



**HIRE AGREEMENT (FUS-FR-OP-024)**  
**PRINT AND RETURN BEFORE HIRE COMMENCES**

1. By signing this HIRE AGREEMENT, the Hirer has read and accepted the HIRE TERMS AND CONDITIONS and has entered into an Agreement with Fusion Plastics Pty Ltd (the Company).
2. It is the Hirer's responsibility to collect and return the goods to the Company. (s3)
3. The Hirer is responsible for any stolen, missing or damaged goods while on hire to it, and the cost of replacement or repairs of the goods and any accessories provided. (s14)
4. A 10% insurance charge is applicable to all welders and generators if you do not provide a valid certificate of currency for your plant and equipment insurance, that shows the Company the goods that you are hiring being insured under your policy. (s11.7)
5. The hire price is per day and is charged daily, weekly or monthly as indicated on your order. Hire applies from date of pickup to date of return to the Company. No refunds will be given where goods are returned early (s3).
6. The Hirer agrees to use the goods in a proper manner and according to relevant standards and recommended use. (s11)
7. The Company may inspect the goods from time to time during the Hire Period and the Hirer shall permit or procure permission for representatives of the Company to enter the Site or any other premises where the goods are located. (s15.8)
8. The Company has not made any representation or warranty regarding the state, suitability, fitness or use of the goods and the Hirer has not relied on any representation or warranty whatsoever. (s11)
9. The Company is not and shall not be responsible in any way for any damage or injury to person or property caused or contributed to in anyway by or to the goods or the Hirer's use of the goods and the Hirer shall indemnify the Company against any loss, damage, destruction or cost of whatsoever nature incurred by the Hirer in respect of the above. (s11)
10. The Hirer agrees that the goods are returned to the Company at the expiration of the Hire Period (or such further period as the Company may agree) in the same condition as it was hired. In the event that the Hirer fails to return the goods in such condition, a cleaning fee of \$250 (or such other sum as the Company may reasonably determine having regard to the condition of the goods) shall apply. Where the goods hired relate to an Electrofusion Machine and EF Adaptor Plugs are provided but are not returned, a \$500 replacement charge will apply. (s15.6)

COMPANY NAME		PO NUMBER	
AUTHORISED PERSON NAME		SIGNATURE	
PICKUP CONTACT		DATE	
EQUIPMENT REQUIRED		HIRE DATES	
EQUIPMENT REQUIRED		HIRE DATES	
EQUIPMENT REQUIRED		HIRE DATES	
EQUIPMENT REQUIRED		HIRE DATES	

## HIRE TERMS AND CONDITIONS

### 1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions:

**"Agreement"** means the contract made between Company and the Hirer in relation to the hire of Equipment, and includes:

- i) The Company's application to open a credit account,
- ii) These Terms and Conditions,
- iii) Any other hire agreement or arrangement made by the Company with the Hirer ("the Company's Hire Agreement"), whether signed or not.

**"Australian Consumer Law"** means Schedule 2 of the Competition and Consumer Act 2010 (Cth);

**"CCA"** means the Competition and Consumer Act 2010 (Cth);

**"Company"** means Fusion Plastics Pty Ltd (ACN 084 543 742) and/or Fusion Piping Pty Ltd (ACN 103 442 922).

**"Consumer"** means a person acquiring Goods:

- i) of a kind ordinarily acquired for personal, domestic or household use or consumption; or
- ii) at a price not exceeding \$40,000; or
- iii) of a kind ordinarily acquired for personal, domestic or household use or consumption; or
- iv) that consist of a vehicle or trailer acquired for use principally in the transport of goods on public roads, but excludes a person acquiring the Goods, or holding himself or herself out as acquiring the Goods for the purpose of:
  - v) re-supply; or
  - vi) using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land.

**"Consumer Goods"** means 'goods of a kind ordinarily acquired for personal, household or domestic use or consumption', as that expression is used in section 3 of the Australian Consumer Law.

**"Consumer Guarantee"** means a consumer guarantee applicable to this contract under the Australian Consumer Law, including any Express Warranty.

**"Consumer Services"** means 'services of a kind ordinarily acquired for personal, household or domestic use or consumption', as that expression is used in section 3 of the Australian Consumer Law.

**"Equipment"** means any of the Company's equipment and goods (including any associated or attached tools, accessories and parts) that are hired to the Hirer under these Terms and Conditions.

**"Express Warranty"** has the same meaning as in section 2(1) of the Australian Consumer Law.

**"Fair or Reasonable"** means 'fair or reasonable' for the purposes of section 64A of the Australian Consumer Law.

**"Financing Statement"** and "Financing change statement" means a "financing statement" and a "financing change statement" within the meaning of s.10 of the PPSA.

**"Goods"** means and includes any goods and Equipment supplied by the Company to the Hirer under these Terms and Conditions.

**"GST"** means "GST" within the meaning of the GST Act.

**"GST Act"** means the A New Tax System (Goods and Services Tax) Act 1999 (as amended) and the following expressions bear the same meaning as in the GST Act: "tax invoice", "taxable supply" and "value".

**"Hirer"** means the person, company or other legal entity that hires Equipment from the Company. Where the context permits, it includes the Hirer's employees and contractors.

**"Hire Period"** means the term specified in clause 2.

**"Insolvency Event"** means, in relation to a party, that one of the events specified in clause 19 has occurred in relation to that party.

**"Intellectual Property"** means any intellectual property including without limitation patents, trademarks, copyright, designs, layouts, circuit boards, knowhow, software, object codes, source codes, and confidential information.

**"PMSI"** means a purchase money security interest as defined in section 14 of the PPSA.

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

**"Proceeds"** means "proceeds" within the meaning of section 31 of the PPSA.

**"Rates"** means the rates notified by Company to the Hirer from time to time.

**"Register"** means the Personal Property Securities Register established under the PPSA.

**"Security Agreement"** means a "security agreement" within the meaning of section 10 of the PPSA.

**"Security Interest"** means a "security interest" within the meaning of section 12 of the PPSA.

**"Site"** means the land or premises located at the address on which Equipment is to be installed as requested by the Hirer.

**"Terms and Conditions"** means these Hire Terms and Conditions.

1.1 Terms and expression defined in or for the purposes of the CCA or the PPSA have the same meaning when used in these Terms and Conditions.

### 2. GENERAL

2.1 These Terms and Conditions apply to:

- i) the establishment, operation and use of the account of the Hirer with the Company;
- ii) all transactions effected by the Hirer with the Company for the supply/hire of Equipment and Goods or services on its account or on a cash basis unless otherwise expressly agreed in relation to any particular supply of Equipment, Goods and services; and
- iii) the exclusion of all others including any terms and conditions of the Hirer.

2.2 These Terms and Conditions shall apply as if incorporated into each order/hire placed by the Hirer with the Company.

2.3 These Terms and Conditions may be varied only with the written agreement of the Company.

### 3. RATES AND HIRE PERIOD

3.1 The Hire Period will commence upon the date of the Company's Hire Agreement with the Hirer or the date on which the Hirer takes possession of the Equipment (which ever occurs first) and will continue for the initial Hire Period and any extensions of that period and the Hire Period will end when the Equipment is back in the possession of the Company.

3.2 The Hire Period includes weekends and public holidays and is irrespective of the time the Plant is being used.

3.3 Unless otherwise instructed by the Hirer, at the end of the initial Hire Period and each extension of the Hire Period, the Company will automatically extend the Hire Period and invoice the Hirer for all extensions of the Hire Period. Where the Hire Period is extended it will continue until the Hirer instructs Company to pick up the Equipment or the Company decides to terminate the hire arrangements.

3.4 Where the Hirer instructs the Company to pick up the Equipment under 3.3, the instructions will be given by the Hirer in time for the Equipment to be picked up and returned to the Company's premises within the Company's normal business hours. In the event of insufficient notice being given, hiring charges will continue to apply at the Company's absolute discretion until the Equipment is received by the Company. The Hire Period noted on the Company's Hire Agreement will not be deemed notice to the Hirer that the Equipment is available for collection. Where the Company agrees to collect the Plant, the Hirer remains responsible for any theft, loss or damage to the Equipment until the Equipment is collected by the Company.

3.5 During the Hire Period, the Hirer must pay Company all hire fees as calculated in accordance with the Rates.

3.6 All Rates are subject to change and may increase without notice.

3.7 The Hirer is not permitted to claim a reduction or refund in hire fees for Equipment returned before the end of the initial Hire Period or any extensions of that Hire Period.

#### **4. PAYMENT AND DEFAULT ARRANGEMENTS**

4.1 The hire fee must be paid in the manner and in accordance with the payment terms specified on any invoice issued by Company or otherwise notified to Hirer from time to time. For the avoidance of any doubt, our standard credit terms of 30 days from invoice date will apply for all credit accounts unless otherwise stated at the time of The Company accepting your credit application. Any change in these terms will be communicated to you in writing.

4.2 The Hirer agrees to pay all hiring charges on or before the commencement date of the Hire Term (unless agreed to the contrary by Company) including delivery fees, pick up fees, hire fees, service fees and all taxes and charges incidental to the hire.

4.3 The Hirer must notify the Company within seven (7) days of any errors with the invoice.

4.4 The Hirer must not deduct any part of the hire fee as retention money.

4.5 The Hirer agrees to pay Company interest on all overdue balances at a rate of 2% per month until all sums owed to the Company under these Terms and Conditions have been paid in full.

4.6 The Hirer is liable for any costs associated with Company recovering overdue sums due under these Terms and Conditions and the Hirer and will indemnify the Company on demand for all expenses incurred by the Company in recovering any amounts which the Hirer fails to pay by the payment due date including without limitation any bank dishonour fees, commissions payable to any commercial or mercantile agents and any legal costs incurred by the Company (assessed on an indemnity basis) arising from the Hirer's default or breach of any of the Terms and Conditions.

#### **5. CREDIT CARD PAYMENTS**

5.1 If a Hirer pays its outstanding account by a credit card, at the time the transaction is processed the Hirer must pay to the Company an amount that the company determines (acting reasonably) to be equal to the merchant service fee or any similar fee payable by the Company to its transaction acquirer in connection with the transaction.

5.2 The Company may add any amount payable by the Hirer under 5.1 to the sale/hire price of the Equipment or services supplied or to be supplied by the Company to the Hirer.

#### **6. GST**

6.1 To the extent that a party makes a taxable supply in connection with these Terms and Conditions, the consideration payable by a party under these Terms and Conditions represents the value of the taxable supply for which payment is to be made, unless otherwise expressly agreed.

6.2 Subject to 5.3, if a party makes a taxable supply pursuant to these Terms and Conditions for a consideration which, under 5.1, represents its value, then the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.

6.3 A party's obligation to make payment under 5.2 is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.

#### **7. CANCELLATION OF ORDERS**

The Hirer may not cancel any order that it places for supply of Equipment after that order is accepted by the Company unless the Company gives it consent in writing. The Company may give or withhold its consent in its absolute discretion. The Company may give its consent subject to conditions that may include payment of money to the Company.

#### **8. SUSPENSION OF CREDIT**

The Company may at any time refuse to extend credit or further credit to the Hirer (and without the Company having or giving any reason for doing so).

#### **9. DELIVERY, INSTALLATION AND REMOVAL AT HIRER'S REQUEST**

9.1 Where the Hirer has requested the Company to deliver and collect the Equipment (and the Company has agreed to do so) the Company will arrange delivery of the Equipment to the Site and will install the Equipment as far as possible in accordance with the Hirer's directions. The Hirer acknowledges that Company may need to alter the position of the Equipment to accommodate services to the Site or other obstacles.

9.2 The Company will remove all Equipment at the end of the Hire Period unless the Company and the Hirer agree to extend the initial Hire Period.

9.3 The Hirer may request the Company to install additional Equipment or to remove part of the Equipment before the expiration of the Hire Period, subject to payment of the extra charges.

9.4 If the Company is delayed from delivering or removing the Equipment from any location for any reason beyond its reasonable control, it may charge the Hirer additional delivery charges calculated on the basis of the daily rental fee plus a sum equal to an additional 20% of the daily rental fee.

9.5 No refunds will apply in the event that the Equipment is returned/collected at the Hirer's request prior to the expiration date of any Hire Period.

#### **10. EXTRA CHARGES**

Additional Equipment requested by the Hirer will incur additional charges for hire and delivery/installation. The removal of Equipment will not excuse the Hirer from the payment of the agreed hire charges for the Equipment.

## 11. USE OF EQUIPMENT

11.1 The Hirer must ensure that the Equipment is used strictly in accordance with Company's instructions and any procedures recommended by the Company from time to time.

11.2 The Hirer must at all times keep the Equipment in good condition and must not, without Company's prior written consent, alter or make additions to the Equipment, or deface, remove or conceal any Company logo, identifying mark or number, or indication of the Company's ownership of the Equipment.

11.3 The Hirer must at all times ensure that the Equipment is used in a safe manner, and must not deliberately damage, abuse or mistreat the Equipment or allow the Equipment to be deliberately damaged, abused, or mistreated.

11.4 If any damage, loss, theft or destruction of the Equipment occurs, whether the Hirer was responsible or not, the Hirer must immediately notify the Company and provide full details of the damage, loss theft or destruction.

11.5 The Hirer must ensure that the Equipment is used at all times strictly in accordance with:

- i) all applicable laws, and
- ii) any relevant industry usage, custom and standards for goods similar to the Equipment.

11.6 The Hirer must obtain and maintain, at its own expense, any insurance, permit or license that may be required under any law or by any statutory or other authority for the use of the Equipment, including its installation or removal. Without limiting the Hirer's obligations under this clause, the Hirer must obtain all permits required under any relevant planning, environment or health and safety legislation, and must ensure that its personnel are appropriately inducted, trained and supervised so as to ensure the safe and lawful use of the Equipment.

11.7 The Company does not insure Equipment while it is on site and the Hirer at their own expense will maintain general liability insurance of not less than \$20 million and all risks insurance that is acceptable to the Company, covering the Equipment for the duration of the hire period. The sum incurred for loss of or damage to the Equipment must be the full market value of the Equipment, as nominated by the Company. Such policy must be in the joint names of the Company and the Hirer and must cover the respective rights of each party relating to personal injury, property damage (including damage to the Equipment) and all other losses of whatsoever nature arising out of the use of the Equipment. Each of the Company and the Hirer is entitled to receive payments of monies under the insurance policy effected pursuant to this clause according to its interest in the policy. Each party agrees to assist and co-operate with the other in making pursuing and settling any claim made under the policy. Without limiting the generality of the above, and if the Company so requests, the Hirer must expend all money received by it under the policy in respect to damage to the Equipment in restoring or replacing the Equipment to its "on hire" condition subject to reasonable wear and tear, and if such money are insufficient, the Hirer must make good the deficiency at its own cost. The Hirer is to provide a certificate of insurance to the Company prior to the Equipment leaving the Owner's premises. If a certificate of insurance is not provided, the Hirer must pay a surcharge to the Company. The invoicing or payment of such a surcharge shall not absolve the Hirer of any of its obligations under this clause. The Hirer is responsible for the damage to Equipment however it is caused when it is in their control.

## 12. MOVEMENT OF EQUIPMENT

The Hirer may at its own risk move or alter the position of the Equipment on the Site. The Hirer indemnifies Company against all claims for any loss or damage, howsoever arising, as a result of any movement of, or alteration to the Equipment.

## 13. LOCATION AND USE OF THE EQUIPMENT

13.1 The Hirer must expressly inform Company of the location of the Equipment during the Hire Period.

13.2 The Hirer must not:

- i) part with possession of the Equipment;
- ii) allow any other person to use the Equipment; or
- iii) permit the removal of the Equipment from the location at which the Hirer represented it would be located without the prior written consent of the Company.

13.3 The Hirer must store the Equipment in a safe place, and do all other things necessary to ensure the continued safety and preservation of the Equipment.

## 14. MISSING OR DAMAGED EQUIPMENT

14.1 The Hirer is responsible for any stolen, missing or damaged Equipment while on hire to it, and the cost of replacement or repairs of that Equipment.

14.2 If the Equipment is returned or collected in a condition which in the reasonable opinion of Company renders it unusable for hire, or if the Equipment is stolen or missing, the Hirer must pay the Company on demand the cost of replacement or repair of the Equipment. In no circumstances will title to the Equipment or any part of it pass to Hirer and the provisions set out in clause 16 relating to the Company's title rights shall apply.

14.3 Other than for the cost of replacing or repairing the Equipment, the Hirer will be liable for all costs, expenses, damages and loss (including consequential loss), incurred by Company arising out of the Equipment not being returned or collected, including where the Equipment has been stolen or is missing.

## 15. HIRER'S OBLIGATIONS

The Hirer will:

15.1 Pay to the Company all hire and related charges and other costs as stipulated in accordance with the Company's Hire Agreement and specified in these Terms and Conditions.

15.2 Accept full responsibility for the safe-keeping of the Equipment, and except as specified hereafter, shall indemnify the Company for all loss, theft of 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 Hirer.

15.3 Accept full responsibility for and indemnify the Company against all claims in respect of any injury to persons, or loss or damage to property, arising out of the possession or use of the Equipment during the Hire Period however arising, whether from the negligence of the Hirer or the Company or other party and without limiting the generality of the foregoing whether or not the Equipment was being operated by an employee, servant or agent of the Hirer or any person for whose acts the Company might be or is held to be responsible in connection with the use of the Equipment.

15.4 Not be entitled to sell, transfer, mortgage, charge or encumber in any way the Equipment nor, without the Company's

management prior written consent, part with the possession of the Equipment nor assign the benefit of this Agreement.

15.5 Not be entitled to remove the Equipment from the Site or allow it to be removed without the Company's permission.

15.6 Ensure that the Equipment is returned to the Company at the expiration of the Hire Period (or such further period as the Company may agree) in the same condition as it was delivered. In the event that the Hirer fails to return the Equipment in such condition, a cleaning fee of \$250 (or such other sum as the Company may reasonably determine having regard to the condition of the Equipment) shall apply. Where the Equipment that is hired is an Electrofusion Machine and EF Adaptor Plugs are provided but are not returned, a \$500 replacement charge will apply.

15.7 Not change or modify electrical plugs on any of the Equipment hired (as changing plugs could cause weld failure due to incorrect power supply).

15.8 The Company may inspect the Equipment from time to time during the Hire Period and the Hirer shall permit or procure permission for representatives of the Company to enter the Site or any other premises where the Equipment is located.

## 16. EXCLUSIONS OF WARRANTIES AND LIMITATIONS OF LIABILITY

16.1 The Company acknowledges that the Australian Consumer Law and similar legislation provides:

- i) certain rights for Consumers that cannot be excluded; and
- ii) in relation to the supply of goods and services, that in some circumstances the Hirer may be a Consumer.

16.2 Subject to 16.3, the Company excludes any and all conditions, warranties, terms and consumer guarantees implied by statute, general law or custom (including without limitation the Australian Consumer Law) applicable to any supply of goods (including all Equipment) and services under these Terms and Conditions.

16.3 The Consumer Guarantees apply to any supply of goods and services where the Hirer is a Consumer, and the liability of the Company in connection with the Consumer Guarantees is not limited except as stated in 16.4.

16.4 If the Hirer is a Consumer in relation to the supply of goods and services, and those goods are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the liability of the Company in connection with the Consumer Guarantees is limited to one of the following (as selected by the Company):

- a) in the case of goods:
  - i) the replacement of the 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 goods equivalent to the goods; or
  - iv) the payment of the cost of having the goods repaired, except where it is not Fair and Reasonable to limit liability in this way.
- b) in the case of services:
  - i) the supply of the services again; or
  - ii) the payment of the cost of having the services supplied again.

16.5 The Company:

- i) excludes any liability in contract, tort (including negligence) or otherwise, in connection with any supply of goods and

services and for all claims under or relating to the Equipment for any indirect damages or losses, or for any special, punitive or exemplary damages;

ii) limits its liability in contract, tort (including negligence) or otherwise, in connection with any supply of goods and services and for all claims under or relating to the Equipment and to the sums payable by the Hirer for the hire of the Equipment; and

iii) excludes any liability for or in connection a claim that the Equipment supplied by the Company under these Terms and Conditions is not fit for a particular purpose or for a particular use, except where the Company has a liability as contemplated by 16.1 or 16.4.

16.6 The Hirer agrees to notify the Company in writing of any change in ownership or shareholding of the Hirer within seven (7) days from the date such change or immediately if an Insolvency Event as specified in clause 19 hereof occurs and the Hirer shall indemnify the Company against any loss or damage (whether direct or consequential) incurred by it as a result of its failure to notify the Company of such change or Insolvency Event.

16.7 The Hirer is liable for and shall indemnify the Company 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 the Company and any environmental loss, cost, damage or expense) in respect of:

- i) personal injury;
- ii) damages to intangible property; or
- iii) a claim by a third party in respect of the Hirer's hire or use of the Equipment. The Hirer's liability under this indemnity is diminished to the extent that the Company's breach of the Terms & Conditions (if any) or negligence causes the liability, claims, damage, loss, costs or expenses.

16.8 The indemnity set out in 16.7 above is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of the term of hire of the Equipment. It is not necessary for a party to incur an expense or make any payment before enforcing a right of indemnity conferred under these Terms & Conditions.

16.9 The Company will not be liable to the Hirer for any acts or omissions of any person supplied by the Company where that person is acting under the Hirer's direction or control during the Hire Period relating to the Equipment and the services provided under these Terms & Conditions and the Hirer shall indemnify the Company against all liability, claims, damages, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis) arising from or incurred in connection with such acts or omissions.

16.10 Subject to the provisions contained in this clause 15, the Company will not be responsible for failure or delay in delivery, pickup, installation or removal and will have no liability to the Hirer or any other person for any loss (including any consequential loss) arising out of such failure or delay.

## 17. RETENTION OF TITLE ARRANGEMENTS

17.1 Property in and title to the Equipment remains with the Company in all circumstances (even if the Hirer goes into liquidation or becomes bankrupt during the Hire Period).

17.2 The Hirer's right to use the Equipment is as a bailee only.

17.3 The Hirer is not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest over or otherwise deal in any way with any of the Equipment.

17.4 Unless otherwise agreed by the Company, the Hirer must identify and store the Equipment in a manner that clearly shows that it is the property of the Company.

## 18. EQUIPMENT SUPPLIED WILL NOT BECOME FIXTURES

18.1 The Hirer acknowledges and agrees that it is the intention of the parties that:

- i) Where the Equipment is or might be characterized as fixtures to land including (without limitation) where they are plastic piping, water treatment piping, tanks, valves, flow control equipment, welding machines, generators, work platforms, telehandlers, building supplies or materials and all related products and accessories; or
- ii) where the Equipment rests by its own weight on the land then the following provisions apply.

18.2 The Equipment shall be taken to be personal property of the Company and not fixtures despite having been connected to another item, appliance, property or otherwise affixed to land.

18.3 In the event of a default by the Hirer under these Terms and Conditions, that in addition to any other enforcement provisions set out in these Terms and Conditions, if the Equipment can be removed without causing significant damage to the premises on which they are located, the Hirer consents to the Company and any authorized contractor acting on behalf of the Company, entering upon the premises of the Hirer or any premises where they are located or have been installed for the purposes of disconnecting them from the other item, appliance or property (as the case may be) and removing and retrieving them.

18.4 In the event of the Company exercising its rights under 18.3, the Hirer:

- i) must not make any claim against the Company; and
- ii) must indemnify the Company against any claim by any third party (including without limitation the owner of the relevant property) in contract, tort (including negligence) or otherwise arising from or in connection with the exercise of those rights including without limitation for the cost of making good the premises arising from or connected with the removal of the Equipment or for any loss or damage (whether direct or indirect) suffered by the Hirer or any third party

## 19. PPS LAW

19.1 This clause applies to the extent that this Contract provides for a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPS Law"). References to PPS Law in this agreement include references to amended, replacement and successor provisions or legislation.

19.2 Fusion may register its security interest. The Hirer must do anything (such as obtaining consents and signing documents) which Fusion requires for the purposes of

- i) ensuring that Fusion' security interest is enforceable, perfected and otherwise effective under the PPS Law;
- ii) enabling Fusion to gain first priority (or any other priority agreed to by Fusion in writing) for its security interest; and
- iii) enabling Fusion to exercise rights in connection with the security interest.

19.3 The rights of Fusion under this document are in addition to and not in substitution for Fusion' rights under other law (including the PPS Law) and Fusion may choose whether to

exercise rights under this document, and/or under such other law, as it sees fit. To avoid any doubt about it Fusion security interest will attach to proceeds.

19.4 To the extent that Chapter 4 of PPSA applies to any security interest under this agreement, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are "contracted out" of this agreement in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires Fusion to give a notice to the Hirer); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires Fusion to give a notice to the Hirer); section 129(2) and 129(3); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).

19.5 The following provisions of the PPS Law: section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral) confer rights on Fusion. Hirer agrees that in addition to those rights, Fusion shall, if there is default by Hirer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the Hirer agrees that Fusion may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

19.6 The Hirer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.

19.7 Fusion and the Hirer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Hirer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to Fusion the benefit of section 275 (6)(a) and Fusion shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this sub-clause.

19.8 Hirer must not dispose or purport to dispose of, or create or purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the Equipment other than with the express written consent of Fusion.

19.9 Hirer must not lease, hire, bail or give possession ('sub-hire') of the Equipment to anyone else unless Fusion (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to Fusion and must be expressed to be subject to the rights of Fusion under this agreement. Hirer may not vary a sub-hire without the prior written consent of Fusion (which may be withheld in its absolute discretion).

19.10 Hirer must ensure that Fusion is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment.

19.11 Hirer must take all steps including registration under PPS Law as may be required to:

- i) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
- ii) enabling the Hirer to gain (subject always to the rights of Fusion) first priority (or any other priority agreed to by Fusion in writing) for the security interest; and
- iii) enabling Fusion and the Hirer to exercise their respective rights in connection with the security interest.

## 20. INSOLVENCY EVENTS

If the Hirer:

- i) becomes insolvent or bankrupt;
- ii) is the subject of an application to wind up, or if a Liquidator, Provisional Liquidator, Receiver, a Receiver and Manager, or an Administrator is appointed with respect to the Customer or any of the Hirer's assets;
- iii) makes an arrangement or composition with the creditors of the Hirer or attempts to make such an arrangement or composition;
- iv) is unable to pay their debts as they fall due;
- v) fails to comply with a statutory demand made under the Corporations Act 2001 (Cth) for payment of a debt;
- vi) ceases business;
- vii) has execution levied against any of their assets; or
- viii) has a mortgagee Liquidator, Provisional Liquidator, Receiver, Receiver and manager or Administrator enter or seek to enter into possession of any of its assets,

then any monies actually or contingently owing to the Company at that time under any contract formed on these Terms and Conditions (including any amounts which would not otherwise be payable until a later date or dates) are immediately due and payable (without the need for any demand by the Company).

## 21. FORCE MAJEURE

21.1 The Company may suspend any or all of its obligations to the Hirer that are affected by any act of God, fire, flood, storm, earthquake, strike, lockout, trade dispute, breakdown, theft, crime, delays in shipping, or the inability of the Company to procure necessary materials or articles preventing or retarding performance of the contract or any other cause not reasonably within the control of the Company (each a Force Majeure Event) and the Company is not responsible for any delay, default, loss or damage due to any Force Majeure Event.

21.2 When a Force Majeure Event ceases to affect the performance of any of the Company's obligations, the Company must lift any suspension of those obligations that it makes under 21.1.

## 22. TERMINATION OF HIRE

22.1 The Company may terminate the Company's Hire Agreement immediately without notice to the Hirer, if the Hirer:

- i) breaches the Company's Hire Agreement and/or any of the Terms and Conditions; or
- ii) is subject to an Insolvency Event;

22.2 Upon termination of the Company's Hire Agreement, all amounts actually or contingently owed by the Hirer under the Company's Hire Agreement and under these Terms and Conditions are immediately due and payable and the Company shall be entitled to take possession of the Equipment. For these purposes the Hirer irrevocably authorises Company or its representatives

to enter onto the Site (or such other premises where the Equipment is located) and agrees to indemnify Company in respect of any claims, damages and expenses associated with the recovery of the Equipment.

22.3 The Company shall be entitled to take possession of the Equipment without authority of the Hirer if the Hirer fails to comply with the Company's payment terms.

## 23. CHANGES TO TERMS AND CONDITIONS

23.1 The Company may amend these Terms and Conditions at any time by publishing the amendments on its website or otherwise notifying the Hirer.

23.2 The amended Terms and Conditions will apply to any hire of the Equipment from the time the amendments are notified to the Hirer in accordance with clause 26. Any such amendment will not affect the validity or enforceability of the agreement between Company and the Hirer in any way.

## 24. SIGNATORY'S WARRANTIES

Any person signing any document on behalf of Hirer in respect of the hire of the Equipment warrants that they:

- i) have the Hirer's authority to contract with the Company on the Hirer's behalf; and
- ii) have been authorised by the Hirer to bind the Hirer to hire the Equipment on the terms set out in the Agreement,

and agree to indemnify the Company against all losses, costs and claims incurred by Company if this is not the case.

## 25. CERTIFICATE

A certificate of the Hirer's liability under the Company's Hire Agreement and/or under these Terms and Conditions, signed by an officer of the Company, is prima facie evidence of the Customer's liability to the Company as at the date of the certificate.

## 26. TIME

Time is of the essence for payment of any monies owed by the Hirer to the Company pursuant to the provisions specified in these Terms and Conditions.

## 27. JURISDICTION

27.1 These Terms and Conditions are governed by the laws of the State of Western Australia.

27.2 The parties submit to the non-exclusive jurisdiction of the Courts of Western Australia in relation to any dispute or claim arising under or in connection with the supply/hire of Equipment under these Terms and Conditions.

## 28. NOTICES

28.1 Any notice required by or contemplated by these Terms and Conditions must be in writing in the English language.

28.2 Any notice by one party to the other shall be sufficiently served if served:

- i) Personally;
- ii) by facsimile transmission to the number specified in the application made to the Company by the Hirer to establish the arrangements under these Terms and Conditions or as otherwise notified to the other party, with a transmission confirmation receipt marked "OK";
- iii) by e-mail to the address specified in the application made to the Company by the Hirer to establish the arrangements

under these Terms and Conditions or as otherwise notified to the other party, if the e-mail is acknowledged by the recipient; or

iv) by pre-paid post to the party to be served at the registered office of the party or to the address specified in the application made to the Company by the Hirer to establish the arrangements under these Terms and Conditions or as otherwise notified to the other party, (in which case it is taken to be received 3 days after the date of posting).