

EQUIPMENT TERMS OF HIRE

These Equipment Terms of Hire ("Terms of Hire") describe the terms and conditions under which Performance Tower Hire Pty Ltd / Performance Tower Hire Pty Ltd T/A Skylift Tech and Training / Performance Tower Hire (Vic) Pty Ltd will supply/hire Equipment on both a Dry Hire and Wet Hire basis, and govern all hire arrangements between Performance Tower Hire and the Customer. The Application, these Terms of Hire, each Hire Schedule and Special Conditions together comprise the entire hire agreement ("Hire Agreement") between Performance Tower Hire and the Customer.

1. Definitions and Interpretation

1.1 Definitions

Account Facility means any billing arrangement between Performance Tower Hire and the Customer, which subject to approval of the Application by Performance Tower Hire, will be administered in accordance with this Hire Agreement.

Application means any application for an Account Facility of which this Hire Agreement forms part.

Authorised Person means such person or persons as may be notified to Performance Tower Hire by the Customer as being entitled to accept delivery of and/or operate the Equipment.

Business Day means any day upon which Performance Tower Hire is open for trade.

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

Charges means the amount payable to Performance Tower Hire by the Customer for the use of the Equipment and the provision of services determined in accordance with this Hire Agreement.

Commencement Date means in respect of a hire the date specified in the relevant Hire Schedule.

Customer means the person, firm or corporation named in the Application, and includes the Customer's servants, agents, employees, contractors and Authorised Persons.

Daily Rate means Performance Tower Hire's daily charge for Dry Hire of the Equipment as specified in a Hire Schedule or as otherwise agreed with or notified to the Customer by Performance Tower Hire, or in the absence of specific document or notification, the applicable rates generally published by Performance Tower Hire.

Damage & Theft Waiver means the option exercised by the Customer at the commencement of the Hire Period to limit the Customer's liability for damage to, or theft of, the Equipment hired as a Dry Hire pursuant to the provisions of clause 8.

Dry Hire means the hire of Equipment in respect of which Performance Tower Hire does not provide an operator for the Equipment.

DTW Fee means the non- refundable Damage & Theft Waiver Fee specified in the Hire Schedule (as varied from time to time) and referred to in clause 8.

Electronic Communication means a communication of information in the form of data, text or images by means of guided and/or unguided electromagnetic energy and includes information published by Performance Tower Hire on the Performance Tower Hire Website and any email between Performance Tower Hire and the Customer.

Electronic Equipment includes but is not limited to, a computer, tablet, telephone or other electronic device, which is capable of receiving Electronic Communication.

Equipment means the goods hired to the Customer under this Hire Agreement which may include but is not limited to: Travel Towers, elevated work platforms and other access equipment, any related goods and associated parts, accessories and equipment for the foregoing; and any hired goods which are substituted or replaced by Performance Tower Hire.

Performance Tower Hire means Performance Tower Hire ABN 71 608 666 128. Performance Tower Hire Pty Ltd T/A Skylift Tech and Training ABN 71 608 666 128 / Performance Tower Hire (Vic) Pty Ltd ABN 33 636 707 358.

Performance Tower Hire Website means www.performancetowerhire.com.au.

Hire End Date means in respect of a hire the date specified in the relevant Hire Schedule.

Hire Period means a period commencing on the Commencement Date and expiring on the Hire End Date and includes, in the case of Wet Hire, the travel time to and from Performance Tower Hire's premises.

Hire Schedule means a schedule, delivery docket or other document whether signed by the Customer or not which details particulars of the Equipment on hire, the Hire Period and such other information as Performance Tower Hire may decide to require.

Hourly Rate means Performance Tower Hire's hourly charge for Wet Hire of the Equipment and/or provision of the Services as specified in a Hire Schedule or as otherwise agreed with or notified to the Customer by Performance Tower Hire, or in the absence of specific document or notification, the applicable rates generally published by Performance Tower Hire.

Notices means and includes those documents and notices relating to this Hire Agreement as are permitted to be given electronically.

Services means all services supplied by Performance Tower Hire to the Customer in relation to a Wet Hire including the provision of an operator to operate the Equipment at a location nominated by the Customer.

Special Conditions means any additional conditions that Performance Tower Hire may impose on the Customer in relation

to a hire of Equipment from time to time.

Sundry Charges means all costs Performance Tower Hire may incur relating to the Customer's use of the Equipment determined in accordance with Performance Tower Hire's schedule of standard sundry charges as varied from time to time or as more specifically agreed with the Customer including but not limited to all cartage, road tolls, accommodation, fuel, cleaning, oil, grease, safety harnesses, administrative costs relating to registrations under the PPS Law and mobilisation and demobilisation costs.

Wet Hire means the hire of Equipment in respect of which Performance Tower Hire provides the services of an operator for the Equipment.

1.2 In the interpretation of this Hire Agreement, unless the context otherwise requires:

- (a) a reference to a party includes that party's executors, administrator, substitutes, successors and permitted assigns;
- (b) each covenant by two or more persons as a party is made jointly by all and severally by each;
- (c) singular includes plural and vice versa;
- (d) headings are for convenience only;
- (e) in the event that these Terms of Hire conflict with any Special Conditions or any terms specifically agreed to with the Customer, then the Special Conditions or such other terms will take precedence to the extent of such conflict; and
- (f) time is of the essence of all the Customer's obligations to Performance Tower Hire, particularly payment of amounts owing.

2. Customer's Acknowledgment

The Customer acknowledges and agrees that:

- (a) any Account Facility is a trader's facility and the Customer is requiring the Facility predominantly for the purposes of carrying on or in connection with the carrying on or establishing of a trade, business or profession;
- (b) the Customer has read and agrees to be bound by these Terms of Hire;
- (c) all Charges and other amounts are payable by the Customer at the rates applicable under this Hire Agreement;
- (d) if Performance Tower Hire approves an Account Facility, Performance Tower Hire may terminate the Account Facility at any time without any prior notice;
- (e) the full amount of all Charges and other amounts

payable by the Customer with an Account Facility to Performance Tower Hire will become due and owing 30 calendar days after the date on which the amounts were first invoiced. The Account Facility is not a credit facility;

(f) any Account Facility is personal to the Customer and cannot be assigned or transferred to any other party without the prior written consent of Performance Tower Hire which Performance Tower Hire may determine in its sole discretion;

(g) if the Customer is a company (other than a listed public company) the Customer must notify Performance Tower Hire of any action having the effect of altering its control whether by transfer of shares, replacement of its directors or otherwise; and

(h) the Customer will be responsible for all costs (including legal costs) calculated on a solicitor and own client basis incurred by Performance Tower Hire in relation to preparation, negotiation and execution of the Hire Agreement.

3. Hire of Equipment and the Provision of Services

3.1 Subject to clause 3.4, Performance Tower Hire agrees to hire Equipment to the Customer, in accordance with these Terms of Hire, on both a Dry Hire and Wet Hire basis.

3.2 If the hire is a Wet Hire:

- (a) Performance Tower Hire agrees to provide an operator for the Equipment; and
- (b) the Customer must hire the Equipment for not less than 4 hours;

3.3 The Customer must, if requested by Performance Tower Hire, complete and sign a Hire Schedule and such other documents as Performance Tower Hire may require in relation to the hire of Equipment.

3.4 Each Hire Schedule is not a separate contract but forms a part of this Hire Agreement between Performance Tower Hire and the Customer, together with any facility applications, guarantee or other contractual documents.

3.5 Performance Tower Hire may in its absolute discretion terminate this Hire Agreement and/or decline to hire Equipment to the Customer at any time.

3.6 Performance Tower Hire may in its absolute discretion substitute or replace the goods hired with other equivalent goods whereupon such goods will form part of the Equipment.

result of the Customer's acts, omissions, neglect or default;

(e) in the case of a Wet Hire:

(i) an overtime fee if the Hire Period is more than 8 hours, outside Performance Tower Hire's normal operating hours, on weekends or on public holidays;

(ii) an accommodation fee for each night an operator is required to stay away from their usual residence

(iii) a cancellation fee if the Customer cancels the hire within 24 hours of its commencement other than for reasons of inclement weather conditions and provided an operator has not been mobilised

(f) any GST or similar tax imposed on any supply by Performance Tower Hire to the Customer under this Hire Agreement and any other state or federal taxes, duties or charges imposed in respect of this Hire Agreement including stamp duty;

(g) all costs (including legal costs calculated on a solicitor and own client basis) incurred by Performance Tower Hire relating to any default of this Hire Agreement by the Customer; and.

(h) a minimum hire charge as determined by Performance Tower Hire from time to time for periods during which the Equipment is being delivered to or collected from the Customer or during which Performance Tower Hire is unable to deliver the Equipment through no fault of its own. Performance Tower Hire shall be entitled to charge at the applicable Hourly or Daily Rate in respect of any period during which the Equipment is unavailable for hire by Performance Tower Hire due to damage caused by the Customer. The imposition of these charges does not mean that Performance Tower Hire agrees to extend the Hire Period.

5.2 Charges will be determined in accordance with the rates and method of calculation set out in the Hire Schedule failing which they will be calculated by multiplying the number of days or hours in the Hire Period by the Daily Rate or the Hourly Rate.

5.3 Any claims for credit by the Customer must be made in writing within seven (7) days of receiving Performance Tower Hire's invoice. If the Customer fails to give notice within the time prescribed, it is taken to have accepted the invoice as correct.

5.4 Performance Tower Hire reserves the right to revise its schedule of Charges and related amounts without notice. Performance Tower Hire may also revise its Charges and related amounts in circumstances where Performance Tower Hire incurs them as a result of non-disclosure by the Customer, unforeseen site problems or incorrect physical dimensions, weights or distances relied on by Performance Tower Hire.

5.5 Performance Tower Hire may, in its sole discretion, accept return of the Equipment before the end of the Hire Period. Such an acceptance does not alter the Hire Period and the Customer will remain liable for all Charges payable to Performance Tower Hire in respect of Hire and Services despite early return of the Equipment. However, Performance Tower Hire will endeavor to re-hire the Equipment in which case the Customer will only be liable for Charges (in respect of hire) until the date of such re-hire or until expiration of the Hire Period, whichever is earlier.

4. Delivery of Equipment and Services

4.1 The Customer is solely responsible for providing Performance Tower Hire with safe access to the nominated location for the delivery of Equipment and Services.

4.2 It is the Customer's responsibility to ensure the location and all activities at that location conducted by the Customer or on its behalf comply with all relevant work health and safety laws, and/or any other relevant safety standards or legislation.

4.3 In the case of a Wet Hire, the operator shall perform any relevant work in accordance with the Customer's reasonable directions. However the Customer agrees that Performance Tower Hire and its operator may decline to follow any direction of the Customer which Performance Tower Hire or its operator considers dangerous to any persons or property or which might involve a breach by any person of any law including, but not limited to, a work health or safety law or which would be inconsistent with the purpose for which the Equipment was designed by the manufacturer.

4.4 The Customer shall make all necessary arrangements to receive the Equipment and Services.

4.5 Performance Tower Hire shall not be liable for any loss or damage caused in accessing the nominated location unless due to Performance Tower Hire's negligence (including, without limitation, damage to pathways, driveways and concreted or paved or otherwise sealed or grassed areas).

4.6 Delivery of the Equipment or Services to an Authorised Person is deemed to be delivery to the Customer

4.7 The failure of Performance Tower Hire to deliver the Equipment or Services shall not entitle either party to treat this contract as repudiated.

5. Liability for Payment

5.1 Customer's Liability

The Customer agrees to pay, without deduction or set-off:

(a) all Charges, Sundry Charges and any other charges, costs and expenses payable to Performance Tower Hire, and in the manner directed by Performance Tower Hire;

(b) interest on all outstanding amounts from the due date for payment calculated at a rate which is the higher of 1.5% per month or the interest rate applying to debts under judgments or orders of the Supreme Court of Queensland plus a margin of 5% per annum;

(c) the DTW Fee in relation to the Equipment where applicable;

(d) any costs of repairing or replacing the Equipment as a

(g) not alter, make any additions to, deface, remove or cover any identifying name, mark, device, component, plate or number on or in the Equipment or in any other manner interfere with the Equipment; and

(h) accept full responsibility for the safe-keeping of the Equipment, and indemnify Performance Tower Hire for all loss or theft of, or damage to, the Equipment resulting from any negligence, failure or omission of the Customer.

6. Equipment

6.1 Customer's Obligations

The Customer must:

(a) ensure that the Customer or an Authorised Person is available to accept the Equipment and Services upon delivery;

(b) ensure the Equipment is used or in the case of a Wet Hire only direct that the Equipment be used strictly:

(i) for the purpose for which it was designed by the manufacturer and in accordance with any handbook, log book, operating manual, guidelines, warranty conditions or other written instructions provided with the Equipment, and standard industry practice;

(ii) by the Customer or an Authorised Person having the appropriate qualifications, training and licenses to operate the Equipment and not under the influence of any drugs or alcohol; and

(iii) in accordance with all applicable laws and regulations in a skillful, safe and tradesman like manner not extending beyond its capacity (having regard to manufacturers specifications) and not having to endure more than normal wear and tear;

(c) notify Performance Tower Hire immediately if the Equipment is stolen, breaks down, malfunctions or is damaged;

(d) not undertake any repair to the Equipment without the prior written consent of Performance Tower Hire;

(e) maintain and return the Equipment to Performance Tower Hire in good repair and condition including but not limited to maintaining adequate battery water, fuel and oil levels, and greasing and oiling and generally servicing the Equipment on a daily basis;

(f) not transfer, assign, encumber, loan or sell the Equipment and must not (except for the purpose of returning the Equipment) remove the Equipment or allow it to be removed from the site address notified to Performance Tower Hire for use of the Equipment without the prior written consent of Performance Tower Hire in its sole discretion;

6.2 Insurance Requirements

(a) Subject to the provisions of clause 8, the Customer must obtain insurance cover for the Equipment for the minimum replacement value of \$600,000 for each single unit and \$20,000,000 for any single event and provide to Performance Tower Hire a copy of the certificate of currency of insurance prior to delivery of the Equipment to the Customer;

(b) In the event of a claim the Customer must direct the insurer to pay to Performance Tower Hire all the proceeds of any claim and Performance Tower Hire must have the ability to control and run the claim process with the insurer if it so chooses; and

(c) Notwithstanding the insurance requirement in clause 6.2(a) or if Performance Tower Hire provides to the Customer the Damage & Theft Waiver under clause 8, the Customer is responsible for:

(i) all excess and other costs associated with any insurance claim made in relation to the damage to, or theft of, the Equipment;

(ii) any shortfall in the cost of repair or replacement of the Equipment following receipt by Performance Tower Hire of any proceeds under any related insurance policy; and

(iii) any loss suffered by Performance Tower Hire as a result of not being able to hire the Equipment during the period reasonably required to repair or replace the Equipment.

6.3 Ownership, Condition and Repossession of Equipment

The Customer agrees that:

(a) it accepts delivery of the Equipment in "as is" condition unless it indicates otherwise at the time of delivery;

(b) it understands the safe and proper use of the Equipment and warrants that in the case of a Dry Hire its personnel have received adequate training in its operation and use;

(c) subject to clause 10.4, Performance Tower Hire owns the Equipment at all times and in all circumstances retains title to the Equipment. No person is entitled to use, dispose of or otherwise deal with the Equipment in any way that is inconsistent with

Performance Tower Hire's ownership or these Terms of Hire;

(d) in no circumstances will the Equipment be deemed to be a fixture;

(e) Performance Tower Hire has the right to inspect, repair or remove (whether on hire or not, and whether the Customer is in default of this Hire Agreement or not) the Equipment at any time and access to the Equipment must be granted or procured for that purpose; and

(f) the Customer shall indemnify Performance Tower Hire for any costs incurred in recovering Equipment whether abandoned, unlawfully detained or otherwise.

6.4 Third Party Interests

The Customer acknowledges that Performance Tower Hire may hire or lease the Equipment from a third party (the "Owner") and in that event title to the Equipment remains with the Owner. The Customer agrees, upon reasonable notice, to allow the Owner access to the Equipment from time to time to inspect the Equipment. The Customer acknowledges and agrees that if Performance Tower Hire's agreement with the Owner terminates during the term of this agreement, and Performance Tower Hire is unable to provide equivalent Equipment pursuant to clause 3.6, this Hire Agreement will automatically terminate and the Owner may immediately recover possession of the Equipment from the Customer. The Owner will not be liable to the Customer in any circumstance arising herein for any claim that the Customer may have against Performance Tower Hire.

6.5 Transportation and Return of Equipment

(a) Performance Tower Hire is not a common carrier and does not accept the obligation or liability of common carriers. Performance Tower Hire 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.

(b) Hiring charges do not include any transportation of Equipment by Performance Tower Hire.

Unless Performance Tower Hire agrees otherwise, the Customer must pay an additional fee for any transportation in accordance with Performance Tower Hire's published rates.

(c) If Performance Tower Hire is collecting the Equipment at the expiration or earlier determination of the Hire Period, the Equipment must be left in an appropriate, secure, easily identified and accessible area.

(d) Performance Tower Hire will not be deemed to have accepted return of the Equipment in good repair and condition until such time as the Equipment has been fully inspected by Performance Tower Hire at its

premises following its return. If the Equipment is not returned in clean, uncontaminated and good working condition, the Customer may be required to pay an additional fee for the cleaning, decontamination and repair of the equipment.

7. PPS Law

7.1 This clause applies to the extent that Performance Tower Hire's interest in respect of a hire provided for in this Hire Agreement is a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPS Law"). References to PPS Law in this Hire Agreement include references to amended, replacement and successor provisions or legislation.

7.2 Performance Tower Hire may register any actual impending or likely security interest. The Customer may not make any Claim against Performance Tower Hire in respect of any registration even if it is determined that Performance Tower Hire should not have registered a security interest. The Customer must do anything (such as obtaining consents and signing documents) which Performance Tower Hire requires for the purposes of:

- (a) ensuring that Performance Tower Hire's security interest is enforceable, perfected and otherwise effective under the PPS Law;
- (b) enabling Performance Tower Hire to gain first priority (or any other priority agreed to by Performance Tower Hire in writing) for its security interest; and
- (c) enabling Performance Tower Hire to exercise rights in connection with the security interest.

7.3 The rights of Performance Tower Hire under this Hire Agreement are in addition to and not in substitution for Performance Tower Hire's rights under other law (including the PPS Law) and Performance Tower Hire may choose whether to exercise rights under this Hire Agreement, and/or under such other law, as it sees fit. To avoid any doubt about it Performance Tower Hire's security interest will attach to proceeds.

7.4 To the extent that Chapter 4 of PPS Law applies to any security interest under this Hire 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 Hire 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 Performance Tower Hire to give a notice to the Customer); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 129(2) and 129(3); section 130 (notice of disposal to the extent it requires Performance Tower Hire to give a notice to the Customer); 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 (re- instatement of security document).

7.5 To the extent they apply, 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 Performance Tower Hire. The Customer agrees that in addition to those rights, Performance Tower Hire shall, if there is default by the Customer, 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 Hire Agreement and the Customer agrees that Performance Tower Hire may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or license.

7.6 The Customer 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. This waiver also extends to any verification statement in respect of security interests arising or provided for under security documents prior to the date of this Hire Agreement.

7.7 Performance Tower Hire and the Customer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The document in this sub-clause is made solely for the purpose of allowing to Performance Tower Hire the benefit of section 275(6)(a) and Performance Tower Hire 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.

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

7.9 The Customer must ensure that Performance Tower Hire 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.

7.10 The Customer must take all steps including registration under PPS Law as may be required to:

- (a) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise

effective under the PPS Law;

- (b) enable the Customer to gain (subject always to the rights of Performance Tower Hire) first priority (or any other priority agreed to by Performance Tower Hire in writing) for the security interest; and

- (c) enable Performance Tower Hire and the Customer to exercise their respective rights in connection with the security interest.

7.11 To assure performance of its obligations under this Hire Agreement, the Customer hereby gives Performance Tower Hire an irrevocable power of attorney to do anything Performance Tower Hire considers the Customer should do under this Hire Agreement. Performance Tower Hire may recover from the Customer the cost of doing anything under this clause 9, including registration fees.

8. Damage & Theft Waiver

8.1 Unless the Customer provides to Performance Tower Hire a certificate of currency for an insurance policy with a reputable insurer that covers damage to, and theft of, the Equipment for the duration of the Hire Period for an amount not less than \$350,000 for each single event, Performance Tower Hire will subject to clause 8.2 provide Damage & Theft Waiver for a DTW Fee.

8.2 Damage & Theft Waiver covers all damage to or theft of the Equipment other than:

(a) resulting from the Customer's failure to comply with its obligations under this Hire Agreement and includes:

- (i) any negligent, wilful or deliberate act or omission including vandalism;

- (ii) use of the Equipment:

(A) in contravention of any law;

(B) contrary to the manufacturer's instructions contained in any handbook, log book, operating manual, guidelines, warranty conditions or other written instructions provided with the Equipment, or standard industry practice;

(C) in an unsafe or un-tradesman like manner;

(D) by an inexperienced, unlicensed or untrained operator; or

(E) by an operator under the influence of alcohol or drugs.

- (iii) a lack of lubrication or failure to properly service the Equipment;

- (iv) excessive wear and tear;

(v) a collision with any overhead object or structure due to insufficient clearance;

(vi) overloading the Equipment;

(vii) exposure to any caustic or corrosive substance;

(viii) an electrical surge or overload; or

(ix) the use of inadequate or excessive electrical extension leads.

(b) to tyres, tubes, windscreens, windows, mirrors, glass or Perspex fitted to or on the Equipment.

expressly excluded. Except where by legislation liability may not be limited, or where a limitation of liability would otherwise render Performance Tower Hire liable to a penalty, Performance Tower Hire's liability for breach of terms which cannot be excluded is limited to:

(a) in the case of goods, the repair or replacement of the goods or the supply of substituted goods (or at Performance Tower Hire's sole discretion, the cost of doing so); or

(b) in the case of Services, supply of the Services again (or at Performance Tower Hire's sole discretion, the cost of doing so).

9. Limitation of Liability 9.1 Release and Indemnity

Except where legislation which cannot be excluded would make this clause illegal or would otherwise make Performance Tower Hire liable to a penalty:

(a) the Customer agrees that:

(i) the Equipment shall be at the sole risk of the Customer and Performance Tower Hire will not be liable for any Claim the Customer may incur or that may arise from any cause whatever including any fault or other defect in the Equipment;

(ii) Performance Tower Hire will not be responsible for and is free from all liability in respect of all such Claims; and

(iii) Performance Tower Hire shall not be liable for any special, indirect or consequential loss or damage in respect of anything done or omitted to be done by Performance Tower Hire or on its behalf under or in respect of this Hire Agreement.

(b) The Customer shall accept full responsibility for, and indemnify Performance Tower Hire against all Claims in respect of any injury or death to persons (including but not limited to any operator of the Equipment), or damage to property, arising out of the use of the Equipment however arising, whether from negligence of the Customer or otherwise. The indemnity in this clause does not however apply to any Claim to the extent arising from the negligence or default of Performance Tower Hire or its employees or contractors.

9.2 Exclusion of Warranties

Performance Tower Hire accepts liability for all warranties implied under the Australian Consumer Law which is contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth) or any other legislation (such as the Fair Trading Acts (or equivalent legislation) in each State and Territory) the effect of which cannot be excluded. All warranties and conditions that are capable of exclusion and would, apart from this provision, form part of this Hire Agreement, are

10. Default and Termination

10.1 Default

The Customer will be in default of this Hire Agreement if the Customer:

(a) fails to comply with any term of this Hire Agreement;

(b) becomes bankrupt or enters into any arrangement with creditors for the liquidation of debts; or

(c) is wound up, placed under administration or any administrator, receiver, or receiver and manager is appointed to the Customer.

10.2 Remedies upon Default

If the Customer is in default then, without prejudice to any other rights or remedies available to Performance Tower Hire:

(a) Performance Tower Hire may terminate this Hire Agreement and take possession of the Equipment by entering onto any land or premises upon which the Equipment is situated. The Customer expressly consents to Performance Tower Hire entering onto any land or premises owned by or under the control of the Customer (or will procure such consent) for the purposes of recovering the Equipment; and

(b) the Customer will pay to Performance Tower Hire all losses, damages, costs and other expenses whatever suffered by Performance Tower Hire as a result of that default including any costs of recovering possession of the Equipment.

10.3 Inability to Supply and Force Majeure

(a) If Performance Tower Hire is unable to hire to the Customer the Equipment ordered by the Customer,

Performance Tower Hire:

(i) may in its sole discretion supply or hire alternative suitable equipment to the Customer; and

(ii) will not be liable for any Claims arising out of its inability to supply the Equipment or alternative suitable equipment to the Customer.

(b) Performance Tower Hire is not liable for any delay, breach or default under this Hire Agreement in circumstances where the delay, breach or default is caused by any thing beyond Performance Tower Hire's control whether or not Performance Tower Hire may have been able to foresee the occurrence of the thing or had taken any steps to avoid its consequences. During any delay, Performance Tower Hire's obligations under this Hire Agreement are suspended.

11. Electronic Communications

(a) Performance Tower Hire can elect to send or serve Notices and/or invoices on the customer by Electronic Communication where an email address is provided by the customer:

(i) Performance Tower Hire may serve Notices on, or issue invoices to, the Customer at that email address;

(ii) the Customer must notify Performance Tower Hire in writing of any change to the email address last provided by the Customer; and

(iii) the Customer is responsible for printing or saving Notices.

b) Alternatively, and at Performance Tower Hire's sole discretion, Performance Tower Hire may serve Notices on the Customer by:

(i) making the Notices available on the Performance Tower Hire Website for a reasonable period of time; and

(ii) promptly notifying the Customer to its nominated email address, that the Notice is available for retrieval from the Performance Tower Hire Website and the nature of the Notice.

(c) The Customer may cancel its election to receive Notices by Electronic Communication at any time, by notifying Performance Tower Hire in writing.

12. Privacy

(For the purposes of this clause 12 only, a reference to "you" or "your" is also a reference to the directors of the Customer (where the Customer is a corporation),

and/or any Guarantor of the Customer and, where the Customer is one or more individuals or a partnership, each and every individual or partner.)

(a) Performance Tower Hire may collect personal information from you either directly or indirectly. Performance Tower Hire will use, disclose and make accessible your personal information in accordance with its Privacy Policy, the Privacy Act 1988 (Cth) and the Australian Privacy Principles.

(b) Performance Tower Hire's Privacy Policy contains information about how you can access and correct your personal information.

(c) You can access Performance Tower Hire's Privacy Policy on the Performance Tower Hire Website at www.performancetowerhire.com.au. You can also request a copy of Performance Tower Hire's Privacy Policy or access and correct your personal information by writing to the General Manager at Performance Tower Hire.

(d) You authorise Performance Tower Hire to give to and seek personal information about your credit arrangements or obtain a consumer or commercial credit report containing information about you from any credit reporting body.

(e) The personal information which Performance Tower Hire may give or seek includes (where applicable):

(i) your name, sex, date of birth, current address and last two addresses, current or last known employer and driver's license number;

(ii) the fact that you have entered into or propose to enter into a Hire Agreement, the value of the Equipment hired or proposed to be hired under a Hire Agreement, and any obligations you may have under this Hire Agreement;

(iii) that you have drawn cheques for \$100.00 or more which have been dishonored more than once; and

(iv) that court judgments and/or bankruptcy orders have been made against you.

(f) You authorise Performance Tower Hire to use the credit report, or obtain a further credit report, for the purposes of collecting overdue payments relating to credit owed by you.

(g) You authorise Performance Tower Hire to give to and seek credit reports and other information about your credit arrangements from:

(i) any credit providers named in any application submitted by you; and

(ii) any credit providers that may be named in

a credit report issued by a credit reporting body.

(h) Your authorisation entitles Performance Tower Hire to exchange information about your credit worthiness, credit standing, credit history and credit capacity.

(i) You authorise Performance Tower Hire to give to any guarantor named in the Application information including a copy of the Application and any demand for payment of overdue amounts and any statements of the Account Facility.

(j) Your authorisation also entitles Performance Tower Hire to give the following information to a credit reporting body (where applicable):

(i) that you are 60 days or more overdue in making a payment to us and that steps have been taken to recover all or any part of the amount which you owe; and

(ii) that in Performance Tower Hire's opinion you have committed a serious credit infringement.

(k) Credit reports and other personal information Performance Tower Hire obtains about your credit arrangements from a credit reporting body or a credit provider may be used by Performance Tower Hire for the following purposes:

(i) to assess any application submitted by you;

(ii) to collect payments that are overdue;

(iii) to notify a credit provider if you breach any obligations you may have under this Hire Agreement;

(iv) to exchange personal information with other credit providers as to the status of your account where you are in breach of a contract with a credit provider;

(v) to assess your credit worthiness;

(vi) to allow a credit reporting body to create a file about you;

(vii) to administer your account;

(viii) to monitor your performance or compliance under any agreement for sale or supply of goods or services connected to provision of credit by Performance Tower Hire; and

(ix) any other purpose permitted or required by law.

(l) You authorise Performance Tower Hire to exchange

personal information about you with:

(i) any person or organisation named by you in an application submitted by you or provided from time to time;

(ii) your proposed Guarantors, any of your Guarantors, insurance providers, consultants, brokers or any supplier of goods and services;

(iii) Performance Tower Hire's collection agents or unrelated debt recovery organisation if you are in breach of this Hire Agreement; or

(iv) Performance Tower Hire's related companies and organisations which service your account and this Hire Agreement.

(m) You also authorise your accountant to release and disclose your financial information to Performance Tower Hire or its agents and you authorise government authorities which hold your driver's license and/or motor vehicle registration information to confirm your address details to Performance Tower Hire or Performance Tower Hire's Authorised agents.

(n) Performance Tower Hire will not disclose personal information to overseas recipients.

(o) You authorise Performance Tower Hire, its agents and contractors to use your personal information for marketing, planning and product development purposes by Performance Tower Hire or Performance Tower Hire's related companies. You can request not to receive direct marketing communications.

(p) If you believe the privacy of your personal information has been compromised, you are entitled to complain to Performance Tower Hire. Performance Tower Hire's Privacy Policy contains information about how you can make a complaint.

(q) If you provide personal information about another individual you agree that you will inform the individual that personal information about them has been supplied to Performance Tower Hire, why it has been provided and that they can contact Performance Tower Hire to obtain access to or update their personal information or get a copy of Performance Tower Hire's Privacy Policy.

(r) If you do not provide the information requested or do not give your authority for the use of the information Performance Tower Hire may decline any application submitted by you.

(s) Performance Tower Hire may use or disclose this information before, during or after the term of this Hire Agreement.

13. Changes to Terms of Hire

These Terms of Hire may be changed from time to time by

Performance Tower Hire giving notice of the amendment to the Customer. Notice is deemed given (whether or not actually received) when Performance Tower Hire sends notice of the amendment to the Customer at any address (including an email address) supplied by the Customer.

14. Governing Law

This Hire Agreement is governed by and must be construed according to the laws applying in the State of Queensland. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State of Queensland.