

**HIRE AGREEMENT**

1.1 **Definitions.** In this Agreement, unless the context or subject matter otherwise requires:

"**Account Facility**" means the billing arrangement between MPM and the Customer, which subject to approval of the Application by MPM, will be administered in accordance with this Agreement;

"**Application**" means the application for an Account Facility, in the form provided by MPM, which is completed by the Customer;

"**Authorised Person**" means such person or persons as may be notified to MPM by the Customer as being entitled to accept delivery of and operate the Equipment;

"**Business Day**" means any day upon which MPM is open for trade;

"**Claim**" means in relation to a person, corporation or other legal entity, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against such person, corporation or legal entity however arising and whether ascertained or unascertained;

"**Corporations Act**" means the Corporations Act 2001 (Cth);

"**Customer**" means the party specified as the Customer in an Order Confirmation and, where the context permits, its servants, agents, employees, contractors and Authorised Persons;

"**Daily Rate**" means MPM's daily charge for hire of the Equipment as specified in an Order Confirmation or as otherwise notified to the Customer by MPM;

"**Equipment**" means any plant and equipment which is the subject of an order from the Customer accepted by MPM, as specified in an Order Confirmation and, if the context requires, includes any part of such plant and equipment including any accessories and safety devices;

"**MPM**" means MPM Access and Hire Pty Ltd ABN 63 135 522 379 trading as MPM Access and Hire and, where the context permits, its related bodies corporate within the meaning of the Corporations Act and their servants, agents, employees and contractors;

"**Hire Charges**" means the amount payable to MPM by the Customer for the use of the Equipment determined in accordance with this Agreement;

"**Hire Period**" means the period commencing on the day that the Equipment is collected by, or delivered to, the Customer and expiring on the later of:

- (a) the day upon which the Customer has agreed to return the Equipment to MPM; or
- (b) the day the Equipment is returned to, or made available for collection and is able to be collected by, MPM provided that if the Equipment is returned to MPM before 9:00am on any Business Day or the Customer notifies MPM that the Equipment is available for collection by 9:00am on any Business Day, the Customer will be regarded as having returned the Equipment on the day preceding that Business Day; or
- (c) the day upon which the Equipment has been repaired or replaced by MPM and is made available for hire following any breakdown in the Equipment caused by the Customer's acts, omissions, neglect or default, such period being inclusive of weekends and public holidays and periods during which the Equipment is not used by the Customer for any reason whatever including industrial action or suspension of work provided that under no circumstances may such period be more than 89 days in the case of Equipment which is a "motor vehicle" for PPSA purposes or more than 1 year for any other Equipment unless (in either case) it is agreed to by MPM under clause 2(j);

"**Order Confirmation**" means a document so entitled issued by MPM to the Customer on MPM's acceptance of the Customer's order for the hire of Equipment;

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

"**Security Interest**" means:

- (a) any security for the payment of money or performance of an obligations including a mortgage, pledge, lien, charge, hypothecation, trust arrangement, title retention arrangement, flawed asset arrangement or any "security interest" as defined in section 12(1) or section 12(2) of the PPSA; or
- (b) any "security interest" as defined in section 12(3) of the PPSA;

"**Sundry Charges**" means the costs of all cartage, cleaning, oil, grease, harnesses and such other costs as MPM may incur relating to the Customer's use of the Equipment and where appropriate, will be determined in accordance with MPM's schedule of standard sundry charges as varied from time to time.

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1.2 **Interpretation.** In the interpretation of this Agreement, unless the context or subject matter otherwise requires:

- (a) a reference to a party includes that party's executors, administrator, substitutes, successors and permitted assigns;
- (b) each covenant by two or more persons as a party is made jointly by all and severally by each;
- (c) the singular includes plural and vice versa;
- (d) this Agreement will be construed in accordance with the laws of New South Wales;
- (e) a reference to any statute or legislation includes State, Territory and Commonwealth laws and regulations and other instruments (including determinations) made under them, and consolidations, amendments, re-enactments or replacements of any of them; and
- (f) time is of the essence of all the Customer's obligations to MPM, particularly payment of amounts owing.

**2. CUSTOMER'S ACKNOWLEDGEMENT**

The Customer acknowledges and agrees that:

- (a) the Account Facility is a trader's facility and the Customer is a trader requiring the Account Facility predominantly for the purposes of carrying on or in connection with the carrying on or establishing of a trade, business or profession;
- (b) the Customer may place orders for the hire of Equipment under this Agreement from time to time. No order is effective unless MPM, in its absolute discretion, accepts the order and hires the Equipment to the Customer on the terms of this Agreement;
- (c) the Customer has read and agrees to be bound by this Agreement. The Customer agrees that each order for the hire of Equipment made by the Customer which is accepted by MPM is regulated by, and subject to the terms of, this Agreement;
- (d) all Hire Charges and other charges are payable by the Customer at the rate notified by MPM provided any agreement to reduce damage waiver charges must be in writing and signed by an authorised officer of MPM;
- (e) MPM may terminate the Account Facility at any time without prior notice;
- (f) the full amount of all Hire Charges and other charges payable by the Customer to MPM will become due and owing 30 calendar days after the date on which the charges were first invoiced. The Account Facility is not a credit facility;
- (g) the Account Facility is personal to the Customer and cannot be assigned or transferred to any other person without the prior written consent of MPM;
- (h) if the Customer is a company (other than a listed public company) the Customer must notify MPM of any action having the effect of altering its control whether by transfer of shares, replacement of its directors or otherwise;
- (i) the Customer will be responsible for all costs (including legal costs calculated on a solicitor and own client basis) incurred by MPM relating to any default by the Customer; and
- (j) in MPM's absolute discretion following a request by the Customer to do so, MPM may agree to the Customer retaining possession of Equipment beyond the maximum Hire Period provided for in clause 1.1. In that case, the Hire Period for the relevant Order Confirmation is extended for the period MPM and the Customer agree in writing.

**3. CREDIT REPORTING**

By signing the applicant's declaration in the Application, the Customer consents to MPM:

- (a) disclosing to a credit reporting agency certain personal information about the Customer including identity particulars, the Account Facility limit, payments which may become more than sixty days overdue, any serious default by the Customer under this Agreement and advice that payments are no longer overdue;
- (b) obtaining from a credit reporting agency a report containing personal credit information about the Customer and a report containing information about the Customer's commercial activities or commercial creditworthiness to enable MPM to assess the Application; and
- (c) giving to any guarantor under the Account Facility information, including a copy of the Application and any demands for payment of overdue amounts and statements of the Account Facility.

**4. LIABILITY FOR PAYMENT**

4.1 **Customer's Liability.** The Customer agrees to pay:

- (a) Hire Charges, Sundry Charges and all other charges, costs and expenses payable to MPM in the manner directed by MPM;
- (b) interest on all outstanding amounts from the due date for payment, calculated at a rate which is the higher of 1.5% per month and the interest rate applying to debts under judgments or orders of the Supreme Court of New South Wales plus 5%;
- (c) damage waiver costs in relation to the Equipment;
- (d) any costs of repairing or replacing the Equipment required as a result of the Customer's acts, omissions, neglect or default;
- (e) any GST or similar tax imposed on any supply by MPM to the Customer under an Order Confirmation and any other state or federal taxes, duties or charges imposed in respect of an Order Confirmation including stamp duty; and
- (f) all costs (including legal costs calculated on a solicitor and own client basis) incurred by MPM relating to any default by the Customer.

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4.2 **Hire Charges.** Hire Charges are calculated by multiplying the number of days in the Hire Period by the Daily Rate.

4.3 **Additional Charges.** MPM may in its discretion, charge additional hire for periods during which the Equipment is being delivered to or collected from the Customer or during which MPM is unable to deliver or collect the Equipment through no fault of its own.

4.4 **Credit.** Any claims for credit by the Customer must be made within fourteen (14) days from date of invoice.

4.5 **Hire Rates.** MPM reserves the right to revise its schedule of hire rates and related charges without notice. MPM may also revise its hire rates and related charges in circumstances where MPM incurs such charges as a result of non-disclosure by the Customer, unforeseen site problems or incorrect physical dimensions, weights or distances relied on by MPM.

4.6 **Early Return.** MPM may, in its sole discretion, accept return of the Equipment before the scheduled date of return. The Customer will remain liable for all Hire Charges payable to MPM despite early return of the Equipment, but MPM will endeavour to re-hire the Equipment in which case the Customer will only be liable for Hire Charges until the date of such re-hire or until expiration of the Hire Period, whichever is earlier.

**5. USE OF EQUIPMENT**

5.1 Customer's Obligations. The Customer must:

- (a) ensure that the Customer or an Authorised Person is available to accept the Equipment upon delivery;
- (b) ensure the Equipment is used:
  - (i) for the purpose for which it was designed by the manufacturer;
  - (ii) by the Customer or an Authorised Person having the appropriate qualifications, training and licences to operate the Equipment (such as licences required for boom type lifts over 11m in height); and
  - (iii) in accordance with all applicable laws and regulations in a skilful, safe and tradesman like manner not extending beyond its capacity (having regard to manufacturers specifications) and not having to endure more than normal wear and tear;
- (c) notify MPM immediately if the Equipment breaks down, malfunctions or is damaged;
- (d) not undertake any repair to the Equipment without the consent of MPM;
- (e) maintain and return the Equipment to MPM in good repair and condition and ensure that a check of battery water levels, fuelling, greasing, oiling and proper servicing of the Equipment is carried out on a daily basis;
- (f) except with the prior written consent of MPM:
  - (i) not transfer, assign, hire, lease, loan or sell the Equipment;
  - (ii) not give any other person an interest in or give or allow to subsist any encumbrance (including a Security Interest) over the Equipment; or
  - (iii) not (except for the purpose of returning the Equipment to MPM) remove the Equipment or allow it to be removed from the site address notified to MPM for use of the Equipment;
- (g) not alter, make any additions to, deface or remove any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment; and
- (h) accept full responsibility for the safe-keeping of the Equipment, and indemnify MPM for all loss, theft or damage to the Equipment resulting from any negligence, failure or omission of the Customer.

5.2 **Condition of Equipment.** The Customer acknowledges that:

- (a) it accepts delivery of the Equipment in "as is" condition unless it indicates otherwise at the time of delivery;
- (b) it is liable for all flat and/or damaged tyres and the replacement cost of missing harnesses, generators etc.;
- (c) it understands the safe and proper use of the Equipment and has received adequate training in its operation and use;
- (d) any person authorised by MPM is entitled, without notice or liability to the Customer, at any time to inspect, repair or (in the event of any default by the Customer) remove the Equipment by entering onto any land or premises owned by or under the control of the Customer upon which the Equipment is situated. For that purpose, the Customer:
  - (i) irrevocably licences MPM and any person authorised by it, to enter onto such land or premises;
  - (ii) undertakes that it will procure any necessary authority to enter from any relevant persons; and
  - (iii) indemnifies MPM from and against all costs and losses suffered by MPM as a result of exercising its rights under this clause 5.2(d);
- (e) if MPM is collecting the Equipment at the expiration or earlier determination of the Hire Period, the Customer must leave the Equipment in an appropriate, easily identified and accessible area; and
- (f) MPM will not be deemed to have accepted return of the Equipment in good repair and condition until such time as the Equipment has been fully inspected by MPM at its depot following its return.

5.3 **Carriage of Equipment.** MPM is not a common carrier and does not accept the obligation or liability of a common carrier. MPM may refuse the handling, lifting and or carriage of Equipment for any person in its discretion and without being bound to give reason for such refusal.

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**6. DAMAGE WAIVER AND INDEMNITIES**

**6.1 Damage Waiver.** Unless the Customer provides, to the satisfaction of MPM, evidence of insurance cover of at least \$250,000 for the Equipment while in the Customer's possession, MPM will arrange to take out damage waiver in respect of the Equipment while in the Customer's possession at the Customer's cost. Unless notified to the contrary, the cost of damage waiver is 12.5% of the Hire Charge.

**6.2 Limitation on Damage Waiver.** The Customer acknowledges that any damage waiver taken out by MPM in respect of the Equipment will not extend to cover any loss or damage resulting from the Customer's failure to comply with the obligations contained in clause 5.1.

**6.3 Liability for Repair.** The Customer is liable for all excess and other costs associated with any insurance claim in relation to the Equipment and must meet any shortfall in repair or replacement of the Equipment following payment of any amount received under insurance, including any loss suffered by MPM as a result of it not being able to hire the Equipment.

**6.4 Release.** The Customer acknowledges that:

- (a) the Equipment shall be at the sole risk of the Customer and MPM will not be liable for any Claim the Customer may incur or that may arise from any cause whatever including any fault or other defect in the Equipment; and
- (b) MPM will not be responsible for, and is free from, all liability in respect of all such Claims.

**6.5 Indemnity.** The Customer shall accept full responsibility for, and indemnify MPM against:

- (a) all Claims in respect of any injury to persons, or damage to property, arising out of the use of the Equipment during the Hire Period however arising, whether from negligence of the Customer or MPM or otherwise and without limiting the foregoing whether or not the Equipment was being operated or transported by a servant of MPM or any other person for whose acts MPM might be or is held to be responsible in connection with the operation of the Equipment; and
- (b) all liabilities, costs and expenses incurred, suffered or sustained by MPM in connection with any default by the Customer.

**6.6 Retrieval of Equipment.** The Customer shall indemnify MPM for any costs incurred in recovering Equipment whether abandoned, unlawfully detained or otherwise.

**7. DEFAULT AND TERMINATION.**

**7.1 Default.** The Customer will be in default if:

- (a) it fails to comply with this Agreement;
- (b) becomes bankrupt or makes any arrangement with creditors for liquidation of debts;
- (c) it is wound up, placed under official management or administration or any administrator, receiver, or receiver and manager is appointed to the Customer; or
- (d) (if clause 9 applies) MPM does not have the highest priority available under the PPSA with respect to a Security Interest arising under this Agreement or, if applicable, in the chattel paper referred to in clause 9.3(b).

**7.2 Remedies upon Default.** If the Customer is in default then, without prejudice to any other rights or remedies:

MPM may terminate the hire of any Equipment and take possession of the Equipment by entering onto any land or premises owned by or under the control of the Customer upon which the Equipment is situated; and the Customer will pay to MPM all losses, damages, costs and other expenses whatever suffered by MPM as a result of that default including any costs of recovering possession of the Equipment.

**7.3 Inability to Supply.** If MPM is unable to hire the Equipment specified in the Customer's order, MPM may in its discretion supply or hire alternative suitable equipment to the Customer. If the alternative equipment is not suitable, the Customer may terminate the hire of such Equipment but MPM will not be liable for any Claims arising out of its inability to supply the Equipment or alternative suitable equipment to the Customer.

**7.4 Third Party Owner.** The Customer acknowledges that MPM may hire or lease the Equipment from a third party (the "Owner") and in that event title to the Equipment remains with the Owner. The Customer agrees, upon reasonable notice, to allow MPM to arrange for the Owner access to the location where the Equipment is located from time to time to inspect the Equipment. The Customer acknowledges and agrees that if MPM's agreement with the Owner terminates during the term of this Agreement, unless otherwise agreed by the Owner, the hire of all Equipment to the Customer will automatically terminate and the Owner may immediately recover possession of the Equipment from the Customer. The Owner will not be liable to the Customer in any circumstance for any claim that the Customer may have against MPM.

**8. GENERAL**

**8.1 Entire agreement.** This Agreement (including the terms of any Order Confirmation) states all the express terms agreed by the Customer and MPM in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

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8.2 Inconsistency. If there is an inconsistency between any order for the hire of Equipment or other document between the parties to this Agreement, this Agreement prevails.

8.3 Governing law. This Agreement and each Order Confirmation is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that State and courts of appeal from them.

8.4 Variation. MPM may from time to time vary the terms of this Agreement by prior written notice to the Customer.

**9. PPSA PROVISIONS**

This clause 9 applies only if the Hire Period exceeds the maximum Hire Period provided for in clause 1.1.

**9.1 Security Interest in Equipment.**

- (a) The Customer acknowledges that under the PPSA:
  - (i) a Security Interest in the Equipment and its proceeds arises in favour of MPM, granted by the Customer; and
  - (ii) a Security Interest in the chattel paper referred to in clause 9.3(b) and its proceeds may arise in favour of MPM, granted by the Customer.
- (b) MPM may apply for registration, or give any notification, in connection with any Security Interest granted by the Customer to MPM.
- (c) The Customer agrees to do anything reasonably required by MPM to:
  - (i) provide more effective security over the Equipment and, if applicable, the chattel paper in which MPM has a Security Interest granted by the Customer;
  - (ii) ensure any Security Interest granted by the Customer to MPM is enforceable, perfected and otherwise effective and has the priority required by MPM (which, unless MPM agrees otherwise, is first priority);
  - (iii) enable MPM to apply for any registration or give any notification in respect of, or in connection with, any Security Interest granted by the Customer to MPM; and
  - (iv) enable MPM to exercise any rights in connection with any Security Interest granted by the Customer to MPM.
- (d) The Customer acknowledges that anything it is required to do under clause 9.1(c) or clause 9.3 is at its cost. The Customer agrees to pay or reimburse MPM's costs, charges and expenses (including any registration fees) in connection with anything MPM does under clause 9.1(b).
- (e) The Customer acknowledges that any Security Interest in the Equipment granted by the Customer to MPM attaches to the Equipment on the first day on which the Hire Period exceeds the maximum period provided for in clause 1.1.
- (f) If the Customer is an individual, he/she warrants that he/she intends to use the Equipment in the course or furtherance, to any degree, of carrying on an enterprise to which an Australian Business Number has been allocated.
- (g) The Customer warrants that the Equipment is not "inventory" within the meaning given in section 10 of the PPSA when held by the Customer.
- (h) The Customer agrees, in relation to any Security Interest in the Equipment granted by the Customer to MPM, that:
  - (i) MPM need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) and 132(4) of the PPSA;
  - (ii) the Customer may not exercise any rights under sections 142 and 143 of the PPSA; and
  - (iii) MPM need not give the Customer any notice of verification statement.

9.2 Confidentiality. Subject to section 275(7) of the PPSA, neither MPM nor the Customer will disclose any information of the kind mentioned in section 275(1) of the PPSA that is not publicly available.

**9.3 PPSA Undertakings.**

- (a) If the Customer holds any Security Interest in the Equipment for the purposes of the PPSA (whether or not as a result of a breach by the Customer of this Agreement), and if the Customer's failure to perfect the Security Interest would materially affect MPM's Security Interest in the Equipment, the Customer must implement, maintain and comply in all material respects with, procedures for the perfection of those Security Interests. Those procedures must include procedures designed to ensure that the Customer takes all reasonable steps under the PPSA to maintain continuously perfected Security Interests, including all steps reasonably necessary for:
  - (i) the Customer to obtain the highest ranking possible in respect of the Security Interest; and
  - (ii) to reduce as far as possible the risk of a third party acquiring any interest free of MPM's Security Interest.

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(b) If a Security Interest in connection with the Equipment in the form of a chattel paper is held by the Customer or arises in the Customer's favour (whether or not as a result of a breach by the Customer of this Agreement), the Customer grants a Security Interest in the chattel paper to MPM for the purpose of securing payment of any money the Customer owes MPM in connection with this Agreement and any Order Confirmation. The Security Interest created by this clause is a charge and the Customer may not transfer, dispose of or otherwise deal with the chattel paper or allow another Security Interest to exist in it. The Customer must deposit with MPM all original documents of title comprising the chattel paper and any other documents MPM requests relating to the chattel paper.

(c) The Customer must notify MPM in writing of any change in the Customer's name at least 14 days before the Customer proposes to change its name.

(d) Unless defined in clause 1.1, terms used in this clause 9.3 which have a defined meaning in the PPSA have that meaning in this clause 9.3.