

# HIRE CONDITIONS

Set out below are Skyreach's Hire Conditions which form part of the Agreement between Skyreach and the Customer. They are subject to periodic review by Skyreach. Skyreach reserves the right to adopt new Conditions by written notice to the Customer and by posting them on its Website.

## (1) DEFINITIONS AND INTERPRETATION

1.1 **Definitions** In these Conditions, unless the context or subject matter otherwise requires:

- (1) **Account Terms** means "Terms" as defined in the document headed "Skyreach Account Terms";
- (2) **Administration Fee** means the amount charged by Skyreach in relation to administration of the Equipment hire.
- (3) **Agreement (or this/the Agreement)** means and includes the following:
  - (a) these Conditions,
  - (b) Account Terms;
  - (c) Application;
  - (d) Hire Proposal;
  - (e) Skyreach Schedule;
  - (f) Guarantee Charge and Indemnity;
 as well as any agreement entered into between Skyreach and the Customer in relation to the hire of Equipment from Skyreach as evidenced by Invoice, Delivery Form and/or otherwise;
- (4) **Application** means the document headed "30 DAY TRADING ACCOUNT APPLICATION" as defined in that document;
- (5) **Authorised Person** means such Person or Persons accepting delivery of and the operation of the Equipment on behalf of the Customer;
- (6) **Business day** means any Day where Skyreach is open for trade;
- (7) **Breakdown** means a period of time that the Equipment is unable to be used;
- (8) **Cash Sale Customer ("CSC")** means any Person, business Company or other legal entity that does not have a 30-day trading account with Skyreach.
- (9) **Claim** means in relation to a Person, a 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 however arising and whether ascertained or unascertained;
- (10) **Company** means a company registered under the Corporations Act 2001 (Cth).
- (11) **Conditions** means these Hire Conditions. and any other relevant terms / conditions imposed by Skyreach in relation to the hire of the Equipment to the Customer;
- (12) **Customer** means the party specified as such in any Application and where the context permits, its servants, agents, employees, contractors and Authorised Persons;
- (13) **Day** means a period of 8 hours;
- (14) **Day Rate** means Skyreach's daily Hire Charge of the Equipment as specified in the Skyreach Schedule and the Hire Proposal and Invoice/s;
- (15) **Delivery Form** means any document containing delivery details and headed as such;
- (16) **DLT Waiver** has the meaning and applies as set out in subclauses 11.1 to 11.3. It essentially limits the liability of the Customer for damage or loss to or theft of any of the Equipment hired by the Customer whilst in its possession or the circumstances set out in subclauses 11.1 to 11.3. When the DLT Waiver does not apply, the Customer must pay the DLT Waiver Excess;
- (17) **DLT Waiver Excess** means 1% of the new replacement value of the Equipment determined by Skyreach or \$5,000 whichever is the greater, payable by credit card or EFT by the Customer upon demand;
- (18) **Equipment** means any plant and equipment specified in this/the Agreement or any agreement with Skyreach and if the context

requires, includes any part of such plant and equipment including any accessories and safety devices;

- (19) **Guarantee Charge and Indemnity** means the document headed "Skyreach GUARANTEE CHARGE AND INDEMNITY" as defined in that document;
  - (20) **Hire Charges** means the amount payable to Skyreach by the Customer for the use of the Equipment determined in accordance with these Conditions, the Skyreach Schedule and Hire Proposal and Invoice/s.;
  - (21) **Hire Period** means the period commencing on the day that the Equipment is collected by or delivered to the Customer and expiring on the latter of:
    - (a) The day upon which the Customer has agreed to return the Equipment to Skyreach; or
    - (b) The day the Equipment is returned to or made available for collection and is able to be collected by Skyreach;
    - (c) The day upon which the Equipment has been repaired or replaced by Skyreach and is made available for hire following any Breakdown in the Equipment caused by the Customer's acts, omissions, neglect or default, such period being inclusive of weekends and public holidays and periods during which the Equipment is not used by the Customer for any reason whatever including industrial action or suspension of work;
  - (22) **Hire Proposal** means the document containing the quote to the Customer and headed "Hire Proposal";
  - (23) **Invoice** means any document in the form of a tax invoice issued by Skyreach to the Customer and payable by the Customer;
  - (24) **Location** means the location/place/site/on-site where the Customer will use the Equipment or where the Equipment is located.;
  - (25) **Long Term Hire Equipment** means Equipment hired for more than (3) three months;
  - (26) **Minimum Hire Period** means a minimum period applicable to certain items of Equipment as stated in the Hire Proposal;
  - (27) **Off-Hire** means the date the Hire Period ends and shall in all cases be treated as a full Day's hire.
  - (28) **Person** includes one or more individuals or one or more individuals trading under a trading name or business name, It also includes a Company or other legal entity;
  - (29) **PPS Law** means the Personal Property Securities Act 2009 (Cth), its subordinate legislation and any amended, replacement and successor provisions.
  - (30) **PPSR** means the Personal Property Securities Register under the PPS Law;
  - (31) **Security Interest** means an interest as defined in the PPS Law
  - (32) **Skyreach** includes where relevant Skyreach Group Holdings Pty Ltd – ABN 54 610 283 157 Skyreach Pty Ltd - ABN 37 076 542 955 Skyreach (NSW) Pty Limited – ABN13 142 415 638 Skyreach (Vic) Pty Limited – ABN 97 119 453 315 and their related bodies corporate within the meaning of the Corporations Act 2001 and where the context permits, their directors, servants, agents, employees and contractors;
  - (33) **Skyreach Schedule** means the Skyreach Schedule of rates, fees and charges attached to and forming part of the Hire Proposal.
  - (34) **Sundry Charges** means all the costs, charges and credit card surcharges set out in this Agreement (or any other agreement between Skyreach and the Customer) other than the Administration Fee and Hire Charges; and
  - (35) **Website** means www.skyreach.com.au
- 1.2 **Interpretation** In the interpretation of all agreements between Skyreach and the Customer including this Agreement, unless the context or subject matter otherwise requires:
- (1) A reference to a party includes that party's executors, administrators, substitutes and permitted assigns;
  - (2) Each covenant by two or more persons as a party is made jointly by all and severally by each;

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- (3) The singular includes plural and vice versa; and
- (4) Time is of the essence of all the Customer's obligations to Skyreach, particularly notices and payment of amounts owing.
- (5) These Conditions apply to all agreements between Skyreach and the Customer including this Agreement;
- (6) Any terms and conditions implied by statute or otherwise are excluded to the extent it is lawful to do so.
- (7) Any notices, correspondence, documents to be sent by Skyreach or the Customer, whether required or not, are to be sent to the other party's address/email set out in this Agreement;
- (8) Capitalised terms in this Agreement (other than headings) have the meaning given to them in this Agreement; and
- (9) The clause headings in these Conditions are for reference purposes only and do not in any way influence or affect the meaning of these Conditions.
- (1A) SKYREACH SCHEDULE AND THESE CONDITIONS**
- 1A.1 Skyreach reserves the right to change or update the Skyreach Schedule or these Conditions but will only do so by giving the Customer (30) thirty days' notice of any change or update in which case the Customer has the right to terminate this Agreement by giving Skyreach a notice of such termination within that (30) thirty day period and pay to Skyreach all monies owing to it under this Agreement up to the date of termination and return the Equipment or allow Skyreach to take possession of the Equipment.
- 1A.2 Notwithstanding subclause 1A.1, Skyreach reserves the right to change or update the Skyreach Schedule without notice to the Customer if Skyreach becomes aware of any non-disclosure by the Customer or incorrect or misleading information given by the Customer or unforeseen Location problems.
- 1A.3. If subclause 1A.2 applies, the new Skyreach Schedule will apply as determined by Skyreach.
- (2) INCONSISTENCY**
- 2.1 If there is any conflict or inconsistency between these Conditions and any other document making up this Agreement, these Conditions prevail to the extent of the inconsistency.
- (3) TITLE TO EQUIPMENT**
- 3.1 The Customer acknowledges that in all circumstances Skyreach retains title to the Equipment (even if the Customer goes into liquidation or becomes bankrupt during the Hire Period). In no circumstances will the Equipment be deemed to be a fixture. The rights of the Customer to use the Equipment are as a bailee only.
- (4) LIABILITY FOR PAYMENT**
- 4.1 **Customer's Liability** The Customer agrees to pay and is liable for:
- (1) The Administrative Fee, Hire Charges and the Sundry Charges.
- (2) Any damages occasioned to Skyreach by reason of a failure to maintain any or any adequate insurance in respect of the said Equipment whilst in the Customer's possession, power or control;
- (3) Any excess to any insurance and/or any DLT Waiver Excess (as may be applicable) suffered by Skyreach for any Claims made in relation to damage or loss to or theft of Equipment whilst the Equipment was in the Customer's possession, power or control; Any costs of repairing or replacing the Equipment required as a result of the Customer's acts, omissions, neglect or default;
- (4) Any GST or similar tax imposed on any supply by Skyreach to the Customer and any other state or federal taxes, duties or charges imposed including stamp duty; and
- (5) All costs (including legal costs calculated on a solicitor and own client basis) incurred by Skyreach relating to any default by the Customer on an indemnity basis.
- 4.2 **Additional Charges** Skyreach may in its discretion, charge for additional periods during which the Equipment is being delivered to or collected from the Customer or during which Skyreach is unable to deliver or collect the Equipment through no fault or omission of Skyreach.
- 4.3 **Breakdown** If the Customer notifies Skyreach in writing of any Equipment Breakdown, Hire Charges will not be incurred during the time in which the Equipment is not working, unless, at Skyreach's determination, such condition is due to negligence or misuse on the part of or attributable to the Customer. The Customer remains liable for any Hire Charges during the period of repair or unavailability of Equipment due to loss, damage or theft while in the possession or control of the Customer.
- 4.4 **A notification of Equipment Breakdown** Notification does not absolve the Customer from its requirement to safeguard the Equipment and in the event of a Breakdown the Customer shall not repair or attempt to repair the Equipment without the prior written consent of Skyreach. If the Equipment breaks down or becomes unsafe, the Customer must immediately stop using the Equipment and must take all necessary steps to prevent injuries to any Person or damage to any property as a result of the condition of the Equipment. Skyreach shall not be liable for any expenditure, damages, loss or inconvenience incurred by the Customer arising out of any Breakdown in the Equipment whether caused by fair wear and tear, lack of repair or negligence on the part of Skyreach or any other reason whatsoever. If any Equipment breaks down or is damaged due to the Customer's negligence or misuse Hire Charges will continue to be charged until the Equipment has been repaired or replaced;
- 4.5 **Breakdown (After Hours)** Skyreach will provide both technical and on-site field service assistance for Equipment Breakdown during normal business hours Monday to Friday. If attendance is required on-site after those hours, weekends or public holidays then labour time (plus travel time if outside the metropolitan area of a capital city) will automatically be charged to the Customer at penalty call-out rates (min. 4 hours charge) regardless of the Breakdown problem;
- 4.6 **Cleaning** The Customer is liable for all costs associated with any cleaning including painting, decal replacement, repairs to Equipment that has been returned to Skyreach from hire in an unsatisfactory condition as determined by Skyreach.
- 4.7 **Disputes** The Customer must immediately check all Hire Charges, and any disputes in relation to those Hire Charges (subject to subclause 4.10) must be communicated to Skyreach in writing within 28 days of an Invoice date, otherwise the Hire Charges are deemed to be accepted by the Customer.
- 4.8 **Dispute Resolution** If a dispute arises between Skyreach and the Customer under subclause 4.7, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen days (14) days after the service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a Person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (1) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- (2) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 4.9 **Early Return** Skyreach may in its sole discretion, accept the return of the Equipment before the scheduled date of return. The Customer will remain liable for all Hire Charges (and Sundry Charges) payable to Skyreach despite early return of the Equipment but Skyreach will endeavour to re-hire the Equipment in which case the Customer will only be liable for Hire Charges until the date of such re-hire or until expiration of the Hire Period, whichever is earlier.
- 4.10 **Late Return** The Customer remains liable to be charged for the Equipment until returned to the Skyreach branch it came from. The Customer will also be liable for one Day's hire upon the day the hire was Off-Hired. Confirmation of Off-Hire is communicated with a verbal and recorded Off-Hire Number to the Customer. Subclause 4.7 does not apply where an Off-Hire Number cannot be quoted by the Customer.
- 4.11 **Hire Charges** are calculated by multiplying the number of days in the Hire Period by the Day Rate shown in the Hire Proposal and Invoice/s.

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- 4.12 **Insolvency Event** Any one or more of the following is an event of insolvency ("Insolvency Event"). If the Customer:
- becomes insolvent or bankrupt;
  - is the subject of an application to wind up, or if a liquidator, provisional liquidator, receiver, a receiver and manager, or an administrator is appointed with respect to the Customer or any of the Customer's assets;
  - makes an arrangement or composition with the creditors of the Customer or attempts to make such an arrangement or composition;
  - is unable to pay debts as they fall due;
  - fails to comply with a statutory demand made under the Corporations Act 2001 (Cth) for payment of a debt;
  - ceases business;
  - has execution levied against any assets; or
  - has a mortgagee, liquidator, provisional liquidator, receiver, receiver and manager or administrator enter or seek to enter into possession of any of its assets, then any monies actually or contingently owing to Skyreach at that time by the Customer, (including any amounts which would not otherwise be payable until a later date or dates) are immediately due and payable (without the need for any demand by Skyreach).
- 4.13 **Minimum Hire Period** If a Minimum Hire Period applies, it will be stated in the Hire Proposal. If the Customer returns any Equipment to which the Minimum Hire Period applies, before the expiration of the Minimum Hire Period, the Customer must pay all Hire Charges in respect of the Minimum Hire Period.
- 4.14 **Non-Potable/Sea Water** The Customer is liable to Skyreach for refurbishment of the Equipment where the Equipment has been subjected to any corrosion.
- 4.15 **Remote Area Hire Conditions**
- Definitions:**

"**Remote Area**" is a Location in excess of 100km by road travel from the nearest Skyreach branch.

"**PMP**" is the managed Preventive Maintenance Programme operated by Skyreach (or its agent) for all Equipment. The PMP involves regular attendance at the Location by Skyreach service personnel to conduct (3) three monthly regular routine Equipment servicing and general maintenance at the Customer's expense.
  - Unless otherwise specified in the Skyreach Hire Proposal, in addition to the charges for Equipment servicing and general maintenance, the PMP for all Equipment operating in a Remote Area will be subject to a per km charge both to and from 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, accommodation and meals ("**Remote Area Travelling Charges**").
  - Multiple items of Equipment hired by the same Customer on the site will only be charged as one call out.
  - The Customer remains responsible for daily maintenance and care of all Equipment in their 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.
  - If the Equipment breaks down in a Remote Area, the Customer must also pay Skyreach the Remote Area Travelling Charges relating to any attendance to the Location concerned.
  - It is the responsibility of the Customer to provide access to site. Refusal to allow access to Equipment at the specified intervals will incur further charges. Equipment will be treated as "out of service" and charged by Skyreach to the Customer at full charge until access to the Equipment is accessed for servicing to be undertaken.
  - If the Customer requires Equipment to be serviced at intervals other than the pre-determined PMP service cycle (to align service cycles with Location requirements), then the Customer must pay all charges relating to attendance to site by a service technician to complete the additional service.
- (8) It is the responsibility of the Customer to provide accommodation and meals for Remote Areas if no accommodation is available within 20 kilometres of the Location.
- 4.16 **Risk – Site damage Evaluation** It is the Customer's responsibility to ensure that a risk analysis/assessment (including provision of spillage kits) has first been carried out at the Location for the Equipment being hired as to spillage of oils, fuel, battery fluid or water that may affect the work and environmental area. The Customer agrees to fully indemnify Skyreach against all liability, Claims, damage, loss, costs and expenses (including, without limitation, legal fees and costs (on a solicitor and own client basis), whether incurred or awarded against Skyreach which Skyreach may incur as a result of the Customer's failure to comply in the prevention of spillage from fuel, oil, water with any environmental law or regulation on any Location.
- 4.17 **Servicing** Skyreach will provide (3) three-month regular on-site hire fleet servicing ("Servicing") during normal business hours Monday to Friday. Any more regular Servicing requested by the Customer to be undertaken by Skyreach (whether in a Remote Area or not) will be at the Customer's expense and charged as set out in the Skyreach Schedule;
- 4.18 **Servicing (After Hours)** If Servicing is required on-site after hours, weekends or public holidays then labour time (plus travel time if outside metro area) will automatically be charged to the Customer at penalty call-out rates (min. 4 hours charge).
- 4.19 **Set-Off** If an amount is payable by the Customer to Skyreach under these Conditions or any other conditions, contract or agreement between the Customer and Skyreach, Skyreach is entitled to set off that amount against any amount payable by Skyreach to the Customer.
- (5) **FORCE MAJEURE**
- 5.1 The obligations of Skyreach and the Customer are suspended during the time and to the extent that Skyreach or the Customer is prevented from complying with them due to any one or more of the following events:
- act of God;
  - war, riot, act of terrorism, insurrection, vandalism or sabotage;
  - law, rule or regulation of any government or government agency or executive or administrative order or act;
  - explosion;
  - power shortage/outage; or
  - Breakdown of Equipment, that;
    - is unforeseen by Skyreach or the Customer;
    - is beyond the control of Skyreach or the Customer; and
    - occurs without the fault or negligence of Skyreach or the Customer.
- (6) **USE OF EQUIPMENT**
- 6.1 **Customer's Further Obligations** In addition to any obligations of the Customer in these Conditions, the Customer must:
- ensure the Equipment is used:
    - for the purpose for which it was designated by the manufacturer;
    - by the Customer or an Authorised Person having the appropriate qualifications, training and licences to operate the Equipment (such as but not limited to licences required for boom type lifts over 11m in height/telehandlers); and
    - in accordance with all applicable laws and regulations (including Work Health and Safety legislation) in a skilful, safe and tradesman like manner not extending beyond its safe operating capacity (having regard to manufacturers specifications) and not subjected to anything other than normal wear and tear.
  - conduct a job safety analysis prior to using the Equipment;
  - comply with all environmental laws and immediately rectify any breach of any environmental law caused by use of the Equipment;
  - notify Skyreach immediately if the Equipment breaks down, malfunctions or is damaged;

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- (5) not undertake any repair to the Equipment without the written consent of Skyreach;
- (6) maintain and return the Equipment to Skyreach in good order, repair and condition and ensure that a daily check of battery water levels, fuels, greasing, oils and tyres of the Equipment is carried out;
- (7) Carry out operator log book checks supplied with the Equipment on a daily/shift use basis;
- (8) not transfer, assign, encumber, loan or sell the Equipment and not (except for the purpose of returning the Equipment) remove Equipment or allow it to be removed from the Location notified to Skyreach for use of the Equipment without the written consent of Skyreach; and
- (9) not alter, remove, make any additions to, deface or erase any notices, decals, safety information, identifying stickers, identifying mark, plate or number on or in the Equipment or, in any other manner interfere with the Equipment.
- 6.2 Condition of Equipment** The Customer acknowledges that:
- (1) it accepts delivery of the Equipment in "a safe and good working condition" unless it indicates otherwise at the time/day of delivery;
- (2) it ensures an Authorised Person is available to accept the Equipment upon delivery; and the replacement cost of missing hire accessories such as harnesses, pipe racks, hooks, jibs and fire extinguishers, etc;
- (3) it understands the safe and proper use of the Equipment and the operator of the Equipment has received appropriate third party training in its operation and use;
- (4) Skyreach may inspect, repair or remove the Equipment at any time and access to the Equipment must be granted for that purpose; and
- (5) Skyreach 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 Skyreach at its depot following its return.
- 6.3 Carriage of Equipment** Skyreach is not a common carrier and does not accept the obligation or liability of common carriers.
- (7) CASH SALE CUSTOMER (CSC) OBLIGATIONS**  
The obligations for a Cash Sale Customer includes:
- 7.1 The CSC shall on or prior to a hire pay fully in advance by means of credit card or EFT (cash and cheques are not accepted) the full amount of the Hire Charges for the period the Equipment is required. The CSC shall also pay in advance for charges on an estimated fuel usage for the period the Equipment is required plus cartage costs for mobilisation and demobilisation of the Equipment.
- 7.2 The CSC acknowledges that it has all the appropriate licences/tickets to operate the Equipment;
- 7.3 The CSC acknowledges that all the Conditions in this Agreement are fully applicable to the CSC;
- 7.4 The CSC acknowledges that where payment is made by credit card (Visa, Mastercard) that there will be a credit card surcharge (currently ranging from 1% to 1.5%) on the total amount payable;
- (8) DELIVERY AND RETURN/PICK-UP OF EQUIPMENT**
- 8.1 The Customer is responsible for returning the Equipment to the Skyreach branch it hired the Equipment from during normal business hours and will remain liable to be charged for the Equipment until it is returned to Skyreach.
- 8.2 Skyreach will not be responsible or liable for any charges for any type of loss or damage whatsoever caused by delays in delivery or installation or failure to deliver for any reason whatsoever.
- 8.3 The Customer must ensure that:
- (a) the Customer or an Authorised Person is available to accept and sign for the Equipment upon delivery;
- (b) an appropriate, designated, easily identified, accessible and safe lay-down area is set aside for the unloading and loading of the Equipment for its delivery/pick up as required (such as at the commencement of the Hire Period or the expiration (or earlier determination) of the Hire Period;
- (c) where loading/unloading of Equipment is on a road or in a public place, that all the appropriate permits, licences and registrations are obtained and paid in full; and
- (d) that trained/qualified traffic controllers are supplied where applicable for loading/unloading of Equipment on public roads, in public areas or as otherwise may be required.
- 8.4 If at the Customer's request the Customer requires the Equipment to be delivered and left at the place of delivery without being signed for, the Customer accepts full liability for any loss or damage to the Equipment from the time of delivery.
- 8.5 Subject to subclause 8.4, Skyreach shall have the right to charge the Customer for any additional delivery, waiting time or collection for each occasion where the Equipment was not able to be delivered and or collected at the agreed times and Location.
- 8.6 Where Skyreach has agreed to collect the Equipment from the Location, the Customer must ensure the Equipment is kept safe and secure until the time of collection.
- 8.7 The Customer acknowledges and accepts it will be charged for a full days hire of the Equipment for the day on which the Equipment is Off-Hired and returned by the Customer (or collected by Skyreach) irrespective of the time at which the Equipment is returned (or collected by Skyreach);
- (9) PERSONAL PROPERTY SECURITIES**
- 9.1 This clause applies to the extent that this Agreement provides a Security Interest.
- 9.2 Skyreach may register its Security Interest. The Customer must do anything (such as obtaining consents and signing documents) which Skyreach requires for the purpose of:
- (a) ensuring that Skyreach's Security Interest is enforceable, perfected and otherwise effective under the PPS Law;
- (b) enabling Skyreach to gain first priority (or any other priority agreed by Skyreach in writing) for its Security Interest; and
- (c) Enabling Skyreach to exercise rights in connection with the Security Interest.
- 9.3 Skyreach may recover from the Customer the cost of doing anything under this clause, including but not limited to registration fees.
- 9.4 The rights of Skyreach under this Agreement are in addition to and not in substitution for Skyreach's rights under other law (including PPS Law) and Skyreach may choose whether to exercise rights under this Agreement, and/or under other law, as it sees fit.
- 9.5 To the extent that Chapter 4 of the PPS Law applies to the Security Interest under this Agreement, the following provisions of the PPS do not apply and, for the purpose of section 115 of the PPS Law are 'contracted out' of this Agreement in respect to all goods/Equipment to which that section can be applied; section 95 (notice of removal of accession to the extent it requires Skyreach to give 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 130 (notice of disposal to the extent it requires Skyreach to give notice to the Customer); section 129 (2) and 129 (3); section 132 (3)(d) (contents of statement of account after disposal); section 132 (4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re-instatement of security agreement).
- 9.6 The following provisions of the PPS Law confer rights on Skyreach: 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). The Customer agrees that in addition to those rights, Skyreach 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/Equipment, not only under those sections but also, as additional and independent rights, under this document and the Customer agrees that Skyreach may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 9.7 The Customer waives its rights to receive a verification statement in relation to any registration on the register of a Security Interest in respect of the Equipment.

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- 9.8 Skyreach 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 agreement in this subclause is made solely for the purposes of allowing Skyreach the benefit of section 275 (6)(a) and Skyreach shall not be liable to pay damages or any other compensation or be subject to injunction if Skyreach breaches this subclause.
- (10) SECURITY INTERESTS AND ADDITIONAL SUB-HIRE OBLIGATIONS**
- 10.1 The Customer must not create, purport to create or permit to be created any Security Interest in the Equipment other than with the express written consent of Skyreach.
- 10.2 The Customer must not lease, hire or bail the Equipment or otherwise dispose or give the Equipment to anyone else (and any of these acts is termed a "sub-hire") unless Skyreach (in its absolute discretion) first consents in writing. Any such sub-hire by the Customer must be first agreed to in writing by Skyreach in a form acceptable to Skyreach and must be expressed to be subject to the rights of Skyreach under this Agreement.
- 10.3 The Customer may not vary any sub-hire without the prior written consent of Skyreach (in its absolute discretion).
- 10.4 The Customer must ensure that Skyreach is provided at all times with up-to-date information about the sub-hire including but not limited to 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.
- 10.5 The Customer must take all steps including registration under the PPS Law as may be required to:
- Ensure that any Security Interest arising under or in the respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
  - enable the Customer to gain (subject always to the rights of Skyreach) first priority (or any other priority agreed to by Skyreach in writing) for the Security Interest; and
  - ensure Skyreach and the Customer are able to exercise their respective rights in connection with the Security Interest.
- 10.6 Skyreach may recover from the Customer the cost of doing anything under this clause, including reimbursement for registration fees.
- (11) DAMAGE, LOSS, THEFT Waiver (DLT WAIVER) RELEASE AND INDEMNITIES**
- 11.1 DLT Waiver is not insurance, but Skyreach agrees that the Customer's liability for damage or loss to or theft of the Equipment can be limited in some circumstances only, to the DLT Waiver Excess payable by the Customer to Skyreach on demand. Skyreach will provide DLT Waiver in respect of the Equipment while in the Customer's possession. The Customer acknowledges that the DLT Waiver provided by Skyreach in respect of the Equipment will not extend to cover any damage or loss to or theft of the Equipment resulting from the Customer's failure to comply with the obligations contained in these Conditions or its negligence and obligations to third parties.
- 11.2 DLT Waiver does apply and will limit the Customer's liability in the following circumstances, where in respect of the Equipment:
- it has been lost, stolen, damaged or vandalised and it has been proven that the Equipment was safely secured on a fully lockable enclosed site and that the Equipment was in a demobilised secured state;
  - it has been proven to be accidentally damaged by a third party through no fault or any negligence of the Customer or the Customer's agent
- 11.3 DLT Waiver does not apply and will not limit the Customer's liability in the following circumstances where in respect of the Equipment:
- it is lost, stolen or vandalised through not safely securing the equipment;
  - it is used off-shore;
  - it is used over water;
  - it is used underground;
- its mysterious or unexplained disappearance or wrongful conversion occurs;
  - it has been damaged through use other than as prescribed by the manufacturer;
  - the Customer or the Customer's agent has breached or allowed any breach of this Agreement;
  - where the damage is caused by the negligence of the Customer or the Customer's agent;
  - damage is caused by an unlicensed operator of the Equipment by the Customer or the Customer's agent;
  - damage is caused by other outside parties;
  - where damage is from use in violation of any statutory laws and regulations;
  - damage is caused in public areas;
  - damage is caused while the Equipment is on a public road or any road that is unsealed or not a public road;
  - damage is caused by overhead structure;
  - damage is caused by water or flooding;
  - damage has been caused by tides, sea-water/spray, non-potable water causing corrosion, use in a harsh environment or caustic environment;
  - damage is caused by overloading the Equipment;
  - damage is caused whilst being lifted, craned, loaded or unloaded by the Customer, the Customer's agent or any other party other than Skyreach or its agent;
  - damage is caused by towing, pushing or dragging the Equipment;
  - damage is caused to paint, paint overspray, acids or any other damaging abrasive/corrosive substances;
  - damage is to LMS (Load Management Systems) equipment, equipment controls, equipment attachments, glass, mirrors, lights, fork tines, safety harnesses, CB radios, aerials and tyres;
  - damage is caused during transport, except where transported by Skyreach;
  - it is the subject of any type of retrieval or salvage.
- 11.4 **Liability for Repair or Replacement** In addition to the DLT Waiver Excess, the Customer is also liable for any costs associated with any insurance Claim made by Skyreach in relation to the Equipment if it needs to be repaired or replaced due to the Customer's acts or omissions and must also meet any shortfall in the repair or replacement of the Equipment following payment of any amount received under insurance, including any loss suffered by Skyreach as a result of not being able to continue to hire the Equipment.
- 11.5 **Release** The Customer acknowledges that the Equipment shall be at the sole risk of the Customer upon receipt (or collection of the Equipment by the Customer) and the Customer accepts full responsibility for the secure safe-keeping of the Equipment, and fully indemnifies Skyreach for all loss, theft, seizure, fault, damage or defect to/of the Equipment resulting from any cause whatsoever and Skyreach will not be liable for any Claim the Customer may make or that arises in that regard. To remove any doubt Skyreach will not be responsible for and is released from all liability in respect of all such Claims.
- 11.6 **Indemnity** The Customer shall accept full responsibility for, and indemnifies Skyreach against all Claims in respect of any personal injury to any Person, or damage to property, arising out of the hire or use of the Equipment during the Hire Period however arising, whether from the negligence of the Customer or otherwise. Without limiting the above, the Customer indemnifies Skyreach against any environmental loss, cost, damage or expense arising out of or in connection with the hire or use of the Equipment.
- 11.7 Notwithstanding subclause 11.6, the Customer's liability is diminished to the extent of any breach by Skyreach of this Agreement or any negligence on Skyreach's part contributes to or gives rise to any Claim.

# HIRE CONDITIONS

11.8 **Retrieval of Equipment** The Customer shall indemnify Skyreach for any costs incurred in recovering Equipment whether abandoned, unlawfully detained or otherwise.

11.9 **Use on Land Only** The Customer agrees that the Equipment must not be used on or carried over water or used underground without Skyreach's prior written consent. In connection with any use on or carriage over water where Skyreach consents to that use or carriage, the Customer is responsible for all marine insurance, excesses, salvage or other costs in connection with the retrieval of the Equipment.

**(12) SPECIAL CONDITIONS OF HIRE**

12.1 **Power Generation** When the Customer hires a Power Generator from Skyreach these special conditions ("Special Conditions of Hire") have the same meaning as those used in this Agreement unless indicated otherwise.

- (a) Definition:
  - (a) "Power Generator" means a device or combination of devices that converts mechanical energy, chemical reaction or photovoltaics to produce electrical energy (also known as a generator set or power source).
  - (b) The Customer acknowledges that Skyreach has made the manufacturer's operating and safety instructions for the Power Generator available to the Customer to read.
  - (c) The Customer acknowledges that if a crane is required for safe and proper delivery of a Power Generator, the Customer will be liable for the charges of the crane and any waiting time.
  - (d) The Customer acknowledges that where the Power Generator is required to be connected to fixed or hard wiring, the Customer is responsible for arranging the connection, maintenance and disconnection of the Power Generator by a suitably qualified electrical contractor who conducts the works strictly in accordance with the applicable legislation.
  - (e) The Customer acknowledges that Skyreach is not responsible for arranging the inspection or reinspection of the Power Generator by the applicable electrical safety authority, where required. Such inspections will be arranged by the Customer at the Customer's expense.
  - (f) The Customer agrees to operate the Power Generator strictly in accordance with the applicable legislation.
  - (g) The Customer agrees to indemnify Skyreach against all liability, Claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a solicitor and own client basis, whether incurred or awarded against Skyreach) which Skyreach may incur as a result of the Customer's failure to comply with any applicable legislation.
  - (h) The Customer acknowledges and will when operating the Power Generator:
    - (a) Properly position the Power Generator and any accessories to eliminate any adverse environmental impact to ensure that it will not leak, spill or disperse any fluids, oils, coolants or fuels;
    - (b) In the event of a leak, spill or dispersal, immediately implement control measures to prevent, limit or reduce the impact;
    - (c) Evaluate whether spill kits should be available at the site the Power Generator is located;
    - (d) Be responsible for the installation, plumbing or bunding of any external fuel cells or additional tanks.
- (i) Skyreach makes no warranties about the ability of the Power Generator to provide constant, uninterrupted power supply. The Customer is responsible for ensuring there is a contingency power supply in place on-site in the event that the Power Generator fails. The Customer will be liable and indemnify Skyreach against all liability, Claims, damage, loss, costs and expenses arising as a result of the Customer's hire of the Power Generator and the Customer's failure to implement a contingency power supply.

(j) If there is any inconsistency between these Conditions and the Special Conditions of Hire, then the Special Conditions of Hire will prevail to the extent of the inconsistency.

**(13) DEFAULT AND TERMINATION**

- 13.1 **Default** The Customer will be in default if:
  - (1) it fails to comply with any term of this Agreement or any agreement between Skyreach and the Customer; or
  - (2) an Insolvency Event occurs.
- 13.2 **Third Party Equipment** The Customer acknowledges that Skyreach may hire or lease the Equipment from a third party (the "Owner") and in that event the title to the Equipment remains with the Owner. The Customer agrees, upon reasonable notice, to allow Skyreach to arrange for the Owner access to the Location from time to time to inspect the Equipment. The Customer acknowledges and agrees that if Skyreach's agreement with the Owner terminates during the term of this Agreement, unless otherwise agreed by the Owner, this Agreement will automatically terminate, and the Owner may immediately recover possession of the Equipment from the Customer in which case the Customer will allow the Owner access to the Equipment at the Location to recover the Equipment. The Owner will not be liable to the Customer in any circumstance for any Claim that the Customer considers it has against Skyreach.
- 13.3 **Remedies upon Default** If the Customer is in default then, without prejudice to any other rights or remedies:
  - (1) Skyreach may terminate this Agreement (and any other agreement between Skyreach and the Customer) and take possession of the Equipment by entering onto any land or premises owned by or under the control of the Customer upon which the Equipment is situated or any Location: and
  - (2) The Customer will pay Skyreach all losses, damages, costs and other expenses (including legal costs on a solicitor and own client basis) howsoever and whatever suffered by Skyreach as a result of that default including any costs of recovering possession of the Equipment.
  - (3) Any document sent by or on behalf of Skyreach to the Customer setting out the amount owing under this Agreement (or any other agreement between Skyreach and the Customer) by the Customer to Skyreach will be irrefutable evidence of the amount owing without the necessity for Skyreach to provide any further evidence to the Customer or further breakdown of the amount owing.
- 13.4 **Inability to Supply** If Skyreach is unable to hire the Equipment to the Customer, Skyreach may in its discretion supply or hire alternative suitable equipment to the Customer. If the alternative equipment is not suitable, the Customer may terminate this Agreement but Skyreach will not be liable for any Claims arising out of its inability to supply the Equipment or alternative suitable equipment to the Customer.
- (14) GOVERNING LAW**
- 14.1 This Agreement (and any other agreement between Skyreach and the Customer) will be construed as made in Queensland and the laws of Queensland will apply. The parties agree to submit to the non-exclusive jurisdiction of the courts of Queensland.

I,.....  
(PRINT NAME IN FULL) being the Customer (or a duly Authorised Person of the Customer fully authorised by the Customer, execute this document and hereby accept these Conditions (and the Agreement) without amendment.

Signature .....

Title/Designation.....

Date...../...../.....