consent.
- b. Except if clause 14.(a) applies, upon receiving notice from You under clause 12(a), We will:
  - i. all reasonable steps to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by You; and
  - ii. not impose a Hire Charge for that portion of the Hire Period for which the Equipment was broken down or unsafe, nor the costs associated with any repair or replacement of the Equipment.

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

- a. If the Equipment has broken down or become unsafe to use as a result of Your acts or omissions, (or the acts or omissions of Your employees or contractors) or if the Equipment is lost, stolen or damaged beyond fair wear and tear during the Hire Period, You will be liable for:
  - i. any costs incurred by Us to recover and repair or replace the Equipment; and
  - ii. the Hire Charges for that portion of the Hire Period during which the Equipment is being recovered and repaired or replaced.
- b. Provided that You pay the costs and charges described in clause 13(a), We will return or replace the Equipment, and You must continue to pay the Hire Charges for the remainder of the Hire Period.

### **14. INSURANCE**

- a. You must insure the Equipment for loss, theft or damage to the Equipment for the full replacement value of the Equipment.
- b. You must provide to Us a certificate of currency for an appropriate policy of insurance that covers loss, theft or damage to the Equipment during the Hire Period for an amount not less than the replacement value of the Equipment. You are responsible for any excess and any other costs associated with any insurance taken out by You under this clause and You are responsible for any shortfall in repair or replacement of the Equipment following payment of any amount received under insurance, including any loss We suffer as a result of not being able to hire the Equipment.

### **15. INDEMNITIES AND EXCLUSION OF LIABILITIES**

- a. Subject to clause 15(c), and except as expressly provided to the contrary in this Hire Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Hire Agreement or its subject matter are excluded to the maximum extent permitted by law.
- b. Nothing in this Hire Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Consumer Guarantees.

- c. Where We are not able to exclude a guarantee, term, condition, warranty, undertaking, inducement or representation imposed by legislation in relation to this Hire Agreement, ('**Non-Excludable Provision**'), and We are able to limit Your remedy for a breach of the Non-Excludable Provision, then Our liability for breach of the Non-Excludable Provision is limited to (at Our election):
  - i. in the case of goods, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or
  - ii. in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- d. Subject to Our obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, Our maximum aggregate liability for all claims under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, is limited to an amount equal to the fees paid by You under this Hire Agreement. In calculating Our aggregate liability under this clause, the parties must include any amounts paid or the value of any goods or services replaced, repaired or supplied by Us for a breach of any Non-Excludable Provisions.
- e. Subject to clauses 15(c) and 15(d), We will not be liable to You for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs You have incurred, amounts that you are liable to Your customers for or any loss suffered by third parties under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.
- f. You are liable for and indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) in respect of:
  - i. personal injury;
  - ii. damage to property; or
  - iii. a claim by a third party,in respect of Your hire or use of the Equipment or Your breach of the Hire Agreement. Your liability under this indemnity is diminished to the extent that Our breach of the Hire Agreement or Our negligence causes the liability, claims, damage, loss, costs or expenses.
- g. Each indemnity in this Hire Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Hire Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Hire Agreement.
- h. We will not be liable to You for any acts or omissions of any person supplied by Us where that person is acting under Your direction and control during the Hire Period and you indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) arising from or incurred in connection with such acts or omissions.

## 16. TERMINATION OF HIRE AGREEMENT

- a. Either party may terminate this Hire Agreement and any Hire Period immediately by giving notice to the other party, if the other party:
  - i. breaches any material term of the Hire Agreement and fails to remedy the breach within 7 days of written notification of the breach; or
  - ii. that other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business.
- b. We may terminate the Hire Agreement immediately if You or any third party has made a false statement in, or breached any provision of, the Relevant Documents.
- c. These rights of termination are in addition to any other rights either party has under the Hire Agreement and does not exclude any right or remedy under law or equity.

### **17. RETURN OR RECOVERY OF THE EQUIPMENT**

- a. If You are in breach of the Hire Agreement or if the Hire Agreement or a Hire Period has been terminated under clause 16, You must immediately return the Equipment to Us in good working order, and in good repair (fair wear and tear excepted) to a place We nominate.
- b. If you fail to comply with your obligations under clause 17(a), We may, at Your cost, take all steps necessary (including legal action) to recover the Equipment, including entering Your premises to do so and You expressly consent to Us entering Your premises for the purposes of recovering Our Equipment.

### **18. EQUIPMENT THAT IS COLLECTED OR DELIVERED IN A DAMAGED AND / OR DEFECTIVE CONDITION**

If You collect or receive the Equipment and find that it is broken, damaged and/or defective, You must notify Us within 24 hours after You collect or receive the Equipment. If You do not notify Us within this time period, We are entitled to assume that the Equipment You collected or received was in good order and condition.

### **19. PRIVACY**

- a. We will comply with the Australian Privacy Principles in all dealings with You. We may need to collect personal information about You, including but not limited to, Your full name and address, drivers licence details, credit card details, date of birth, and credit or business history.
- b. You consent to Us using Your personal information in order to:
  - i. fulfill functions associated with the hire of Equipment to You, including but not limited to assessing Your credit worthiness, or exercising Our rights under clause 9;
  - ii. provide services to You;
  - iii. prevent theft of Our Equipment;
  - iv. enter into contracts with You or third parties, and
  - v. to market to You and maintain a client relationship with You.
- c. You also consent to Us disclosing Your personal information:
  - i. to any credit provider or credit reporting agency for the purposes of obtaining information about Your consumer or commercial credit or business history or Your commercial activities or credit worthiness; and
  - ii. to Our service providers, contractors and affiliated companies from time to time to help improve and market Our services to You.
- d. You have the right to access the personal information We hold about You.
- e. Copies of Our Privacy Policy and Credit Reporting Policy are available upon request.

### **20. FORCE MAJEURE**

- a. Subject to clause 20(b), neither party will be responsible for any delays in delivery or installation due to causes beyond their control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.
- b. Nothing in clause 20(a) will limit or exclude Your responsibility and liability under the Hire Agreement for Equipment that is lost, stolen or damaged beyond fair wear and tear during the Hire Period, or has broken down or become unsafe to use as a result of Your conduct or negligence.

### **21. SEVERABILITY**

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

### **22. GOVERNING LAW**

The Hire Agreement is governed by the laws of New South Wales, and each party submits to the non-exclusive jurisdiction of the courts of that State in respect of any proceedings arising in connection with the Hire



Agreement. Each party waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

### **23. ENTIRE AGREEMENT**

The Hire Agreement comprises the entire agreement between the parties. No additional terms and conditions (including any terms contained in any purchase order supplied by You) apply to the hire of the Equipment unless the Hire Agreement is varied in accordance with clause 25.

### **24. NO RELIANCE**

You acknowledge that neither We nor any person acting on Our behalf have made any representation or other inducement to You to enter into the Hire Agreement and You have not entered into the Hire Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those representations contained in this Hire Agreement.

### **25. VARIATION**

- a. From time to time, We may wish to vary this Hire Agreement. If We intend to do so, We will give You 28 days' written notice of our varied terms. If You have reasonable grounds to believe the change will be detrimental to Your rights, You may terminate this Hire Agreement without penalty within 28 days of receiving Our written notice.
- b. Any other variation of the Hire Agreement must be agreed in writing by You and Us.

### **26. NO WAIVER OF RIGHTS**

No delay or omission by a party to exercise any right, power or remedy available to that party as a result of a 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 that party's rights to take action or make a claim in respect of a continuing breach or default.

### **27. NOTICES**

- a. A notice, demand, certification, process or other communication relating to this agreement must be in writing in English and may be given by an agent of the sender.
- b. In addition to any other lawful means, a communication may be given by being:
  - i. personally delivered;
  - ii. left at the party's current address for notices;
  - iii. sent to the party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail.
  - iv. The particulars for delivery of notices for each party is initially that party's registered office or residential address shown in the 'Parties' section of this agreement. Each party may change its particulars for delivery of notices by notice to the other party.
- c. Subject to clause 27, a communication is deemed given:
  - i. if posted:
    1. within Australia, to an Australian address, 3 Business Days after posting; or
    2. in any other case, 10 Business Days after posting;
  - ii. if emailed, at the time and date it was successfully sent without the sender subsequently receiving a delivery failure notification.
- d. If a communication is given after 5.00pm on a day in the place of receipt, it is taken as having been given at 9.00am on the next day.
- e. Any process or other document relating to a claim made under this agreement may be served by any method contemplated by this clause or in accordance with any applicable law.

### 28. DISPUTES

- a. If a dispute arises, the dispute must be referred to each party's authorised representative (as nominated from time to time) for resolution.
- b. If the dispute is not resolved within 10 business days of such referral it must be referred for resolution to a panel consisting of a senior management representative of each of the parties.
- c. If the dispute is not resolved, or the panel does not meet within 10 days of such referral, either party may commence legal proceedings.

### 29. REVIEW OF YOUR CREDIT APPROVAL

- a. From time to time We may review any Credit Account We have granted to You without notice.
- b. We may, at Our discretion, decide to withdraw credit for any reason, including but not limited to if Your circumstances change, You fail to make payments on time or You fail to use the Equipment in accordance with the terms of the Hire Agreement.
- c. If we withdraw credit you may terminate this Hire Agreement immediately by giving Us written notice. However, if You do so You must:
  - i. pay amounts that were subject to credit in accordance with the terms on which that credit was provided; and
  - ii. pay all amounts due to Us under this Hire Agreement, including hire charges until the Equipment is returned to Us and is in Our possession.

### 30. SIGNING THIS HIRE AGREEMENT

- a. By collecting or taking delivery of the Equipment the subject of this Hire Agreement You agree to accept and be bound by these terms and conditions.
- b. The person collecting or taking delivery of the Equipment in accordance with this Hire Agreement indemnifies Us against all losses, costs and claims incurred by Us arising out of the person so signing this Hire Agreement not in fact having such power and/or authority.

### 31. CLAIM FOR PAYMENT

This Hire Agreement is a claim for payment under the *Building and Construction Industry Security of Payment Act 1999* (NSW).

### 32. ASSIGNMENT

We may assign this Hire Agreement to any third party without Your consent (including a Related Body Corporate).

### 33. PREVIOUS EDITIONS

This edition of the Terms of Hire replaces and supersedes any and all previous editions of the Terms of Hire We have issued.

## **SPECIAL CONDITIONS – SECTION 1 – HIRE TO BUY ARRANGEMENTS**

### **1. APPLICATION AND PRECEDENCE**

- a. These special conditions apply if a Quotation contains a hire arrangement containing the following elements:
  - i. the length of the Hire Period is set at a fixed number of months;
  - ii. the Hire Charges (including interest) are split into a number of equal instalments equivalent to the number of months in the Hire Period; and
  - iii. if You pay all Hire Charges, and otherwise comply with your obligations under the Hire Agreement, ownership of the Equipment will transfer from Us to You on our receipt of the final Hire Charge instalment,

which is referred to as a **“Hire to Buy Arrangement”**.

- b. The HTB Arrangement forms part of the Hire Agreement.
- c. In the event of any inconsistency between the terms of the Hire Agreement and these Special Conditions, the terms of these Special Conditions will prevail.

### **2. RETENTION OF TITLE**

Title in and to the Equipment hired under HTB Arrangement will only transfer from Us to You when You have:

- a. paid the final monthly instalment of the Hire Charges for the Equipment (the **“Final Payment”**);
- b. paid all outstanding Hire Charges; and
- c. paid all other money You owe to Us.

### **3. ONGOING OBLIGATION TO PAY HIRE CHARGES**

You will continue to be responsible for payment of the Hire Charges and all other charges until such time as the Final Payment is received by Us.

### **4. PURCHASE OF HIRE AGREEMENT BEFORE END OF HIRE PERIOD**

You may terminate the Hire to Buy Arrangement and purchase the Equipment from Us at any time by:

- a. at least 10 business days before You want to purchase the Equipment, telling Us in writing that You intend to purchase those Equipment; and
- b. paying to Us:
  - i. all Hire Charge instalments which are still to fall due until the end of the Hire Period, including the Final Payment; and
  - ii. all other money You owe to Us under the Hire Agreement.
- c. When You pay Us the amounts referred to in 37(b), and if You have done everything You should have done under the Hire Agreement, title to the Equipment will pass to You on an “as is – where is” basis and without any representation or warranty from Us as to title, condition or any other matter.

### **5. REPUDIATION OF HIRE AGREEMENT**

- a. You will repudiate the Hire Agreement, and We may terminate it by notice to You, if:
  - i. You tell us, or Your conduct indicates (in Our reasonable opinion), that You no longer intend to be bound by the Hire to Buy Arrangement; or
  - ii. You are unwilling or unable to pay any Hire Charges when they fall due.
- b. If we give You a notice of termination under clause 38(a), You must immediately:
  - i. return the Equipment to Us in good working order, and in good repair (fair wear and tear excepted) to a place We nominate and in accordance with the Hire Equipment Return Process;

- ii. pay Us all amounts owing under the Hire Agreement, including any costs or fees We incur in recovering the Equipment if You fail to return it to Us; and
  - iii. pay Us the Termination Fee as liquidated damages for Your repudiation of the Hire Agreement.
- c. Notwithstanding Your payment of the Termination Fee, We will retain ownership of the Equipment.
- d. For the purposes of this clause 38, the “**Termination Fee**” will be the amount equivalent to the value of the monthly instalment of the Hire Charges for the Equipment (including the Final Payment) that would have been payable if You had completed the HTB Arrangement.
- e. These rights of termination are in addition to any other rights We have under the Hire Agreement and do not exclude any right or remedy under law or equity.

## **SPECIAL CONDITIONS – SECTION 2 – HIRE OF LOAN EQUIPMENT**

### **1. DEFINITIONS**

In this Section 2:

**“Hire Period”** has the meaning set out in clause 2(c) of this Section 2.

**“Loan Equipment”** means items of Our equipment loaned to customers.

**“Potential Fault”** means a potential fault or failure that prevents an item of equipment from operating as designed.

**“Repair Quote”** means a quotation to repair or replace an item of faulty, damaged or broken equipment.

**“Trimble Warranty”** means warranty provided by Trimble including standard manufacturer’s warranty or a extended warranty (referred to as a Trimble Protection Plan).

**“Your Equipment”** means an item of equipment You own or possess.

Other capitalised words in this Section 2 have the meaning given in clause 2 of the Hire Agreement.

### **2. HIRING LOAN EQUIPMENT TO YOU**

- (a) If You contact Us about concerns Your Equipment has a Potential Fault, We may (but are not obliged to) hire Loan Equipment to You whilst We investigate the fault.
- (b) If We agree to hire Loan Equipment to you, the hire arrangement will be subject to the terms of the Hire Agreement.
- (c) The Hire Period will:
  - a. start on the earlier of the following:
    - i. when You take possession of the Loan Equipment from one of Our employees; or
    - ii. the time We deliver the Loan Equipment to Your nominated address; and
  - b. end when You return the Loan Equipment to Us in accordance with the Hire Equipment Return Process.

### **3. WARRANTY COVERAGE**

- (a) As part of Our investigations into the Potential Fault, We will confirm if Your Equipment is currently covered by Trimble Warranty or not.
- (b) If Your Equipment is:
  - a. covered by Trimble Warranty and We have verified that a fault exists, the rectification of the fault (which may include repair or replacement of Your Equipment) will be subject to the relevant warranty terms and conditions; or
  - b. not covered by Trimble Warranty, You will be liable to pay the cost of rectifying any faults in Your Equipment if You instruct Us to undertake that work.

### **4. FAULT INVESTIGATIONS**

- (a) At the completion of Our investigations into the Potential Fault, one of the following outcomes will occur:
  - a. If We cannot replicate the fault:
    - i. We will return Your Equipment to You at Your cost;
    - ii. You must promptly return the Loan Equipment to Us in accordance with the Hire Equipment Return Process; and
    - iii. You will be liable for, and agree to pay, the Hire Charges of the Hire Period.
  - b. If Your Equipment is covered by Trimble Warranty and We confirm the fault exists:

- i. We will repair or replace Your Equipment in accordance with the relevant warranty terms and return it at no cost to You;
  - ii. provided You promptly return the Loan Equipment to Us in accordance with the Hire Equipment Return Process, there will be no cost to You for the hire of the Loan Equipment.
- c. If Your Equipment is not covered by Trimble Warranty and We confirm the fault exists:
  - i. We will provide You with a Repair Quote;
  - ii. You must promptly advise Us whether or not You wish to proceed with the Repair Quote; and
  - iii. You will be liable for and agree to pay the Hire Charges for the Loan Equipment until it is returned to Us in accordance with the Hire Equipment Return Process.

### **5. RETURN OF LOAN EQUIPMENT**

- (a) The Loan Equipment You return to Us in must be the same clean condition and good working order it was in when You received it, ordinary fair wear and tear excluded. If You do not properly clean the Loan Equipment, We will charge You a cleaning fee.
- (b) If We have agreed to collect the Loan Equipment from You, You must ensure it is kept safe and secure until the time of collection.
- (c) You acknowledge and agree that You will be liable to pay:
  - a. ongoing Hire Charges if You fail to comply with the Hire Equipment Return Process, and the correct notification of the Off Hire Date and Equipment return in particular; and
  - b. for the cost to repair or replace any damaged Loan Equipment you return to Us.

### **6. OWNERSHIP OF THE LOAN EQUIPMENT**

- (a) You acknowledge that We own the Loan Equipment and in all circumstances We retain title to the Loan Equipment (even if You go into liquidation or become bankrupt during the Hire Period). Your rights to use the Loan Equipment are as a bailee only.
- (b) You are not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Loan Equipment in any way.
- (c) In no circumstances will the Loan Equipment be deemed to be a fixture.

### **7. RESPONSIBILITY FOR THE LOAN EQUIPMENT**

You are responsible for any loss, theft or damage to the Loan Equipment from any and every event whatsoever and howsoever and by whosoever caused during the Hire Period except where any such loss, theft or damage was caused by Our actions.