HIRE | SALES | SERVICE | LEASE | STORAGE

TRADING ACCOUNT APPLICATION FORM

(Incorporating Standard Terms and Conditions of Hire)

Truck and Trailer Rentals Australia Pty Ltd
ACN 682 016 066

PO Box 1659, Canning Vale, WA 6970
Phone: 13 33 39
Fax: (08) 6253 8322
accounts@trucktrailerrentals.com.au

Details of Applicant

PLEASE TICK APPROPRIATE BOXES:

☐ Company ☐ Trust ☐ Partnership ☐ Individual Trader ☐ Government

☐ Other (please specify):

Applicant's Legal Name ("Customer") or ("Hirer"):			
Trust Details (if any):			
ABN:		**ACN (If a company):**	
Trading Name:			
Trading Address:			
Suburb:		**State:**	**Post Code:**
Phone:	**Fax:**	**Email:**	

Accounts Payable Contact Details

Contact Name:	**Contact Phone:**	
Contact Address:		
Suburb:	**State:**	**Post Code:**
Email (for invoices):		

Insurance Details

Company Name:	**Contact Phone:**
Contact Person:	**Email:**
Policy Number:	

Directors Details (complete for all directors / proprietors / owners)

Full Name	Date of Birth	Residential Address
1.		
2.		
3.		

By signing this Trading Account Application Form (on your own behalf and where applicable on behalf of the Applicant / Hirer), you:

- warrant the accuracy of the information set out above;
- bind the Applicant to the "Terms and Conditions of Hire" attached to this Trading Account Application Form;
- warrant having read, understood and agreeing to the Terms and Conditions of Hire; and
- acknowledge that the Terms and Conditions of Hire apply every time the Applicant hires equipment from Truck and Trailer Rentals Australia Pty Ltd, and/ or Trailer Rentals Australia.

Sole Trader / Partner / Director Signature	Position / Title	Date

1. DEFINITIONS AND INTERPRETATION

1.1. In these terms and conditions (Terms and Conditions of Hire), unless specified to the Contrary, the following words and phrases have the following meanings given to them:

TTRA means Truck & Trailer Rentals Australia Pty Ltd (ACN 682 016 066) and/or its business names; trading as Trailer Rentals Australia or any other Access Entities from which engages for other services under clause 17 (as applicable).

Access Entities means Access Group Australia Pty Ltd (ACN 096 170 071) or any of its related bodies corporate (as that term is defined in the Corporations Act 2001 (Cth)) and/or registered business names as appropriate including (but not limited to): Access Equipment Group Pty Ltd (ACN 131 094 874) and its business names (not limited to the following): Access Modular; Access Express SA; Access Hire South Australia; Access Hire; Access Hire New South Wales; Forklifts Australia Holdings; Access Equipment VIC; Access Equipment WA; Sub Hire Australia VIC; Sub Hire Australia WA; Access Equipment Hire Australia; Access Hire Darwin, Access Express Australia, Access Rentals South Australia, Access Rentals Queensland; Access Rentals New South Wales; Access Rentals Victoria, Rentpro Equipment; other related and associated bodies including; Access Rentals Australia Pty Ltd (ACN 104 523 088); Access Hire Kalgoorlie Pty Ltd (ACN 639 267 799); Access Hire Port Hedland (ACN 646 333 397); Tilt Trays Australia Pty Ltd (ACN 101 325 302); Access Indigenous Pty Ltd (ACN 643 507 653); Low Loaders Australia Pty Ltd (ACN 134 989 718) and Access Services Group Pty Ltd (ACN 133 958 906), Generators Australia Pty Ltd (ACN: 114 816 465); Forklifts Australia Pty Ltd (ACN: 159 399 756); Truck & Trailer Rentals Australia Pty Ltd (ACN: 682 016 066); Solartech Group Pty Ltd (ACN 639 124 422), Globe Power Pty Ltd (ACN 640 795 008); Dingli Australasia Pty Ltd(ACN 663 403 727)

Australian Standards means voluntary standards developed by a national standards body (such as Standards Australia) or other accredited bodies.

Claim means in relation to a person, corporation or other legal entity, a claim, demand, remedy, suit, injury, damage, loss, cost of liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred or to be made or recovered by or against such person, corporation or other legal entity however arising and whether ascertained or unascertained.

Credit Application means the Hirer's signed application for credit accommodation by TTRA in respect of Equipment hire and in respect of which a copy of these Terms and Conditions of Hire is attached.

Environmental Disposal Levy has the meaning given in clause 4.5.

Environmental Laws means any statute, policy directions or regulations made or issued by a regulatory body or government body relating to the environment including (without limitation) the protection of the environment.

Equipment means each item hired by TTRA to the Hirer and includes all tools, accessories, parts, item of equipment and devices affixed thereto or supplied therewith.

Guarantors means the Guarantors listed in item 2 of the schedule to the Deed of Guarantee and Indemnity.

Hire Agreement means every agreement between TTRA and the Hirer for the hire of Equipment (whether signed or not), all of which will be deemed to include:

(a) the Credit Application (or other order documentation approved by TTRA in respect of the Equipment);

(b) these Terms and Conditions of Hire; and

(c) if applicable, the Terms and Conditions of Carriage.

Hire Period has the meaning given in clause 3.

Hirer means the person, firm or corporation to whom the Equipment is hired by TTRA (including the party named and described in the Credit Application as the "Applicant") and includes any Contractor, employee, servant, agent or other person claiming through, under or in trust for any such person, firm or corporation.

Location means the place where the Hirer will deliver and/or collect the Equipment.

Modern Slavery has the meaning given in section 4 of the Modern Slavery Act 2018 (Cth).

Rental Levy has the meaning given in clause 4.14.

Security Deposit means the deposit as detailed in the quote kept by TTRA as security for the proper compliance by the Hirer of its obligations under the Hire Agreement.

Terms and Conditions of Carriage means the terms and conditions that are applicable and included in this Hire Agreement in circumstances where the Hirer requests TTRA to deliver Goods on the Hirer's behalf excluding Transportation of Equipment hired under these Terms and Conditions of Hire.

1.2. In the interpretation of these Terms and Conditions of Hire, the following provisions apply unless the context otherwise requires:

1.2.1. words importing the singular include the plural and vice versa;

1.2.2. words importing any gender includes both genders;

1.2.3. a reference to any matter or thing includes the whole and each part of it separately;

1.2.4. where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;

1.2.5. a reference to a natural person includes a company or other corporate body and vice versa;

1.2.6. a reference to any legislation, regulation, code or local law includes any modification, re-enactment or substitution of it;

1.2.7. the obligations imposed by these Terms and Conditions of Hire on or in favour of a party who is a natural person extends to his heirs, executors, administrators and assigns;

1.2.8. the obligations imposed by these Terms and Conditions of Hire on or in favour of a party which is a corporate body includes its successors and assigns; and

1.2.9. use of the word "including" is to be read and construed without limitation.

2. TITLE TO EQUIPMENT

2.1. The Hirer acknowledges that in all circumstances TTRA retains title to the Equipment (even if the Hirer goes into liquidation or becomes bankrupt during the Hire Period) and in no circumstances will it be deemed to be a fixture. The rights of the Hirer to use the Equipment are as a bailee only.

2.2. Except in the circumstances set out in clause 13, the Hirer must not offer, sell, assign, sub-let, charge, mortgage, pledge, create any form of security interest or otherwise deal with the Equipment in any way which is inconsistent with the rights of TTRA as owner.

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2.3. All risk in the Equipment passes to the Hirer upon delivery to the Hirer or collection of the Equipment by the Hirer, continues during the entirety of the Hire Period and only ceases when TTRA acknowledges that the Equipment has been returned to TTRA (or when the Equipment is collected by TTRA if agreed).

3. HIRE PERIOD

3.1. Subject to clause 3.3, the period of hire commences when the Hirer takes possession of the Equipment or when TTRA delivers the Equipment in accordance with the Hirer's instructions and the period of hire ends when the Equipment is back in the possession of TTRA (in total, the "Hire Period"). The Hire Period includes weekends and public holidays and is irrespective of the time the Equipment is being used.

3.2. The Hirer will be entitled to use the Equipment for the Hire Period on the express understanding that it will be charged for such use in accordance with the Hire Agreement.

3.3. Should TTRA agree with the Hirer that TTRA will deliver and collect the Equipment, hire charges will commence from the time the Equipment leaves TTRA's premises and continue until the date that the Equipment is available for collection from the Location ("**Off-Hire Date**"). The Hirer must notify TTRA of that date in advance and TTRA may give the Hirer a number as verification that such notification has been received ("**Off-Hire Number**").

3.4. The notification will be given by the Hirer with sufficient time in advance (prior to 3pm on the Off-Hire Date) for the Equipment to be picked up and returned to TTRA's premises within TTRA's normal business hours by the Off-Hire Date. If TTRA considers that insufficient notice has been given, the Hirer will be charged for such additional period of time as TTRA considers is necessary to arrange collection or delivery of the Equipment, but in any case, no less than an extra minimum period of hire. Any hire period specified on the Hire Agreement will not be deemed notice to TTRA that the Equipment is available for collection. Where TTRA agrees to collect the Equipment, the Hirer remains responsible for theft, loss or damage to the Equipment until the Equipment is collected by TTRA.

3.5. The Hire Agreement will specify the type of rate that will apply. Equipment hired for at least 5 days in a seven-day period, will be charged at the weekly rate.

3.6. TTRA reserves the right to charge a minimum period of hire for certain types of Equipment. The minimum period of hire may not be varied except if agreed in writing by TTRA.

3.7. The Hire Period will not be subject to stand down or adjustment for any reason whatsoever unless agreed to by TTRA in writing.

4. HIRE CHARGES AND OTHER CHARGES

4.1. **Hire:** Subject to clause 4.9, the Hirer will pay TTRA the hire charges set out in the Hire Agreement, as well as other levies or charges that may be applicable. The Hirer is not entitled to any discount or rebate if the Equipment is not used by the Hirer for any part of the Hire Period. If the Equipment is used for more than the agreed distance specified in the quote, TTRA may elect to charge for additional distance beyond the quote.

4.2. **Pricing Confidentiality:** The Hirer acknowledges that all pricing quoted by TTRA is for the Hirer only and must be kept confidential at all times.

4.3. **Consumables and Trade Materials:** The Hirer will be liable for charges made for consumables and Trade materials used at the scheduled rate.

4.4. **Tax and Government Charges:** The Hirer will be liable for stamp duty, GST and all other applicable taxes, duties, levies, penalties and any other government charges imposed on the Hire Agreement or in respect of the Hire Period. If the Hirer wishes to claim exemption from duty or tax, the Hirer must furnish appropriate exemption certificates to TTRA. Unless otherwise expressly agreed in writing by TTRA, any quarantine costs payable in respect of the Equipment (including without limitation the costs of any necessary disassembly, reassembly and cleaning of the Equipment) are payable by the Hirer, and the Hirer must also pay the hire charges during the period of such disassembly, reassembly and cleaning of the Equipment.

4.5. **Environmental Disposal Levy:** TTRA may charge, and the Hirer will agree to pay the amount specified by TTRA in the Hire Agreement in consideration of any oil, grease or other environmental contaminants used, applied or discarded in connection with the Equipment.

4.6. **Credit Card Payments:** If any additional charges are applied beyond the quoted amount, Access will promptly notify the Hirer of the charges and the amount debited. The Hirer agrees that the credit card may be charged for up to 30 days following the end of the month when the Equipment was off-hired or when a final damage invoice is issued, whichever occurs later.

4.7. **Delivery:** If the Hirer requires TTRA to deliver or collect the Equipment, then the Hirer will be liable for the cost of delivery, collection. TTRA will not be responsible for any loss or damage whatsoever caused by delays in delivery or failure to deliver for any reason whatsoever, including negligence on the part of TTRA or its agents or employees. TTRA shall have the right to charge the Hirer for an additional delivery or collection fee for each occasion where the Equipment was not able to be delivered and or collected at the agreed times and location. TTRA is not a common carrier and does not accept the obligation or liability of common carriers. TTRA may refuse the handling, lifting and/or carriage of Equipment for any person in its discretion and without being bound to give reason for such refusal.

4.8. **Return of Equipment:** The Customer will remain liable to be charged for the Equipment until it is returned to TTRA (if TTRA agrees to collect the Equipment then clause 3.3 applies). The Hirer will be charged a full day hire for the day on which the Equipment is returned by the Hirer (or collected by TTRA) irrespective of the time at which the Equipment is returned (or collected by TTRA).

4.9. **Early Return of Equipment**: If the Hirer returns the Equipment before the expiry of the minimum period of hire mentioned in clause 3.6 (if any), the Hirer will remain liable for all hire and other charges payable to TTRA for the minimum period of hire.

4.10. **Payment Due Date:** The Hirer is required to pay all fees, charges and costs that may become due and payable on demand unless the Hirer has been approved for 30-day credit terms. If credit terms are granted, payment shall be made within 30 days from end of month. Access reserves the right to withdraw credit terms at any time, in which case all outstanding payments shall be due immediately in cash upon demand.

4.11. **Invoice:** The Hirer must notify Access of any invoice disputes including providing a valid Purchase Order Number. If no dispute is raised or communicated to Access within 14 days from the Invoice Date, the invoice will be considered accepted.

4.12. **Late Payment:** Invoices sent to the Hirer's email address by TTRA will be deemed to have been received by the Hirer on the date that the email is sent. If a Hirer does not pay the amount of the Hire Agreement invoice by the payment due date, a late payment fee of 4% per month, compounding monthly, may be imposed. In addition, the Hirer will be liable to indemnify TTRA for all expenses incurred by TTRA in recovering any amounts which the Hirer fails to pay by the payment due date (including any commission payable to any commercial or mercantile agents and legal costs).

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Where an invoice remains overdue for 3 days or longer, the Hirer's Trading account will be placed on stop credit. Where an invoice remains overdue for 15 days or longer, TTRA reserves the right for all equipment to be off-hired and removed and transported back to TTRA at the Hirer's cost.

4.13. **Set-off and application of funds:** TTRA may set-off against any credit owed to the Hirer any amount owing by the Hirer to TTRA. Any claims for credit by the Hirer shall be made within fourteen days of receiving TTRA's invoice. The Hirer must not withhold or make any deduction from any payment by way of set-off. The Hirer acknowledges and agrees that any payment made by the Hirer pursuant to this Agreement may be applied by TTRA to such outstanding moneys due to TTRA, as TTRA determines in its sole discretion and notwithstanding any direction given by the Hirer at the time of payment.

4.14. **Return time:** For the sake of certainty the Hirer may only return the Equipment to TTRA's premises during normal business hours.

4.15. **Rental Levy:** The Hirer will pay a 12.5% Rental Levy on all Hire Agreements in addition to TTRA's hire charges for the purpose of covering aesthetic and incidental wear and tear, servicing, break downs and costs associated with the hire and off-hire of Equipment in accordance with the manufacturer's guidelines and all relevant Australian Standards. If the hirer refuses to pay the Rental Levy, then all costs associated with aesthetic and incidental wear and tear, servicing, break downs and costs associated with the hire and off-hire of Equipment, will be on-charged to the Hirer. The Rental Levy does not constitute consideration for (and the Hirer remains responsible for) loss or damage occasioned by any one or more of the following:

4.15.1. damage occasioned by any one or more of the following:

4.15.2. damage due to misuse, abuse or overloading of the Equipment or any components thereof;

4.15.3. wrongful conversion of the Equipment or any components thereof;

4.15.4. loss or damage suffered due to a contravention by the Hirer of the Hire Agreement;

4.15.5. loss or damage arising from use in violation of any statutory laws and regulations;

4.15.6. damage caused to tyres and tubes by blowout, bruises, cuts or other causes inherent in the use of the Equipment;

4.15.7. glass breakage or graffiti;

4.15.8. loss or damage relating to lack of lubrication or other normal servicing of Equipment or due to a failure to comply with the cleaning and servicing instructions given by TTRA;

4.15.9. loss or damage to the Equipment whilst located, used, loaded, unloaded, Transported on or over water, wharves, bridges or vessels of any kind;

4.15.10. loss or damage to motors or other electrical appliances or devices caused by overloading or artificial electrical current, including use of under-rated or excessive length of extension leads on electrically powered tools and machines;

4.15.11. damage caused by exposure to any corrosive or caustic substance, such as (without limitation) cyanide, salt, water and acid;

4.15.12. theft of the Equipment or any deliberate damage of any type caused to the Equipment (whether caused by the Hirer or any third party whatsoever);

4.15.13. loss or damage to Equipment during Transport, except were Transported by TTRA; or

4.15.14. loss or damage caused by the negligence of the Hirer and damage caused by paint, texture, coat, overspray, concrete, grinding, welding, gas, cutting, collision, dropping and/or impact.

Payment of the rental levy entitles the Hirer to one set of tyres per year. If the Hirer refuses payment of rental levy, then tyre wear will be charged on a usage basis. Tyre wear will be determined by a measurement taken at the start and completion of the hire period.

4.16. **After Hours Servicing and Breakdowns:** TTRA will provide on-site servicing and break-down assistance during standard working hours. If attendance to site is required after hours or on weekends, this will be charged at after-hour rates. Minimum call out charge of 3 hours will be applicable.

4.17. **Non-Potable Water:** Where the use of non-potable water for dust suppression causes corrosion to equipment, the Hirer will be charged for refurbishment of the equipment.

4.18. **Cleaning:** The Hirer is responsible for all costs associated with any cleaning, painting, replacement of decals, repairs and refuelling of equipment returned to TTRA in an unsatisfactory condition as determined by TTRA. If the Equipment was in any way exposed to asbestos or asbestos containing materials during the period of Hire, the Hirer must ensure that the Equipment is decontaminated (including cleaned, washed and vacuumed) by a licensed asbestos removalist prior to return to TTRA. The Hirer must pay for all costs associated with this decontamination and provide evidence from a licensed asbestos removalist that this has been carried out.

4.19. **Security Deposit:** The Hirer shall be entitled to recover any rental or any other due amount in terms of this Hire Agreement, be it damages or otherwise, from the Security Deposit and to pay the balance thereof, if any, over to TTRA within 7 (seven) Business Days following the date of termination or cancellation of this Hire Agreement. The Hirer acknowledges that TTRA will be entitled to retain any interest that may accrue in respect of the Security Deposit whilst this Hire Agreement is in force.

5. RENTAL LEVY AND ENVIRONMENTAL DISPOSAL LEVY

5.1. The Rental Levy and Environmental Disposal Levy specified in the invoice are payable by the Hirer in addition to the other hire charges stated in the Hire Agreement. If no Rental Levy is referred to in the invoice, the Hirer acknowledges and agrees that it will be charged for and it will pay to TTRA the costs specific to repainting, tyre wear, description, new decals, new stickers, off-hire costs, onsite servicing, inspections, break downs, repairs, all accommodation, air fares, Travel per km, inductions, Training and chargeable time, to be billed separately to the Hirer.

6. HIRER'S HIRE OBLIGATIONS

6.1. **Possession and Use by Hirer:** The Hire Agreement is personal to the Hirer and the Hirer will not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time during the Hire Period.

6.2. **Suitability:** The Hirer agrees that the use of the Equipment is deemed acceptance that it has satisfied itself as to the suitability, condition and fitness for purposes of the Equipment. To the extent permitted by law, TTRA gives no warranty that the Equipment is suitable for the Hirer's purpose. For the avoidance of doubt, this clause is not intended to exclude the application of statutory warranties under the Australian Consumer Law in circumstances where they would otherwise apply.

6.3. **Operation of Equipment:** The Hirer warrants that at all times it will:

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6.3.1. only use the Equipment for the purpose in which it was manufactured or designed and shall only operate the Equipment within Australia unless agreed in writing by TTRA.

6.3.2. operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions.

6.3.3. ensure persons operating or erecting the Equipment are suitably instructed/TTRAined in its safe and proper use and where necessary hold a current Certificate of Competency and be licensed to use it;

6.3.4. return the Equipment to TTRA in the same good and clean condition it was in when the Hirer received it, ordinary fair wear and tear excluded. If the Hirer fails to clean the Equipment, TTRA will charge the cleaning cost to the Hirer;

6.3.5. display, maintain all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by the operator of the Equipment;

6.3.6. ensure all persons operating the Equipment wear suitable clothing and protective equipment as required or recommended by the manufacturer or by TTRA;

6.3.7. ensure that no persons operating the Equipment are under the influence of drugs or alcohol;

6.3.8. conduct a job safety analysis prior to using the Equipment at a site;

6.3.9. accept responsibility for the safe keeping of and insuring the Equipment during the Hire Period;

6.3.10. ensure that no persons carry illegal, prohibited or dangerous substances in or on the Equipment;

6.3.11. comply with all Environmental Laws from time to time and immediately rectify any breach of an Environmental Law caused by the use of the Equipment;

6.3.12. service and upkeep the Equipment on a regular basis as stated by TTRA. Further, all costs included in servicing will be on the Hirer to pay for. Costs may include fuel, rotating tyres and similar costs. Tyres requiring replacement must be replaced with a recognised premium brand; and

6.3.13. not remove or tamper with any part of the Equipment outside of service requirements. This includes but is not limited to the strict requirement not to tamper with any Tracker or GPS installed in the Equipment.

6.4. **Cleaning and Maintenance:** The Hirer must:

6.4.1. carry out daily checks, clean, fuel, lubricate and maintain the Equipment in good condition and in accordance with the manufacturer's and TTRA's instructions at the Hirer's cost; and

6.4.2. not in any way alter, modify, tamper with, damage or repair the Equipment without TTRA's written consent.

6.5. **Safekeeping:** The Hirer must ensure that during the Hire Period the Equipment is stored safely and securely and is protected from theft, seizure, damage or vandalism.

6.6. **Alteration and Identifying Marks:** The Hirer must not alter, deface, remove or erase any notices, safety information, identifying marks, plates or numbers on the Equipment.

6.7. **Inspections:** The Hirer consents to TTRA inspecting the Equipment from time to time during the Hire Period. The Hirer must provide access to the Equipment and a safe place of work at the Location for TTRA to carry out any inspection, including as required under the Australian Standards. In addition, the Hirer may arrange a joint inspection with TTRA at the end of the Hire Period.

6.8. **Safe Loading and Transport:** The Hirer will ensure the safe loading, securing and Transporting of all Equipment in accordance with all laws and manufacturer's guidelines. The Hirer and any Transporting Contractor must observe any safety directions advised by TTRA and/or manufacturer of the Equipment for its loading and safe handling.

6.9. **Return to Location**: The Hirer must return the Equipment to the Location before off-hiring with TTRA. If the Hirer is not using TTRA delivery or collection, the Equipment must be returned to TTRA's premises where the Equipment was collected from by the Hirer or delivered from TTRA (during normal business hours).

6.10. **Electrical Equipment testing and tagging:** The Hirer is responsible for arranging at the Hirer's cost the testing and tagging of all electrical equipment forming part of the Equipment by the relevant manufacturer's agent in accordance with the manufacturer's instructions and the applicable Australian standard/s and regulatory authority requirements. TTRA is able to arrange, at the Hirer's cost, for such testing and tagging of the relevant electrical equipment. Any damage caused to the Equipment resulting from incorrect testing will be at the Hirer's cost.

7. EQUIPMENT BREAKDOWN

7.1. Obligations of Hirer: In the event that the Equipment breaks down or becomes unsafe to use during the Hire Period, the Hirer must:

7.1.1. immediately stop using the Equipment and notify TTRA;

7.1.2. immediately take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;

7.1.3. immediately take all steps necessary to prevent any further damage to the Equipment; and

7.1.4. not repair or attempt to repair the Equipment without TTRA's written consent.

7.1.5. Obligations of TTRA: In the event that the Equipment breaks down or becomes unsafe to use through no fault, negligence, recklessness or misuse by the Hirer or any third party who gains access to the Equipment at the Location, TTRA will:

7.1.6. take all steps necessary to repair the Equipment soon as reasonably possible after being notified by the Hirer;

7.1.7. allow for the Hirer to be attended by another service provider to repair the damage;

7.1.8. not impose a hire charge for that portion of the Hire Period for which the Equipment was broken down or unsafe, nor, subject to clause 16.4, the costs associated with any repair or replacement of the Equipment; and

7.1.9. not be liable for any expenditure, damages, loss or inconvenience incurred by the Hirer or any Claim made against the Hirer arising from or in any way connected with a breakdown of or a malfunction in the Equipment, besides that directly caused by the gross negligence or wilful default of TTRA.

8. LOST, STOLEN OR DAMAGED EQUIPMENT

8.1. The Hirer is at all times responsible for the Equipment and its attached tools and accessories during the Hire Period.

8.2. If the Equipment is lost, stolen or damaged during the Hire Period, or if the Hirer fails to return the Equipment to TTRA within agreed timeframes, the Hirer will be liable for:

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8.2.1. any costs incurred by TTRA in repairing the Equipment or for the new replacement cost of the Equipment if it cannot be economically repaired; and

8.2.2. any other costs whatsoever incurred by TTRA as a result of the loss, theft or damage to the Equipment (including the full hire charges as set out in the Hire Agreement until the Equipment stated in clause 8.2.1 is again available for use by TTRA).

8.3. The Hirer is obligated to report any accident and theft involving the Equipment to the police and other relevant authorities and shall endeavour to provide TTRA all relevant case and accident reference numbers.

8.4. Where there is any theft, loss or damage involving the Equipment and an insurance claim is repudiated as a result of the gross negligence or action(s) of the Hirer or any other person connected with the Hirer, the Hirer shall, without delay or set-off, pay to TTRA the market value of the Equipment as indicated on the insurance policy for the Equipment. The Hirer shall also remain liable towards TTRA for payment of all rental premiums up and until the date on which the market value of the Equipment is paid to the Hirer, at which stage this agreement may be terminated by TTRA in its absolute discretion.

9. SUPPLY DOCUMENTS

9.1. Upon request by TTRA, the Hirer must supply TTRA with full copies of any document relating to the Equipment in any way including any police report regarding any damage caused to the Equipment by any person.

10. INSURANCE

10.1. The Hirer shall affect and maintain at its expense the policies of insurance specified in subclauses 10.1.1 and 10.1.2 providing cover for the whole of the period of hire including any extension or continuation.

10.1.1. A policy providing indemnity for physical loss, including theft and/or damage to the Equipment for the replacement value of each item of Equipment, including whilst in Transit; and

10.1.2. A public liability policy in the usual terms which provides indemnity with respect to the operation of the Equipment to a limit of indemnity of at least $20,000,000.

10.2. The Hirer shall ensure that each policy of insurance names TTRA as a named insured as owner of the Equipment.

10.3. The Hirer shall provide TTRA with evidence of the insurance effected in compliance with clauses 10.1.1 and 10.1.2 immediately upon demand by TTRA.

10.4. The Hirer warrants that it shall not do any of the following:

10.4.1. do anything, or fail to do anything, which would allow an insurer to refuse or reduce a claim;

10.4.2. vary the insurance required by this clause in any way without the written consent of TTRA; or

10.4.3. enforce, conduct, settle or compromise a claim without the consent of TTRA.

11. INDEMNITIES AND EXCLUSIONS OF LIABILITY

11.1. Subject to clause 11.2 and except as expressly provided to the Contrary in the Hire Agreement, all terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to TTRA's obligations under the Hire Agreement are excluded from the Hire Agreement to the extent permissible by law.

11.2. Where any Act of Parliament implies a term, condition or warranty in this Hire Agreement and that Act prohibits provisions in a Contract excluding or modifying the application, exercise or liability under that term, condition or warranty, such term, condition or warranty will be deemed to be included in this Hire Agreement to the minimum extent permissible. The Hirer hereby warrants and agrees with TTRA that any damages suffered by it as a result of any breach by TTRA of this Hire Agreement or any breach of any applicable legislation will not exceed and otherwise be capped at the lesser of the actual charges payable pursuant to the Hire Agreement or four months hire charges.

11.3. Subject to clause 11.2, TTRA will not be under any liability to the Hirer for consequential loss or damage (including loss of actual or anticipated profits or revenue, economic loss of any kind or any loss suffered as a result of any claim or claims by third parties) in Contract, tort (including negligence) under statute or otherwise from or in relation to the Equipment or this Hire Agreement.

11.4. The Hirer is liable for and indemnifies TTRA against all liability, claims, loss, costs and expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor/client basis, determined without taxation, assessment or similar process and whether incurred or awarded against TTRA and any environmental loss, cost, damage or expense) arising from or incurred in connection with the Hirer's hire and use of the Equipment or its breach of the Hire Agreement.

11.5. Each indemnity in this Hire Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Hire Agreement. It is not necessary for a party to incur expenses or make any payment before enforcing a right of indemnity conferred by this Hire Agreement. The Hirer must pay on demand any amount it must pay under an indemnity in this Hire Agreement.

11.6. For the purposes of clauses 11.3 to 11.4, use of Equipment operated by a person supplied by TTRA will be use of the Equipment by the Hirer.

12. MODERN SLAVERY

12.1. The Hirer must ensure that it:

12.1.1. does not engage in Modern Slavery;

12.1.2. complies with all laws, codes, standards, regulations, legal requirements and directions relating to Modern Slavery;

12.1.3. develops and maintain policies and procedures to avoid engaging in Modern Slavery; and

12.1.4. notifies TTRA promptly upon becoming aware of any complaint or allegation that the Hirer has engaged in Modern Slavery.

13. PPS LAW

13.1. For the purposes of this clause, "**PPS Law**" means the Personal Property Securities Act 2009 (Cth) and its regulations and any other associated or consequential Act or regulation, as amended. A term defined in the PPS Law has the same meaning when used in this clause.

13.2. The Hirer acknowledges that this Hire Agreement is a security agreement and a PPS Lease for the purposes of the PPS Law and creates a security interest in all Equipment rented to the Hirer, as security for the Hirer's obligations to TTRA under this Hire Agreement.

13.3. The Hirer agrees to indemnify TTRA for any costs, commissions, fees and expenses, including legal expenses, in relation to the registration, maintenance, enforcement or discharge of a security interest.

13.4. The Hirer agrees to do all such things, sign and/or provide all such documents and/or provide any further information as necessary and required to enable TTRA to acquire a perfected security interest in all Equipment supplied by TTRA to the Hirer and, if applicable, a Purchase Money Security Interest.

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13.5. The Hirer agrees to Contract out of, waive or exclude such sections of the PPS Law as TTRA may require, to the extent that those sections are able to be excluded under the PPS law. The Hirer expressly agrees to:

13.5.1. Contract out of the enforcement provisions referred to in Articles 115(1)(f) to 115(1)(h), 115(1)(l) to 115(1)(n), 115(1)(p), 115(1)(q) and 115(1)(r) of the PPS Law;

13.5.2. waive their right to receive a copy of any notice or statement under Articles 157 and 175 of the PPS Law in respect of the security interest created by this Contract;

13.5.3. not sell or grant any other security interest in the Equipment rented, and

13.5.4. not change or attempt to change any document or registration made or required under the PPS Law in relation to the security interest created by this Contract without the prior written consent of TTRA.

13.6. If:

13.6.1. a PPS Law applies or commences to apply to this Hire Agreement, or any Transaction contemplated by it, or TTRA determines based on legal advice that this is the case; and

13.6.2. in the opinion of TTRA, the PPS Law:

13.6.2.1. does or will adversely affect its security position or obligations; or

13.6.2.2. enables or would enable its security position to be improved without materially adversely affecting the Hirer,

TTRA may give notice to the Hirer to do anything (including amending this Hire Agreement or executing a new document) that in TTRA's reasonable opinion is necessary, to the maximum possible extent, to overcome the circumstances contemplated in subclause 13.6.2.1 above and/or improve the security position as contemplated in subclause 13.6.2.2 above. The Hirer must comply with the requirements of that notice within the time specified in the notice.

13.7. The Hirer will not lease, hire, bail or otherwise deal with ('**sub-hire**') the Equipment unless TTRA gives its prior written consent. Any such sub-hire must be in writing in a form acceptable to TTRA and must be expressed to be subject to TTRA's rights under this Hire Agreement. The Hirer may not vary a sub-hire without the prior written consent of TTRA.

13.8. The Hirer must ensure TTRA is provided 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.

13.9. The Hirer must take all steps including registration on the PPS register as may be required to:

13.9.1. ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPSA;

13.9.2. enable the Hirer to gain (subject always to the rights of TTRA and its related entities) first priority (or any other priority TTRA agrees to writing) for the security interest; and

13.9.3. enable the parties to exercise their respective rights in connection with the security interest.

13.10. If having completed everything reasonably practicable as required under the above clause, in the reasonable opinion of TTRA its security position or obligations under or in connection with this Hire Agreement have been or will be materially adversely affected, TTRA may by further notice to the Hirer terminate this Hire Agreement, in which case:

13.10.1. this Hire Agreement will be terminated with effect from the date or time specified in the notice; and

13.10.2. the Hirer must pay to TTRA all monies owing to it within 30 days of that termination.

14. TERMINATION

14.1. TTRA may terminate the Hire Agreement immediately by notice to the Hirer, if:

14.1.1. the Hirer breaches any term of the Hire Agreement; or

14.1.2. the Hirer becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, comes under external administration, goes into receivership or ceases to carry on business.

14.2. TTRA may terminate the Hire Agreement for any other reason by giving the Hirer 2 hours' notice.

14.3. The right of termination is in addition to any other rights under the Hire Agreement and does not exclude any right or remedy under law or equity and the terms of this Hire Agreement (including in respect of payment of the hire charges) continue to apply until the return of the Equipment to TTRA (or collection by TTRA if agreed).

15. RECOVERY OF EQUIPMENT

15.1. If the Hirer is in breach of the Hire Agreement or if TTRA has terminated this Hire Agreement, TTRA may take all steps necessary (including legal action) to recover the Equipment, including entering the Hirer's premises to do so and the Hirer hereby authorises TTRA to do so.

16. REMOTE AREA CONDITIONS

16.1. Definitions:

"**Remote Area**" is a location in excess of 50km from nearest TTRA branch.

16.2. Unless otherwise specified in the Hire Agreement the attendance of a TTRA employee or Subcontractor at the location of the Equipment in a Remote Area will be subject to a per km charge both to and from the site at the scheduled rate per kilometre plus labour costs at the scheduled rate, per person per hour (including Travelling time) plus any other direct Travelling costs including airfares and accommodation (**Remote Area Travelling Charges**).

16.3. The Hirer remains responsible for daily maintenance and care of all Equipment in its possession, including daily checking of all fluids (fuel, oil, water, battery levels etc), general tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points.

16.4. If the Equipment breaks down in a Remote Area, the Hirer must also pay TTRA the Remote Area Travelling Charges relating to any attendance to the location concerned.

16.5. It is the responsibility of the Hirer to provide accurate details as to the current location of the Equipment and ensure TTRA has access to the site. Refusal to allow TTRA to access the Equipment at the specified intervals will incur charges. Equipment will be placed out of service at full charge until TTRA notice is given for servicing to be completed.

16.6. If the Hirer requires Equipment to be serviced at intervals other than the pre-determined PMP service cycle (to align service cycles with site in line with manufacturing requirements), then the Hirer must pay all charges relating to attendance of qualified personnel.

16.7. It is the responsibility of the Hirer to provide accommodation for Remote Areas if no accommodation is available within 20 kilometres of that location.

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17. CLAUSE OF INCORPORATION OF ASSOCIATED TERMS AND CONDITIONS

17.1. This clause shall apply where the Hirer requests:

17.1.1. repair and maintenance services;

17.1.2. transportation services beyond those required for the Terms and Conditions of Hire;

17.1.3. yellow equipment hire;

17.1.4. to purchase products and/or Equipment; and/or

17.1.5. engage Access Entities for the hire of equipment.

17.2. Where the Hirer requests;

17.2.1. maintenance services from Access, the Hirer agrees to be bound by the Terms and Conditions of Service, which form an integral part of this Hire Agreement, and are located at here;

17.2.2. transportation services from Access, the Hirer agrees to be bound by the Terms and Conditions of Carriage, which form an integral part of this Hire Agreement, and are located at here;

17.2.3. Yellow Equipment from Access, the Hirer agrees to be bound by the Terms and Conditions of Yellow Hire, which form an integral part of this Hire Agreement, and are located at here;

17.2.4. To purchase products and/or Equipment from Access, the Hirer agrees to be bound by the Terms and Conditions of Sale, which form an integral part of this Hire Agreement, and are located at here;

17.2.5. To engage Access Entities for the hire of equipment, the Hirer agrees to be bound by the Terms and Conditions of Hire, which form an integral part of this Hire Agreement, and are located here.

17.2.6. The above terms and condition are located at the links contained in clause 17.2 respectively and shall apply and govern all aspects of Equipment, repairs, maintenance, transport, yellow equipment, capital sales, truck and trailer rentals and related obligations.

17.3. The Hirer confirms they have had the opportunity to read and understand the above linked terms and conditions in clause 17.2 prior to signing. In addition to the links provided, a copy of the relevant terms will be provided upon request.

18. MISCELLANEOUS

18.1. **Severability:** If any part of the Hire Agreement (including these Terms and Conditions) becomes void or unenforceable for any reason, then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.

18.2. **Governing Law and Default Recovery**: This Hire Agreement is governed by the laws of Western Australia and each party submits to the exclusive jurisdiction of the courts in that State.

18.3. **Security of Obligations:** As security for the obligations and liabilities of the Hirer and Guarantors under the Hire Agreement, the Hirer and Guarantors hereby charges for the due and punctual payment and performance of those obligations and liabilities, all of its legal and equitable interest (both present and future) of whatsoever nature held in any way in any real property. Without limiting the generality of the charge in this clause, the Hirer and Guarantors agree, on request by TTRA, to execute any documents and do all things necessary required by TTRA to register a mortgage security over any real property in which the Hirer and Guarantors have an interest (whether legal, equitable, present or future). The Hirer and Guarantors will indemnify TTRA on an indemnity basis against all costs and expenses incurred by TTRA in connection with the preparation and registration of any mortgage documents. The Hirer and Guarantors also consent unconditionally to TTRA lodging a caveat or caveats noting its interest in any real property in which the Hirer and Guarantors have an interest (whether legal, equitable, present or future).

18.4. **Entire Agreement:** The Hire Agreement, including these Terms and Conditions of Hire and the relevant credit application and hire Contract (or other order documentation approved by TTRA in respect of the Equipment), comprises the entire agreement between the parties. No additional terms and conditions proposed by the Hirer (including any terms contained in any hire order provided by the Hirer) apply to the hire of the Equipment unless agreed to in writing by TTRA.

18.5. **No Reliance:** The Hirer acknowledges that neither TTRA nor any other person acting on TTRA's behalf has made any representation or other inducement to it to enter into the Hire Agreement and that it has not entered into the Hire Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those representations or inducements contained herein.

18.6. **Variation:** TTRA may at any time vary the Hire Agreement, including these Terms and Conditions of Hire, by giving the Hirer 14 days' written notice of its intention to do so. If the Hirer is materially prejudiced by the variation, it may terminate the Hire Agreement by returning the Equipment to TTRA (or, if agreed, arranging collection by TTRA, in which case the Hire Agreement terminates upon collection by TTRA).

18.7. **GST:** All prices quoted are GST-exclusive and net of all taxes (whether in Australia or otherwise), unless otherwise expressly stated. TTRA will provide a tax invoice to the Hirer where applicable. All GST, customs duties, Government taxes, import / export permits and documentation fees levied or pertaining to Equipment during the period of rental are payable by the Hirer and the Hirer indemnifies TTRA to the extent it becomes liable for payment of such a tax or has paid such tax and is unable to recover it from the relevant authority.

18.8. **Privacy:** TTRA may collect personal information about the Hirer. TTRA may use the Hirer's personal information to provide services to the Hirer, to fulfil administrative functions associated with these services, to enter into Contracts with the Hirer or third parties, and for marketing and client relationship purposes. Generally, the Hirer has a right to TTRA personal information TTRA holds about the Hirer.

18.9. The Hirer consents to and authorises TTRA to use and disclose the Hirer's personal information in accordance with clause 17.8.

18.9.1. TTRA will only disclose information that we have about you:

18.9.2. to the extent specifically required by law; or

18.9.3. where there is a duty to the public to disclose that information.

18.9.4. where the interests of TTRA require disclosure.

18.10. The Hirer irrevocably authorises Access to make such enquiries as it deems necessary to provide services to the Hirer or investigate the credit worthiness of the Hirer and any guarantors from credit reporting agencies. Access may obtain personal and commercial credit information regarding the hirer from a credit reporting agency.

18.11. **Notice to Hirer:** Any document which by the Hire Agreement may be given by TTRA may be served or

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rendered by leaving it at or posting it to the address of the Hirer as stated in the Hire Agreement or at an address in Western Australia last notified by the Hirer in writing to TTRA and will be deemed to have been serviced or rendered at the time of leaving or, if posted, on the business day following the day of postage and any notice may be signed by an officer, manager or solicitor of TTRA.

18.12. **No Waiver:** No delay or omission to exercise any right, power or remedy accruing to TTRA upon any continuing breach or default under the Hire Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of any right of TTRA to take action or make a claim in respect of a continuing breach or default or to be acquiescence to it.

18.13. **Withdrawal of Credit Accommodation:** Any credit accommodation and/or credit limit granted by TTRA to the Hirer may be reviewed at any time without notice. Where a credit limit is set by TTRA, and the Hirer exceeds this credit limit the Hirer's Trading account will be placed on stop credit. Credit may be withdrawn for Hirers failing to make payments or use the Equipment in accordance with these Terms and Conditions of Hire and a statement may be issued at that time requiring payment within 7 days of any amount due and owing.

18.14. **Authority of Hirer:** The person signing the Hire Agreement (including the Credit Application) for and on behalf of the Hirer hereby covenants with TTRA that he or she has the authority of the Hirer to make the Agreement on the Hirer's behalf and is empowered by the Hirer to bind the Hirer to the Agreement and hereby indemnities TTRA against all losses, costs and claims incurred by TTRA arising out of the person so signing the Agreement not in fact having such power and/or authority.

18.15. **Previous Editions:** This edition of the Terms and Conditions of Hire replaces and supersedes all of TTRA's previously issued Terms and Conditions of Hire.

18.16. **Time of the Essence:** Time is to be of the essence with all obligations of the Hirer in the Hire Agreement.

18.17. **Right of Refusal to Hire:** TTRA is in no way obliged to hire any Equipment to the Hirer and may refuse to hire Equipment to a Hirer at its absolute discretion

Signed: _____

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