

# Terms of Hire

## 1. HIRE AGREEMENT

These Terms of Hire, together with:

- a) each Hire Schedule provided to You by Us, whether signed or not;
- b) any Special Conditions specific to the type of Equipment You have hired;

set out the terms of the hire agreement (the "Hire Agreement") between You and Us. The provision or acceptance of a Hire Schedule shall not form a separate agreement between You and Us, but shall constitute part of this Hire Agreement. Any terms contained in any document supplied by You, including any terms in Your purchase order, will not form part of the Hire Agreement.

## 2. DEFINITIONS

When We refer to the following terms in this document:

**"Account Customer"** means a person or entity that has an approved and current commercial trading account with Alliance Safety Equipment Pty Ltd.

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

**"Cash Customer"** means a person or entity who is required to pay the invoice by an approved cash payment method.

**"Charges"** means the Hire Charge or any other charge specified in the Quotation, the Hire Schedule or these Terms and Conditions.

**"Claims"** means any claims, demands, writs, summonses, actions, suits, proceedings, judgments, orders, decrees, damages, costs, losses and expenses of any nature whatsoever.

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

**"Consumer Contract"** has the same meaning as in the ACL.

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

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

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

**"Environmental Laws"** means any statute, regulations or other laws made or issued by a regulatory body or government regulating or otherwise relating to the environment including without limitation the use or protection of the environment.

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

**"Date Due"** means the date that You expect the Hire Period to end. This date is set out in the Hire Schedule.

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

**"Hire Period"** means the period described in clause 4.

**"Hire Schedule"** means the document provided by Us to You which includes details of the Equipment You have hired, the expected Date Due and the address for the delivery of the Equipment.

**"Licence to Perform High Risk Work"** means a validly issued licence issued by the relevant workplace health and safety departments of each respective state government required for the operation of Equipment which is considered to be high risk.

**"New Replacement Cost"** means the cost to replace the Equipment with a new item of the same equipment, or if the same equipment is not available, then the cost to replace the Equipment with a new item of equipment of the same quality, function and capacity.

**"Non Excludable Provision"** has the meaning set out in clause 16.3.

**"PMSI"** means a 'purchase money security interest' as defined in the PPSA.

**"PPSA"** means the Personal Properties Securities Act 2009 (Cth) (as amended) and any other legislation and regulations in respect of it, and the following words in clause 10.2, 11 and 30 have the respective meanings given to them in the PPS Act: *financing change statement, financing statement, purchase money security interest (or "PMSI"), register, registration and security interest.*

**"Quotation"** means a quotation given by Us to You detailing the Equipment, Hire Period, Hire Charge and any Other Charges, subject at all times to these Terms and Conditions.

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

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

**"Relevant Documents"** means:

- a) the Credit Application;
- b) the Credit Card Authorisation; and
- c) any Guarantee, Indemnity & Charge which guarantees all monies owing by You to Us.

**"Road Law"** means any law, regulation or rule relating to the use of a road, restrictions on driving hours (in whichever legislative instrument those requirements may appear), mass, load and restraint requirements for the carriage of goods, dangerous goods, environmental impacts and speed and traffic requirements and includes the Heavy Vehicle National Law.

**"Small Business Contract"** has the same meaning as in the ACL (as amended).

**"Swap Out"** means to replace or exchange the Equipment.

**"Transport Movement"** means the period of time during a delivery in which Equipment is being transported by road, air or sea.

**"We/Us/Our"** means Alliance Safety Equipment Pty Ltd (ABN 55 977 478 216) any Related Body Corporate of Alliance Safety Equipment Pty Ltd and their successors and assigns.

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

## 3. OUR HIRE COMMITMENT TO YOU

We agree to hire the Equipment to You and will:

# Terms of Hire

- a) provide the Equipment to You in good working order;
- b) subject to clause 9.6, allow You to exclusively use the Equipment during the Hire Period.

## 4. THE HIRE PERIOD

4.1 The Hire Period commences on the earlier of the following:

- a) when You take possession of the Equipment; or
- b) if You requested delivery of the Equipment, from the time the Equipment departs Alliance Safety Equipment at 49 Charters Towers Road, Hyde Park QLD 4812.

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

4.3 The Hire Period includes weekends and public holidays.

4.4 A minimum Hire Period may apply in respect of certain items of Equipment. We will advise you at the time of hiring if a Minimum Hire Period applies. If You return the Equipment to Us before the expiration of the Minimum Hire Period, You are required to pay all Hire Charges in respect of the Minimum Hire Period.

## 5. HOW WE CALCULATE YOUR HIRE CHARGES

- a) You will pay Us for the hire of the Equipment at the Hire Charge set out in the Quotation.
- b) The Quotation will specify the type of rate which will apply to You and the method of calculation.
- c) You agree that if a hire rate discount has been provided for long term hires and the Customer returns the Equipment prior to the nominated end date, We reserve the right to charge You the full value for the period of the hire without discount.
- d) You will be charged for the hire of Equipment for the full Hire Period. For the avoidance of doubt, You must continue to pay the Hire Charges and other charges after the Due Date if You have not returned the Equipment to Us by the Expected Due Date. This obligation survives termination of the Hire Agreement.

## 6. OTHER CHARGES

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

- a) for any consumables, fuel or trade materials We supply to You;
- b) if You require Us to deliver, collect or install the Equipment, the cost of delivery, collection or installation, as detailed in the Quotation. Such charge may include a waiting fee (charged at cost) in addition to the delivery and collection fee if the nominated time for delivery or collection of the Equipment is delayed by You;
- c) if You do not return the Equipment in clean and good working condition, charges for the cleaning and repair of the Equipment;
- d) any charges for refilling fuel tanks, gas cylinders or oxygen cylinders;
- 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) an environmental charge in relation to any item of Equipment as detailed in the Quotation;

- h) if You require 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; and
- i) any reasonable charges incurred by Us if we are unable to inspect, swap out or carry out maintenance on the Equipment during normal working hours.
- j) the current retail price of any Equipment as advised by Us which is for whatever reason not returned to Us and any charges for damages.

## 7. DEBIT AUTHORITY FOR CASH CUSTOMERS

Cash Customers are required to provide a Credit Card Authority and You hereby authorise Alliance Safety Equipment to debit all fees and charges payable under the Hire Agreement to Your card, whether owing now or in the future.

## 8. PAYMENTS FOR ACCOUNT CUSTOMERS

- 8.1 We may issue an invoice to You at the commencement, or completion of the Hire Period and periodically throughout the Hire Period.
- 8.2 You must pay all Hire Charges and other fees, charges and costs that become due and payable under this Hire Agreement by the due date on the Invoice.
- 8.3 If You do not pay the invoice in full by the payment due date, We may charge, in addition to any other costs recoverable under this Hire Agreement:
  - 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.

## 9. YOUR OBLIGATIONS TO US

- 9.1 This Hire Agreement is personal to You and You must not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time, unless expressly agreed by Us in writing.
- 9.2 You agree that before taking delivery of the Equipment, You have satisfied Yourself as to the suitability and condition of the Equipment and You will ensure that the Equipment is used only for the purpose for which it was designed by the manufacturer. Subject to clause 16.2 and 16.3, We make no representations and give no guarantee or warranty that the Equipment is suitable for Your intended purpose.
- 9.3 You 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 or erecting the Equipment are suitably trained on its safe and proper use, qualified to use the Equipment and where necessary, hold a current licence to perform high risk work;

- 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
- 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.

**9.4 You must:**

- a) keep the Equipment in good condition and maintain in accordance with the manufacturer's and Our instructions at Your own cost;
- b) not in any way alter, modify, tamper with, damage or repair the Equipment;
- c) not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information, on the Equipment;
- d) not remove fuel or oil tank caps, bund plugs, seals or any other accessories from the Equipment and ensure they are in place when You return the Equipment;

**9.5** At all times during the Hire Period, You must store the Equipment safely and securely.

**9.6** You will allow Us to enter Your premises and inspect, maintain or swap out the Equipment from time to time during the Hire Period during normal working hours. If We cannot inspect or maintain the Equipment during normal working hours, then additional charges may apply.

**9.7** Whenever You are moving the Equipment, You must ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturer's guidelines. You (or any contractor You engage) must observe any safety directions advised by Us and/or the manufacturer of the Equipment to ensure its safe loading and handling.

**9.8** You must not remove the Equipment from the State or Territory in which You hired it without Our written consent.

**9.9** 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 use of the Equipment.

**9.10** You must use best endeavours to ensure that the Equipment is not contaminated with any hazardous substances. 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 on the contamination processes applied. If, in Our opinion acting reasonably, the Equipment is not capable of being decontaminated, You will be charged for the replacement cost of the Equipment.

**9.11** Any electrical equipment provided by Us will be tested and tagged before it is hired to You, but during the Hire Period, You are responsible for arranging the re-testing and re-tagging of any electrical Equipment in accordance with the manufacturer's instructions and the applicable Australian Standard(s) and Regulatory Authority requirements at Your cost.

**10. OWNERSHIP OF THE EQUIPMENT**

**10.1** Except as detailed in clause 10.4, You acknowledge that We own the Equipment and in all circumstances We retain title to the Equipment. Your rights to use the Equipment are as a bailee only.

**10.2** Except in the circumstances set out in clause 11, 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.

**10.3** In no circumstances will the Equipment be deemed to be a fixture.

**10.4** 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.

**11. PPSA**

**11.1** You:

- i) acknowledge that We may register any actual or impending PMSI under the PPSA in respect of all Equipment; and
- ii) consent to Us registering our PMSI under the PPSA and will do all things reasonably necessary to assist Us register Our security interest.

**11.1** We are responsible for:

- i) the preparation and registration of the financing statement or financing change statement; and
- ii) payment of any fees associated with the registration, and

and You waive the right to receive from Us verification of the registration pursuant to section 157(3)(b) of the PPSA.

**11.2** If You sub-hire the Equipment to Your agent, contractor, subcontractor or any third party ("Sub-hire") and the Sub-hire is a security interest under the PPSA, You agree that You will protect Our interests in the Equipment by:

- a) registering a security interest itself; or
- b) assigning, by this clause, to Us all rights as bailor to enforce against an agent, contractor or subcontractor.

**11.3** You have an obligation to give Us notice if another party with a security interest in the Equipment seizes or otherwise deals with Our PMSI in the Equipment.

**11.4** If you grant any security interest in the Equipment to another party, that other party must acknowledge the priority of Our PMSI.

**11.5** The parties agree that neither party is required to give notice to the other under the PPSA unless the obligation to give the notice cannot be excluded.

## 12 RESPONSIBILITY FOR THE EQUIPMENT

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

## 13 RETURN OF EQUIPMENT

13.1 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 or in Our view (acting reasonably) the Equipment is not decontaminated, We will charge You a cleaning cost in accordance with clause 6c) and You will be liable to continue to pay the Hire Charges for that portion of the Hire Period during which the Equipment is being cleaned by Us (and not withstanding that You may have provided a clearance report that the Equipment is not contaminated).

13.2 Except in the circumstances set out in clause 13.3 below, it is Your responsibility to return the Equipment to the Alliance Safety Equipment branch You hired it from during normal business hours.

13.3 If We have agreed to collect the Equipment from You, You must ensure it is kept safe and secure until the time of collection.

## 14 WHAT TO DO IF THE EQUIPMENT BREAKS DOWN

14.1 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 person 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.

14.2 Except if clause 15.1 applies, upon receiving notice from You under clause 14.1a) We will:

- a) take all reasonable steps 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.

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

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

- 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.

15.2 Provided that You pay the costs and charges described in clause 15.1, We will return or replace the Equipment, and You must continue to pay the Hire Charges for the remainder of the Hire Period.

## 16. INDEMNITIES AND EXCLUSION OF LIABILITIES

16.1 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 Consumer Guarantees.

16.3 Where We are not able to exclude a guarantee, term, condition, warranty, undertaking, inducement or representation imposed by legislation in relation to this Hire Agreement, ('Non-Excludable'), 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:

- i) the replacement of Goods or the supply of equivalent Goods;
- ii) the repair of the Goods;
- iii) the payment of the cost of replacing the Goods or of acquiring the equivalent Goods; or
- iv) the payment of having the Goods repaired.

b) In the case of service, the supplying of the services, or the payment of the cost of having the service 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, is limited to an amount equal to the fees paid by You under this Hire Agreement.

16.5 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, wastes costs You have incurred, amounts that You are liable to Your customers for any loss suffered by third parties under or relating to this Hire Agreement or its subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.

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 property; or

- c) a claim by a third party.

in respect of Your hire of 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 limitations, 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. TERMINATION OF HIRE AGREEMENT

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 (including for breach of payment terms pursuant to clause 7 and 8) and fails to remedy the breach within 7 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, subject to any right You may have under the Corporations Act 2001.

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

17.3 We may terminate the Hire Agreement immediately if You or any third party has made a false statement in, or breached any provision of the Relevant Documents.

17.4 These rights of termination are in addition to any other rights either party had 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, at Your cost, take all steps necessary (including legal action) to recover the Equipment, including entering Your premises to do so and You expressly consent to Us entering Your premises for the purposes of recovering Our Equipment.

## 19. SECURITY

Except where clause 31 applies:

- a) as security for Your obligations 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 ("Charged 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. You consent to the lodgement by Us of a Caveat noting our interest on the Charged Property; and

- 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 document.

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

If You collect or receive the Equipment and find that it has parts missing, 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.

## 21. PRIVACY

21.1 We will comply with the Australian Privacy Principles in all dealings with You.

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

- a) fulfill functions associated with the hire of Equipment to You, including but not limited to assessing Your credit worthiness, or exercising Our rights under clause 11;
- b) provide services to You;
- c) enter into contracts with You or third parties, and
- d) to market to You and maintain a client relationship with You.

21.3 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.

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

21.5 Copies of our Privacy Policy, Credit Policy and Trading Terms and Conditions are available upon request or visit [www.alliancesafety.com.au](http://www.alliancesafety.com.au)

## 22. FORCE MAJEURE

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



22.2 Nothing 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.

## 23. 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.

## 24. GOVERNING LAW

The Hire Agreement is governed by the laws of Queensland and each party submits to the non-exclusive jurisdiction of the courts of that State in respect of any proceedings arising in connection with the Hire Agreement. Each party waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

## 25. ENTIRE AGREEMENT

The covenants and agreements expressed or implied in the Hire Agreement comprise the whole of the agreement between the parties and, except as expressly or otherwise provided, supersede all prior agreements and understanding, whether verbal or otherwise, between Us and You in relation to the hire of the Equipment. No additional terms and conditions (including any terms contained in any purchase order supplied by You) apply to the hire of the Equipment unless the Hire Agreement is varied in accordance with clause 27.

## 26. 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.

## 27. VARIATION

To the extent that a variation to this Hire Agreement is not detrimental to You, from time to time, We may vary this Hire Agreement. If We intend to do so, We will give You 28 days' written notice of our varied terms. If You have reasonable grounds to believe the change will be detrimental to Your rights, You may terminate this Hire Agreement without penalty within 28 days of receiving Our written notice. Any other variation of the Hire Agreement must be agreed in writing by You and Us.

## 28. NO WAIVER OF RIGHTS

Subject to clause 19, 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 right to take action or make a claim in respect of a continuing breach or default.

## 29. REVIEW OF YOUR CREDIT APPROVAL

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

29.2 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.

29.3 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) pay all amounts due to Us under this Hire Agreement, including hire charges until the Equipment is returned to Us and is in Our possession.

## 30. SIGNING THIS HIRE AGREEMENT

30.1 The person signing or accepting the terms of any document which forms part of the Hire Agreement or Relevant Documents 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.

30.2 Except where clause 31 applies, the person signing or accepting the terms of this Hire Agreement indemnifies Us against all losses, costs and claims incurred by Us arising out of the person so signing this Hire Agreement not in fact having such power and/or authority.

## 31. PROVISIONS OF THIS AGREEMENT EXCLUDED FROM CONSUMER CONTRACTS AND SMALL BUSINESS CONTRACTS

The following provisions will not apply if the Hire Agreement is a consumer contract or a small business contract:

- i) Clause 17.2 (Termination on 24 hours' notice);
- ii) Clause 19 (Security);
- iii) Clause 30.1 (Signing this Agreement); and
- iv) Clause 32 (Assignment).

## 32. ASSIGNMENT

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

32.2 Where you are an individual acquiring goods or services wholly or predominantly for personal, domestic or household use or consumptions, then we may assign this Hire Agreement to a Related Body Corporate providing that Related Body Corporate has the financial and operational resources to comply with the terms of the Hire Agreement. If You have reasonable grounds to believe the assignment will be detrimental to Your rights, You may terminate this Hire Agreement without penalty by giving Us 28 days written notice that You wish to terminate the Hire Agreement.

## 33. TELEMETRY DATA

33.1 Notwithstanding the provisions contained in clause 16.4 of this Agreement, We are not liable with respect to Your use or reliance on any telemetry data We have provided to You in relation to the Equipment ("Data").

33.2 You acknowledge that:

- a) We own all rights, title and interest (including intellectual property rights) in the Data;

- b) You must obtain our prior written approval for the purposes for which You intend to use the Data and You must not disclose the Data to any third party;
  - c) We do not warrant the accuracy of any Data nor guarantee that such Data Will be available to You throughout the Hire Period;
  - d) We are not required to retain any Data and such Data may not be available for retrieval after the Hire Period; and
  - e) We may disclose, from time to time, any Data to a third party who is not party to this Hire Agreement (for example, location and utilisation data with respect to the Equipment) and we are not required to obtain Your prior permission with respect to such disclosure nor will such disclosure constitute a breach of this Agreement by Us.
- 33.3 You release and indemnify us with respect to all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursement on a full indemnity basis, whether incurred or warded against Us and any environmental loss, costs, damage or expense) incurred in relation to Your use and reliance on any Data, arising with respect to the disclosure of Data to, and use of Data by, a third party (pursuant to clause 33.2e)).