



Mackay
23 Iridium Dr, Paget 4740 QLD
PH: (07) 4998 5299

Townsville
911 Ingham Road, Bohle 4818 QLD
PH: (07) 4774 8332

Application For Credit facility - 30 Day EOM Account

Company Name/Sole Trader/Partnership: _____ (“you”, “your”, “customer”)

Trading Name (if applicable): _____

ABN: _____ **Business Commenced:** _____

Registered Office: _____ **Street Address:** _____ **Postal Address:** _____

Phone Number _____ **Email** _____ **Contact Name** _____

Head Office _____

Accounts _____

Purchasing _____

Name of Directors _____ **Address** _____ **Phone Number** _____

1. _____

2. _____

3. _____

Trade References Please provide 3 references and ensure they are willing to provide a reference

1. _____ Email: _____

2. _____ Email: _____

3. _____ Email _____

The customer hereby:

- a) Authorises AJP (AJP Industrial Supplies) to contact my references to obtain a credit check
- b) Acknowledges acceptance of AJP (AJP Industrial Supplies) standard terms and conditions of sale
- c) Acknowledges receipt and acceptance of our Terms and Conditions of Hire set out in Schedule One to this application (“**T&C of Hire**”)
- d) Agrees that AJP’s standard terms and conditions of sale and T&C of Hire will be binding on the customer in all respects and a binding agreement will be formed between AJP and the customer if the customer does any one or more of the following:
 - i) signs and returns this application whether physically or by any electronic means (including fax or electronic mail);
 - ii) confirms or indicates acceptance of AJP’s standard terms and conditions of sale and T&C of Hire in an electronic mail received by AJP;
 - iii) places an order for any Equipment with AJP; or
 - iv) takes possession of any Equipment from AJP, and the terms of such agreement will be as set out in:
 - v) this application;
 - vi) the standard terms and conditions of sale; and

vii) the Hire Agreement (including any Hire Schedule).

Signature: _____

Name: _____

Position: _____

Date: _____

By signing above, I confirm I am authorised to sign on behalf of the customer

BANK DETAILS

Account Name: AJP Industrial Supplies
BSB: 084-917
Account Number: 924562556
Remittance Advice Email: accounts@ajpind.com.au

Office Use only:
Pricing Agreement _____
Sales Representative _____

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STANDARD TRADING TERMS AND CONDITIONS

1. SELLER MAY DECLINE ORDERS

AJP Industrial Supplies (AJP) reserves the right to accept in whole, or part, any order, or decline an order.

2. DELIVERY TERMS

Delivery of the goods shall be effected by the Company to the customer subject to availability and without liability on behalf of the company for any delays. Prices quoted are excluding freight unless prior arranged with AJP.

3. NON STOCK ITEMS

All non stock items (shown as '**') are non returnable unless faulty and orders placed for these products can not be cancelled unless approved by AJP.

4. RETURN AND CLAIMS

- (i) Claims for shortages and/or damages must be lodged within 48 hours of delivery, quoting the invoice number and dates. A restocking fee may apply. Goods must be returned in as new condition unless otherwise advised to AJP.
- (ii) AJP reserves the right to decline any claim at the Company's discretion.

5. TITLE TO THE GOODS

Title to the goods delivered will remain the property of AJP and will not pass to the purchaser until payment in full for the goods has been received.

6. PRICES

Prices are subject to change without notice.

7. PAYMENT

Terms of payment are 30 days end of month or for Cash Term Accounts, upon receipt of goods. Failure by the customer to comply with the Company's terms of payments shall entitle the company to suspend any further orders placed and accepted by the company until the outstanding amounts have been paid. Should the trading terms be exceeded by the customer all costs associated with recovery of outstanding amounts including solicitors fee and any out of pocket expenses will be the liability of the customer.

8. EXCLUSION OF LIABILITY

The seller shall not be responsible for any damages whatsoever caused either to the products supplied or as a result of the malfunction of such products in the event that such products are fitted by unqualified tradesmen or if products are adapted to a use to which they are not specifically intended.

9. PPSA

You consent to Us affecting and maintaining a registration on the register (in any manner We consider appropriate) in relation to any security interest contemplated or constituted by this Hire Agreement in the

Equipment and the proceeds arising in respect of any dealing in the Equipment and You agree to sign any documents and provide all assistance and information to Us required to facilitate the registration and maintenance of any security interest. We may at any time register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest). You waive the right to receive notice of a verification statement in relation to any registration on the register of a security interest in respect of the Equipment.

10.2 You undertake to:

- a) do anything (in each case, including executing any new document or providing any information) that is required by Us
 - i. so that We acquire and maintain one or more perfected security interests under the PPSA in respect of the Equipment and its proceeds,
 - ii. to register a financing statement or financing change statement and
 - iii. to ensure that Our security position, and rights and obligations, are not adversely affected by the PPSA;
- b) not register a financing change statement in respect of a security interest contemplated or constituted by this Hire Agreement without Our prior written consent; and
- c) 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 Our prior written consent.

10.3 If Chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising under or in connection with this Hire Agreement and:

- a) section 115(1) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and You will have no rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and
- b) section 115(7) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and You will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.

10.4 Unless otherwise agreed and to the extent permitted by the PPSA, You and We agree not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. You waive any right You may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.

10.5 For the purposes of section 20(2) of the PPS Act, the collateral is Equipment including any Equipment which is described in any Hire



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Schedule provided by Us to You from time to time. This Hire Agreement is a security agreement for the purposes of the PPS Act.

10.6 We may apply amounts received in connection with this Hire Agreement to satisfy obligations secured by a security interest

contemplated or constituted by this Hire Agreement in any way We determine in Our absolute discretion.

10.7 You agree to notify Us in writing of any change to Your details set out in the Credit Application, within 5 days from the date of such change.

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SCHEDULE ONE

TERMS AND CONDITIONS OF HIRE

1. HIRE AGREEMENT BETWEEN YOU AND US

These Terms of Hire, together with:

- (a) any Credit Application You completed and submitted to Us;
- (b) each Hire Schedule provided to You by Us, whether signed or not; and make up the hire agreement (the "Hire Agreement") between You and Us. The provision or acceptance of a Hire Schedule shall not form a separate agreement between You and Us, but shall constitute part of this Hire Agreement. It is important that You read and understand all of the terms and conditions of the Hire Agreement before hiring from Us.

If You have any questions please ask Us.

2. DEFINITIONS

To assist, when We refer to the following terms in this document: "Credit Account" means You have properly completed and submitted a Credit Application to Us and We have approved You for an account with Us.

"Equipment" means any of Our equipment, including but not limited to, mobile plant, machines and any associated or attached tools, accessories and parts available for hire.

"Expected Off Hire Date" means the date You advised Us at the commencement of the hire that You would no longer require the Equipment. This date is set out in the Hire Schedule.

"Hire Period" means for Equipment specified in a Hire Schedule the period described in clause 4.

"Hire Schedule" means the document provided by Us to You which outlines important information, including but not limited to, the Equipment You have hired, the hire rates which apply to the Equipment, any other applicable charges, the Expected Off Hire Date and the address for delivery of the Equipment.

"Off Hire Date" has the meaning set out in clause 5.5.

"PPSA" means the PPS Act and any other legislation and regulations in respect of it and the following words in clause 9.2, 10 and 31 have the respective meanings given to them in the PPS Act: collateral, financing change statement, financing statement, interested person, purchase money security interest, register, registration, security agreement, security interest and verification statement.

"PPS Act" means the Personal Property Securities Act 2009 (Cth) (as amended).

"We/Us/Our" means AJP Industrial Supplies (ABN 58 161 445 101).

"You/Your" refers to the person, firm, organisation, partnership, corporation, trust or other entity hiring Equipments from Us, as named in the Credit Application or the Hire Schedule (where You do not hold a Credit Account). The reference to "You" includes any employees, agents and contractors.

3. OUR HIRE COMMITMENT TO YOU

We agree to hire You the Equipment and will:

- (a) provide the Equipment to You in good working order; and
- (b) subject to clause 8.6, allow You to exclusively use the Equipment during the Hire Period.

4. THE HIRE PERIOD

4.1 The Hire Period commences when, either:

- a) You take possession of the Equipment;
 - b) a person authorised by You (including but not limited to logistics provider, courier, freight or transport business) takes possession of the Equipment on your behalf; or
 - c) if You request delivery and collection of the Equipment, the day the Equipment is dispatched from our address;
- whichever occurs first.

4.2 The Hire Period is for an indefinite term and ends when the Equipment is back in Our custody and possession.

4.3 The Hire Period includes weekends and public holidays.

4.4 The Hire Period can only be changed if You request a variation and We agree to that variation in writing.

5. HOW WE CALCULATE YOUR HIRE CHARGES

5.1 You will pay Us for the hire of the Equipment at the hire charge rates set out in the Hire Schedule. Hire invoices are raised on the last day of each month and on off hire, the rates are calculated below:

- (a) The weekly rate is divided by 7 and multiplied by the days on hire during the invoice period;
- (b) The monthly rate is divided by 30 and multiplied by the days on hire in the month when it has not been on hire from the 1st of the month to the last day of the month.

5.2 The Equipment shall be charged for at the schedule hire rate plus all other charges & options taken listed in the schedule until checked in by the branch to which it must be returned during its business hours. Agreed Rental Extensions are charged at the daily rate.

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- 5.3 We reserve the right to charge for a minimum period of hire for certain types of Equipment, but We will advise You of any minimum hire periods before You commence the hire.
- 5.4 Except in the circumstances set out in clause 5.5, You will be charged for the hire of Equipment for the full Hire Period. For the avoidance of doubt, You will continue to incur hire and other charges after the Expected Off Hire Date if You have not returned the Equipment to Us by the Expected Off Hire Date.
- 5.5 If You have requested that We deliver and collect the Equipment and We have agreed, hire charges will commence from the time the Equipment leaves Our premises and continue until the date the Equipment is received into our premises (the "Off Hire Date"). You must notify Us that the Equipment is available for collection. For the avoidance of doubt, the Expected Off Hire Date set out in the Hire Schedule is not considered to be Your notice to Us that the Equipment is available for collection.

6. OTHER CHARGES

In addition to hire charges, You agree that You will be required to pay:

- (a) for any consumables, fuel or trade materials We supply to You;
- (b) if You require Us to deliver, collect the Equipment, the cost of delivery, collection, as detailed in the Hire Schedule;
- (c) if You do not return the Equipment in clean and good working condition, charges for the cleaning and repair of the Equipment;
- (d) a charge for pumping out storage tanks or refilling water or fuel tanks;
- (e) any stamp duty or GST arising out of this Hire Agreement;
- (f) any other applicable levies, fines, penalties and any other government charges arising out of Your use of the Equipment;
- (g) if You request operational guidance or training on the use of the Equipment and Our staff are available to provide this, the cost for the provision of these services at rates agreed with Us;
- (h) any reasonable charged incurred by Us if we are unable to inspect or carry out maintenance on the equipment during normal working hours; and
- (i) if applicable, the Loss Theft Damage (LTD) waiver

charge as determined and set out in clause 15.

7. PAYMENT

- 7.1 You must pay all fees, charges and costs that become due and payable under this Hire Agreement within 30 days after the end of month in which hire Equipment invoiced.
- 7.2 If You do not pay the invoice in full by the payment due date, We reserve the right to charge, in addition to any other costs recoverable under this Hire Agreement:
- a) interest, calculated monthly, on the total outstanding balance. The interest rate used to calculate the interest payable for the month is the 90-day Bank Bill Swap Rate published on the first business day of that month plus 2%; and
 - b) any costs and expenses (including any commission payable to any commercial or mercantile agents and legal costs) incurred by Us in recovering any unpaid amounts under this Hire Agreement.

8. YOUR OBLIGATIONS TO US

- 8.1 This Hire Agreement is personal to You and so You must not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time, unless expressly agreed by Us in writing.
- 8.2 You agree that before accepting the Equipment, You have satisfied Yourself as to the suitability, condition and fitness for purpose of the Equipment for the job You intend to use it for. Subject to clauses 16.2 and 16.3, We make no representations and give no guarantee or warranty that the Equipment is suitable for Your intended purpose.
- 8.3 To help You stay safe during the Hire Period, You and Your employees, agents and contractors must:
- a) operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
 - b) ensure persons operating the Equipment are suitably trained on its safe and proper use, qualified to use the Equipment.
 - c) wear suitable clothing and protective equipment when operating the Equipment as required or recommended by Us or the manufacturer;
 - d) ensure that no persons operating the Equipment are under the influence of drugs or alcohol;
 - e) conduct a job safety analysis prior to using the Equipment;
 - f) ensure that no persons carry illegal, prohibited or dangerous substances in or on the Equipment; and

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- g) display all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Equipment.
- 8.4 It is important to take care of the Equipment during the Hire Period. You must:
 - a) clean, fuel, lubricate and keep the Equipment in good condition and in accordance with the manufacturers and Our instructions at Your own cost;
 - b) carry out routine maintenance in accordance with the manufacturers and Our instructions at Your own cost;
 - c) carry out mandatory electrical insulation testing and maintenance in accordance with the manufacturers and Our instructions at Your own cost;
 - d) not in any way alter, modify, tamper with, damage or repair the Equipment without Our prior written consent; and
 - e) not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment.
- 8.5 At all times during the Hire Period, You must store the Equipment safely and securely and protected from theft, seizure, loss or damage.
- 8.6 You will allow Us to enter Your premises and inspect the Equipment from time to time during the Hire Period. You can also request to conduct a joint inspection of the Equipment with Us at the end of the Hire Period.
- 8.7 Whenever you are moving the Equipment, you must ensure safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturers guidelines. You (or any contractor You engage) must observe any safety directions advised by Us and/or the manufacturer of the Equipment to ensure its safe loading and handling. You warrant that you will not load Vehicles in excess of the Motor Vehicle's gross vehicle mass at any time during the Hire Period.
- 8.8 You must not remove the Equipment from the State or Territory in which You hired it without Our written consent.
- 8.9 You must not use the Equipment off-shore, in an area where friable asbestos is present, or move the Equipment over water without Our prior written consent, which may be reasonably withheld.
- 8.10 You warrant that You will comply with all Environmental Laws from time to time and immediately rectify any breach of an Environmental Law caused by the use of the Equipment.
- 8.11 You must use best endeavours to ensure that the Equipment is not contaminated with any hazardous substances (including asbestos). Subject to clause 8.9, You

must advise Us of any risks of hazardous substance contamination to the Equipment as soon as they become apparent. Where Equipment may have been subjected to contamination, you must effectively decontaminate the Equipment, as well as provide Us with written details of decontamination processes applied.

If, in Our opinion acting reasonably, the Equipment has not been properly decontaminated or is not capable of being decontaminated, You will be charged for the new replacement cost of the Equipment.

- 8.12 You agree to pay any traffic or parking fine, storage cost or toll of any kind in respect of the Equipment incurred whilst the Equipment is in your possession or under your control. In addition you acknowledge that a \$50.00 administration fee will be charged to your account. You acknowledge that the administration fee is a reasonable estimate of the cost that would be incurred by us in handling the traffic or parking fine.

9. OWNERSHIP OF THE EQUIPMENT

- 9.1 Except as detailed in clause 9.4, You acknowledge that We own the Equipment and in all circumstances We retain title to the Equipment (even if You go into liquidation or become bankrupt during the Hire Period). Your rights to use the Equipment as a bailee only.
- 9.2 Except in the circumstances set out in clause 10, You are not entitled to offer, sell assign, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Equipment in any way.
- 9.3 In no circumstances will the Equipment be deemed to be a fixture.
- 9.4 You acknowledge that We may hire or lease Equipment from a third party if we cannot provide the Equipment to You ("Third Party Owner"), and if this occurs, title in the Equipment remains with the Third Party Owner.

10. PPSA

- 10.1 You consent to Us affecting and maintaining a registration on the register (in any manner We consider appropriate) in relation to any security interest contemplated or constituted by this Hire Agreement in the Equipment and the proceeds arising in respect of any dealing in the Equipment and You agree to sign any documents and provide all assistance and information to Us required to facilitate the registration and maintenance of any security interest. We may at any time register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest). You waive the right to receive notice of a

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verification statement in relation to any registration on the register of a security interest in respect of the Equipment.

10.2 You undertake to:

- d) do anything (in each case, including executing any new document or providing any information) that is required by Us
 - iv. so that We acquire and maintain one or more perfected security interests under the PPSA in respect of the Equipment and its proceeds,
 - v. to register a financing statement or financing change statement and
 - vi. to ensure that Our security position, and rights and obligations, are not adversely affected by the PPSA;
- e) not register a financing change statement in respect of a security interest contemplated or constituted by this Hire Agreement without Our prior written consent; and
- f) 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 Our prior written consent.

10.3 If Chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising under or in connection with this Hire Agreement and:

- c) section 115(1) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and You will have no rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and
- d) section 115(7) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and You will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.

10.4 Unless otherwise agreed and to the extent permitted by the PPSA, You and We agree not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. You waive any right You may have, or

but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.

- 10.5 For the purposes of section 20(2) of the PPS Act, the collateral is Equipment including any Equipment which is described in any Hire Schedule provided by Us to You from time to time. This Hire Agreement is a security agreement for the purposes of the PPS Act.
- 10.6 We may apply amounts received in connection with this Hire Agreement to satisfy obligations secured by a security interest contemplated or constituted by this Hire Agreement in any way We determine in Our absolute discretion.
- 10.7 You agree to notify Us in writing of any change to Your details set out in the Credit Application, within 5 days from the date of such change.

11. RESPONSIBILITY FOR THE EQUIPMENT

You are responsible for the Equipment for the Hire Period.

12. RETURN OF EQUIPMENT

- 12.1 You must return the Equipment to Us in the same clean condition and good working order it was in when You received it, ordinary fair wear and tear excluded. If You do not properly clean the Equipment, We will charge You a cleaning cost in accordance with clause 6(c).
- 12.2 Except in the circumstances set out in clause 12.3 below, it is Your responsibility to return the Equipment in good working condition to the branch You hired it from during normal business hours. Should equipment be returned to a different location You will be charged an additional demobilisation fee.
- 12.3 If You have requested, and We have agreed, to collect the Equipment from You, You must ensure it is kept safe and secure until the time of collection.

13. WHAT TO DO IF EQUIPMENT BREAKS DOWN

- 13.1 In the event that the Equipment breaks down or becomes unsafe to use during the Hire Period You must:
 - a) immediately stop using the Equipment and notify Us;
 - b) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
 - c) take all steps necessary to prevent any further damage to the Equipment itself; and
 - d) not repair or attempt to repair the Equipment without Our written consent.
- 13.2 Except if clause 14.2 applies, upon receiving notice from You under clause 12.1, We will:

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- a) take all steps necessary to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by You; and
- b) not impose a hire charge for that portion of the Hire Period for which the Equipment was broken down or unsafe, nor the costs associated with any repair or replacement of the Equipment.

14. WHAT TO DO IF EQUIPMENT IS LOST, STOLEN OR DAMAGED

14.1 You will notify Us immediately of equipment that is lost, stolen, damaged, broken down or unsafe to use. You will not attempt to repair or engage any person, including a qualified person, to repair the equipment unless authorised by Us in writing. Any Unauthorised repairs or maintenance work organised or undertaken on equipment whilst under this Hire Agreement will be at Your cost. If the unauthorised repairs or maintenance are deemed to be unsatisfactory by Us, then we will be charge You for additional repairs.

14.2 If the Equipment has broken down or become unsafe to use as a result of Your negligence or if the Equipment is lost, stolen or damaged beyond fair wear and tear during the Hire Period, You will be liable for:

- a) any costs incurred by Us to recover and repair or replace the Equipment; and
- b) the hire charges for that portion of the Hire Period during which the Equipment is being recovered and repaired or replaced.

14.3 Provided that You pay the costs and charges described in clause 14.1, We will return the Equipment to You once it has been repaired or replaced, and You will continue to pay the hire charges for the remainder of the Hire Period.

15. LOSS THEFT DAMAGE WAIVER (LTD)

15.1 LTD is not insurance, but is an agreement by Us to limit Your liability in certain circumstances for loss, theft or damage to the Equipment to an amount called the LTD Waiver Excess. The LTD Waiver Excess is explained below in clause 15.5 and limitations set out in clause 15.6

15.2 If Agreed by Us and You, A LTD fee will be charged at a rate of 10% of the total hire fee.

15.3 You are not required to pay the LTD Waiver Fee if you produce a certificate of currency for an appropriate policy of insurance that covers loss, theft or damage to the Equipment ('Your Insurance'). You are responsible for any excess or any other costs associated with Your insurance and You are responsible for any shortfall in repair or replacement costs of the Equipment following payment of

any amount received under Your Insurance, including any loss We suffer as a result of not be able to hire the Equipment.

15.4 Where you have paid the LTD Waiver Fee, We will waive Our right to claim against You for loss, theft or damage to the Equipment if:

- a) for a theft, You have promptly reported the incident to the police and provided Us with a written police report; and
- b) You have co-operated with Us and provided Us with the details of the incident, including any written or photographic evidence We require;
- c) the loss, theft or damage does not fall into one or more of the circumstances set out in clause 15.6; and
- d) You have paid Us the LTD Waiver Excess.

15.5 The LTD Waiver Excess for each item of Equipment is calculated as follows:

- a) If replacement cost or repair is below \$500 then the replacement or repair cost.
- b) If the replacement cost is above \$500 then 1.3% of the replacement cost or repair cost.

15.6 Even if You have paid the LTD Waiver fee, We will not waive Our rights to claim against You for loss, theft or damage to the Equipment and LTD Waiver will not apply if the loss, theft or damage

- a) has arisen as a result of Your breach of a clause of Our Terms and Conditions of Hire;
- b) has been caused by Your negligent act or omission;
- c) has arisen as a result of Your use of the Equipment in violation of any laws;
- d) has been caused by Your failure to use the Equipment for its intended purpose or in accordance with our Instructions or the manufacturer's instructions;
- e) occurs to the Equipment whilst it is located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
- f) has been caused by a lack of lubrication or a failure to properly service or maintain the Equipment;
- g) has been caused by collision with a bridge, carpark, awning, gutter, tree or any other overhead structure due to insufficient clearance;
- h) has been caused by the overloading of the Equipment or any components thereof;
- i) is to motors or other electrical Equipment or components with the Equipment caused by electrical overload, a surge in electrical current of the use of under-rated or excessive lengths of extension leads with the electrical Equipment;
- j) is caused by exposure to any corrosive or caustic

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- substances such as cyanide, salt water, acid, etc;
- k) is caused by vandalism;
 - l) is to tyres or tubes; or
 - m) is to windscreens, mirrors, glass or Perspex.

16. INDEMNITIES AND EXCLUSION OF LIABILITIES

- 16.1 Subject to clause 16.3, and except as expressly provided to the contrary in this Hire Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Hire Agreement or its subject matter are excluded to the maximum extent permitted by law.
- 16.2 Nothing in this Hire Agreement excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited. This may include the Australian Consumer Law, which contains guarantees that protect the purchasers of goods and services in certain circumstances.
- 16.3 Where any legislation implies or imposes a guarantee, term, condition, warranty, undertaking, inducement or representation in relation to this Hire Agreement and We are not able to exclude that guarantee, term, condition, warranty, undertaking, inducement or representation ('Non-Excludable Provision'), and We are able to limit Your remedy for a breach of the Non-Excludable Provision, then Our liability for breach of the Non-Excludable Provision is limited to (at Our election):
- a) in the case of goods, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or
 - b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- 16.4 Subject to Our obligations under the Non-Excludable Provisions and to the maximum extent permitted by law, Our maximum aggregate liability for all claims under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, is limited to an amount equal to the fees paid by You under this Hire Agreement. In calculating Our aggregate liability under this clause, the parties must include any amounts paid or the value of any goods or services replaced, repaired or supplied by Us for a breach of any Non-Excludable Provisions.

- 16.5 Subject to clauses 16.3 and 16.4, We will not be liable to You for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs You have incurred, amounts that you are liable to Your customers for or any loss suffered by third parties under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.
- 16.6 You are liable for and indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) in respect of:
- a) personal injury;
 - b) damage to tangible property; or
 - c) a claim by a third party,
- in respect of Your hire or use of the Equipment or Your breach of the Hire Agreement. Your liability under this indemnity is diminished to the extent that Our breach of the Hire Agreement or Our negligence causes the liability, claims, damage, loss, costs or expenses.
- 16.7 Each indemnity in this Hire Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Hire Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Hire Agreement.
- 16.8 We will not be liable to You for any acts or omissions of any person supplied by Us where that person is acting under Your direction and control during the Hire Period and you indemnify Us against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Us and any environmental loss, cost, damage or expense) arising from or incurred in connection with such acts or omissions.

17. WHEN THIS HIRE AGREEMENT TERMINATES

- 17.1 Either party may terminate this Hire Agreement and any Hire Period immediately by giving notice to the other party, if:
- a) that other party breaches any term of the Hire

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Agreement and fails to remedy the breach within 14 days of written notification of the breach; or

- b) that other party becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business.

17.2 We may terminate the Hire Agreement and any Hire Period for any other reason on 24 hours' notice.

17.3 These rights of termination are in addition to any other rights either party has under the Hire Agreement and does not exclude any right or remedy under law or equity.

18. RECOVERY OF THE EQUIPMENT

If You are in breach of the Hire Agreement or if the Hire Agreement or a Hire Period has been terminated under clause 17, We may take all steps necessary (including legal action) to recover the Equipment, including entering Your premises to do so. Upon receiving written notice from Us, You expressly consent to Us entering Your premises for the purposes of recovering Our Equipment.

19. SECURITY

- a) as security for Your obligations and liabilities under this Hire Agreement, You hereby charge for the due and punctual payment and performance of those obligations and liabilities, all of Your legal and equitable interest (both present and future) of whatsoever nature held in any and all real property;
- b) without limiting the generality of the charge in this clause, You agree, on Our request, to execute any documents and do all things necessary required by Us to register a mortgage security or other instrument of security over any real property and against the event that You fail to do so within a reasonable time of being so requested, You irrevocably and by way of security, appoint any credit manager or solicitor engaged by Us to be Your true and lawful attorney to execute and register such instruments;
- c) You will indemnify Us on an indemnity basis against all costs and expenses incurred by Us in connection with the preparation and registration of any such charge and mortgage documents; and
- d) You also consent unconditionally to Us lodging a caveat or caveats noting Our interest in any of Your real property.

20. INSURANCE

- a) You are wholly responsible for the cost of repairs and damage to the Equipment as identified in this Hire

Agreement, or to any property, person or animal, caused by any person or event whatsoever, from the time you take possession or control of the Equipment until you are released from your obligations under this Hire Agreement.

- b) In the event that we suggest or nominate a third party to repair the Equipment if damaged or faulty, you remain wholly responsible for loss to the Equipment of any kind.
 - c) In the event that the Equipment is deemed by us to be a total loss, you will pay us the market value or our lease payout value for the Equipment, whichever is the greater;
 - d) You acknowledge if Insurance by you is imposed you will be responsible to continue paying all Hire and other charges at the rate specified in this agreement until the Equipment is repaired or in the case of a total loss, payment is received by us for either the market value or lease payout figure, whichever is the greater
- Clause 20 does not apply when the signed Hire Agreement notes the LTD Waiver Fee will be charged. If during the hire You request the LTD Waiver Fee be added to the Hire Agreement, Clause 20 will not apply for the hire period the LTD Waiver Fee is charged.

21. EQUIPMENT THAT IS COLLECTED OR DELIVERED IN A DAMAGED AND / OR DEFECTIVE CONDITION

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

22. PRIVACY

22.1 At AJP Industrial Supplies, We take Your privacy seriously. We will comply with the Australian Privacy Principles in all dealings with You.

22.2 We may need to collect personal information about You, including but not limited to, Your full name and address, drivers licence, credit card details, date of birth, credit or business history and other personal information. You consent to Us using Your personal information in order to:

- a) fulfil functions associated with the hire of Equipment to You, including but not limited to assessing Your credit worthiness, or taking steps in accordance with clause 10;
- b) provide services to You;
- c) prevent theft of Our Equipment;

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- d) enter into contracts with You or third parties, and
- e) to market to You and maintain a client relationship with You.

22.3 You also consent to Us disclosing Your personal information:

- a) to any credit provider or credit reporting agency for the purposes of obtaining information about Your consumer or commercial credit or business history or Your commercial activities or credit worthiness; and
- b) to Our service providers, contractors and affiliated companies from time to time to help improve and market Our services to You.

22.4 You have the right to access the personal information We hold about You.

22.5 A copy of Our Privacy Statement is available upon request.

23. FORCE MAJEURE

23.1 Subject to clause 23.2, neither party will be responsible for any delays in delivery, installation or collection due to causes beyond their control including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.

23.2 Nothing in clause 23.1 will limit or exclude Your responsibility and liability under the Hire Agreement for Equipment that is lost, stolen or damaged beyond fair wear and tear during the Hire Period, or has broken down or become unsafe to use as a result of Your conduct or negligence.

24. SEVERABILITY

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

25. GOVERNING LAW

The Hire Agreement is governed by the laws of Queensland each party submits to the non-exclusive jurisdiction of the courts of that State.

26. ENTIRE AGREEMENT

The Hire Agreement as defined in clause 1, comprises the entire agreement between the parties. No additional terms and conditions (including any terms contained in any purchase

order) apply to the hire of the Equipment unless agreed in writing by the parties.

27. NO RELIANCE

Subject to clauses 16.1 and 16.3, You acknowledge that neither We nor any person acting on Our behalf have made any representation or other inducement to You to enter into the Hire Agreement and You have not entered into the Hire Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those representations contained in this Hire Agreement.

28. VARIATION

From time to time, We may need to vary this Hire Agreement. If We intend to do so, We will give You 30 days written notice and clearly set out Our proposed amendments. If You have reasonable grounds to believe the change will be detrimental to Your rights, You may terminate this Hire Agreement without penalty within 30 days of receiving Our written notice. Any other variation of these terms and conditions must be agreed in writing by You and Us.

29. NO WAIVER OF RIGHTS

Subject to clause 20, no delay or omission by a party to exercise any right, power or remedy available to that party as a result of a continuing breach or default under the Hire Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of that party's rights to take action or make a claim in respect of a continuing breach or default.

30. REVIEW OF YOUR CREDIT APPROVAL

30.1 From time to time We may review any Credit Account We have granted to You without notice.

30.2 We may, at Our discretion, decide to withdraw credit for any reason, including but not limited to if Your circumstances change, You fail to make payments on time or You fail to use the Equipment in accordance with the terms of the Hire Agreement.

30.3 If we withdraw credit you may terminate this Hire Agreement immediately by giving Us written notice. However, if You do so You must:

- a) pay amounts that were subject to credit in accordance with the terms on which that credit was provided; and
- b) still pay all amounts due to Us under this Hire Agreement, including hire charges until the Equipment is back in our custody and possession.

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31. SIGNING THIS HIRE AGREEMENT

- 31.1 The person signing any document which forms part of the Hire Agreement for and on behalf of You hereby warrants that he or she has Your authority to enter into the Hire Agreement on Your behalf and grant the security interests in connection with it and is empowered to bind You to the Hire Agreement and each security interest granted in connection with it.
- 31.2 The person signing this Hire Agreement indemnifies Us against all losses, costs and claims incurred by Us arising out of the person so signing this Hire Agreement not in fact having such power and/or authority.

32. PREVIOUS EDITIONS

This edition of the Terms of Hire replaces and supersedes the Terms and Conditions of Hire September 2019 and all previous editions of the Terms of Hire We have issued.