



**AUSTRALIAN BOOM &  
SCISSOR LIFT**

Australian Boom & Scissor Lift Pty Ltd  
39 Holbeche Road Arndell Park NSW 2148

**t** 02 9678 9666

**f** 02 9678 9777

**e** sales@abslift.com.au

**w** www.abslift.com.au

**a** ABN 37 080 505 826

1<sup>st</sup> January 2013

Dear Customer

**RE: PERSONAL PROPERTIES SECURITIES ACT 2009**

In regards to the above, the introduction of the Personal Securities Act (PSSA) has taken effect as from 30<sup>th</sup> January 2012.

In accordance with this new legislation, Australian Boom & Scissor Lift Pty Ltd have reviewed and amended our Terms & Conditions of Trade to reflect the PPSA changes. We are required by law to advise you of any changes to our Terms and Conditions of Trade. These changes mainly relate to the "Goods Hire Agreement" between Australian Boom & Scissor Lift Pty Ltd and your Organisation to prove the perfected ownership of our equipment whilst the machinery is under a Hire Contract.

Enclosed please find a copy of our new Terms and Conditions of Trade and Credit Application, which Australian Boom & Scissor Lift Pty Ltd requires all customers to read, review and sign. These new trading terms have now come into effect AS FROM 1<sup>ST</sup> February 2012 as required by the PPSA Legislation and should you require any additional information relating to the PPSA, it is recommended to seek professional legal advice on this matter.

Please complete, sign and return a copy of the attached Credit Application Form and Personal/Directors Guarantee and Indemnity. Australian Boom & Scissor Lift Pty Ltd will not recognise any application sent back that does not have the Personal/Indemnity Form completed.

Please note that from the date of this letter, all credit accounts will be operated under the new Terms and Conditions of Trade.

Should you have any queries, please do not hesitate to contact us within 14 days.

Yours faithfully

Australian Boom & Scissor Lift Pty Ltd

*Joel Fetherston*

Mr Joel Fetherston  
Director



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## CREDIT ACCOUNT APPLICATION

**To Be Completed By Applicants** - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

DATE: \_\_\_\_\_ ABN/ACN Number: \_\_\_\_\_

CUSTOMER'S TRADE NAME: \_\_\_\_\_

CUSTOMER'S FULL or LEGAL NAME: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Mobile: \_\_\_\_\_ Email: \_\_\_\_\_

Billing Address: \_\_\_\_\_ Registered Office Address: \_\_\_\_\_

State: \_\_\_\_\_ Postcode: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_

### COMMERCIAL CUSTOMERS ONLY

Requested Credit Limit: \$ \_\_\_\_\_ Date Established: \_\_\_\_\_

Contact 1: \_\_\_\_\_ Contact 2: \_\_\_\_\_

Position: \_\_\_\_\_ Position: \_\_\_\_\_

Phone: \_\_\_\_\_ Phone: \_\_\_\_\_

### **DETAILS OF OWNER (If Sole Trader) PARTNERS (If Partnership) OR DIRECTORS (If Company) OR TRUSTEE (If a Trust)**

Full Name: \_\_\_\_\_ Full Name: \_\_\_\_\_

Home Address: \_\_\_\_\_ Home Address: \_\_\_\_\_

Postcode: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Postcode: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

### TRADE REFERENCES

Business Name 1: \_\_\_\_\_ Business Name 2: \_\_\_\_\_

Address or A/C No: \_\_\_\_\_ Address or A/C No: \_\_\_\_\_

Phone: \_\_\_\_\_ Phone: \_\_\_\_\_

Fax: \_\_\_\_\_ Fax: \_\_\_\_\_

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Australian Boom & Scissor Lift Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. ***I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Customer I shall be personally liable for the performance of the Customer's obligations under this contract.***

**SIGNED (DIRECTOR 1):** \_\_\_\_\_ **SIGNED (DIRECTOR 2/SECRETARY):** \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Position: \_\_\_\_\_ Position: \_\_\_\_\_

### **WITNESS TO CUSTOMER'S SIGNATURE:**

**Signed:** \_\_\_\_\_ **Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

# Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of Australian Boom & Scissor Lift Pty Ltd and its successors and assigns ("ABS") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

("the Customer") [Insert Company Name In Box Provided]

**I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:**

1. **GUARANTEE** the due and punctual payment to ABS of all moneys which are now owing to ABS by the Customer and all further sums of money from time to time owing to ABS by the Customer in respect of goods and services supplied or to be supplied by ABS to the Customer or any other liability of the Customer to ABS, and the due observance and performance by the Customer of all its obligations contained or implied in any contract with ABS, including but not limited to the Terms & Conditions of Trade signed by the Customer and annexed to this Guarantee and Indemnity. If for any reason the Customer does not pay any amount owing to ABS the Guarantor will immediately on demand pay the relevant amount to ABS. In consideration of ABS agreeing to supply the Goods to the Customer, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under these terms and conditions (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 ("PPSA") and unequivocally consents to ABS registering any interest so charged. The Guarantor irrevocably appoints ABS and each director of ABS as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which ABS may reasonably require to:
  - (a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (b) register any other document required to be registered by the PPSA or any other law; or
  - (c) correct a defect in a statement referred to in clause 1(a) or 1(b).
2. **HOLD HARMLESS AND INDEMNIFY** ABS on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, ABS in connection with:
  - (a) the supply of goods and/or services to the Customer; or
  - (b) the recovery of moneys owing to ABS by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to ABS' nominees costs of collection and legal costs; or
  - (c) moneys paid by ABS with the Customer's consent in settlement of a dispute that arises or results from a dispute between, ABS, the Customer, and a third party or any combination thereof, over the supply of goods and/or services by ABS to the Customer.

**I/WE FURTHER ACKNOWLEDGE AND AGREE THAT**

3. **I/We have received, read and understood ABS' Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
4. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of moneys owing to ABS by the Customer and all obligations herein have been fully paid satisfied and performed.
5. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on ABS' part (whether in respect of the Customer or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Customer's obligations to ABS, each Guarantor shall be a principal debtor and liable to ABS accordingly.
6. If any payment received or recovered by ABS is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and ABS shall each be restored to the position in which they would have been had no such payment been made.
7. The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
8. **I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Customer to ABS.**
9. I/we irrevocably authorise ABS to obtain from any person or company any information which ABS may require for credit reference purposes. I/We further irrevocably authorise ABS to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with ABS as a result of this Guarantee and Indemnity being actioned by ABS.
10. The above information is to be used by ABS for all purposes in connection with ABS considering this Guarantee and Indemnity and the subsequent enforcement of the same.

|   |  |
|---|--|
| <b>GUARANTOR-1</b>                                |  |
| SIGNED: _____                                     |  |
| FULL NAME: _____                                  |  |
| HOME ADDRESS: _____                               |  |
| DATE OF BIRTH: _____                              |  |
| SIGNATURE OF WITNESS: _____                       |  |
| NAME OF WITNESS: _____                            |  |
| OCCUPATION: _____                                 |  |
| PRESENT ADDRESS: _____                            |  |
| EXECUTED as a Deed this _____ day of _____ 20____ |  |

|   |  |
|---|--|
| <b>GUARANTOR-2</b>                                |  |
| SIGNED: _____                                     |  |
| FULL NAME: _____                                  |  |
| HOME ADDRESS: _____                               |  |
| DATE OF BIRTH: _____                              |  |
| SIGNATURE OF WITNESS: _____                       |  |
| NAME OF WITNESS: _____                            |  |
| OCCUPATION: _____                                 |  |
| PRESENT ADDRESS: _____                            |  |
| EXECUTED as a Deed this _____ day of _____ 20____ |  |

Note: 1. If the Customer is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).  
 2. If the Customer is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

**WARNING: THIS IS AN IMPORTANT DOCUMENT YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE SIGNING IT**

1. **Definitions**
- 1.1 "ABS" means Australian Boom & Scissor Lift Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Australian Boom & Scissor Lift Pty Ltd.
- 1.2 "Customer" means the Customer or any person acting on behalf of and with the authority of the Customer.
- 1.3 "Equipment" means all Equipment (including any accessories) supplied on hire by ABS to the Customer (and where the context so permits shall include any incidental supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by ABS to the Customer.
- 1.4 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by ABS to the Customer.
- 1.5 "Price" means the cost of the hire of the Equipment as agreed between ABS and the Customer subject to clause 4 of this contract.
2. **The Commonwealth Competition and Consumer Act 2010 ("CCA") and Fair Trading Acts ("FTA")**
- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 2.2 Where the Customer hires Equipment as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.
3. **Acceptance**
- 3.1 Any instructions received by ABS from the Customer for the hire of Equipment and/or the Customer's acceptance of Equipment supplied on hire by ABS shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be amended with the written consent of ABS.
- 3.4 The Customer shall give ABS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by ABS as a result of the Customer's failure to comply with this clause.
- 3.5 Equipment is supplied by ABS based only on the terms and conditions of hire herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of hire.
4. **Price and Payment**
- 4.1 At ABS' sole discretion the Price shall be either:
  - (a) as indicated on invoices provided by ABS to the Customer in respect of Equipment supplied on hire; or
  - (b) ABS' quoted Price (subject to clause 4.2) which shall be binding upon ABS provided that the Customer shall accept in writing ABS' quotation within sixty (60) days.
- 4.2 ABS reserves the right to change the Price in the event of a variation to ABS' quotation. Any variation from the plan or specifications (including, but not limited to, any variation due to unforeseen circumstances, or due to adverse weather conditions, or as a result of increases to ABS in the cost of materials and labour) will be charged for on the basis of ABS' quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At ABS' sole discretion a non-refundable deposit may be required.
- 4.4 At ABS' sole discretion a bond may be required which shall be refunded upon return of the Equipment in a condition acceptable to ABS.
- 4.5 Time for payment for the Equipment shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.
- 4.6 Payment will be made by cash, or by cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Customer and ABS.
- 4.7 Receipt by ABS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 4.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
5. **Hire Period**
- 5.1 If ABS agrees with the Customer to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves ABS' premises and continue until the Customer notifies ABS that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 5.2 The date upon which the Customer advises of termination shall in all cases be treated as a full day's hire, except where the Equipment is returned after 11am for normal hire, or after 8am for off hire.
- 5.3 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless ABS confirms separate prior arrangements in writing. In the event of Equipment breakdown, provided the Customer notifies ABS immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Customer.
6. **Delivery of the Equipment**
- 6.1 At ABS' sole discretion delivery of the Equipment shall take place when:
  - (a) the Customer takes possession of the Equipment at ABS' address; or
  - (b) the Customer takes possession of the Equipment at the Customer's address.
- 6.2 At ABS' sole discretion the costs of Delivery are:
  - (a) in addition to the Price; or
  - (b) are for the Customer's account.
- 6.3 The Customer shall make all arrangements necessary to take delivery of the Equipment whenever it is tendered for delivery. In the event that the Customer is unable to take delivery of the Equipment as arranged then ABS shall be entitled to charge a reasonable fee for redelivery.
- 6.4 ABS may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 6.5 Delivery of the Equipment to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 6.6 The Customer shall be responsible for free access by ABS to the site on which the Equipment is located. If there are any delays due to free access not being available then the Customer shall be responsible and shall reimburse ABS for all lost hire fees associated with the Equipment being unavailable. The Customer shall also be responsible for all other expenses and costs incurred by ABS due to delays in access to the Equipment. The off-hire receipt will be issued when the Equipment is picked up by ABS or returned to ABS' premises.
- 6.7 The failure of ABS to deliver shall not entitle either party to treat this contract as repudiated.
- 6.8 ABS shall not be liable for any loss or damage whatever due to failure by ABS to deliver the Equipment (or any of it) promptly, or at all, where due to circumstances beyond the control of ABS.
7. **Risk**
- 7.1 ABS retains property in the Equipment nonetheless all risk for the Equipment passes to the Customer on delivery.
- 7.2 The Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies ABS for all loss, theft, or damage to the Equipment however caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Customer.
8. **Damage Waiver/Insurance**
- 8.1 Unless the damage waiver box on the hire form is marked "not required" (N/R) and initiated by the Customer then damage waiver charges shall apply. The damage waiver excess for each item of Equipment is the amount equal to five hundred dollars (\$500) or (if the replacement cost of the Equipment is less than five hundred dollars (\$500)) the replacement cost of the Equipment or fifteen percent (15%) of the cost of the repairs (if the Equipment is partially damaged and can be repaired) or fifteen percent (15%) of the full new replacement cost of the Equipment (if the Equipment is lost, stolen or damaged beyond repair), whichever is greater. The damage waiver shall not apply to damage to the Equipment in the following circumstances, and the Customer shall be responsible for, and shall indemnify ABS (without limitation) against any loss or damage in the case of all Equipment for:
  - (a) damage to batteries; or
  - (b) damage to tyres and tubes; or
  - (c) damage to any accessories; or
  - (d) damage caused where the Equipment is used for a purpose for which it was not designed; or
  - (e) damage caused by the use or operation of Equipment in violation of any statute (Commonwealth or State) or any regulation or by-law thereunder, or any bylaws imposed by a local authority; or
  - (f) misappropriation causing damage or wrongful conversion by the Customer or its employees, servants, sub-contractors or agents, or any other third party to whom the Equipment is entrusted by the Hirer; or
  - (g) damage caused by the use or operation of the Equipment in contravention of any terms of this hire agreement; or
- (h) damage resulting from overloading, or exceeding the rated capacity of the Equipment, or the misuse, abuse or improper servicing of the Equipment; or
- (i) damage to the Equipment occurring whilst the Equipment is located, used, unloaded, or transported on, over or near water (including, but not limited to, places such as wharfs, bridges, barges, and vessels of all kinds); or
- (j) damage to motors or other electrical Equipment or components within the Equipment caused by electrical overload, a surge in electrical current or the use of under-rated or excessive lengths of extension leads with the electrical Equipment; or
- (k) damage caused by exposure to any corrosive or caustic substance, such as but not limited to cyanide, salt water and acid.
- 8.2 On acceptance by the Customer of the damage waiver, the Customer shall be covered by ABS' Contractors Plant Policy subject always to the terms and conditions of that policy, a copy of which is available from ABS. The Customer acknowledges and agrees to comply with the conditions of ABS' Contractors Plant Policy.
- 8.3 In the event that the Customer opts not to pay ABS' damage waiver then the Customer must insure ABS' interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 8.4 Where no damage waiver has been paid by the Customer the Customer accepts full responsibility for and shall keep ABS indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses 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 and whether or not arising from any negligence, failure or omission of the Customer or any other persons.
- 8.5 Where no damage waiver has been paid by the Customer then the Customer shall immediately on request by ABS pay:
  - (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not insured to ABS;
  - (b) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;
  - (c) the cost of repairing any damage to the Equipment caused by the negligence of the Customer or the Customer's agent;
  - (d) the cost of repairing any damage to the Equipment caused by vandalism, or (in ABS' reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Customer.
9. **Title**
- 9.1 The Equipment is and will at all times remain the absolute property of ABS.
- 9.2 If the Customer fails to return the Equipment to ABS then ABS or ABS' agent may (as the invite of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 9.3 The Customer is not authorised to pledge ABS' credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
10. **Defects**
- 10.1 The Customer shall inspect the Equipment on delivery and shall within twenty-four (24) hours notify ABS of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford ABS an opportunity to inspect the Equipment within a reasonable time following delivery if the Customer believes the Equipment is defective in any way. If the Customer shall fail to comply with these provisions the Equipment shall be presumed to be free from any defect or damage. For defective Equipment, which ABS has agreed in writing that the Customer is entitled to reject, ABS' liability is limited to either repairing or replacing the Equipment, except where the Customer has hired Equipment as a consumer within the meaning of the Competition and Consumer Act 2010 (C/With) or the Fair Trading Acts of the relevant state or territories of Australia, and may therefore also be entitled to, either a refund of the hire price of the Equipment, or repair of the Equipment, or replacement of the Equipment.
11. **Customer's Responsibilities**
- 11.1 The Customer shall:
  - (a) notify ABS immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Customer is not absolved from the requirements to safeguard the Equipment by giving such notification;
  - (b) satisfy itself at commencement that the Equipment is suitable for its purposes;
  - (c) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by ABS or posted on the Equipment;
  - (d) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to ABS upon request;
  - (e) comply with all occupational health and safety laws relating to the Equipment and its operation;
  - (f) in the event of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to ABS;
  - (g) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Equipment;
  - (h) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
  - (i) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
  - (j) not exceed the recommended or legal load and capacity limits of the Equipment;
  - (k) not use or carry any illegal, prohibited or dangerous substance on or on the Equipment;
  - (l) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
  - (m) not use equipment for sand blasting or to apply shotcrete;
  - (n) indemnify and hold harmless ABS in respect of all claims arising out of the Customer's use of the Equipment.
- 11.2 Immediately on request by ABS the Customer will pay:
  - (a) all costs incurred in cleaning the Equipment;
  - (b) the cost of fuels and consumables provided by ABS and used by the Customer.
12. **Cancellation**
- 12.1 ABS may cancel these terms and conditions or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice. On giving such notice ABS shall repay to the Customer any sums paid in respect of the Price. ABS shall not be liable for any loss or damage whatever arising from such cancellation.
- 12.2 In the event that the Customer cancels delivery of the Equipment the Customer shall be liable for any loss incurred by ABS (including, but not limited to, any loss of profits) up to the time of cancellation.
13. **Default and Consequences of Default**
- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at ABS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Customer owes ABS any money the Customer shall indemnify ABS from and against all costs and disbursements incurred by ABS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, ABS' collection agency costs, and bank dishonour fees).
- 13.3 Without prejudice to any other remedies ABS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms of hire ABS may repossess the Equipment as per clause 9.2, or suspend or terminate the supply of Equipment to the Customer and any of its other obligations under the terms and conditions. ABS will not be liable to the Customer for any loss or damage the Customer suffers because ABS has exercised its rights under this clause.
- 13.4 Without prejudice to ABS' other remedies at law ABS shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies. ABS may have and all amounts owing to ABS shall, whether or not due for payment, become immediately payable in the event that:
  - (a) any money payable to ABS becomes overdue, or in ABS' opinion the Customer will be unable to meet its payments as they fall due; or
  - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
14. **Security and Charge**
- 14.1 In consideration of ABS agreeing to supply Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Customer indemnifies ABS from and against all ABS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising ABS' rights under this clause.
- 14.3 The Customer irrevocably appoints ABS and each director of ABS as the Customer's true and lawful attorney(s) to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.
15. **Privacy Act 1988**
- 15.1 The Customer agrees for ABS to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by ABS.
- 15.2 The Customer agrees that ABS may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
  - (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer.
 The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 15.3 The Customer consents to ABS being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 15.4 The Customer agrees that personal credit information provided may be used and retained by ABS for the following purposes (and for other purposes as shall be agreed between the Customer and ABS or required by law from time to time):
  - (a) the provision of Equipment on Hire; and/or
  - (b) the marketing of services by ABS, its agents or distributors; and/or
  - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Equipment on hire; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the hire of the Equipment.
- 15.5 ABS may give information about the Customer to a credit reporting agency for the following purposes:
  - (a) to obtain a consumer credit report about the Customer;
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 15.6 The information given to the credit reporting agency may include:
  - (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
  - (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
  - (c) advice that ABS is a current credit provider to the Customer;
  - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
  - (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - (f) information that, in the opinion of ABS, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
  - (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more have been dishonoured more than once;
  - (h) that credit provided to the Customer by ABS has been paid or otherwise discharged.
16. **Personal Property Securities Act 2009 ("PPSA")**
- 16.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 16.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Equipment that has previously been supplied and that will be supplied in the future by ABS to the Customer.
- 16.3 The Customer undertakes to:
  - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which ABS may reasonably require to:
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 16.3(a)(i) or 16.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, ABS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Equipment charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of ABS;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without the prior written consent of ABS.
- 16.4 ABS and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 16.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130 132(3)(d) and 132(4) of the PPSA.
- 16.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 16.7 Unless otherwise agreed to in writing by ABS, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 16.8 The Customer must unconditionally ratify any actions taken by ABS under clauses 16.3 to 16.6.
- 16.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
17. **Building and Construction Industry Security of Payments Act 1999**
- 17.1 At ABS' sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 17.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.
18. **General**
- 18.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 18.3 ABS shall be under no liability whatever to the Customer for any indirect loss and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by ABS of these terms and conditions.
- 18.4 In the event of any breach of this contract by ABS the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of ABS exceed the Price.
- 18.5 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by ABS.
- 18.6 ABS may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 18.7 ABS reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which ABS notifies the Customer of such change. Except where ABS supplies further Equipment to the Customer and the Customer accepts such Equipment, the Customer shall be under no obligation to accept such changes.
- 18.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 18.9 The failure by ABS to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect ABS' right to subsequently enforce that provision.

