

Kentan Access & Hire - General Terms and Conditions

1. Definitions-

1.1 Capitalised words used in the Agreement have the following meanings:

Additional Hours Charge means the per hour rate (plus GST) for each hour the Equipment is used in excess of the agreed hourly usage as described in the Hire Schedule.

Agreement has the meaning given in clause 2.1.

KH means Kentan Access & Hire Pty Ltd ACN 633 924 259, its successors and assigns or any person acting on behalf of and with the authority of it.

Business Day means any day other than a Saturday or Sunday.

Claim includes any claim, notice, demand, debt, account, action, expense, cost, lien, liability, proceeding, litigation (including legal costs) investigation or judgment of any nature, whether known or unknown and whether arising by way of indemnity, statute, contract, in tort (including in negligence or for breach of statutory duty) or on any other basis in equity or in law.

Cleaning Services Charges means labour rate (plus GST) per hour plus cost of consumables. This means any cleaning, in addition to a basic wash and wipe, required to return the Equipment to the condition immediately prior to the hire, excluding fair wear and tear. Excessive Cleaning includes but is not limited to removal of paint stains, resins, concrete, grout and cement.

Daily Rate means the daily rate set out in the Hire Schedule.

Damage Waiver Fee means the amount equal to a % of the Price payable by You for hire of Equipment in accordance with this Agreement.

Delivery and Collection Fee means the delivery and collection fee set out in the Hire Schedule.

End Date means: (a) where the Hire Schedule sets out an end date, that date; or (b) where the Hire Schedule states that the Hire Period is for an indefinite term or does not provide an end date, the date when the Equipment is back in KH's possession.

Equipment means all equipment (including any plant, tools, or any accessories) supplied on hire by KH to You (and where the context permits, includes any supply of associated services), as further described in the Hire Schedule.

Excess Charges means the amount of the excess payable by KH to its insurers in respect of any claim under a policy of insurance held by KH.

Futile Charge means, for each item of Equipment, the quoted delivery cost for that item of Equipment for each failed attempt at delivery or collection for that item of Equipment.

Goods means all goods or services supplied by KH to You at Your request from time to time.

Hire Charge means the hire charges for the Equipment calculated in accordance with clause 14.

Hire Period means the period described in clause 13.1.

Hire Schedule means the document provided to You by KH setting out the key terms of hire of the Equipment.

Invoice means any and all invoices, quotations, or any other work authorisation forms provided by KH to You.

Minimum Hire Period means the minimum period for which you agree to hire of the Equipment, as described in the Hire Schedule.

Off-Hire Number means the number provided to you by KH.

Outstanding Amount means all amounts due and payable to KH by You and not yet paid in accordance with this Agreement.

Price means the amount payable for the provision of Goods and/or hire of Equipment as determined in accordance with clause 3 below.

Refuel Charges means per litre rate (plus GST).

Repair Charges means labour rate per hour (plus GST) for labour, plus cost of parts and consumables.

Tyre Replacement Fee means the amount determined by applying the following formula: $\$TRF = A(12-B/12)$ where: TRF = the Tyre Replacement Fee A = the cost to KH of replacing the tyres for the Equipment B = the number of months since the tyres for the Equipment were last replaced by KH.

Weekly Rate means the weekly rate set out in the Hire Schedule.

You means the person/s buying the Goods and/or hiring Equipment as specified in any Invoice or Hire Schedule and, if there is more than one, is a reference to each person jointly and severally and includes Your successors and permitted assigns.

Your Premises means the premises where the Equipment will be used by You as set out in the Hire Schedule.

2. The agreement between You and KH

2.1 These terms and conditions, together with any Hire Schedule or Invoice, set out the terms of the agreement between You and KH (the Agreement).

2.2 Clauses 1 to 12 (inclusive) (General Terms and Conditions) apply to the hire of Equipment and the provision of Goods. Additionally:

- (a) clauses 13 to 24 (inclusive) (Special Terms for Equipment Hire) apply to the hire of Equipment; and
- (b) clauses 25 to 29 (inclusive) (Special Terms for Purchase of Goods) apply to the purchase of Goods.

- 2.3 Any order or request by You for the provision of Goods or Equipment which purports to include terms not expressly included in the Agreement is of no effect and the order or request is deemed to be on the basis of this Agreement, unless otherwise agreed by the parties.
- 2.4 You are taken to have exclusively accepted and You are immediately bound by this Agreement if You place an order for or accept delivery of the Goods and/or Equipment.
- 2.5 You must obtain (at Your expense) all licences and approvals that are required for Your use of the Goods and/or Equipment.
- 3. Price and Payment**
- 3.1 The Price payable by You in consideration for:
- (a) KH selling the Goods to You, is as set out in the Invoice; and
 - (b) KH hiring the Equipment to You, is as determined pursuant to clause 14.
- 3.2 Any quote provided by KH is, subject to clause 3.3, valid for the period stated in the quotation or, where no period is stated, for a period of thirty (30) days.
- 3.3 KH reserves the right to vary the Price if You request a variation to KH's quotation.
- 3.4 At KH's sole discretion, a non-refundable deposit may be required to be paid by You prior to KH providing any Goods or Equipment.
- 3.5 You may make any payment required under this Agreement by cash, cheque, bank cheque, electronic/on-line banking or credit card.
- 3.6 Receipt by KH of any form of payment other than cash will not be deemed to be payment until that form of payment has been honoured, cleared or recognised and the funds are freely available to KH.
- 3.7 Unless otherwise expressly stated the Price and any other charge or fee payable by You under or in connection with this Agreement does not include GST.
- 3.8 You must pay to KH, as an additional payment, the amount equal to any GST KH is required to pay for a supply by KH under this Agreement and any other taxes and duties that may be applicable to the Goods or Equipment, without deduction or set off of any other amounts, at the same time and on the same basis as You pay the Price.
- 3.9 If You do not have a credit account with KH, the Price is due and payable on or before the date which is seven (7) days after the date of any invoice given to You by KH and must be paid prior to KH supplying the Goods and/or Equipment, unless otherwise agreed.
- 3.10 If You have a credit account with KH, the Price is due and payable on or before the date which is thirty (30) days after the date of any invoice given to You by KH, unless otherwise agreed.
- 3.11 You are not entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to You by KH nor to withhold payment of any invoice because part of that invoice is in dispute.
- 4. Security**
- 4.1 In consideration of KH agreeing to supply the Goods and/or Equipment, and if you fail to perform your obligations under this Hire Agreement, you appoint KH as your attorney to do anything you should have done under this Agreement. KH may recover from you the cost of doing anything under this Agreement.
- 5. Personal Property Securities Act 2009 ("PPSA")**
- 5.1 In this clause 5:
- (a) the following terms have the meaning given to them in the PPSA: (1) Financing Statement; (2) Financing Change Statement; (3) Purchase Money Security Interest ('PMSI'); (4) Security Agreement; and (5) Security Interest;
 - (b) 'PPS Register' means the Personal Properties Securities Register established under the PPSA; and
 - (c) 'Goods' includes any Intellectual Property rights held by KH in connection with the Goods and/or Equipment.
- 5.2 Upon assenting to these terms and conditions in writing, You acknowledge and agree that these terms and conditions constitute a security agreement for the purpose of the [PPSA](#) and creates a security interest in all Goods and/or collateral (account) - being Your monetary obligation to KH for Goods – that have previously been supplied and that will be supplied in the future by KH to You. Despite anything to the contrary contained in this Agreement, KH may, to secure (with equal priority) payment of all Outstanding Amounts, take a Security Interest in:
- (a) all present and after acquired Goods and/or Equipment supplied by KH;
 - (b) any proceeds of any sale of the Goods and/or Equipment; and
 - (c) any proceeds of any insurance held by You for the Goods and/or Equipment.
- 5.3 The Security Interest will continue until You have paid all Outstanding Amounts.
- 5.4 You undertake to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which KH may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the [PPSA](#); or

- (iii) correct a defect in a statement referred to in clause 5.4(a)(i) or 5.4(a)(ii);
 - (b) indemnify, and upon demand reimburse, KH for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the [PPSA](#) or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of KH;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of KH;
 - (e) immediately advise KH of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 5.5 The parties agree that sections [96](#), [115](#) and [125](#) of the [PPSA](#) do not apply to the security agreement created by these terms and conditions.
- 5.6 You waive your rights to receive notice under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 5.7 You waive your rights as a grantor and/or a debtor under sections [142](#) and [143](#) of the [PPSA](#).
- 5.8 Unless otherwise agreed to in writing by KH, you waive your right to receive a verification statement in accordance with section [157](#) of the [PPSA](#).
- 5.9 The Customer must unconditionally ratify any actions taken by KH under clauses 5.4 to 5.8.
- 5.10 Subject to any express provisions to the contrary (including those contained in this clause), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the [PPSA](#).
- 6. Warranties, Indemnities and Liability**
- 6.1 Subject to clause 6.2, and except as expressly provided to the contrary in this Agreement, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to this Agreement or its subject matter are excluded to the extent permitted by law.
- 6.2 Nothing in this Agreement excludes, restricts or modifies any guarantee, term, condition, warranty, undertaking, inducement or representation implied or imposed by any legislation (including the Australian Consumer Law contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth)) which cannot be lawfully excluded, restricted or modified (the Non-Excluded Guarantees).
- 6.3 To the extent permitted by law, a party's liability for breach of a Non-Excluded Guarantee is limited (at KH's discretion) to:
- (a) in the case of goods, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or
 - (b) in the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.
- 6.4 To the extent permitted by law, and subject to any obligations arising under the Non-Excluded Guarantees, the maximum aggregate liability for all Claims under or relating to this Agreement or its subject matter, is limited to an amount equal to the charges paid by You to KH under this Agreement.
- 6.5 To the extent permitted by law and despite any other clause of this Agreement, KH will not be liable to You for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs You have incurred, amounts that you are liable to Your customers for, or any loss suffered by third parties under or relating to this Agreement or its subject matter, whether in contract, tort, in equity, under statute, under an indemnity, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.
- 6.6 Except to the extent a Claim arises due to KH's act/s, omission/s or negligence, You are liable for and indemnify KH against:
- (a) all Claims in respect of personal injury or damage to property; and/or
 - (b) any Claim by a third party, arising from or in connection with Your:
 - (i) hire or use of the Equipment;
 - (ii) use of the Goods; or
 - (iii) breach of this Agreement.
- 6.7 You warrant that:
- (a) You have the power to enter into this Agreement and You have obtained all necessary authorisations to allow You to do so;
 - (b) You are not insolvent or bankrupt;
 - (c) You are not entering into this Agreement in your capacity as a trustee of any trust; and
 - (d) this Agreement creates binding and valid legal obligations on You.
- 6.8 Despite any provision of this Agreement, neither party will be liable to the other for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 7. Intellectual Property**
- 7.1 Where KH has designed, drawn or developed any part of the Goods and/or Equipment for You, then the copyright in any designs and drawings and documents remains the property of KH.

- 7.2 You warrant that all designs, specifications or instructions given to KH in connection with this Agreement will not cause KH to infringe any patent, registered design or trademark by KH supplying the Goods and/or Equipment and You indemnify KH against any action taken by a third party against KH in respect of any such infringement.
- 8. Default and Termination of the Agreement**
- 8.1 KH may in its absolute discretion terminate this Agreement, without prejudice to any other rights or remedy available to KH, and all amounts owing to KH will (whether or not due for payment) become immediately payable, if:
- (a) You breach a term of this Agreement, and the breach is either not capable of rectification or, if capable of rectification, is not rectified within 7 days of notice by KH of the breach;
 - (b) any money payable to KH becomes overdue or, in KH's reasonable opinion, You are or will be unable to make payment;
 - (c) You become insolvent, bankrupt, convene a meeting with Your creditors or propose or enter an arrangement with creditors, or make an assignment for the benefit of Your creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of You or any of Your assets.
- 8.2 Without prejudice to any other right or remedy available to KH, if this Agreement is terminated under clause 8.1, Kentan may:
- (a) sue for recovery of all monies owing by you; and
 - (b) repossess the Equipment (and is authorised to enter any premises where the Equipment is located to do so).
- 8.3 Termination of this Hire Agreement does not affect Kentan's rights or remedies, including any rights of payment to any amounts to which it is entitled as at the date of termination.
- 8.4 KH may charge interest in accordance with clause 8.3 on any Outstanding Amount, which will accrue daily from the date when payment is due until the date of actual payment, at a rate of one percent (2.5%) per calendar month (compounded monthly).
- 8.5 You indemnify KH from and against all costs and disbursements incurred by KH in recovering any Outstanding Amount (including, but not limited to, internal administration fees, legal costs on a solicitor-client basis, and bank dishonour fees).
- 8.6 For a dispute arising under this Agreement (other than payments due to KH) both parties will try in good faith to settle the problem or dispute by negotiation, failing which the dispute will be referred to alternative dispute resolution through the office of the Hire and Rental Industry Association of Australia prior to litigation.
- 8.7 Any dispute concerning a Hire Charge must be notified by You to KH in writing within 7 days of the date of the Hire Agreement. All Hire Charges are otherwise deemed to be accepted by you.
- 8.8 The procedure for dispute resolution set out in this clause does not apply to legal proceedings for urgent interlocutory relief.
- 9. Credit Facility**
- 9.1 KH reserves the right to review (or to withdraw) any credit facility offered to You without any requirement to give prior notice.
- 9.2 If KH withdraws a credit facility, You will have the right to terminate this Agreement without notice provided that You:
- (a) pay all amounts owing under the revoked credit facility in accordance with the terms upon which that credit facility was granted; and
 - (b) pay all other Outstanding Amounts.
- 10. Change in Control**
- 10.1 You must give KH not less than fourteen (14) days prior written notice of any proposed change in Your ownership or shareholding and any other change in Your details (including changes in Your name, address, contact phone and email address).
- 11. Privacy**
- 11.1 KH may need to collect personal information from You, including Your full name and address, drivers licence details, credit card details, date of birth and credit or business history. You consent to KH using Your personal information in order to:
- (a) fulfil functions associated with the hire of Equipment or sale of Goods to You, including to assess Your credit worthiness or exercising KH's rights under clause 5;
 - (b) provide services to You;
 - (c) prevent theft of our Equipment;
 - (d) enter into contracts with You or third parties; and
 - (e) market to You and maintain a client relationship with You.
- 11.2 You consent to KH disclosing Your personal information:
- (a) To any credit provider or credit reporting agency for the purposes of obtaining information about Your consumer or commercial credit or business history or Your commercial activities or credit worthiness; and
 - (b) To KH's service providers, contractors and affiliated companies from time to time to help improve and market KH's services to You.
- 11.3 You have the right to access the personal information KH holds about You and KH will comply with all laws in connection with KH's use of Your personal information.
- 12. General**
- 12.1 The failure by a party to enforce any provision/s of this Agreement will not be treated as a waiver of that provision, nor will it affect a party's right to subsequently exercise a right pursuant to the provision/s.

- 12.2 If any provision of this Agreement is or is deemed to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
- 12.3 This Agreement is governed by the laws of the state of New South Wales and is subject to the jurisdiction of the courts of in that state.
- 12.4 KH may, from time to time, license or sub-contract all or any part of its rights and obligations under this Agreement.
- 12.5 You may not assign or encumber a right or interest under the Agreement without the prior written consent of KH which may be given, denied or imposed on any conditions in KH's absolute discretion.
- 12.6 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Agreement. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Agreement.
- 12.7 In this Agreement:
- (a) 'including' and 'includes' (and any other similar expressions) are not words of limitation;
 - (b) a word that is derived from a defined word has a corresponding meaning;
 - (c) singular includes the plural and the converse; and
 - (d) neither this Agreement or any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.
- 12.8 The Agreement may only be amended or modified by agreement in writing by the parties.
- 12.9 Clauses 1, 3, 5, 6 and 12 survive expiry or termination of this Agreement.

Special Terms for Equipment Hire

13. Hire Period

- 13.1 The Hire Period:
- (a) commences at the time the Equipment leaves KH's premises (Start Time);
 - (b) ends on the End Date; and
 - (c) includes Saturdays, Sundays and public holidays.
- 13.2 For Equipment hire where the term of this Agreement is not for a fixed period or becomes for an indefinite period then this Agreement may be terminated by You giving KH not less than twenty-four (24) hours written notice.
- 13.3 If the agreement is for a fixed period, you are liable to pay to us all monies owing during the Hire Period. Should you terminate the agreement prior to the end of the fixed period date, You are liable to pay to KH all monies owing for the Hire Period, unless otherwise agreed.

14. Calculation of Price

- 14.1 The Price for Hire of the Equipment includes:
- (a) the Hire Charge;
 - (b) the Delivery and Collection Fee;
 - (c) the Additional Hours Charge (if any);
 - (d) the Cleaning Services Charge (if any);
 - (e) the Damage Waiver Fee (if any);
 - (f) the Refuel Charge (if any);
 - (g) the Tyre Replacement Fee (if any);
 - (h) the Futile Charge (if any); and
 - (i) the Repair Charge (if any).
- 14.2 The Hire Charge is payable for each Business Day during the period commencing on the Start Time until the later of:
- (a) the date on which KH provides an Off-Hire Number to You (inclusive); and
 - (b) where the Hire Schedule does not set out an end date, the final day of the Minimum Hire Period (inclusive); and
 - (c) where the Hire Schedule sets out an end date, that date (inclusive).
- 14.3 The Hire Charge is calculated as follows:
- (a) the first five Business Days will be charged at the Daily Rate; and
 - (b) each subsequent Business Day will be charged at the Weekly Rate, pro-rata based on a five day week.
- 14.4 The Hire Charge is based on usage of the Equipment for 38 hours per week. If You use the Equipment for more than 152 hours during any consecutive four week period ($38 \times 4 = 152$), You will be charged the Additional Hours Charge for each hour the Equipment is used in excess of 152 hours in that period.
- 14.5 In consideration of KH delivering and collecting the Equipment to and from Your Premises, You must pay the Delivery and Collection Fee.
- 14.6 Clause 14.2 applies regardless of whether any Equipment is returned prior to the end of the Minimum Hire Period.
- #### **15. Delivery of Equipment and Access to Your Premises**
- 15.1 You must ensure that KH has free and clear access to Your Premises to enable safe and efficient delivery of the Equipment by KH or its nominee to enable KH to deliver the Equipment in accordance with this Agreement.

- 15.2 You warrant that Your Premises comply with all relevant laws, including occupational health and safety laws applicable to building/construction sites, and any other relevant safety standards.
- 15.3 If You breach Your obligation to provide free and clear access to the Premises in accordance with clause 15.1 and KH is unable to deliver the Equipment then, without prejudice to any other rights or remedies available to it, KH may (in its absolute discretion) charge You, and You will be liable for, the Futile Charge for each day from the first attempted delivery until the day of actual delivery.
- 15.4 You must inspect the Equipment on delivery to Your Premises and notify KH in writing of any defect or damage, shortage in quantity, or any other error in connection with the Equipment, within twenty-four (24) hours following delivery to Your Premises or (if applicable) alternate nominated address for delivery.

16. Collection of Equipment and Your responsibilities and end of Hire Period

- 16.1 On expiry of the Hire Period or if You wish to terminate the Agreement, You must notify KH by telephone of such termination or expiry (End Notice).
- 16.2 If KH receives the End Notice prior to 10am on a Business Day, KH must provide an Off-Hire Number to You on that Business Day. If the End Notice is received after 10am or on a day other than a Business Day, the Off Hire Number will be provided on the next Business Day.
- 16.3 Upon receipt of the Off Hire Number, You must:
- (a) ensure that KH has free and clear access to the Your Premises to enable safe and efficient collection of the Equipment by KH or its nominee; and
 - (b) make the Equipment available for collection from Your Premises by KH: (i) complete with all parts and accessories, clean and in good order and in the same condition as it was when You received it (fair wear and tear excepted); and (ii) with full tank of fuel.
- 16.4 At KH's sole discretion and without prejudice to any of KH's other rights or remedies, if You fail to comply with:
- (a) clause 16.3(a), KH may charge You and You will be liable for the Futile Charge for each day of the breach;
 - (b) clause 16.3(b)(i), KH may undertake the required work to comply with that clause and, if so, You must pay the Cleaning Services Charges to KH; or
 - (c) clause 16.3(b)(ii), KH may fill the Equipment with fuel and, if so, You must pay the Refuel Charges to KH.
- 16.5 If You fail to make the Equipment available to KH for collection in accordance with this Agreement, then KH or KH's agent may (as Your invitee) enter upon and into land and premises owned, occupied or used by You, or any premises where the Equipment is situated and take possession of the Equipment.
- 16.6 Except to the extent a Claim arises due to KH's negligence, You indemnify KH against all Claims incurred by or brought against KH in connection with KH exercising its rights under clause 16.5.

17. Title to and Risk in the Equipment

- 17.1 The Equipment is and will at all times remain the absolute property of KH and in all circumstances, KH retains title to the Equipment.
- 17.2 You are not authorised or entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of security interest or encumbrance over or otherwise deal with the Equipment.
- 17.3 Subject to the express terms of this Agreement, all risk in the Equipment transfers to You on and from the Start Time and remains with You until the Equipment is back in KH's possession and control.

18. Your use of the Equipment

- 18.1 You must:
- (a) satisfy Yourself at commencement of this Agreement that the Equipment is suitable for Your purposes;
 - (b) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction (whether supplied by KH or posted on the Equipment), including by: (i) ensuring that all persons operating the Equipment are suitably instructed in the Equipment's safe and proper use; (ii) ensuring that, where necessary, the operator holds a current Certificate of Competency and is fully licensed to drive and operate the Equipment; (iii) complying with all occupational health and safety laws relating to the Equipment and its operation; and (iv) not exceeding the recommended or legal load and capacity limits of the Equipment;
 - (c) during the Hire Period, ensure the Equipment is left locked, securely stored, and protected against acts of theft or vandalism when not in use;
 - (d) keep the Equipment in Your possession and control and at Your Premises at all times during the Hire Period;
 - (e) not alter or make any additions to the Equipment (including altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment) or otherwise interfere with the Equipment;
 - (f) not permit the Equipment or any part of it to be used by any third party;
 - (g) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment; and
 - (h) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold. 18.2 You must provide evidence of all relevant certificates and licences referred to in clause 18.1(b)(ii) to KH upon request.

19. Maintenance of the Equipment

19.1 You must, at Your own cost, during the Hire Period:

- (a) conduct daily checking of the Equipment for oil, grease, water and battery and other fluid levels to determine if each are at the recommended levels;
- (b) conduct daily checking of tyre pressure to determine if all tyres are at the recommended pressure levels;

- (c) conduct daily checking of the Equipment for any sign of looseness, wear or damage;
- (d) conduct daily cleaning of the Equipment;
- (e) for all Battery Electric Forklifts, charge and top up the battery with water on a daily basis; and
- (f) conduct any other maintenance requirements as notified by KH from time to time.

19.2 You must notify KH immediately by telephone of the full circumstances of:

- (a) any maintenance required to the Equipment, including as a result of Your obligations under clause 19.1;
- (b) any mechanical breakdown of the Equipment;
- (c) any accident involving the Equipment;
- (d) any damage to the Equipment;
- (e) any loss or theft of the Equipment; and
- (f) the Equipment becoming unsafe for any reason.

19.3 If any of the circumstances referred to in clause 19.2 occur, You must:

- (a) immediately cease using the Equipment as soon as You become aware of the relevant circumstances and
- (b) take all necessary steps to prevent injury to any person and all property as a result of the condition of the Equipment.

19.4 KH will conduct any regular maintenance or periodic servicing (except that referred to in clause 19.1) required to be conducted for the Equipment.

19.5 You must allow KH to enter Your Premises and inspect and maintain the Equipment from time to time and to enable it to comply with clause 19.4, during normal working hours.

20. Costs for Repairs to and Replacement of Equipment

20.1 Subject to clause 6.3, but without limiting clause 6.6, if the Equipment is lost, stolen or damaged (except fair wear and tear) during the Hire Period, You will be liable for:

- (a) except to the extent the loss, theft or damage is caused by an act, omission or negligence of KH or is the responsibility of KH pursuant to clause 23.1: (i) if the damage is repairable, any costs incurred by KH in repairing the Equipment; and (ii) if the damage is irreparable or in the case of loss or theft of the Equipment, the cost of replacing the Equipment; and
- (b) except to the extent the loss, theft or damage is caused by an act, omission or negligence of KH: (i) the Hire Charges until the Equipment is repaired or replaced; and (ii) any other costs whatsoever incurred by KH in connection with the loss, theft or damage to the Equipment.

20.2 Without limiting clauses 6.6 and 20.1, if You fail to charge or top up the battery in accordance with clause 19.1 (e), and the battery is required to be replaced, You must pay all costs associated with replacement of the battery.

20.3 You must not repair or attempt to repair the Equipment without KH's prior written consent.

20.4 If KH is required by any relevant authority, or is requested by You or KH decides to salvage the Equipment then You must pay KH the salvage costs incurred by KH.

20.5 Harnesses lost or damaged will be charged out at a rate equivalent to the cost to KH of replacing the lost or damaged item.

20.6 KH may determine, in its absolute discretion, to itself conduct any work required to repair or rectify damage to the Equipment KH will charge You, and You must pay to KH, the Repair Charges for that work.

20.7 Lost or damaged log books, operator manuals or paperwork will incur a charge equivalent to the cost to KH of replacing the lost or damaged item.

21. Tyres

21.1 KH will supply, at its cost, new tyres for each separate piece of Equipment once per annum.

21.2 If new tyres are required for the Equipment prior to the date on which KH is scheduled to supply new tyres for that Equipment, KH will provide new tyres subject to You paying the Tyre Replacement Fee.

22. Insurance for the Equipment

22.1 You must take out and maintain for the Hire Period the following insurances:

- (a) unless You pay the Damage Waiver Fee in accordance with clause 23, insurance covering: (i) KH's interest in the Equipment for full replacement value; (ii) insured against physical loss or damage including the perils of accident, fire, theft and burglary and all other usual risks; and (iii) insured for 'hired in plant.'
- (b) Public Liability Insurance covering all loss, damage or injury to property arising out of the use of or in connection with the Equipment.

22.2 You must not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

22.3 Upon request You must provide copies of the certificates of currency and policy terms for the insurances referred to in clause 22.1 to KH.

23. Damage Waiver Fee

23.1 Upon payment of the Damage Waiver Fee by You KH will, subject to clauses 23.2, 23.3, 23.4, 23.5, 23.6, 23.7 and 23.8, be responsible for the cost of repairs and/or replacement of the Equipment due to loss, theft or damage occurring during the Hire Period.

23.2 The cost of repairs and/or replacement does not include the Excess Charges. If an insurance claim is made by KH for the cost of repairs and/or replacement of the Equipment during the Hire Period, the Excess Charges will be payable by You.

23.3 This clause 23 in no way entitles You to, or implies the availability of, compensation from KH for any liability incurred by You in relation to the Equipment.

23.4 Clause 23.1 will not continue to operate after the expiry of this Agreement unless an extension is granted in writing by KH and an additional Damage Waiver Fee is paid by You.

23.5 Clause 23.1 will not apply to theft, loss or damage to the Equipment arising from:

- (a) breach of any laws or regulations relating to the use of the Equipment;
- (b) misuse, abuse, wilful or malicious use, negligent, careless or reckless use, overloading, exceeding rated capacity, or improper servicing of Equipment;
- (c) loss or damage by whatever cause to tools and/or accessories supplied with the Equipment including hoses, drills, bits, leads, tyres and tubes;
- (d) lack of lubrication or non-compliance with maintenance requirements that could reasonably be expected of You under this Agreement;
- (e) disregard of instructions given to You by KH or the manufacturer in respect of the proper use of the Equipment;
- (f) a breach of this Agreement by You;
- (g) failure to reasonably secure the Equipment against theft;
- (h) damage to the Equipment during transit (including while on any wharf, bridge or over water);
- (i) glass breakage or exposure to corrosive substances or erosion or earth movement;
- (j) damage to electric motors or tools caused by unsuitable leads and/or leads being too long;
- (k) damage to Equipment paintwork;
- (l) loss or damage due to mysterious disappearance;
- (m) loss or damage caused by misappropriation or wrongful conversion;
- (n) use of the Equipment on an off-shore oil rig or underground or
- (o) any matter that is excluded under a policy of insurance held by KH.

23.6 If the Price payable by You under this Agreement is increased for any reason, including due to an extension of this Agreement, You must pay to KH the increased Damage Waiver Fee arising from that increase in Price.

23.7 This clause 23 does not apply to any Wet Hire of Equipment.

23.8 You acknowledge and agree that this clause 23 is not an insurance policy but is an agreement by KH to limit Your liability in certain circumstances.

Special Terms for Purchase of Goods

24. Delivery of Goods

24.1 Delivery of the Goods is taken to occur at the time that You or Your nominated carrier takes possession of the Goods at KH's address ("Delivery Time").

24.2 Unless otherwise agreed by KH in writing, the cost of delivery of Goods to You is in addition to the Price.

24.3 KH may deliver the Goods or make the Goods available to You in separate instalments. Each separate instalment must be invoiced and paid in accordance with the provisions in this Agreement.

24.4 A delivery period quoted commences from the date KH receives the deposit (if required) with any time specified by KH for Delivery of the Goods is an estimate only. You must still accept delivery of the Goods even if late and KH will not be liable for any loss or damage incurred by You as a result of the delivery being late. Both parties will make every endeavour to enable to Goods to be delivered at the time agreed between the parties.

25. Risk in Goods

25.1 Risk of damage to or loss of the Goods passes to You on the Delivery Time and You must insure the Goods on or before the Delivery Time.

25.2 If You request KH to leave Goods outside KH's premises for collection or to deliver the Goods to an unattended location then such Goods will be left at Your sole risk.

26. Title to Goods

26.1 KH and You agree that ownership of the Goods will not pass to You until:

- (a) KH has received all amounts owing to KH by You in accordance with this Agreement; and
- (b) You have met all of Your obligations to KH under this Agreement.

- 26.2 Until ownership of the Goods passes to You in accordance with clause 27.1:
- (a) You are only a bailee of the Goods and must return the Goods to KH on request;
 - (b) You hold the benefit of Your insurance of the Goods on trust for KH and must pay to KH the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) You must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If You sell, dispose or part with possession of the Goods then You must hold the proceeds of any such act on trust for KH and must pay or deliver the proceeds to KH on demand;
 - (d) You should not convert or process the Goods or intermix them with other goods but, if You do, then You hold the resulting product on trust for the benefit of KH and must sell, dispose of or return the resulting product to KH as it directs;
 - (e) You irrevocably authorise KH to enter any premises where KH believes the Goods are kept and recover possession of the Goods;
 - (f) KH may recover possession of any Goods in transit whether or not delivery has occurred; and
 - (g) You must not charge or grant an encumbrance over the Goods nor grant or otherwise give away any interest in the Goods.
- 26.3 KH may commence proceedings to recover the Price for the Goods sold to You notwithstanding that ownership of the Goods has not passed to You.

27. Inspection and return of Goods

- 27.1 You must inspect the Goods upon delivery pursuant to clause 25.1 and must, within twenty four hours of the Delivery Time, notify KH in writing of any defect or damage, shortage in quantity, or any other error in connection with the Goods.
- 27.2 Upon such notification You must allow KH to inspect the Goods.
- 27.3 Subject to clause 29, returns for Goods will only be accepted by KH provided that:
- (a) You have complied with the provisions of this clause 28;
 - (b) KH has agreed that the Goods are defective;
 - (c) the defective Goods are returned to KH within a reasonable time at Your cost; and
 - (d) the Goods are returned in the same condition to that in which they were delivered.

28. Second-hand Goods

- 28.1 In the case of second-hand Goods, You acknowledge and agree that:
- (a) You have had full opportunity to inspect the second hand Goods prior to entering into this Agreement;
 - (b) You accept the Goods within the condition as at the Delivery Time;
 - (c) other than as set out in clause 6, no warranty is given by KH in respect of the Goods; and
 - (d) KH has agreed to provide You with the second-hand Goods and calculated the Price of the second hand Goods in reliance on this clause 29.