

STANDARD TERMS AND CONDITIONS FOR THE COMMERCIAL HIRE OF GOODS AND EQUIPMENT

These Standard Terms and Conditions together with the Offer to Hire Form, Payment Terms and Special Conditions, the Offer by The Owner (**Kelm Equipment Hire Pty Ltd**) to you (**the "Hirer"**) to hire the Equipment and if the Hirer accepts this Offer constitute the whole of the Contract with the Hirer.

1. DEFINITIONS AND EXPLANATIONS

In these Terms and Conditions these words and phrases have the following meanings:

"Acceptance" and **"Accepted"** means acceptance of the Offer to Hire Form by the Hirer.

"Additional Equipment" means further goods or equipment required by the Hirer for delivery to the Site.

"Cancellation" means the cancellation by the Hirer of this Contract, which Cancellation must be communicated to The Owner by email or facsimile and be to that effect.

"COD" means cash on delivery to Site.

"Contract" means the Contract between the Owner and the Hirer for the hiring of the Equipment the Terms of which are fully set out in these Standard Terms and Conditions and in the Offer to Hire Form and any special conditions.

"Day" means a calendar day commencing immediately on midnight and finishing immediately before the next midnight.

"Delivery Address" means, except where otherwise stated in the Special Conditions or in the Offer to Hire Form, the Site.

"Deposit" means any sum which is stated in the Offer to Hire Form as a deposit.

"Dry Hire" means the hiring of the Equipment to the Hirer without the provision of persons to operate the Equipment.

"Duty" means any duty payable under any State or Territory legislation in respect of the hiring of the Equipment to the Hirer under this Contract.

"Equipment" means collectively all the goods and equipment described in the Offer to Hire Form and separately each item of the goods and equipment designated in the Offer to Hire Form and includes all additional Equipment.

"Essential Term" means any term in these Standard Terms and Conditions which is expressly stated to be an Essential Term and also means any term which the parties expressly state in any Special Conditions to be an Essential Term. "Essential Term" also includes any term which, by its nature and importance, one or other of the parties would not enter into this Contract without that term being included.

"Facilities" means all electrical services, scaffolding, lighting, awnings and other requirements necessary in order to facilitate the proper and safe installation and use of the Equipment on the Site.

"GST" means Goods and Services Tax as defined in *A New Tax Act (Goods and Services) 1999* (Cth).

Hirer "Effective Control" means actual physical control and use of the Equipment at relevant times. Where the Equipment is provided to the Hirer on a Dry Hire basis, it will be deemed to be under the Effective Control of the Hirer. Where the Equipment is provided to the Hirer on a Wet Hire basis, it will be deemed to be under the Effective Control of The Owner.

"Hire Fee" means the fee exclusive of GST which the Hirer has by this Contract agreed to pay to The Owner for the hire of the Equipment for the Period of Hire. Additional Equipment will be separately invoiced to the Hirer and will be in addition to the Hire Fee and will be added to the Invoice of the Hire Fee to the Hirer. The Hire Fee is set out in the Offer to Hire Form.

"Hirer" means the company or person described in the Offer to Hire Form as "the Hirer" and includes where applicable its lawful successors and assignees.

"Manufacturer" means in respect of each item of Equipment the identified Manufacturer of that item of Equipment.

"Offer" means this offer to hire the Equipment to the Hirer.

"Owner" means the company referred to as the owner in the Offer to Hire Form completed by the Hirer. If applicable, any reference to the owner is also a reference to its lawful successors and assignors.

"Owner's Premises" means the premises where the Owner stores the Equipment.

"Period of Hire" means the period for which the Equipment is hired by the Hirer as specified in the Offer to Hire Form, being the period commencing on the delivery of the Equipment to the Site, being the Delivery Address as stated in the Offer to Hire Form and expiring on the Collection Date as stated in the Offer to Hire Form.

"Services" means the provision of labour by the Owner (its servants, agents or lawful contractors) including but not limited to labour for production planning, event management, Equipment delivery, set-up, operation, pack-down and collection.

"Site" means the designated place, venue, or location at which the Equipment is to be delivered to and at which place the Hirer is to take possession of the Equipment.

"Special Conditions" means the special conditions (if any as set out in the Offer to Hire Form).

"Terms" means these Standard Terms and Conditions which will always be sent with the Offer to Hire Form together with any Special Conditions set out and the Offer to Hire Form itself.

"Venue" means the place where the Equipment is to be used by the Hirer.

"Wet Hire" means the hiring of the Equipment and the provision of persons to operate the Equipment and provide the Services in respect thereto.

A reference to a Statute, Rule or Regulation is a reference to that Statute, Rule or Regulation as amended, re-enacted or modified from time to time.

The headings in these Standard Terms and Conditions are for convenience only and do not affect their construction.

A reference to any party includes their lawful successors and assigns.

2. BINDING CONTRACT

- 2.1. This Contract is entered into and will be binding on the Owner and the Hirer upon the Hirer's Acceptance of the Offer. All Equipment is available as listed at the time on the offer as sent to the Hirer.
- 2.2. Until the Hirer has Accepted this Offer, the Owner may at any time withdraw the Offer by email, facsimile or letter to the Hirer to that effect.
- 2.3. The Hirer will for all the purposes of this Contract be deemed to have Accepted the Offer on these Standard Terms and Conditions together with any Special Conditions and this Contract will thereby be created if the Hirer communicates its Acceptance in the manner provided in the Offer.
- 2.4. The Owner has no obligation to the Hirer to supply the Equipment named in the Offer if equipment is deemed unavailable.
- 2.5. If there is any Duty payable in respect of this Contract, it must be paid by the Hirer in addition to the Hire Fee.
- 2.6. The Offer to Hire Form can only be Accepted by the Hirer.
- 2.7. If an Acceptance is sent by any other person or company other than the Hirer, that person or company will be deemed to be the Agent of the Hirer and the Owner may rely upon this Acceptance by that person or agent as being an Acceptance by the Hirer.
- 2.8. The Owner may, at its absolute discretion, where the Acceptance is received from a person or company other than the Hirer, require written confirmation by the Hirer that such Acceptance is given for and on its behalf and with its full authority. If the Owner requires such confirmation, then the Acceptance will not be deemed to have been communicated and received by the Owner until such confirmation is received.

3. TERMS OF PAYMENT

- 3.1. The Hirer will pay the Hire Fee to the Owner on the Payment Date as stated in the Offer. The Owner must provide a Tax Invoice to the Hirer for the Hire Fee. If payment in advance or COD is required, it must be paid for before goods are dispatched. The Hirer must also pay the GST as stated in the Tax Invoice when paying the Hire Fee to the Owner. If payment is not made by the Payment Date as set out in the contract, the Owner is not obliged to Deliver the Equipment and may withhold Delivery of the Equipment to the Site until such payment is received.
- 3.2. Without limiting the circumstances in which the Owner may require the Hire Fee payment to be paid in advance, the Owner may require advance payment of the Hire Fee where before any hiring takes place any of the Equipment to be hired has to be manufactured, adapted or any process has to be applied to existing items of the Equipment to match with the Hirer's specific requirements.
- 3.3. Where either in the Special Conditions or in the contract the Owner has agreed to give a discount on the Hire Fee to the Hirer, then if the Hirer does not pay the total amount of the Tax Invoice (as discounted) with GST and Duty within the payment period in the contract, then the discount is forfeited by the Hirer and the Owner has the right to issue a replacing Tax Invoice to the Hirer for the full Hire Fee plus GST and any Duty without any discount. This will apply not only to the Equipment but also to all Additional Equipment which the Hirer may require after the initial contract has been Accepted with the intent that if such Additional Equipment is not paid for within the time stated in the contract (for the Equipment), such non-payment in respect of the Additional Equipment will cause the Hirer to lose the right to the discount, not only in respect of the Additional Equipment, but also in respect of the Equipment the subject of the Hire Fee.
- 3.4. Kelm Hire reserves the right to charge the hirer's credit card for any outstanding invoice if payment is not received within the terms of the hire agreement.

4. THE EQUIPMENT

- 4.1. The Equipment will at all times remain the property of the Owner. The Hirer has no legal or equitable interest in the Equipment or any part thereof. The Hirer's possession of the Equipment (upon delivery) will be as a bailee for the Period of Hire and thereafter at will.
- 4.2. Upon delivery, the Equipment must be inspected by the Hirer to determine whether the Equipment delivered is complete in accordance with the Contract and is in good order and working condition. Unless otherwise stated in the Special Conditions, the Hirer will on completion of the inspection be deemed to have satisfied itself that the Equipment as a whole is suitable, fit and merchantable and capable of meeting all the requirements of the Hirer.
- 4.3. Unless the Owner has been expressly retained, in writing, to advise on the suitability, fitness and merchantability of the Equipment for the Hirer's purpose, any warranting as to suitability, fitness or merchantability is hereby expressly excluded.
- 4.4. Any shortages or malfunctioning of the Equipment must be notified by the Hirer to the Owner, in writing, within 24 hours of delivery.
- 4.5. Where the Hirer is in Effective Control of the Equipment, then the Hirer is a bailee of the Equipment. In addition to all duties imposed at law upon bailees, it is an essential term of the Contract that the Hirer will:
- (a) At all times exercise all reasonable care and diligence in the use of the Equipment in accordance with Manufacturer's specifications;
 - (b) Where the Hirer has responsibility to return the Equipment, it must return it in good order and working condition to the Owner at the Delivery Address on or prior to the expiration of the Period of Hire;
 - (c) Where the Owner is to collect the Equipment at the expiration of the Period of Hire, the Hirer must make it available for collection in good order and working condition at the Delivery Address; if failure to do so an attempted pick up charge may apply.
 - (d) Not tamper or in any way interfere with, or repair or attempt to repair the Equipment;
 - (e) Be responsible for all accidental damage to the Equipment, save and except where such damage is caused by the Owner;
 - (f) Be responsible for all loss or damage to the Equipment occasioned by theft, malicious damage, or other unlawful act, save and except where such loss or damage occurs when the Equipment is under the effective control of the Owner;
 - (g) At no time during the Period of Hire part with possession of the Equipment or in any way deal with it in a manner inconsistent with the rights of the Owner as owner;
 - (h) Ensure that the Equipment is secure at all time and where being stored in unlocked premises, supply such security measure to ensure that the Equipment is secure at all times;

- (i) Keep the Equipment safe at all times during the Period of Hire;
 - (j) Not remove or deface any label, Manufacturer's serial numbers or other marks identifying the Equipment and/or The Owner's ownership of the Equipment;
 - (k) Not permit any person to improperly use the equipment.
- 4.6. In the event that the Equipment or any part of it is lost, stolen or damaged during the Period of Hire in circumstances where the Hirer bears responsibility under these Terms, the Hirer will be liable to the Owner and will indemnify it for the cost and expenses of the replacement of such lost or stolen Equipment and/or for the replacement of Equipment which, in the sole determination of the Owner, is damaged beyond repair and/or for the costs and expenses of repairing or re-instating damaged equipment.
- 4.7. In the event that the Hirer fails or refuses for any reason whatsoever to return or make available for collection all the Equipment to the Owner at the expiration of the Period of Hire, then the Hirer will be in breach of an essential Term of this Contract and without prejudice to any other rights which the Owner may have, either pursuant to these Terms or at law, the Hirer will be liable to pay the Owner on a Day-Rate basis for the hiring for Equipment for such further period of time.
- 4.8. For the purposes of clause 4.7 above, such further period of time will commence at the expiration of the Period of Hire and conclude at the earliest to occur of, the date when the Equipment is returned to The Owner in good working order and condition or the date when the Owner receives from the Hirer full monetary compensation for the loss or damage to the Equipment. The loss or damage to the Equipment will be the replacement cost of the Equipment at that time or, where the Equipment cannot be replaced, the cost of new substitute Equipment that can substantially be used for the same purpose as the lost damaged or destroyed Equipment. In addition, the Hirer fully indemnifies the Owner for any other liability, loss or cost that the Owner might sustain as a consequence of the Owner being unable to meet any other contractual obligation to supply that Equipment (or any other item thereof) to any other person.

5.0. DAMAGE WAIVER

- 5.1. Damage Waiver does not constitute insurance, it is instead an agreement by Kelm Hire that the Customer's liability for damage to Kelm Hire Equipment can be limited in some circumstances only, to an amount called the Damage Waiver Excess.
- 5.2. The Damage Waiver shall apply to certain equipment hires for 12% of the hire fee and is subject to the conditions listed below. The Damage Waiver Excess shall be applied at the lesser amount of the following; the actual repair and recovery cost of the Equipment **OR** 20% of the current replacement cost of the Equipment as is reasonably determined Kelm Hire using supplier list prices.

THE DAMAGE WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMER'S LIABILITY IN THE FOLLOWING CIRCUMSTANCES;

- (a) Where the equipment is wilfully damaged by the Customer's employees or agents;
 - (b) Where the equipment is lost or stolen;
 - (c) Where the operator of the equipment is not suitably licensed;
 - (d) Where the operator of the equipment is affected by drugs and/or alcohol;
 - (e) Where the damage is caused by any overhead structure or object collision whatsoever such as a bridge, awning, tree, gutter due to insufficient clearance;
 - (f) Where the damage is caused while the equipment is being driven or towed on any road that is unsealed or is not on a public road; (g) Where the damage is caused by overloading.
- 5.4. The customer may pay an additional Equipment Waiver Plus Fee (Not available for Customer's driving with "P" plate licenses) for the hire of Motor Vehicles, which will;
- (a) Reduce the damage waiver in relation to medium and large equipment and;
 - (b) Add a Theft Waiver component for medium and large machinery. The Theft Waiver is not insurance, but is an agreement by Kelm Hire that the Customer's for theft or loss of the Equipment can be limited in some circumstances only to an amount called the Theft Waiver Excess.

Kelm Hire will ask the Customer to pay the Equipment Waiver Plus Fee on the hire of medium and large equipment, but the Customer may decide to opt out of this payment.

Payment of the Equipment Waiver Plus Fee is compulsory on all earth moving equipment unless Kelm Hire agrees to accept a certificate of insurance which the Customer has provided at their own cost.

The reduced Damage Waiver Excess and Theft Waiver Excess which apply to medium and large equipment in the case that the Equipment Waiver Plus Fee is paid will be displayed on the hire contact and will vary for different machinery types.

5.5. THEFT WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMER'S LIABILITY FOR THEFT in the following circumstances;

- (a) Where the Customer has failed to keep the Equipment in a securely locked Compound, or in the case of a motor vehicle, has failed to secure and lock the vehicle or;
 - (b) Where the Customer has failed to submit to Kelm Hire a police report concerning the theft within 7 days of the theft occurring
- In the event of the Theft Waiver applying, hire fees will be charged to the Customer until the Police Report is provided to Kelm Hire

5.6. The Damage Waiver or Theft Waiver will NOT apply in any instance where Kelm Hire determines that any of the applicable circumstances in clauses 5.2(a)-(g) have occurred, except in the instance that the Customer is able to establish otherwise to the reasonable satisfaction of Kelm Hire. 5.2(a)-

In the event of Theft Waiver applying, hire fees will be charged to the Customer until the Police Report is provided to Kelm Hire.

5.7. Damage Waiver or Theft Waiver will NOT apply where Kelm Hire determines that any of the applicable circumstances in clauses 6.2(a)-(g) or 6.4(a)-(b) respectively have occurred, unless the Customer is able to establish otherwise to the reasonable satisfaction of Kelm Hire. 6.4(a)-

6. PPS LAW

- 6.1. This clause applies to the extent that this Contract provides for a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPS Law"). References to PPS Law in this agreement include references to amended, replacement and successor provisions or legislation.
- 6.2. If Kelm Hire does not have at Commencement a PPS Law registration ensuring a perfected first priority security interest in the Equipment, the Hire Period, (including any extension of the Hire Period or the aggregate of consecutive Hire Periods during which the Customer has substantially uninterrupted possession) may not despite anything else in this document or any Hire Schedule be longer than 2 years.
- 6.3. Kelm Hire may register its security interest. The Customer must do anything (such as obtaining consents and signing documents) which Kelm Hire requires for the purposes of:
- (a) ensuring that Kelm Hire' security interest is enforceable, perfected and otherwise effective under the PPS Law;
 - (b) enabling Kelm Hire to gain first priority (or any other priority agreed to by Kelm Hire in writing) for its security interest; and
 - (c) enabling Kelm Hire to exercise rights in connection with the security interest.
- 6.4. The rights of Kelm Hire under this document are in addition to and not in substitution for Kelm Hire' rights under other law (including the PPS Law) and Kelm Hire may choose whether to exercise rights under this document, and/or under such other law, as it sees fit. To avoid any doubt about it Kelm Hire security interest will attach to proceeds.
- 6.5. To the extent that Chapter 4 of PPSA applies to any security interest under this 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 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 Kelm 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 130 (notice of disposal to the extent it requires Kelm Hire to give a 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).'
- 6.6. 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 Kelm Hire. Customer agrees that in addition to those rights, Kelm Hire shall, if there is default by 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 document and the Customer agrees that Kelm Hire may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 6.7. 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.
- 6.8. Kelm 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 agreement in this sub-clause is made solely for the purpose of allowing to Kelm Hire the benefit of section 275 (6)(a) and Kelm 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.
- 6.9. 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 Kelm Hire.
- 6.10. Customer must not lease, hire, bail or give possession ('sub-hire') of the Equipment to anyone else unless Kelm Hire (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to Kelm Hire and must be expressed to be subject to the rights of Kelm Hire under this agreement. Customer may not vary a sub-hire without the prior written consent of Kelm Hire (which may be withheld in its absolute discretion).
- 6.11. Customer must ensure that Kelm 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.
- 6.12. 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) enabling the Customer to gain (subject always to the rights of Kelm Hire) first priority (or any other priority agreed to by Kelm Hire in writing) for the security interest; and
 - (c) enabling Kelm Hire and the Customer to exercise their respective rights in connection with the security interest.

6.13. To assure performance of its obligations under this agreement, the Customer hereby gives Kelm Hire an irrevocable power of attorney to do anything Kelm Hire considers the Customer should do under this agreement. Kelm Hire may recover from Customer the cost of doing anything under this clause 5, including registration fees.

7. SERVICES

7.1. Where the Owner provides Services for a Hirer at a Site, each of the following are Essential Terms of this Contract, which the Hirer must comply with. The Hirer must:

- (a) Ensure that the Owner is able to access the Site at all times specified by the Owner and at all other reasonable times so as to enable the Owner to provide the Services;
- (b) Ensure that the Equipment when installed remains in place at the Site for the Period of Hire and that the Site is not required for any other purpose which would require the Equipment to be dismantled and re-installed or which may put the whole or any part of the Equipment at risk of being lost damaged or destroyed;
- (c) Ensure that all access to the Site is given to the Owner and that such time as is required by the Owner is available at the conclusion of the Period of Hire to enable the Owner to dismantle and remove the Equipment from the Site;
- (d) Do all such things as are necessary to discharge the Hirer's obligations under all applicable Occupation Health and Safety legislation, regulations and codes of practice so as to ensure that the Site and the Equipment as installed are safe and free from defects and dangerous conditions;
- (e) Ensure that where the Equipment is being Installed on any structure or held in place by any structure that the structure is capable of holding the weight of the Equipment and that the structure is properly erected so as to be safe and so as to take the anticipated loads involved in holding the Equipment;
- (f) Ensure that the Site is safe for all of the Owner's employees and contractors to carry out the services required of the Owner under this Contract.

7.2. Where in the Details of Goods and Equipment to be Hired it states that the Owner will deliver the Equipment to the Site, then the Owner is responsible for the Equipment until it is delivered to the Hirer at the Site. Where in the Details of Goods and Equipment to be Hired it states that the Hirer will collect the Equipment from the Owner and the Hirer will deliver it to the Site, then the Hirer is responsible for the Equipment as and from the time the Hirer collects the Equipment from the Owner's Premises.

7.3. The Hirer acknowledges that the Owner may in providing the Services be dependent upon other contractors preparing the Site for the Equipment or its installation. The Owner will not be liable for any delay in installing the Equipment or for providing the Services where such delay is a consequence of any act or omission on the part of such external contractors.

7.4. Except where the Owner has expressly agreed to provide any Facilities, it is the exclusive responsibility of the Hirer to ensure that:

- (a) The Site is safe for the Installation and use of the Equipment;
- (b) All required Facilities are available and are in place, are safe and in good working order;
- (c) The Site is safe for the provision of the Services.

8. DEFAULT EVENTS

8.1. The Hirer will be in default if:

- (a) It breaches any of its obligations under this Contract and fails to remedy such breach within seven (7) days of being requested by the Owner to do so;
- (b) It breaches any essential Term of this Contract;
- (c) Where the Hirer being a corporation is insolvent, is wound-up or goes into Liquidation or has an Administrator appointed to it or has a Receiver appointed over any of its assets;
- (d) Where the Hirer is a natural person, he or she is or becomes insolvent or makes an assignment for the benefit of his or her creditors or commits an act of bankruptcy under the *Bankruptcy Act* 1966 (Cth) or is declared bankrupt.

8.2. On the happening of a Default Event the Owner may, without prejudice to any of its other rights either under these Terms or at law and without previous notice to the Hirer, enter any Site where the Owner believes the Equipment to be located, re-possess it and the Hirer hereby agrees not to make any claim or bring any action against the Owner as a result of the re-possession of the Equipment.

8.3. The Hirer agrees to indemnify the Owner and keep the Owner indemnified against any loss or liability expense or cost which might be incurred by the owner in entering upon the Site and taking possession of the Equipment or any item thereof. Such indemnity covers any liability to any third party for trespass or for damage to the Site occasioned through the entry upon the Site, the re-possession of the Equipment or its removal from the Site.

9. WARRANTIES

9.1. Except where specifically agreed in the Special Conditions, the Owner gives no warranty express or implied in respect of the Equipment, its fitness for purpose or the condition thereof.

9.2. All warranties implied by the *Competition and Consumer Act* 2010 (Cth) and any other Statutes (if any) that can be expressly excluded are hereby expressly excluded.

9.3. Where permitted by statute, the Owner's liability for breach of any warranty is limited to:

- (a) The supply to the Hirer of substituted equivalent equipment; or

- (b) The payment of the costs of supplying to the Hirer substituted equivalent equipment; or (c) The repayment to the Hirer of the Hire Fee.

10. LIMITATION OF LIABILITY

10.1. The liability of the Owner is limited as follows:

- (a) The Owner is not liable to the Hirer for any loss or damage which the Hirer might sustain as a consequence of the Hirer ordering the wrong Equipment or insufficient quantities of the Equipment or where the Equipment is hired for a purpose which is outside of the Equipment's specifications.
- (b) The Owner is not liable for any damage or loss suffered by the Hirer as a consequence of any late Delivery of the Equipment to the Site.
- (c) The Owner will have no liability to the Hirer if it is the responsibility of the Hirer to prepare the Site for the Delivery and Installation of the Equipment or where it is the responsibility of the Hirer to provide the Facilities and at the time of Delivery of the Equipment to the Site, the Site is not so prepared or the Facilities or any of them are not available or unsuitable.
- (d) The Owner has no liability to the Hirer for any damage or loss which the Hirer might sustain where the cause of that damage or loss is the negligence of the Hirer or any of its servants, agents or contractors.

10.2. Where it is the responsibility of the Hirer to ensure that the Site is safe and that the Facilities are safe, then the Hirer indemnifies the Owner against any liability to any third party who suffers injury, loss or damage where such injury, loss or damage is caused wholly or partly as a consequence of any negligent act or omission or other failure on the part of the Hirer to ensure that the Site is safe.

10.3. Kelm Hire Pty Ltd will not be held liable for any harm or injury caused by hired equipment.

11. CANCELLATION AND CANCELLATION FEE

11.1. The Hirer has the right to Cancel this Contract provided that it sends a Cancellation notification by email to The Owner before goods are dispatched. Upon receipt of such Cancellation, the Owner has no further obligation to deliver the Equipment, the subject of the Cancellation, to the Site.

11.2. The Cancellation sent by the Hirer must clearly identify each and every item of the Equipment which the Hirer no longer requires.

12. The Owner will be entitled to invoice the Hirer for the Equipment the subject of the Cancellation.

13. DEPOSIT

13.1. The Owner may, as part of its Offer to Hire Form, require the Hirer as a pre-condition of Acceptance, to pay to the Owner a Deposit in respect of the Equipment to be Hired. The amount of the Deposit shall be as stated in the contract. Unless The Owner expressly by email or facsimile waives the receipt of the Deposit as a pre-condition of Acceptance, no Acceptance by the Hirer will be effective unless and until the Deposit is received.

13.2. Any such Deposit shall when paid be applied against the Hire Fee, or if the Hirer cancels the Contract or any Equipment, The Owner may, at its discretion, apply such Deposit as a credit against any such Cancellation Fee.

14. NO SALE AND ACKNOWLEDGEMENT OF OWNERSHIP

14.1. This is a hiring agreement only and does not constitute or give rise to any sale of the Equipment to the Hirer, any hire purchase agreement or arrangement with the Hirer or any leasing agreement that contains an option to purchase the Equipment. The relationship between the Owner and the Hirer is limited to a relationship of owner and bailee in respect of the equipment.

14.2. The Hirer acknowledges that the Owner is the sole exclusive owner of the Equipment and the Additional Equipment.

14.3. Nothing in this Contract confers any option on the Hirer to purchase the Equipment or any part thereof.