

Hire Terms and Conditions

This document records the terms and conditions on which Kerr's Hire agrees to hire Plant or Equipment to the Customer. Kerr's Hire may in its reasonable discretion decline to hire any Plant or Equipment to a Customer.

These Hire Terms and Conditions apply even where a written rental or hire agreement is not provided and/or acknowledged by the Customer.

Kerr's Hire may at any time vary these terms and conditions upon reasonable notice. Variations to these terms and conditions will only apply to hire agreements entered into after the variations have occurred.

In the event of any inconsistency, the following order of priority will apply:

- A. Special Conditions; then
- B. the Credit Application (where applicable); then
- C. Hire Contract; then
- D. Terms and Conditions.

1 Definitions and interpretation

1.1 Definitions

In these Terms and Conditions, unless the context requires otherwise:

Accident means an unintended and unforeseen incident, including:

- (a) a collision between the Plant or Equipment and another vehicle or object, including animals and roadside infrastructure;
- (b) rollovers; or
- (c) a weather event, including hail Damage, that results in Damage or Third Party Loss.

Additional Charges means any fees or charges in respect of or which relate to:

- (a) returning the Plant or Equipment outside of the Hire Period;
- (b) carriage, freight or other charges for the delivery, installation, pick up of the Plant or Equipment by Kerr's Hire (unless otherwise specified in a Hire Contract);
- (c) any reasonably required cleaning costs of the Plant or Equipment;
- (d) the cost of rectifying any damage to the Plant or Equipment caused and/or contributed to by the Customer;
- (e) all road tolls, fines and penalties paid or payable by Kerr's Hire caused and/or contributed to by the Customer's use of the Plant or Equipment or which occurs during the Hire Period;
- (f) repossession costs incurred by or required to be payable by Kerr's Hire in the event the Plant or Equipment is repossessed or third-party takes possession of the same;
- (g) the cost of consumable items supplied by Kerr's Hire and used by the Customer;
- (h) all operating costs of the Plant or Equipment during the Hire Period as incurred by Kerr's Hire; and
- (i) any set up, folding, stacking, bagging and/or service calls carried out by Kerr's Hire at the Customer's request.

Agreement means the agreement between Kerr's Hire and the Customer for the hire of the Plant or Equipment, consisting of:

- (a) the Hire Contract;
- (b) the Credit Application (where applicable);
- (c) any Special Conditions; and
- (d) these Terms and Conditions.

Approvals means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by these terms and conditions.

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 of the *Competition Consumer Act 2010* (Cth).

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person.

Bank Account means the bank account of Kerr's Hire as advised by Kerr's Hire from time to time.

Business Day means a day which is not a Saturday, Sunday or public holiday in Victoria.

Claim includes any claim, including a notice, demand, debt, account, action, expense, damage, the loss, cost, lien, liability, proceeding, litigation (including reasonable legal costs), investigation or judgment of any nature, whether known or unknown.

Commencement means the date set out in an Invoice, Hire Contract or when the Customer takes possession of the Plant or Equipment, whichever is earlier.

Consumer Guarantee means a consumer guarantee as it applies to supplies made under these terms and conditions, as set out in under Part 3-2, Division 1 of the *Australian Consumer Law*.

Credit Application means the terms and conditions relating to Kerr's Hire granting terms of credit to the Hirer, as provided to the Hirer from time to time.

Customer means the customer described in the Hire Contract, Invoice or any other document which Kerr's Hire presents to the Customer.

Damage means:

- (a) any loss or damage in relation to the costs of new Plant or Equipment;
- (b) any loss or damage to the Plant or Equipment including its parts, components and accessories, that is not Fair Wear and Tear;
- (c) towing and salvage costs;
- (d) assessing fees; and
- (e) Loss of Use,

and for the avoidance of doubt, any damage to the windscreen, headlights, lights or tyres that makes any of the Plant or Equipment unroadworthy is not Fair Wear and Tear.

Dangerous Goods means substances or articles which pose a risk to people, property or the environment due to their chemical or physical properties and includes asbestos, explosives, fireworks, ammunition, toxic, flammable or combustible liquids, solids and gases, refrigerant gases, dangerous when wet chemicals, oxidising substances, infectious substances, clinical or medical waste, radioactive substances, corrosives and dry ice.

Default Rate means the rate which is 4% above the interest rate calculated in accordance with Section 2 of the *Penalty Interest Rates Act 1983* (Vic) as amended from time to time.

Delivery Address means the delivery address described in a Hire Contract, Invoice or any other document the Customer presents to Kerr's Hire or as otherwise agreed in writing.

Delivery Date means:

- (a) the estimated delivery date described in an Invoice or any other document Kerr's Hire presents to the Customer or otherwise agreed in writing; or
- (b) the date when the Customer first takes possession of the Plant or Equipment and/or signs a receipt acknowledging delivery,

whichever is earlier.

Event of Default means an event of default described in clause 12.1.

Fair Wear and Tear means minor damage, in the reasonable opinion of Kerr's Hire, caused by ordinary day-to-day use of the Plant or Equipment in compliance with this Agreement.

Force Majeure Event means an act of God, fire, lightning, earthquake, explosions, flood, subsidence, insurrection or civil disorder or military operations or act of terrorism, expropriation, strikes, lock-outs, pandemics (including Covid-19), epidemics, or other industrial disputes of any kind not relating solely to the party

affected, and any other event which is not within the reasonable control of the party affected but does not include any act or omission of the other party.

GST has the meaning given in GST Law.

GST Law has the meaning given in *A New Tax System (Equipment and Services Tax) Act 1999* (Cth).

Hire Charge means the amounts shown in an Invoice or any other document produced by Kerr's Hire to the Customer (including any schedule of rates) which are payable by the Customer, but does not include any Additional Charges and other amounts owing under the Agreement.

Hire Contract means the hire contract completed and submitted by the Customer to Kerr's Hire, which has been approved and accepted by Kerr's Hire.

Hire Period means the period for which the Customer is to hire the Plant or Equipment pursuant to this Agreement. If no pre-determined or defined term is specified in an Hire Contract or Invoice, **Hire Period** means the period of hire specified in an Invoice or Hire Contract, unless off-hire validly occurs prior in accordance with clauses 4.5, 4.6 or 4.7. The Hire Period only ends once the Customer has off hired the machine with Kerr's Hire by verbal notice and Kerr's Hire has collected the Plant or Equipment from the Customer or the Customer has returned the Plant or Equipment to Kerr's Hire.

Insolvency Event means the happening of any one or more of the following events:

- (a) in relation to a natural person:
 - (i) that person being unable to pay his or her debts as and when they fall due;
 - (ii) an application and filing for bankruptcy being made in respect of that person; or
 - (iii) a receiver, or receiver and manager, trustee for creditors or trustee in bankruptcy or analogous person being appointed over that person's assets or undertakings or any of them; or
- (b) in relation to a body corporate:
 - (i) that body corporate being unable to pay its debts as and when they fall due;
 - (ii) a receiver, receiver and manager, administrator or liquidator being appointed over that body corporate's assets or undertakings or any of them;
 - (iii) an application for winding up or other process seeking orders which, if granted, would render that body corporate an externally-administered body corporate being filed and not being withdrawn within 20 Business Days;
 - (iv) that body corporate being or becoming the subject of an order, or a resolution being passed, for the winding up or dissolution of that body corporate; or
 - (v) that body corporate entering into, or resolving to enter into, a deed of company arrangement or an arrangement, composition or compromise with, or proceedings being commenced to sanction such a deed of company arrangement or arrangement, composition or compromise, other than for the purposes of a bona fide scheme of solvent reconstruction or amalgamation.

Invoice means an invoice issued by Kerr's Hire to the Customer.

Kerr's Hire means Kerr's Northside Hire Pty. Ltd. (ACN 006 405 170) trading as Kerr's Hire or any of its Related Bodies Corporate.

Loss means any damage, loss, liability, expense or cost whether direct or indirect, consequential or incidental including but not limited to:

- (a) stamp duties, GST any other taxes or duties;
- (b) tolls, fines, penalties, levies or charges;
- (c) fuels and consumables;
- (d) legal costs and/or

- (e) any other amount charged by Kerr's Hire's insurer regarding any circumstance as notified by Kerr's Hire to the Customer.

Loss of Use means Kerr's Hire's loss calculated on a weekly basis at the weekly rate shown in an Invoice because the Plant or Equipment is being repaired or replaced, or if it is written off as a result of an Accident or if deemed by Kerr's Hire to be beyond reasonable repair, or it has been stolen, lost or destroyed.

Major Breach means a breach of any of clauses 4 and 17, that causes Damage, theft of the Plant or Equipment or Third Party Loss.

Off-Hire Date means, where a pre-determined or fixed Hire Period is not applicable, the date the Customer advises Kerr's Hire the Plant or Equipment is no longer required in accordance with clauses 4.5, 4.6 or 4.7.

Overhead Damage means:

- (a) Damage at or above the level of the top of the front windscreen of the Plant or Equipment; or
- (b) Third Party Loss, caused by:
 - (c) contact between the part of the Plant or Equipment that is at or above the level of the top of the front windscreen with objects overhanging or obstructing its path;
 - (d) objects being placed on the roof of the Plant or Equipment; or
 - (e) the Customer or any person standing or sitting on the roof of the Plant or Equipment.

Plant or Equipment means any item or kind of plant, equipment, vehicles, tools, accessories, attachments, parts, manuals, instructions, packing and transportation materials or substitute and replacement plant or equipment including any other plant or equipment hired to the Customer by Kerr's Hire in accordance with the Agreement.

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPSR means the personal properties security register established pursuant to the PPSA.

Privacy Policy means Kerr's Hire's privacy policy, available on request or otherwise at:

<https://kerrshire.com.au/galleryupload/webdoc/policies/Privacy%20Policy.pdf>

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth).

Security Deposit means a sum of money paid by the Customer to Kerr's Hire prior to the Commencement, held as security for the fulfillment of the Customer's obligations under the Agreement, including the payment of any additional charges, damages, or other amounts due but unpaid in respect of the use and hire of the Equipment.

Security Interest has the meaning given in the PPSA.

Sites mean sites specified by the Customer in writing and approved by Kerr's Hire from which it will use or store the Plant or Equipment.

Site Procedures means the Approvals, policies and procedures in respect of each Site.

Special Conditions means any special conditions specified by Kerr's Hire and agreed to by the Hirer in the Hire Contract or Invoice.

Taxes means any tax, levy, charge, impost, rates, duty, fee, deduction, compulsory loan or withholding tax which is (or is able to be) assessed, levied, imposed or collected by or payable to any Authority and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed or made on or in respect of the above.

Terms and Conditions means these terms and conditions.

Third Party Loss means loss or damage to third party property, including other motor vehicles and any claim for third party loss of income.

Warranties mean the warranties specified in clause 9 or otherwise under these Terms and Conditions.

2 Acknowledgement

- 2.1 By making a Hire Contract, the Customer acknowledges that it has carefully read and understood the Agreement and agree to be bound by its terms and conditions. The Customer acknowledges that the Agreement may impact it, including that:
- the liability of Kerr's Hire to the Customer is excluded in some circumstances;
 - Customer may be liable for damage to Plant or Equipment that are hired by it, and for damage to goods or property owned by a third party; and
 - Kerr's Hire's Privacy Policy permits, in some circumstances and subject to compliance with the Australian Privacy Principles, to provide data about the Customer, or data provided by the Customer, to a third party in a form that may enable the third party to identify the Customer.

3 Hire of Plant or Equipment: Kerr's Hire

- 3.1 The Customer may submit a Hire Contract for the hire of Plant or Equipment. In consideration of Kerr's Hire accepting a Hire Contract, the Customer must pay the Hire Charge and any Additional Charges that become payable. Subject to the terms of the Agreement, Kerr's Hire agrees to hire the Plant or Equipment to the Customer for the Hire Period.
- 3.2 Upon acceptance by the Customer of this Agreement and the Customer paying or continuing to pay the Hire Charge (as applicable), either:
- the Customer shall collect or cause to be collected, the Plant or Equipment from Kerr's Hire on the Delivery Date; or
 - Kerr's Hire shall deliver or cause to be delivered the Plant or Equipment to the Delivery Address on the Delivery Date.
- 3.3 Delivery times and the Delivery Date are estimates only. Kerr's Hire is not responsible for the failure or delays in delivery, installation or collection. If delivery, installation or collection of the Plant or Equipment is suspended or delayed due to the Customer's action or inaction, the Customer must reimburse Kerr's Hire for its Loss and expenses for any delay, including waiting fees.
- 3.4 All costs for the transport, collection, delivery and return of any Plant or Equipment between Kerr's Hire and the Customer must be paid for by the Customer, unless otherwise stated in an Invoice. Such charge may also include a waiting fee if the nominated time for delivery or collection of the Plant or Equipment is delayed by the Customer.
- 3.5 Kerr's Hire will endeavour that the Plant or Equipment is clean and in good working order as at the Delivery Date.
- 3.6 The Hire Period for Plant or Equipment is based on either a 4-hour period of use (half day), 8-hour period of use (one day) or seven day period of use (one week) (as applicable) unless otherwise specified in an Invoice. The Hire Period includes public holidays irrespective of whether the Plant or Equipment is being used by the Customer or not. Additional hours outside of the half-daily, daily or weekly period of use (as applicable) will be charged a two (2) times the rate applicable for the first eight (8) hours.
- 3.7 Upon expiration of the Hire Period, the Hire Period can be terminated on 24 hours written notice by either party.

4 Hire of Plant or Equipment: The Customer

- 4.1 The Customer agrees that before accepting the Plant or Equipment it has satisfied itself as to the suitability, condition and fitness for purpose of the Plant or Equipment without relying upon the skills or judgment of Kerr's Hire or any person purporting to act on its behalf.
- 4.2 The Customer acknowledges that it has received full and adequate instructions from Kerr's Hire as to the operation and safe use of the

Plant or Equipment accessories and consumables used in relation thereto.

4.3 The Customer must:

- satisfy itself at the Commencement that the Plant or Equipment is suitable for its purposes;
- inspect the Plant or Equipment either at the time it collects or at the time Kerr's Hire delivers the Plant or Equipment (as applicable). The Customer must give written notice to Kerr's Hire of any fault, defect or damage of the Plant or Equipment within 24 hours of collection or delivery of the Plant or Equipment (as applicable). If no written notice is given by the Customer pursuant to this clause, Kerr's Hire is entitled to assume the Plant or Equipment was received in good working order and condition;
- make arrangements for Kerr's Hire to collect the Plant or Equipment, at the Customer's cost, at the end of the Hire Period. If Kerr's Hire agrees to allow the Customer to itself deliver the Plant or Equipment to Kerr's Hire at the end of the Hire Period, the Customer must do so at its own costs and must take out insurance for the Plant or Equipment at full replacement value to cover the transit;
- return the Plant or Equipment to Kerr's Hire in clean and good working order. In the event the Plant or Equipment is not returned in clean and good working order, Kerr's Hire may charge the Customer, and the Customer must pay, for all cleaning and repair costs incurred by Kerr's Hire;
- operate the Plant or Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instructions whether supplied by Kerr's Hire or posted on or in the Plant or Equipment;
- indemnify Kerr's Hire for all injury and/or damage caused or contributed to by the Customer to persons and property in relation to the Plant or Equipment and its operation and have adequate insurance to cover all liabilities incurred as a result of the use of the Plant or Equipment;
- ensure that any person collecting or taking delivery of Plant or Equipment on behalf of the Customer is authorised by the Customer to do so and the Customer will not allege that any such person is not so authorised;
- ensure that all persons operating or erecting the Plant or Equipment are suitably instructed in its safe and proper use and where necessary hold all necessary Approvals and qualifications required at law to operate the Plant or Equipment;
- conduct a thorough hazard and risk assessment before using the Plant or Equipment and comply with all applicable laws (including relevant work, health and safety laws) relating to the Plant or Equipment and its operation. The Customer acknowledges that a Safety Checklist is located on each piece of Plant or Equipment ("the Checklist"). The Customer agrees to undertake a daily safety check using the Checklist before using the Plant or Equipment;
- safely secure all items loaded in or on the Plant or Equipment or in or on the Customer's vehicle and indemnify Kerr's Hire in respect of any injury and/or damage caused by items falling from the Plant or Equipment or from any vehicle or trailer operated by or on behalf of the Customer;
- operate the Plant or Equipment with an adequate motor vehicle and/or power source;
- immediately report and provide full details to Kerr's Hire as soon as any fault, accident or damage occurs in respect of the Plant or Equipment;
- allows Kerr's Hire's employees, servants, agents and/or sub-contractors (as applicable) to enter the Delivery Address or Sites or any other premises where the Plant or Equipment is located to inspect, test, repair, replace or

- remove the Plant or Equipment at reasonable times during the Hire Period on reasonable notice to the Customer;
- (n) except for Fair Wear and Tear, pay Kerr's Hire for any damage to, loss, theft or destruction of, the Plant or Equipment that occurs during the Hire Period;
- (o) inform Kerr's Hire of the location of the Plant or Equipment at all times;
- (p) comply with all laws and Site Procedures in connection with the Plant or Equipment;
- (q) ensure that the ground conditions are safe and adequate for all Plant or Equipment and personnel;
- (r) supervise the unloading and loading of the Plant or Equipment at the Delivery Address or Sites;
- (s) ensure that the Plant or Equipment must never be used or driven in prohibited areas which include:
- (i) roads that are prone to flooding or are flooded;
 - (ii) beaches, streams, rivers, creeks, dams and floodwaters;
 - (iii) any road where the police or an authority has issued a warning;
 - (iv) any road that is closed; and
 - (v) any road where it would be unsafe to use or drive the Plant or Equipment.
- 4.4 The Customer must not:
- (a) tamper with, damage or repair the Plant or Equipment;
- (b) lose or part with possession of the Plant or Equipment;
- (c) rely upon any representation relating to the Plant or Equipment or its operation other than those contained in the Agreement;
- (d) use the Plant or Equipment in an environment which may be toxic, caustic or may otherwise cause damage to the Plant or Equipment;
- (e) allow any person to drive a vehicle or operate Plant or Equipment if the person:
- (i) does not hold a suitable licence to drive that class of motor vehicle or operate the Plant or Equipment (or has not otherwise been adequately trained to do so); or
 - (ii) is affected by drugs and/or alcohol.
- (f) exceed the recommended or legal load and capacity limits of the Plant or Equipment;
- (g) operate the Plant or Equipment while load-measuring instruments are defective, inoperative, or turned off;
- (h) exceed the recommended or legal speed limit for the Plant or Equipment;
- (i) sell, charge, encumber, grant any right, interest or lien (of any nature) in or over the Plant or Equipment;
- (j) use or operate Plant or Equipment for or in connection with oil, gas or geothermal drilling or wells;
- (k) use or operate Plant or Equipment underground;
- (l) use the Plant or Equipment on a watercraft;
- (m) overload the Plant or Equipment;
- (n) incorrectly load the Plant or Equipment;
- (o) store any illegal, prohibited and/or Dangerous Goods in or on the Plant or Equipment.
- 4.5 When the Customer no longer requires the Plant or Equipment (unless a pre-determined Hire Period is agreed) and it is available for collection by Kerr's Hire, it must contact Kerr's Hire during its usual business hours and provide one (1) Business Day's verbal notice of the Customer's intention to off-hire the Plant or Equipment. Kerr's Hire will issue an off-hire number which must be recorded and kept by the Customer and the Off-Hire Date will be the following day after receipt by Kerr's Hire of the notice provided by the Customer.
- 4.6 Provided the off-hire number is allocated, and access is granted to enable collection of the Plant or Equipment (if applicable), Hire Charges will cease from the Off-Hire Date. If the Plant or Equipment is not returned (or access is not granted to Kerr's Hire) on the Off-Hire Date or access is not granted to Kerr's Hire to collect the Plant or Equipment, Hire Charges will continue to apply until Kerr's Hire is able to collect the Plant or Equipment.
- 4.7 Where there is no specified Hire Period, Kerr's Hire may require return of the Plant or Equipment within two (2) Business Days (or a longer period determined by Kerr's Hire, acting reasonably) of notice to the Customer at its discretion.
- 4.8 Kerr's Hire will inspect the Plant or Equipment upon its return and notify the Customer in writing of any fault, defect or damage to the Plant or Equipment or any refuelling charge.
- ## 5 Security Deposit
- 5.1 Kerr's Hire may require the Customer to pay a Security Deposit prior to and as a condition of the commencement of the Hiring Period.
- 5.2 The Security Deposit serves as security for the Customer's compliance with the terms and conditions of the Agreement.
- 5.3 Kerr's Hire may deduct any additional charges, damages, or other amounts due but unpaid by the Customer under this Agreement from the Security Deposit.
- 5.4 Upon the satisfactory completion of the Hiring Period and fulfillment of all obligations by the Customer, any remaining balance of the Security Deposit shall be refunded to the Customer.
- ## 6 Payment Terms
- 6.1 Kerr's Hire charges for periodic amounts for the hire of the Plant or Equipment. The Hire Charge will be charged for the duration of an estimated hire period. The Additional Charges are due and payable by the Customer as and when such fees and charges are incurred by Kerr's Hire or become liable to be paid by the Customer.
- 6.2 Unless Kerr's Hire has approved the Customer to pay the Hire Charge for the Plant or Equipment on credit pursuant to the Credit Application, the Customer must pay the Hire Charge in full on Commencement and prior to Kerr's Hire releasing the Plant or Equipment to the Customer.
- 6.3 If Kerr's Hire has approved the Customer to pay for the Hire Charge for the Plant or Equipment on credit pursuant to the Credit Application, Kerr's Hire may render Invoices to the Customer at Commencement or at the Off-Hire Date or periodically throughout the Hire Period, in its sole discretion (acting reasonably) or as otherwise permitted by the Credit Application.
- 6.4 All Hire Charges and any Additional Charges must be paid on the terms set out in an Invoice.
- 6.5 All payments made under this Agreement must be paid to Kerr's Hire's Bank Account, via credit card or via cash payment. If payment is made via credit card, the Customer is responsible for any credit card fees charged by Kerr's Hire or any third-party.
- 6.6 The Customer hereby authorises Kerr's Hire to capture and store their credit card details and/or pre-authorise an amount set out on Commencement to cover potential future Hire Charges incurred by the Customer.
- 6.7 The Customer must pay all amounts due to Kerr's Hire:
- (a) without set-off, deductions, counter-claims or conditions; and
 - (b) in available cleared funds.
- 6.8 If the Customer owes any amount to Kerr's Hire then Kerr's Hire may, in its sole discretion and without prejudice to any of its other rights, do one or more of the following:
- (a) collect the Plant or Equipment; or
 - (b) set-off that amount against any amount owing by Kerr's Hire to the Customer, whether under the Agreement or otherwise.
- 6.9 Immediately on request by Kerr's Hire, the Customer will pay the current retail price of any Plant or Equipment as advised by Kerr's

- Hire which is for whatever reason not returned to Kerr's Hire and any charges for Damages.
- 6.10 If an amount due under this Agreement is paid after the due date the Customer must pay Kerr's Hire, in addition to the overdue amount:
- (a) interest at the Default Rate calculated based on a 365-day year from the date of the default until the date the amount (together with all accrued interest) is paid in full; and
 - (b) all costs and expenses incurred by Kerr's Hire in collecting the overdue amount (including Kerr's Hire's legal costs).
- 6.11 Kerr's Hire reserves its rights under security of payment legislation.
- ## 7 Title and Risk
- 7.1 Risk in the Plant or Equipment passes to the Customer upon dispatch of the Plant or Equipment from Kerr's Hire's premises by Kerr's Hire or its agent or representatives or upon collection of the Plant or Equipment by the Customer's agent or representative. This clause 7.1 does not apply if this is a consumer contract or a small business contract for the purposes of section 23 of the Australian Consumer Law, in which case risk and responsibility passes on delivery to the Customer.
- 7.2 Until Kerr's Hire has received payment in full for all Plant or Equipment supplied by Kerr's Hire under this Agreement:
- (a) the Customer holds the Plant or Equipment as bailee for the Company; and
 - (b) the Plant or Equipment shall, so far as practicable, be kept separate from other goods of the Customer, so as to be readily identifiable as the property of Kerr's Hire.
- 7.3 For the avoidance of any doubt, title in the Plant or Equipment shall not transfer to the Customer.
- 7.4 Upon default of the Customer of the due performance or observance of any other obligation under this Agreement, including an Insolvency Event, Kerr's Hire may by notice in writing to the Customer enter upon the Customer's premises or the Delivery Address or any Site to remove any of the Plant or Equipment to which Kerr's Hire has retained title and for this purpose the Customer shall afford Kerr's Hire all reasonable assistance to locate and take possession of the Plant or Equipment.
- 7.5 In the event that Kerr's Hire repossesses the Plant or Equipment, the Customer authorises Kerr's Hire to take possession of any property in, on or attached to the Plant or Equipment which is not the property of Kerr's Hire.
- 7.6 The Customer acknowledges that by virtue of this Agreement, Kerr's Hire has or will have a Security Interest in the Plant or Equipment, the proceeds from the sale of the Plant or Equipment and the proceeds of any insurance policy for the purposes of the PPSA.
- 7.7 The Customer grants Kerr's Hire a Security Interest in all of the Customer's present and after acquired property and any proceeds until Kerr's Hire is paid in full under this Agreement.
- 7.8 The Customer acknowledges that Kerr's Hire may do anything reasonably necessary, including but not limited to registering its Security Interest on the personal property securities register established under the PPSA in order to perfect this Security Interest and comply with the requirements of the PPSA. The Customer agrees to do all things reasonably necessary to assist Kerr's Hire to achieve perfection of this Security Interest under the PPSA.
- 7.9 The Customer and Kerr's Hire agree that, pursuant to section 115 of the PPSA, the following provisions in the PPSA do not apply in relation to this Security Interest to the extent, if any, mentioned (words in this provision have the same meaning as in the PPSA):
- (a) section 117 (obligations secured by interests in personal property and land);
 - (b) section 118 (enforcing Security Interest in accordance with land law decisions), to the extent that it allows a secured party to give a notice to the grantor;
 - (c) section 125 (obligation to dispose of or retain collateral);
 - (d) section 129 (disposal by purchase);
 - (e) section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor and other secured parties before disposal;
 - (f) paragraph 132(3)(d) (contents of statement of account after disposal);
 - (g) subsection 132(4) (statement of account if no disposal);
 - (h) section 142 (redemption of collateral); and
 - (i) section 143 (reinstatement of security agreement).
- 7.10 The Customer waives its right to receive a verification statement under section 157 of the PPSA.
- 7.11 Kerr's Hire retains any rights of enforcement arising on the PPSA, under this Agreement, or otherwise, including but not limited to a right to seize the collateral under section 123 of the PPSA.
- 7.12 Notwithstanding anything stated to the contrary herein and despite Kerr's Hire electing to register a Security Interest on the personal property security register pursuant to clauses 7.6 and/or 7.7, and subject to any applicable laws, Kerr's Hire shall be at liberty to elect (in its sole discretion and without prejudice to any other rights granted to it) to rely on any of the rights granted to it under this clause 7, including:
- (a) its right to rely on its retention of title in the Plant or Equipment pursuant to this Agreement; and/or
 - (b) its right to register and enforce the Security Interest granted to it by the Customer under this clause 7.
- ## 8 Insurance
- 8.1 Upon risk in the Plant or Equipment passing to the Customer and until all monies owed under this Agreement by the Customer are paid to Kerr's Hire, the Customer must procure and maintain in its own name (noting the interest of Kerr's Hire) public liability insurance with a minimum limit of \$20m in any one occurrence, and insurance for theft, and damage of the Plant or Equipment for an amount of not less than the new replacement value of the Plant or Equipment for items under 24 months of age and market value for items older than 24 months of age (**Insurance(s)**).
- 8.2 At the request of Kerr's Hire, the Customer must produce a certificate of currency for the Insurance policies. The Customer is responsible for any excess and any other costs associated with any insurance taken out by the Customer under this Agreement and the Customer is responsible for any shortfall in repair or replacement of the Plant or Equipment following payment of any amount received under an insurance claim, including any loss Kerr's Hire suffers as a result of not being able to hire the Plant or Equipment.
- 8.3 For the avoidance of any doubt, in the event of any claim being made under the Customer's insurance policy pursuant to or relating to this Agreement, the parties agree and acknowledge that Kerr's Hire will have the right of subrogation with respect to any right of the Customer to recover against any person, firm or corporation. The Customer agrees to execute and deliver whatever instruments or documents are required and do whatever else is reasonably necessary to give effect to such rights. The Customer will cooperate fully with Kerr's Hire and/or its insurer(s) in the prosecution of those rights and will neither take or permit any action to prejudice Kerr's Hire's rights with respect thereto.
- ## 9 Warranties and Liability
- 9.1 Where the Australian Consumer Law applies the Customer has the benefit of guarantees in relation to the hire of the Plant or Equipment which cannot be excluded.
- 9.2 Where the Australian Consumer Law applies and the goods are not of a kind ordinarily acquired for personal domestic or household use or consumption, Kerr's Hire's liability in respect of any guarantee is limited to the replacement or repair of the goods, or the cost of having the goods repaired or replaced.
- 9.3 To the extent that the Australian Consumer Law (or any other law which cannot be excluded) does not apply, Kerr's Hire makes no representations and gives no warranties other than those set out in these Terms and Conditions, and, to the extent such Loss, Claims,

damages, costs or other liabilities were not caused or contributed to by Kerr's Hire, will not be liable to the Customer for any Loss, Claims, damages, costs or other liabilities whatsoever (including for consequential loss) in relation to the hiring of the Plant or Equipment by the Customer.

9.4 Subject to this clause 9, the Customer indemnifies and holds Kerr's Hire harmless to the extent the customer caused or contributed to any Claim, Loss or damage, and only to the extent permitted by law, for any Claim, Loss or damage whatsoever arising in connection with the hire of the Plant or Equipment to the Customer or this Agreement.

9.5 Kerr's Hire's liability under this Agreement is limited to the Hire Charge and Kerr's Hire is not liable for any indirect or consequential loss (including loss of profit or opportunity).

10 Release and Indemnity

10.1 The Customer agrees to use and possess the Plant or Equipment at its own risk. The Customer agrees that Kerr's Hire bears no responsibility or liability for any Loss to any of the Customer's property (including the Plant or Equipment) except to the extent that it was caused or contributed to by the recklessness or gross negligence of Kerr's Hire.

10.2 The Customer indemnifies and holds Kerr's Hire harmless to the full extent permitted by law for any Loss whatsoever arising in connection with the Customer's use of the Plant or Equipment by the Customer, including any breach of this Agreement. The indemnity in this clause shall be reduced to the extent that the Loss was directly caused by the recklessness or gross negligence of Kerr's Hire.

11 Repair and Replacement

11.1 In addition to any other rights of entry granted under this Agreement, the Customer grants Kerr's Hire the right, and will use its best endeavours to ensure that others grant Kerr's Hire the right, at all times until all monies owing under this Agreement by the Customer are paid to Kerr's Hire to:

- (a) inspect the state of repair of the Plant or Equipment;
- (b) carry out such tests on the Plant or Equipment as may seem necessary to Kerr's Hire;
- (c) observe the use of the Plant or Equipment;
- (d) inspect any maintenance records in respect of the Plant or Equipment; and
- (e) do any act, matter or thing which may be required to be done to give proper effect to the terms of this Agreement or to protect Kerr's Hire's rights in the Plant or Equipment.

11.2 In in order to protect its rights in the Plant or Equipment, Kerr's Hire may, at its discretion, at all times prior to risk in the Plant or Equipment passing to the Customer:

- (a) serve a notice in writing on the Customer of any defect or deficiency in the Plant or Equipment or its use or both requiring repair or replacement;
- (b) if Kerr's Hire decides repairs are required to the Plant or Equipment it may:
 - (i) enter upon premises with workmen (if necessary) and all necessary materials for the purpose of carrying out those repairs; or
 - (ii) replace the Plant or Equipment with equivalent Plant or Equipment.

11.3 Where damage to or unsatisfactory maintenance of the Plant or Equipment requires Kerr's Hire to incur costs and expense repairing or replacing the Plant or Equipment, the cost of all repairs and replacements (if any) of the Plant or Equipment will be borne by the Customer.

11.4 If, during the Hire Period, the Plant or Equipment is lost, stolen, destroyed or damaged during the Hire Period beyond Fair Wear and Tear, or becomes unsafe to use due to any act or omission of the Customer, the Customer must immediately notify Kerr's Hire in

writing and the Customer is liable to Kerr's Hire for and must indemnify Kerr's Hire for (at Kerr's Hire's election):

- (a) the full cost of either:
 - (i) repairing the Plant or Equipment; or
 - (ii) replacing the Plant or Equipment with new equipment, as determined by Kerr's Hire in its sole and absolute discretion; and
- (b) any other costs whatsoever arising from or in connection with the loss, theft or damage to the Plant or Equipment including but not limited to Hire Charges, Claim, Damage and/or Loss until the replacement value is paid to Kerr's Hire; and
- (c) any lost revenue, including Loss of Use, arising from or in connection with the loss, theft or damage to the Plant or Equipment until the replacement value is paid to Kerr's Hire.

12 Default and termination

12.1 Each of the following events is an Event of Default, namely:

- (a) the Customer fails to perform or observe any of the covenants or provisions of this Agreement and (if capable of remedy) such default continues for more than 5 Business Days after notice from Kerr's Hire requiring a remedy for the breach;
- (b) the Customer fails to perform or observe any of the covenants or provisions of this Agreement and (if capable of remedy) such default continues for more than ten (10) Business Days after notice from Kerr's Hire requiring the Customer to remedy the breach;
- (c) the Customer fails to return any Plant or Equipment to Kerr's Hire within five (5) Business Days of request by Kerr's Hire;
- (d) the Customer sells or closes its business or relocates the Plant or Equipment without written notice to Kerr's Hire;
- (e) the Customer suffers an Insolvency Event or if it is a partnership, is dissolved or if it is a natural person, dies.

12.2 If an Event of Default occurs Kerr's Hire may at its option:

- (a) by proceeding by appropriate court action, either at law or in equity, enforce performance of the applicable terms and provisions of this Agreement or recover damages for the breach concerned; and/or
- (b) terminate this Agreement; and/or
- (c) repossess the Plant or Equipment (and is authorised to enter any premises where the Plant or Equipment is located to do so).

12.3 Without prejudice to Kerr's Hire's right to pursue the Customer for Loss arising from a breach of this Agreement, upon the expiry of this Agreement or early termination under this clause, the Customer must immediately pay Kerr's Hire all amounts owing under this Agreement.

12.4 On termination of this Agreement, the Customer must immediately return any Plant or Equipment to Kerr's Hire and pay all Hire Charges, Claim, Damage and/or Loss. If the Customer does not return the Plant or Equipment within fourteen (14) days of termination of the Agreement, the Customer must pay to Kerr's Hire an amount equal to the new replacement value of the Plant or Equipment as fairly specified by Kerr's Hire and any Claim, Damage and/or Loss.

12.5 The Customer grants in favour of Kerr's Hire an irrevocable licence to enter upon its premises, on reasonable notice, to repossess the Plant or Equipment provided such action complies with applicable laws.

13 Force Majeure

Kerr's Hire will not be liable for any Loss incurred as a result of delay or failure to observe this Agreement due to an event of Force Majeure. Kerr's Hire's obligations under this Agreement will be

suspended and will resume as soon as the cause of the Force Majeure has ceased to have effect.

14 Privacy

- 14.1 Kerr's Hire may provide details of this Agreement to a credit reporting agency for the purpose of:
- (a) obtaining a credit report; and
 - (b) allowing the credit agency to maintain a file, in respect of the Customer.
- 14.2 Kerr's Hire will endeavour to take reasonable commercial steps to protect all personal information provided by the Customer in accordance with the Australian Privacy Principles of the *Privacy Act 1998* (Cth).

15 Third Party Rights

- 15.1 The parties acknowledge and agree that some or all of the Plant or Equipment may be owned by a third party or under finance from a third party (**Third Party**), giving that Third Party an interest in the relevant Plant or Equipment (**Third Party Rights**).
- 15.2 Where a Third Party Interest is valid and subsisting, the Customer acknowledges that:
- (a) a person other than Kerr's Hire may be the legal owner of the Plant or Equipment;
 - (b) the Third Party may enforce the terms of this Agreement, as if it were Kerr's Hire;
 - (c) the Third Party shall at all times be entitled to register its interest on the PPSR, if applicable; and
 - (d) nothing in this Agreement shall limit, reduce, vary or otherwise qualify the rights of the Third Party against Kerr's Hire or the Plant or Equipment.

16 General

- 16.1 These Terms and Conditions, the Hire Contract, an Invoice and any other documents produced by Kerr's Hire to the Customer constitutes the entire understanding between the parties and supersedes all prior agreements, understandings and communications, whether written or oral.
- 16.2 This Agreement operates as a 'standing agreement' and each Invoice shall constitute a separate contract for the hire of the Plant or Equipment between the parties. Kerr's Hire may enforce its rights under this Agreement against an Invoice, multiple Invoices or the Agreement as a whole.
- 16.3 Except as required by law, the parties must not disclose to any person without the other's prior written consent the existence of, or details in, this Agreement or any other information which is confidential and not otherwise in the public domain.
- 16.4 If any provision of the Agreement is illegal or unenforceable in any relevant jurisdiction, it must be enforced to the maximum extent possible, and if unenforceable may be severed for the purposes of that jurisdiction, without affecting its enforceability in any other jurisdiction or the enforceability of any other part of this Agreement.
- 16.5 All waivers must be in writing. A single or partial exercise or waiver by a party of a right relating to these Terms and Conditions does not prevent any other exercise of that right or the exercise of any other right.
- 16.6 Clauses 1, 10, 12, 16 and any Warranties and indemnities survive termination or expiration of this Agreement.
- 16.7 The Special Conditions set out in the Hire Contract prevail to the extent of any inconsistency with these Terms and Conditions.
- 16.8 This Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria, Australia.

17 Vehicles

- 17.1 This clause 17 applies in respect of vehicles in addition to any other provision of these Terms and Conditions.

17.2 We set a minimum age limit for those hiring the vehicles. The Customer warrants that:

- (a) the Customer and the Customer's personnel are at least 25 years of age and have no less than 12 months driving experience, unless Kerr's Hire has agreed to a variation of that restriction before the Commencement;
- (b) the Customer and the Customer's personnel have a valid licence to drive the class of vehicle which is issued in an Australian state or territory or an international licence (with a valid international driving permit if the Customer's licence is not issued in English) appropriate for the class of the vehicle and not subject to any restriction or condition;
- (c) the Customer and the Customer's personnel are not learner drivers or provisional or probationary licence holders;
- (d) the Customer and the Customer's personnel have not had their licence cancelled within 2 years of Commencement.

17.3 The Customer acknowledges and agrees that it is a Major Breach of this Agreement, if the Customer breaches any of clauses 17.2(a) to 17.2(d). If there is a Major Breach of these Terms and Conditions there is no cover for the Customer or the Customer's Personnel for any Damage, theft of the vehicle or Third Party Loss.

17.4 At Commencement, the Customer must inspect the vehicle to ensure that any pre-existing damage is noted.

17.5 At the end of the Hire Period, the Customer must:

- (a) return the vehicle:
 - (i) in the same condition it was in at Commencement, Fair Wear and Tear excepted; and
 - (ii) with a full tank of fuel;
- (b) pay the balance of the Hire Charge (if any);
- (c) pay any Claim, Damage and/or Loss;
- (d) pay for all Overhead Damage; and
- (e) pay for any Damage caused by the immersion of the vehicle in water.

17.6 If the Customer returns the vehicle with less than a full tank of fuel, a refuelling charge, in addition to the cost of the fuel (at no less than \$3.00/litre), will apply. The cost of fuel set out herein is a genuine pre-estimate of the costs to be actually incurred by Kerr's Hire.

17.7 The Customer must comply with all mandatory seat belt laws and fines may be imposed by the police on any driver or passenger who does not have a seat belt properly adjusted and fastened.

17.8 The Customer is responsible for the payment of any road tolls, parking fines or any other traffic violation, including penalties or fines and charges which are claimed from Kerr's Hire which are incurred during the Hire Period even if received by Kerr's Hire after the end of the Hire Period. The Customer must, if requested by Kerr's Hire, nominate a driver for any parking fines or any other traffic violations.

17.9 The Customer and the Customer's personnel must make sure that the vehicle is locked when not in use or unattended and the keys or remote-control device must be kept in the Customer's possession, or that of the Customer's personnel, at all times.

17.10 The Customer and the Customer's personnel must take reasonable care of the vehicle by:

- (a) preventing it from being damaged;
- (b) making sure that it is protected from the weather;
- (c) maintaining the engine and brake oils and coolant level and tyre pressures and checking these on no less than a weekly basis;
- (d) using the correct fuel type; and
- (e) making sure it is not overloaded.

17.11 Where Kerr's Hire has given prior authority to the Customer to repair the vehicle the Customer must keep and produce to Kerr's Hire the original tax invoices and receipts for any repairs, towing or salvage and the Customer will be reimbursed only if these expenses have been authorised by Kerr's Hire. Any entitlement to

- reimbursement is subject to there being no Major Breach of these Terms and Conditions.
- 17.12 Kerr's Hire is not responsible for:
- (a) damage as a result of use of the incorrect fuel type;
 - (b) a flat battery because the lights or entertainment systems have been left on;
 - (c) tyre changing of the vehicle;
 - (d) lost keys or remote-control device; or
 - (e) keys or remote-control device locked in the vehicle,
- and extra charges will apply if any of these services are provided at the Customer's request.
- 17.13 If the Customer or the Customer's personnel:
- (a) commit a Major Breach of these Terms and Conditions in a way that causes Damage, theft of the vehicle or Third Party Loss; or
 - (b) drive the vehicle in a reckless manner so that a substantial breach of road safety legislation has occurred,
- the Customer and the Customer's personnel:
- (c) are liable for all Damage, theft of the vehicle and Third Party Loss; and
 - (d) are liable for and must pay any additional costs or expenses Kerr's Hire incur as direct consequence.
- 17.14 Acting reasonably, Kerr's Hire may terminate these Terms and Conditions and take immediate possession of the vehicle if a breach of any part of clause 17 has occurred.
- 17.15 If the vehicle is stolen or if the Customer or the Customer's personnel have an Accident where:
- (a) any person is injured;
 - (b) the other party has failed to stop or leaves the scene of the Accident without exchanging names and addresses; or
 - (c) the other party appears to be under the influence of drugs or alcohol,
- the Customer or the Customer's personnel must also report the theft or Accident to the Police.
- 17.16 If the Customer or the Customer's personnel have an Accident, the Customer or the Customer's personnel must:
- (a) exchange names and addresses and telephone numbers with the other driver;
 - (b) take the registration numbers of all vehicles involved;
 - (c) take as many photos as is reasonable showing:
 - (i) the position of the vehicles before they are moved for towing or salvage;
 - (ii) the Damage to the vehicle;
 - (iii) the damage to any Third Party vehicle or property; and
 - (iv) the general area where the Accident occurred, including any road or traffic signs;
 - (d) obtain the names, addresses and phone numbers of all witnesses;
 - (e) not make any admission of fault or promised to pay the other party's claim or release the other party from any liability;
 - (f) forward all Third Party correspondence or court documents to Kerr's Hire within 7 days of receipt; and
 - (g) co-operate with Kerr's Hire in the prosecution of any legal proceedings that Kerr's Hire may institute or defence of any legal proceedings which may be instituted against the Customer or Kerr's Hire as a result of an Accident, including attending Kerr's Hire's lawyer's office or any Court hearing.