

# Perth Hire & Sales – Terms & Conditions

1. **Definitions**
- 1.1 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "PH&S" means Sullihook Pty Ltd T/A Perth Hire & Sales, its successors and assigns or any person acting on behalf of and with the authority of Sullihook Pty Ltd T/A Perth Hire & Sales.
- 1.3 "Client" means the persons, entities or any person acting on behalf of and with the authority of the Client requesting PH&S to provide Equipment on hire (and/or for purchase) as specified in any proposal, quotation, order, invoice or other documentation, and:
  - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 "Equipment" means all goods, machinery and plant (including all fittings, accessories, tools and parts) supplied to the Client on hire and/or for purchase or Services supplied by PH&S to the Client at the Client's request from time to time (where the context so permits the terms "Equipment" or "Services" shall be interchangeable for the other), and are as described on the invoices, quotation, order, hire Contract, or any other authorisation forms as provided by PH&S to the Client.
- 1.5 "Services" means all Services supplied by PH&S to the Client and are as described on the quotations, invoices, consignment note, sales order or any other forms as provided by PH&S to the Client and includes any advice or recommendations.
- 1.6 "Hire Period" means the Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by PH&S to the Client.
- 1.7 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.8 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Equipment via the website.**
- 1.9 "Price" means the Price payable (plus any GST where applicable) for the supply of Equipment and/or Services as agreed between PH&S and the Client subject to clause 5 of this Contract.
- 1.10 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999".
2. **Acceptance**
- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery of the Equipment and/or Services.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 10 of the Electronic Transactions Act 2010 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.5 None of the Equipment shall be sublet or cross-hired by the Client. The Client shall not assign or transfer its interest in the Contract, or part with possession of all, or any portion, of the Equipment, without the prior written consent of PH&S, which may be arbitrarily withheld.
- 2.6 Any advice, recommendation, information, assistance or service provided by PH&S in relation to Equipment supplied is given in good faith, is based on PH&S' own knowledge and experience and shall be accepted without liability on the part of PH&S and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Equipment.
3. **Errors and Omissions**
- 3.1 The Client acknowledges and accepts that PH&S shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
  - (a) resulting from an inadvertent mistake made by PH&S in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by PH&S in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of PH&S, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
4. **Change in Control**
- 4.1 The Client shall give PH&S not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by PH&S as a result of the Client's failure to comply with this clause.
5. **Price and Payment**
- 5.1 At PH&S' sole discretion, the Price shall be either:
  - (a) as indicated on invoices provided by PH&S to the Client in respect of the supply of Equipment and/or Services; or
  - (b) the Price as at the date of Delivery of the Equipment/Services according to PH&S' current schedule rates; or
  - (c) PH&S' quoted Price (subject to clause 5.2) which shall be binding upon PH&S provided that the Client shall accept in writing PH&S' quotation within thirty (30) days. Unless specified otherwise.
- 5.2 PH&S reserves the right to change the Price:
  - (a) if a variation to the Equipment which are to be supplied is requested (including but not limited to, in the event that additional blades are required or where the Client uses more than the Client's daily one millimetre (1mm) diamond allowance, etc.); or
  - (b) if a variation to the Services originally scheduled (including plans or specifications) is requested; or
  - (c) where an extension to the Hire Period is requested; or
  - (d) in the event of increases to PH&S in the cost of labour or materials which are beyond PH&S' control.
- 5.3 Time for payment for the Equipment and/or Services being of the essence, the Price will be payable by the Client on the date/s determined by PH&S, which may be:
  - (a) the date specified on any invoice or other form as being the date for payment; or
  - (b) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by PH&S.
- 5.4 Payment may be made by cash, electronic-line banking, credit card (a surcharge may apply per transaction) of the Price), or by any other method as agreed to between the Client and PH&S.
- 5.5 PH&S may in its discretion allocate any payment received from the Client towards any invoice that PH&S determines and may do so at the time of receipt or at any time afterwards. On any default by the Client PH&S may re-allocate any payments previously received and allocated. In the absence of any payment allocation by PH&S, payment will be deemed to be allocated in such manner as preserves the maximum value of PH&S' Purchase Money Security Interest (as defined in the PPSA) in any event.
- 5.6 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by PH&S nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to PH&S an amount equal to any GST PH&S must pay for any supply of Equipment and/or Services by PH&S under this or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client 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.
6. **Credit Card Information**
- 6.1 PH&S will:
  - (a) keep the Client's personal details, including credit card details for only as long as is deemed necessary by PH&S;
  - (b) not disclose the Client's credit card details to any third party;
  - (c) not unnecessarily disclose any of the Client's Personal Information, except in accordance with the Privacy Policy (clause 15) or where required by law.
- 6.2 The Client expressly agrees that, if pursuant to this Contract, there are:
  - (a) any unpaid charges;
  - (b) other amounts due and outstanding by the Client;
  - (c) any Equipment (or any part of them) supplied on hire that are lost or damaged;
  - (d) additional charges for diamond wear in accordance with clause 5.2(a);
  - (e) any other additional charges are due from the Client which were not known at the time of the return of the Equipment.
- 6.3 PH&S is entitled to immediately charge the Client's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Client pursuant to the terms of this Contract.
7. **Delivery**
- 7.1 Delivery of the Equipment ("Delivery") is taken to occur at the time that PH&S (or PH&S' nominated carrier) delivers the Equipment to the Client's nominated address. PH&S is authorised to deliver the Equipment at the address given to PH&S by the Client for that purpose and it is expressly agreed that PH&S shall be taken to have made Delivery in accordance with this Contract if at that address PH&S obtains from any person a receipt or a signed Delivery docket for the Equipment.
- 7.2 The Client must take Delivery (by receipt or collection) whenever the Equipment are tendered for Delivery. In the event that the Client is unable to take Delivery as arranged then PH&S shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.3 At PH&S' sole discretion, the cost of delivering the Equipment in addition to, the Price.
8. **Title**
- 8.1 Where this is a hire Contract:
  - (a) the Equipment is and will at all times remain the absolute property of PH&S, however the Client accepts full responsibility for:
    - (i) the safekeeping of the Equipment and indemnifies PH&S 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 Client; and
    - (ii) shall keep PH&S 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 Client or any other persons.
  - (b) the Client will insure, or self-insure, PH&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 affect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
  - (c) the Client is not authorised to pledge PH&S' credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
- 8.2 Where is this a Contract for the purchase of the Equipment:
  - (a) PH&S and the Client agree that ownership of the Equipment shall not pass until:
    - (i) the Client has paid PH&S all amounts owing to PH&S; and
    - (ii) the Client has met all of its other obligations to PH&S.
  - (b) It is further agreed that:
    - (i) until ownership of the Equipment passes to the Client in accordance with clause (a) that the Client is only a bailee of the Equipment and must return the Equipment to PH&S on request.
    - (ii) the Client holds the benefit of the Client's insurance of the Equipment on trust for PH&S and must pay to PH&S the proceeds of any insurance in the event of the Equipment being lost, damaged or destroyed.
    - (iii) the Client must not sell, dispose, or otherwise part with possession of the Equipment other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Equipment then the Client must hold the proceeds of any such act on trust for PH&S and must pay or deliver the proceeds to PH&S on demand.
    - (iv) the Client shall not convert or process the Equipment or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of PH&S and must sell, dispose of or return the resulting product to PH&S as it so directs.
    - (v) PH&S may recover possession of any Equipment in transit whether or not delivery has occurred.
    - (vi) the Client shall not charge or grant an encumbrance over the Equipment nor grant nor otherwise give away any interest in the Equipment while they remain the property of PH&S.
    - (vii) PH&S may commence proceedings to recover the Charges of the Equipment sold notwithstanding that ownership of the Equipment has not passed to the Client.
- 8.3 If the Client fails to return the Equipment to PH&S then PH&S or PH&S' agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment.
9. **Personal Property Securities Act 2009 ("PPSA")**
- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 Upon assenting to these terms and conditions in writing the Client 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 Equipment and collateral (accounts) – being a monetary obligation of the Client for Services – that have previously been provided and that will be provided in the future by PH&S to the Client.
- 9.3 The Client undertakes to:
  - (a) promptly sign and further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which PH&S 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 9.3(a)(i) or 9.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, PH&S 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 registration made thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of PH&S;
  - (d) not 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 the prior written consent of PH&S;
  - (e) (where applicable) immediately advise PH&S of any material change in its business practices of selling the Equipment which would result in a change in the nature of proceeds derived from such sales.
- 9.4 PH&S and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 9.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by PH&S, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
10. **Security and Charge**
- 10.1 In consideration of PH&S agreeing to supply Equipment and/or Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Client indemnifies PH&S from and against all PH&S' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising PH&S' rights under this clause.
- 10.3 The Client irrevocably appoints PH&S and each director of PH&S as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.
11. **Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 11.1 The Client must inspect the Equipment on Delivery and must within twenty-four (24) hours of Delivery notify PH&S in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Equipment/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow PH&S to inspect the Equipment.
- 11.2 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**).
- 11.3 PH&S acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, PH&S makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Equipment. PH&S' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.5 If the Client is a consumer within the meaning of the CCA, PH&S' liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.6 If PH&S is required to replace the Equipment under this clause or the CCA, but is unable to do so, PH&S may refund any money the Client has paid for the Equipment.
- 11.7 If the Client is not a consumer within the meaning of the CCA, PH&S' liability for any defect or damage in the Equipment is:
  - (a) limited to the value of any express warranty or warranty card provided to the Client by PH&S at PH&S' sole discretion;
  - (b) limited to any warranty to which PH&S is entitled, if PH&S did not manufacture the Equipment;
  - (c) otherwise negated absolutely.
- 11.8 Subject to this clause 8, returns will only be accepted provided that:
  - (a) the Client has complied with the provisions of clause 11.1; and
  - (b) PH&S has agreed that the Equipment are defective; and
  - (c) the Equipment are returned within a reasonable time at the Client's cost (if that cost is not significant); and
  - (d) the Equipment are returned in as close a condition to that in which they were delivered as is possible.
- 11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, PH&S 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 Client failing to properly maintain or store any Equipment;
  - (b) the Client using the Equipment for any purpose other than that for which they were designed;
  - (c) the Client continuing the use of the Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Client failing to follow any instructions or guidelines provided by PH&S;
  - (e) fair wear and tear, any accident, or act of God.
- 11.10 In the case of second hand Equipment, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Equipment prior to Delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by PH&S as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that PH&S has agreed to provide the Client with the second hand Equipment and calculated the Price of the second hand Equipment in reliance of this clause 11.10.
- 11.11 Notwithstanding anything contained in this clause if PH&S is required by a law to accept a return then PH&S will only accept a return on the conditions imposed by that law.
12. **Intellectual Property**
- 12.1 Where PH&S has designed, drawn or developed Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of PH&S. Under no circumstances may such designs, drawings and documents be used without the express written approval of PH&S.
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 PH&S' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Client owes PH&S any money the Client shall indemnify PH&S from and against all costs and disbursements incurred by PH&S in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, PH&S' contract default fee, and bank dishonour fees).
- 13.3 Further to any other rights or remedies PH&S may have under this Contract, if a Client has made payment to PH&S, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by PH&S under this clause 12 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 13.4 Without prejudice to PH&S' other remedies at law PH&S shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to PH&S shall, whether or not due for payment, become immediately payable if:
  - (a) any money payable to PH&S becomes overdue, or in PH&S' opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client has exceeded any applicable credit limit provided by PH&S;
  - (c) the Client 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
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
14. **Cancellation**
- 14.1 Without prejudice to any other remedies PH&S may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions PH&S may suspend or terminate the supply of Equipment/Services to the Client. PH&S will not be liable to the Client for any loss or damage the Client suffers because PH&S has exercised its rights under this clause.
- 14.2 PH&S may cancel any contract to which these terms and conditions apply or cancel provision of the Equipment and/or Services at any time before the Equipment have been delivered by giving written notice to the Client. On giving such notice PH&S shall repay to the Client any sums paid in respect of the Price. PH&S shall not be liable for any loss or damage whatever arising from such cancellation.
- 14.3 In the event that the Client cancels the Equipment and/or Services, then the Client shall be liable for any loss incurred by PH&S (including, but not limited to, any loss of profits) up to the time of cancellation.

Client's Initials: .....Date:.....

# Perth Hire & Sales – Terms & Conditions

15. **Privacy Policy**  
 15.1 All emails, documents, images or other recorded information held or used by PH&S is Personal Information, as defined and referred to in clause 15.3, and therefore considered Confidential Information. PH&S acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). PH&S acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by PH&S that may result in serious harm to the Client, PH&S will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 15.2 Notwithstanding clause 15.1, privacy limitations will extend to PH&S in respect of Cookies where transactions for purchases/orders transpire directly from PH&S' website. PH&S agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:  
 (a) IP address, browser, email client type and other similar details;  
 (b) tracking website usage and traffic; and  
 (c) reports are available to PH&S when PH&S sends an email to the Client, so PH&S may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via PH&S' website.
- 15.3 The Client agrees for PH&S to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by PH&S.
- 15.4 The Client agrees that PH&S may exchange information about the Client with those credit providers and with related body corporates for the following purposes:  
 (a) to assess an application by the Client; and/or  
 (b) to notify other credit providers of a default by the Client; and/or  
 (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or  
 (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 15.5 The Client consents to PH&S being given a consumer credit report to collect overdue payment on commercial credit.
- 15.6 The Client agrees that personal credit information provided may be used and retained by PH&S for the following purposes (and for other agreed purposes or required by):  
 (a) the provision of Equipment; and/or  
 (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Equipment; and/or  
 (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or  
 (d) enabling the collection of amounts outstanding in relation to the Equipment.
- 15.7 PH&S may give information about the Client to a CRB for the following purposes:  
 (a) to obtain a consumer credit report;  
 (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 15.8 The information given to the CRB may include:  
 (a) Personal Information as outlined in 15.3 above;  
 (b) name of the credit provider and that PH&S is a current credit provider to the Client;  
 (c) whether the credit provider is a licensee;  
 (d) type of consumer credit;  
 (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);  
 (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and PH&S has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);  
 (g) information that, in the opinion of PH&S, the Client has committed a serious credit infringement;  
 (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 15.9 The Client shall have the right to request (by e-mail) from PH&S:  
 (a) a copy of the Personal Information about the Client retained by PH&S and the right to request that PH&S correct any incorrect Personal Information; and  
 (b) that PH&S does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 15.10 PH&S will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 15.11 The Client can make a privacy complaint by contacting PH&S via e-mail. PH&S will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
16. **Service of Notices**  
 16.1 Any written notice given under this Contract shall be deemed to have been given and received:  
 (a) by handing the notice to the other party, in person;  
 (b) by leaving it at the address of the other party as stated in this Contract;  
 (c) by sending it by registered post to the address of the other party as stated in this Contract;  
 (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;  
 (e) if sent by email to the other party's last known email address.
- 16.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
17. **Trusts**  
 17.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not PH&S may have notice of the Trust, the Client covenants with PH&S as follows:  
 (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;  
 (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;  
 (c) the Client will not without consent in writing of PH&S (PH&S will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:  
 (i) the removal, replacement or retirement of the Client as trustee of the Trust;  
 (ii) any alteration to or variation of the terms of the Trust;  
 (iii) any advancement or distribution of capital of the Trust; or  
 (iv) any resettlement of the trust property.
18. **General**  
 18.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party'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 Western Australia, the state in which PH&S has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 18.3 Subject to clause 11.1, PH&S shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by PH&S of these terms and conditions (alternatively PH&S' liability shall be limited to damages which under no circumstances shall exceed the Price).
- 18.4 PH&S may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 18.5 The Client cannot licence or assign without the written approval of PH&S.
- 18.6 PH&S may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of PH&S' sub-contractors without the authority of PH&S.
- 18.7 The Client agrees that PH&S may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for PH&S to provide Equipment to the Client.
- 18.8 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.
- 18.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- Terms Applicable to the Hire of Equipment**  
**Hire**  
 (a) The Hire Period shall commence, and the Price shall be paid by the Client to PH&S, from the time the Equipment departs from PH&S' premises and will continue until (whichever last occurs):  
 (i) the termination of the Hire Period; or  
 (ii) the return of the Equipment to PH&S' premises in good operating condition, reasonable wear and tear excepted; or  
 (iii) the date which the Equipment is available for Recovery by PH&S, as notified by the Client (if such Recovery is agreed to by PH&S), provided the Equipment is recovered in good operating condition, reasonable wear and tear excepted; or  
 (iv) the expiry of the Hire Period.  
 (b) The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.  
 (c) No allowance whatsoever can be made for time during which the Equipment are not in use for any reason, unless PH&S confirms special prior arrangements in writing. In the event of Equipment breakdown, as per clause 19.4(a)(ii), provided the Client notifies PH&S immediately, hiring charges will not be payable during the time the Equipment are not in use, unless the condition is due to negligence or misuse on the part of or attributable to the Client.  
 (d) The Client acknowledges and accepts that one millimetre (1mm) of diamond usage is permitted for each day of Equipment hire. If the Client uses anything more than this daily allowance, the cost of the additional diamond used will be charged and invoiced for in accordance with clause 5.2(a).
- 19.2 **Extension of the Hire Period**  
 (a) If, and only if not later than twenty-four (24) hours before the expiry of the Hire Period, the Client gives notice to PH&S requesting an extension of the Hire Period, such extension is, if any, subject to PH&S' agreement, the availability of the Equipment and the following conditions:  
 (i) the Price and all other payments due under this Contract having been received by PH&S in full as at the expiry of the Hire Period;  
 (ii) there is no breach of the Client's covenants, the Hire Period shall be extended for the period specified between the parties, commencing on the day following the date of expiration of the Hire Period and at the Price, as varied, on the same terms and conditions of this Contract, except for the insertion of the extended term.
- 19.3 **Recovery**  
 (a) As agreed by PH&S and at PH&S' sole discretion recovery of the Equipment ("Recovery") will be completed when the Equipment has been either collected from the site and/or returned to PH&S' premises.  
 (b) In the event the Client or PH&S is unable to effect Recovery as arranged, or there are any delays due to free and clear access to the site not being available, PH&S shall be entitled to charge all additional costs involved with the subsequent attempts at Recovery, as applicable, and all loss of hire fees as a direct result of the Equipment being unavailable.
- 19.4 **Client's Responsibilities**  
 (a) The Client shall:  
 (i) maintain the Equipment as is required by PH&S (including, but not limited to, maintaining water, oil and fluid levels, tyre pressures, general tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points, etc.);  
 (ii) notify PH&S immediately by telephone of the full circumstances of any accident, injury and/or damage. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;  
 (iii) satisfy itself at commencement that the Equipment are suitable for its purposes;  
 (iv) not use the Equipment for any illegal purpose;  
 (v) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any operational manual and/or the manufacturer's instruction whether supplied by PH&S or posted on the Equipment;  
 (vi) ensure that all persons operating Equipment are suitably instructed in the Equipment's safe and proper use and where necessary shall wear the appropriate safety gear while operating the Equipment and/or are fully licenced to operate the Equipment and shall provide evidence of the same to PH&S upon request;  
 (vii) comply with any regulatory body requirements and/or occupational health and safety laws relating to the use of the Equipment;  
 (viii) on termination of the hire, deliver up the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to PH&S;  
 (ix) 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.  
 (x) not alter or make any additions to the Equipment (including but without limitation altering, making 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;  
 (xi) employ the Equipment solely in their own work and shall not permit the Equipment or any part thereof to be used by any other party for any other work;  
 (xii) not exceed the recommended or legal load and capacity limits of the Equipment;  
 (xiii) not fix any of the Equipment in such a manner as to make them legally a fixture forming part of any freehold;
- (b) Immediately on request by PH&S the Client will pay:  
 (i) the new list price of any Equipment that are for whatever reason destroyed, written off or not returned to PH&S;  
 (ii) all costs incurred in cleaning the Equipment;  
 (iii) the cost of repairing any damage to the Equipment caused by:  
 (A) the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;  
 (B) the negligence of the Client or the Client's agent;  
 (C) vandalism, or (in PH&S' reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;  
 (iv) any costs incurred by PH&S in collecting and returning the Equipment to PH&S' premises if the Client does not return the Equipment to PH&S' premises or any pre-agreed pickup location when it was originally agreed that the Client would do so.  
 (v) any lost hire fees PH&S would have otherwise been entitled to for the Equipment, under this, or any other hire Contract;  
 (vi) any insurance excess payable in relation to a claim made by either the Client or PH&S in relation to any damage caused by, or to, the Equipment whilst
- the same is hired by the Client, and irrespective of whether charged by the Client's insurers or PH&S'.
- 19.5 **Remote Hire**  
 (a) In addition to the Client's responsibilities as listed above in accordance with clause 19.4, in the event that the Equipment on hire by the Client is to be located in a remote area ("Remote Area") the following shall apply:  
 (i) an additional charge ("Remote Area Charges") for the delivery, servicing and any repairs of the Equipment will be applicable and charged in addition to the Price;  
 (ii) Remote Area Charges will be calculated on a per kilometre rate travelled by PH&S staff and to from the Remote Area, at PH&S' scheduled rates (plus labour costs per staff member per hour, including travel times and any other subsequent expenses incurred by PH&S and its staff in connection with travel to and from the Remote Area, i.e. airfares and accommodation);  
 (iii) only one (1) call-out fee shall be charged where the Client has multiple items of Equipment on hire at one site.
- 19.6 **Risk**  
 (a) PH&S retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on Delivery.  
 (b) The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies PH&S 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 Client.  
 (c) Except where clause 19.7 applies the Client must prior to Delivery insure, PH&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 Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 19.7 **Damage Waiver/Insurance**  
 (a) Subject to clause 19.7(b) a Loss, Theft, and Damage Waiver (LTD Waiver) charge (being an additional ten percent (10%) of PH&S' hire rates) will be applied to all hire.  
 (b) The Client shall not be required to pay the "LTD Waiver Fee" if the Client produces a certificate of currency (COC) 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 full new replacement value of the Equipment. The COC must be provided to PH&S prior to the supply of Equipment by PH&S.  
 (c) The LTD Waiver is not insurance, but is an agreement by PH&S to limit your liability in certain circumstances for loss, theft, or damage, to PH&S' Equipment to an amount called the "LTD Waiver Excess". The LTD Excess is explained below.  
 (d) Where the Client has paid the LTD Waiver Fee, PH&S will waive PH&S' right to claim against you for loss, theft or damage to the Equipment if:  
 (i) the Client has promptly reported the incident to the Police and provided PH&S with a written Police report;  
 (ii) the Client has co-operated with PH&S and provided PH&S with details of the incident, including any written or photographic evidence that PH&S requires;  
 (iii) the loss, theft or damage does not fall into one or more of the circumstances in clause 19.8(a) and;  
 (iv) the Client has paid to PH&S the LTD Waiver Excess.  
 (e) The LTD Waiver Excess for each item of Equipment is the amount equal to:  
 (i) one thousand dollars (\$1000) or (if the replacement cost of the Equipment is less than one thousand dollars (\$1000)) the replacement cost of the Equipment; OR  
 (ii) twenty percent (20%) of the cost of the repairs (if the Equipment is partially damaged and can be repaired); OR  
 (iii) twenty percent (20%) of the full new replacement cost of the Equipment (if the Equipment is lost, stolen, or damaged beyond repair);
- 19.8 whichever is the greater.  
 (a) Even if the Client has paid the LTD Waiver Fee, PH&S shall not waive PH&S' rights to claim against the Client for loss, theft or damage to the Equipment and the LTD Waiver shall not apply if the loss, theft or damage:  
 (i) has arisen as a result of:  
 (A) the Client breaching a clause of this hire Contract;  
 (B) the Client's use of the Equipment in violation of any law(s);  
 (ii) has been caused by:  
 (A) a negligent act or omission by the Client;  
 (B) the Client's failure to use the Equipment for its intended purpose or in accordance with PH&S' instructions or the manufacturer's instructions;  
 (C) a lack of lubrication or a failure to service or properly maintain the Equipment  
 (D) a collision with a bridge, carpark, awning, gutter, tree, or any other overhead structure or object due to insufficient clearance;  
 (E) the overloading of the Equipment or any components thereof;  
 (F) exposure to any caustic or corrosive substance, such as cyanide, salt water, acid etc.; or  
 (G) vandalism;  
 (H) the willful actions of the Client, their employees, sub-contractors or agents.  
 (iii) is to:  
 (A) motors, or other electrical Equipment or components within the Equipment caused by electrical overload, a surge in current or the use of under rated or excessive lengths or extension leads with the electrical Equipment;  
 (B) tyres or tubes;  
 (C) glass;  
 (iv) that occurs to the Equipment whilst it is located, used, loaded, unloaded, transported on or over water, wharves, bridges, or vessels of any kind;  
 (b) The Client accepts full responsibility for and shall keep PH&S indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage or loss of the Equipment, and/or damage or loss to property arising out of the use or provision of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons, particularly in the event that clauses 19.7(a) to 19.8(a) are voided for any reason.
- Terms Applicable to the Sale of Equipment**  
**Risk**  
 (a) Risk of damage to or loss of the Equipment passes to the Client on Delivery and the Client must insure the Equipment on or before Delivery.  
 (b) If any of the Equipment are damaged or destroyed following Delivery but prior to ownership passing to the Client, PH&S is entitled to receive all insurance proceeds payable for the Equipment. The production of these terms and conditions by PH&S is sufficient evidence of PH&S' rights to receive the insurance proceeds without the need for any person dealing with PH&S to make further enquiries.  
 (c) If the Client requests PH&S to leave Equipment outside PH&S' premises for collection or to deliver the Equipment to an unattended location, then such Equipment shall be left at the Client's sole risk.
- 20.2 **Plans and Specifications**  
 20.3 PH&S shall be entitled to rely on the accuracy of any designs, specifications, measurements and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, PH&S accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate designs, specifications, measurements or other information.  
 20.4 The Client acknowledges that all descriptive specifications, illustrations, drawings, data dimensions, and weights stated in PH&S' or the manufacturers fact sheets, price lists or advertising material are indicative only and that they have not relied on such information.

Client's Initials: .....Date: .....