

CONDITIONS OF HIRE

1. DEFINITIONS AND INTERPRETATION

"Agreement" means the agreement formed between the Owner and the Hirer by the Owner's acceptance of the Hirer's offer as set out on the reverse side of these Terms and Conditions and includes those terms and conditions as set out on that reverse side and these Terms and Conditions;
 "Delivery Date" means the date the Equipment is delivered to the Site;
 "Equipment" means any items hired out by the Owner from time to time including tools accessories attachments parts manuals instructions packing and transportation materials (if any) substitute and replacement equipment whether owned by the Owner or not and includes any part or parts of it;
 "Hirer" means the person firm or corporation entering into this Agreement and includes its successors permitted assigns employees agents or any persons claiming through under or in trust for such a person;
 "Hire Period" means the period commencing on the Delivery Date or if the Hirer notifies the Owner that it requires the Owner to erect the Equipment pursuant to clause 2.1 then upon the date the Owner completes the erection of the Equipment and expiring on the date the Hirer notifies the Owner that it no longer requires the Equipment and receives a pick up number from the Owner or the sooner determination of the Hire Period;
 "Owner" means Pawa Nominees Pty Ltd (ACN 067 927 888) its successors, assigns, related companies (within the meaning of The Corporation Law) sub-contractors employees and agents;
 "Site" the site specified overleaf.

2. HIRE AGREEMENT

- 2.1 The Owner agrees to let and the Hirer agrees to take on hire the Equipment for the Hire Period subject to the terms and conditions herein contained.
 2.1 The Hirer must notify the Owner prior to delivery of the Equipment:
 2.2.1 of the estimated period the Hirer requires the Equipment ("the estimated period"); and
 2.2.2 whether it requires the Owner to erect the Equipment.

3. HIRE CHARGES

- 3.1 The Hirer must pay hire charges at the weekly rate shown on the reverse side of these terms and conditions "and the Goods and Services Tax if any" during the Hire Period or at a rate agreed by the Owner.
 3.2 The Hirer agrees that if the Hirer hires the Equipment for:
 3.2.1 One day or any part thereof the Hirer must pay 50% of the weekly hire rate.
 3.2.2 2-3 days the Hirer must pay 80% of the weekly hire rate; and
 3.2.3 4-7 days the Hirer must pay 100% of the weekly hire rate.
 3.3 The Owner reserves the rights to change the weekly hire rate upon reasonable notice to the Hirer.
 3.4 The Hirer must duly and punctually pay the hire charges and any other charges at the times and in the manner specified in this Agreement or if not specified then within 30 days of the date of invoice or as arranged and confirmed in writing by the Owner.
 3.5 The Hirer must pay all money payable by the Hirer under this Agreement to the Owner free and clear from any and all deductions set offs or counterclaims.
 3.6 The Hirer must pay to the Owner interest at the rate of 2% per annum greater than the rate that would be charged by the Owner's bankers on an overdraft amount not exceeding \$100,000 on all moneys due but unpaid by the Hirer under their Terms and Conditions calculated from the due date of payment to the actual date of payment to the Owner.
 3.7 The Hirer must make payments to the Owner under this Agreement notwithstanding the occurrence or discovery of any defect in breakdown of or damage to the Equipment or any part of it.
 3.8 The Hirer must pay to the Owner on demand:
 3.8.1 The amount of any tax, "GST", duty, levy charge or other expense paid or payable by the Owner to any government or government authority in respect of the use or hire of the Equipment including but not limited to any stamp duty payable in respect of this Agreement;
 3.8.2 The Owner's standard delivery and/or collection charges from time to time; and
 3.8.3 All reasonable costs and expenses incurred by the Owner as a result of a breach by the Hirer in its obligations under these Terms and Conditions.

4. DELIVERY OF EQUIPMENT

- 4.1 The Hirer must make any arrangements necessary to enable the Hirer to obtain delivery of the Equipment and must prior to the Delivery Date arrange for all persons who have an interest in the Site to deliver to the Owner an acknowledgement in writing (in a form acceptable to the Owner) that the Owner:
 4.1.1 has the absolute unencumbered title to the Equipment (as between the Owner and that person); and
 4.1.2 has the right to enter upon or into the Site to inspect and remove the Equipment at any time without any payment to or the consent of any person.
 4.2 If the Hirer fails to accept the Equipment the Hirer must pay the Owner as and by way of liquidated damages the sum the Hirer would have been liable to pay under this Agreement had the Owner hired the Equipment for the estimated period of hire notified to the Owner.

5. HIRER'S OBLIGATION

- 5.1 The Hirer must:
 5.1.1 Keep the Equipment at all times in his possession custody and under his control;
 5.1.2 Notify the Owner immediately of any change in the address of the Hirer;
 5.1.3 Not without the prior written consent of the Owner part with possession of the Equipment nor remove it nor any part of it from the Site;
 5.1.4 Ensure the Equipment remains at all times under the Hirer's control;
 5.1.5 Make the Equipment immediately available for inspection examination testing and for any other purpose set out in this Agreement whenever required by the Owner;
 5.1.6 Permit the Owner to enter any premises where the Owner reasonably believes the Equipment is located or any premises owned occupied or controlled by the Hirer for the purpose of examining and testing the Equipment;
 5.1.7 Immediately stop using the Equipment if it breaks down or becomes unsafe and must take all necessary steps to prevent injuries to any person or property as a result of the Equipment's condition;
 5.1.8 Not do omit to do or permit cause or suffer to be done any act matter or thing that is likely to endanger the safety or condition of the Equipment;
 5.1.9 Immediately repair any damage to or defect in the Equipment upon notification of the same by the Owner;
 5.1.10 Comply with carry out and perform all requirements of any act statute by-law order regulation or requisition relating to the Equipment or to the possession erection or use of the Equipment or to the premises upon which the Equipment is situated or the occupation and use of those premises;
 5.1.11 Pay as if the Hirer were the owner and operator of the Equipment all registration licence insurance and other fees and charges payable in respect of the Equipment or its operation;
 5.1.12 Obtain and maintain in full force and effect all necessary licences permits certificates and regulations governing or relating to the Equipment or to its use or erection;
 5.1.13 At the expiry or earlier determination of the Hire Period deliver up the Equipment to the Owner in good order and condition and in accordance with this Agreement.

6. ALTERATIONS

- 6.1 The Hirer must not make or suffer to permit to be made any alterations to the Equipment.
 6.2 The Owner may at any time and from time to time affix any plates or marks on the Equipment indicate that it is the Owner's and the Hirer must not alter obliterate deface or cover up those plates or marks.

7. OPERATION AND MAINTENANCE OF GOODS

- 7.1 The Hirer must at its own expense.
 7.1.1 Keep and maintain the Equipment in proper working order and condition and in good and substantial repair;
 7.1.2 Employ only properly trained and competent persons to use maintain erect and repair the Equipment; and
 7.1.3 Operate and maintain the Equipment with due care and diligence and in compliance with the instructions and recommendations of the supplier and/or manufacturer of the Equipment as to operation and maintenance.

8. LIENS AND ENCUMBRANCES

- 8.1 The Hirer must not mortgage pledge sell charge sub-hire encumber or otherwise deal with the Equipment or any of its rights under this Agreement nor do omit to do or permit or suffer to be done anything that may prejudice the Owners rights to the Equipment.

9. RISK AND INSURANCE

- 9.1 The Hirer must:
 9.1.1 Assume all risks and liabilities for and in respect of the Equipment and for personal injuries or loss of life and damage to property howsoever arising from the possession use maintenance or repair the Equipment
 9.1.2 Indemnify the Owner against personal injuries loss of life damage to property or loss of or damage to the Equipment whether by fire theft accident seizure confiscation or otherwise and must indemnify the Owner and hold the Owner harmless from and against all actions suits claims proceedings demands costs charges expenses damages losses liabilities writs summonses judgments orders and decrees of any nature (including but not limited to legal costs on a solicitor - own client basis) howsoever arising incurred as a result of in connection with the Equipment of the transport possession use maintenance or repair the Equipment or the seizure or taking of possession of the Equipment by the Owner.
 9.2 The Hirer must at all times during the Hire Period at its own expense insure and keep the Equipment insured with a reputable insurer for their full insurable value against loss or damage by fire theft and accident.
 9.3 The Hirer shall hold any money it receives by virtue of any insurance effected and maintained as herein provided upon trust for the Owner and shall pay that money in full to the Owner upon demand.

10. RELIANCE AND WARRANTIES

- 10.1 The Hirer hereby acknowledges:
 10.1.1 that in deciding to hire the Equipment the Hirer has not relied in any way on the Owner's skill or judgement;
 10.1.2 the Hirer has satisfied itself as to the condition and suitability of the Equipment and its fitness for the Hirer's purposes; and
 10.1.3 that it has prior to hiring the Equipment and will prior to accepting the Equipment examine it and satisfy itself of its condition suitability and fitness for the Hirer's purposes.
 10.2 All conditions and warranties express or implied, whether arising by statute or otherwise as to the condition suitability quality fitness or any purpose or safety of or title to the Equipment are hereby negated and excluded to the full extent permitted by law and the Owner gives no such warranty or condition and the Hirer acknowledges that the Owner has not given any such warranty or condition.
 10.3 The Owner's liability for breach of a condition or warranty implied by Division 2 of Part V of the Trade Practices Act 1974 Or by Part III of the Fair Trading Act 1988 (other than s.69 of the former act and s.34 of the latter act) is hereby limited to:
 10.3.1 in the case of the Equipment any one or more of the following:
 10.3.1.1 the replacement of the Equipment or the supply or equivalent equipment;
 10.3.1.2 the repair of the Equipment;
 10.3.1.3 the payment of the cost of replacing the Equipment or of acquiring equivalent equipment
 10.3.1.4 the payment of the cost of having the Equipment repaired; or
 10.3.2 in the case of services:
 10.3.2.1 the supplying of the services again, or
 10.3.2.2 the payment of the cost of having the services supplied again.

11. TERMINATION

- 11.1 The Owner may without notice determine this Agreement and retake possession of the Equipment and for that purpose enter into or upon any premises where it may be if the Hirer:
 11.1.1 Refuses neglects or fails to duly and punctually pay any hire charges or other money required to be paid pursuant to The provisions of this Agreement;
 11.1.2 Refuses neglects or fails to duly and punctually observe perform and comply with the terms and conditions of this Agreement
 11.1.3 Does omit to do or causes permits or suffers to be done any act matter or thing whereby the Owner's rights to the Equipment may be prejudiced;
 11.1.4 Commits any act of bankruptcy or any order is made against the Hirer;
 11.1.5 (Being a company) shall go into liquidation or any position is presented against it.
 11.2 The Owner may at any time during the Hire Period notify the Hirer to return the Equipment whereupon the Hirer must immediately make it available to the Owner for collection.
 11.3 The Hirer may at any time during the Hire Period notify the Owner that the Equipment is available for collection and obtain a "pick up" number failing which the Hirer shall not be deemed to have notified the Owner that the Equipment is ready for collection.
 11.4 The Owner's records shall be conclusive proof as to the time when the Hirer obtained a pick up number and when the Hirer obtained delivery of the Equipment.;
 11.5 The Owner may at any time after giving or receiving the notices referred to in the preceding clause enter any premises owned occupied or controlled by the Hirer to collect the Equipment and may disconnect dismantle and remove the Equipment from any part of the premises to which it may be affixed.
 11.6 The Owner must collect the Equipment as soon as practicable after receiving a notice from the Hirer requesting this.
 11.7 Upon any termination the Hirer shall indemnify and keep indemnified the Owner from and against all actions suits claims proceedings demands costs charges expenses and liabilities that may arise by reason of the Owner retaking possession of the Equipment.
 11.8 These terms and conditions shall continue to apply in so far as they are applicable until the Owner has collected the Equipment from the site.

12. LOST OR DAMAGED EQUIPMENT

- 12.1 The Hirer must pay to the Owner forthwith on demand the cost of:
 12.1.1 Repairing any damage to the Equipment (excluding damage arising from fair wear and tear), and;
 12.1.2 Replacing any Equipment that is irreparably damaged or lost including replacing any parts with genuine replacement parts at normal retail prices.
 That may be caused or contributed to by the misuse of the Equipment or by any act neglect default or omission of the Hirer or its servants agents and employees and notwithstanding anything otherwise contained in this Agreement the Hirer shall continue to pay hire charges until the cost of repairing or replacing the Equipment has been paid to the Owner.

13. MISCELLANEOUS

- 13.1 These terms and conditions shall be governed by and construed in accordance with the laws of the State of Western Australia.
 13.2 The person signing these Terms and Conditions for and on behalf of the Hirer agrees with the Owner that he or she has the authority of the Hirer to hire the Equipment and is empowered by the Hirer to bind the Hirer to this Agreement.
 13.3 No time or indulgence or waiver of its rights under these Terms and Conditions granted or purporting to be granted by the Owner shall affect the Owner's position by rights under these Terms and Conditions or in the Equipment or shall constitute a waiver or release of any breach committed by the Hirer.
 13.4 If any provision of these Terms and Conditions is found to be void voidable or unenforceable the validity and enforceability of the remaining provisions shall not in any way be affected or impaired.
 13.5 This Agreement is binding upon each person who signs it notwithstanding:
 13.5.1 The failure of the Owner to sign it;
 13.5.2 The avoidance or unenforceability of these terms and conditions or any of them against any signatory or intended signatory.
 13.5.3 The avoidance or unenforceability of these terms and conditions or any of them against any signatory or intended signatory.
 13.6 The terms and conditions and the reverse side constitute the entire agreement between the Owner and the Hirer.
 13.7 These terms and conditions shall continue apply in so far as they are relevant until the date that the Owner collects the Equipment.