



## Commercial Account Application Form

Rollers Australia Pty Ltd  
Trading as: Rollers Queensland  
Mocrib

ACN 087 309 091

Western Plant Hire Pty Ltd

ACN: 610 703 681

PO Box 323 Double Bay NSW 1360

Phone: 1300 132 447 Fax: 1300 132 617

EMAIL: [credit@rollersaustralia.com.au](mailto:credit@rollersaustralia.com.au)

WEBSITE: [www.rollersaustralia.com.au](http://www.rollersaustralia.com.au)

Legal Name of Entity:		ACN:	
Trading Name:		ABN:	
Applicant's Status: Private company <input type="checkbox"/> Public company <input type="checkbox"/> Trust <input type="checkbox"/> Sole trader <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Other (provide details) .....			
Principal business activity:			
Type of Contracting Licence:		Licence No.:	
Date of incorporation or business started:		Estimated credit required:	\$ per month
Business address:			
Contact name:		Phone:	Mobile:
Email address:		Fax:	
Accounts payable contact person name:		Phone:	
Accounts email address:			
Details of directors / proprietors: *attach copy of drivers licence(s)			
Full name	Home address	Phone Number	Date of Birth
Trade references:			
Company name:		Contact:	Fax:
			Ph:
Company name:		Contact:	Fax:
			Ph:
Company name:		Contact:	Fax:
			Ph:
<p>The customer represents and warrants to Rollers Australia Pty Ltd "the Company" that this information is true and correct to the best of its knowledge. I/we consent to the trade and personal references being contacted to gain trading information. I/we acknowledge that the Company has informed us, in accordance with the <i>Privacy Act 1988</i>, that certain personal information may be shared with credit providers and others. I/we the undersigned, accept the Terms &amp; Conditions of Trade of the Company as displayed on the Company Web Site (<a href="http://www.rollersaustralia.com.au">www.rollersaustralia.com.au</a>) and agree same will be incorporated by reference. I acknowledge reading the Terms &amp; Conditions of hire before signing this form and agree that they may be changed in the manner provided including by changing the current version on the website. Credit is approved subject to these representations and warranties and at the discretion of the Company and may be withdrawn at any time.</p>			
Acceptance by authorised director / person / proprietor			
Full Name:	Position:	Signature:	Date:
Full Name:	Position:	Signature:	Date:



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## Secured Deed of Guarantee and Indemnity

To: Rollers Australia Pty Ltd and Western Plant Hire Pty Ltd of PO Box 323 Double Bay NSW 1360 Australia (together or separately "the Company").

In consideration for the Company providing or continuing to provide goods and services to the Customer named in the Schedule ("the Customer") the Guarantor agrees with the Company as follows:

1. The Guarantor guarantees payment by the Customer for all goods and services that have been supplied or may in future be supplied from time to time at the Customer's request and to be answerable and responsible for the payment by the Customer of those and all other moneys which are payable or may become payable by the Customer to the Company, actually or contingently, now or in the future ("**secured money**").
2. The Guarantor hereby separately indemnifies the Company against all losses and expenses (including legal costs on a solicitor/client basis) however arising, directly or indirectly, in respect of any default by the Customer under any contract with the Company and including failure to pay any secured money.
3. Where the Guarantor consists of more than one person this guarantee is enforceable against all persons signing as guarantor jointly and severally.
4. The Guarantor hereby charges with the payment of the secured money all of their interest in any real property (including all property acquired after the date of this Deed and wherever situate) in favour of the Company. The Guarantor agrees to grant a mortgage over any such real property to better secure the secured money. The Guarantor grants a security interest pursuant to the Personal Property Securities Act in all the Guarantor's present and after acquired property as security for the Guarantor's obligations in respect of the secured money. The Guarantor hereby irrevocably appoints the Company and any person nominated by the Company as the attorney of the Guarantor with power to execute, sign, seal and deliver any documents to better secure the secured money and to perfect any security, including to execute any registrable real property mortgage.
5. If the security created by clause 4 is or becomes void or unenforceable it may be severed from this Deed without any effect on the validity of the remainder of this Deed.
6. A certificate signed by a representative of the Company shall be prima facie evidence and proof of moneys owing by the Customer to the Company at that point in time.
7. The Guarantor acknowledges that the Guarantor has made his or her own enquiries of the Customer regarding the Customer's past and prospective dealings with the Company. The Guarantor further acknowledges that the Company is under no obligation to notify them of any changes to its trading terms or dealings with the Customer.
8. This guarantee and indemnity is given for valuable consideration and is a continuing guarantee and indemnity to the Company for the whole of the secured money. The obligations of the Guarantor are absolute and unconditional and shall not be affected by anything that might otherwise affect them including but not limited to: (a) any variation or the Customer's or any other guarantor's obligations (whether or not to make them more onerous) or any invalidity of them and any release, discharge or other indulgence to the Customer or a guarantor (b) insolvency or any composition or arrangement in respect of the Customer or any other guarantor; (c) any failure by the Company to take, perfect or enforce any guarantee or security from or by the Customer or any guarantor.
9. The Guarantor agrees that this Deed shall be construed in accordance with the laws of the State of New South Wales and submits to the non-exclusive jurisdiction of Courts of that State. The Guarantor agrees that the Company may give information about the Guarantor for the following purposes: (a) to obtain a consumer or commercial credit report about the Guarantor; (b) allow the credit reporting agency to create or maintain a credit information file about the Guarantor; (c) effect registration on the Personal Property Securities Register; and (d) to obtain commercial credit information about the Guarantor from a credit reporting agency.


### SCHEDULE

Name of Customer: ..... ACN or ABN: .....

Address of customer: .....

***This is a legal document. Each Guarantor acknowledges having had the opportunity to consider this document and to seek legal advice regarding it.***

<b>GUARANTOR (1)</b> Full Name..... Home Address.....  Signature : _____ Date: _____	<b>WITNESS</b> Full Name..... Home Address.....  Signature : _____ Date: _____
<b>GUARANTOR (2)</b> Full Name..... Home Address.....  Signature : _____ Date: _____	<b>WITNESS</b> Full Name..... Home Address.....  Signature : _____ Date: _____

 <b>ROLLERS AUSTRALIA</b>	<b>Hire, Sale &amp; Services Terms</b>	<b>Rollers Australia Pty Ltd</b> <b>ACN 087 309 091</b> <b>Western Plant Hire Pty Ltd</b> <b>ACN 610 703 681</b> PO Box 323 Double Bay NSW 1360 Head Office Phone: 02 9363 1799 Fax: 02 9363 1277 EMAIL: <a href="mailto:admin@rollersaustralia.com.au">admin@rollersaustralia.com.au</a> WEBSITE: <a href="http://www.rollersaustralia.com.au">www.rollersaustralia.com.au</a>
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This document, together with any Schedules provided by the Company to the Customer, whether signed or not, and any Application or other contractual documents signed by the Customer, sets out the terms of the agreement governing all hires, sales and services which the Company may provide to the Customer. The provision or acceptance of a Schedule will not form a separate agreement between the Parties but will form part of this agreement. Any terms contained in any document supplied by the Customer, including any terms on a purchase order, will not form part of the agreement unless the Company agrees.

The Customer is bound by these Terms because the Customer has signed an agreement including or incorporating them; because the Customer has requested a sale or hire of Equipment or the provision of Services after being given a copy of these Terms; because the Customer took delivery of Equipment (whether or not a Schedule was signed); or because the Customer agreed to be bound by these terms when making an Application.

The Company may in its absolute discretion terminate this agreement and/or decline to sell or hire Equipment or provide services to the Customer at any time.

The Company may amend these Terms from time to time by giving the Customer notice of the amendment. Notice is deemed given (whether or not actually received by the Customer) when the Company does any of the following: (a) send notice of the amendment to the Customer at any address (including an email address) supplied by the Customer; (b) publish the amended terms on the Company website [www.rollersaustralia.com.au](http://www.rollersaustralia.com.au) or (c) display the amended terms at premises from which the Company conducts its operations.

## **1 Definitions**

### **1.1 Definitions**

In this document, the following definitions will apply:

**Account Facility** means any billing arrangement agreed between the Parties.

**Application** means any application for an Account Facility of which these Terms form part.

**Authorised Person** means any person authorised by the Customer, or who reasonably appears to The Company's to be authorised by the Customer, to accept delivery of Services or Equipment, to use the Equipment or to carry out dealings in relation to these Terms.

**Business Day** means a day other than a Saturday, Sunday or public holiday in Sydney, New South Wales.

**Commencement Date** means the date of commencement of the Hire Period determined in accordance with clause 3.1.

**Company** means Rollers Australia Pty Ltd ACN 087 309 091 or any Related Body Corporate and their successors and assigns.

**Encumbrance** means any charge, mortgage, hypothecation, lien or other security interest and includes a 'security interest' as defined in the PPSA.

**Equipment** means any equipment sold or hired to the Customer under this document, including any associated or attached tools, accessories and parts available for sale or hire, which may include equipment made available to the Company from other hire businesses.

**Hire Charges** means the rates and charges payable by the Customer for the hire of the Equipment, as set out in the Schedule or otherwise agreed between the Parties.

**Hire Period** means the period described in clause 3.

**Customer** means the person hiring Equipment from the Company including that person's employees, agents, contractors and Authorised Persons.

**Indirect Loss** means any one or more of the following:

- (a) economic loss, loss of actual or anticipated profits, loss of revenue, loss of savings, loss of production, loss of business, loss of opportunity, loss of access to markets, loss of goodwill, loss of reputation, loss of credit, loss of publicity, loss of data, loss of use, loss of interest or loss arising from business interruption; and
- (b) any special, indirect, consequential, incidental, punitive, exemplary or unforeseeable loss or any similar loss.

**Insolvency Event** means if a Party enters into bankruptcy, provisional liquidation, liquidation, receivership, receiver and managership, voluntary administration or if a controller (as defined in the *Corporations Act 2001* (Cth)) is appointed to a Party or if a mortgagee takes possession of any assets of a Party whether by itself or by an agent or if a Party ceases to trade or is unable to pay its debts as they fall due or if a Party makes a compromise with its creditors or enters into a scheme of arrangement.

**Intellectual Property Rights** means all present and future intellectual, industrial or proprietary rights conferred by statute, at common law or in equity anywhere in the world, whether issued or pending, registered or unregistered, including all forms of copyright, patents, trade marks, designs, trade secrets, know-how, confidential information and circuit layouts.

**Damage Waiver** is the Loss Damage Waiver assurance plan.

**Minimum Hire Period** means the minimum Hire Period (if any) set out in the Schedule.

**Off-Hire Date** means the date when:

- (a) the Hire Period has ended and the Equipment has been returned to the Company's branch from which the Equipment was supplied; or
- (b) the Company's branch from which the Equipment was supplied confirms in writing that the Equipment is no longer required and is available for collection.

**Parties** refers to the Company and the Customer.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Purchase Price** means the amount payable to the Company by the Customer for the sale of any Equipment, as set out in the Schedule, invoice or quote.

**Related Body Corporate** has the meaning given to that term in the *Corporations Act 2001* (Cth).

**Schedule** means the document provided by the Company to the Customer, including a quotation or tender proposal, which includes details of the Equipment the Customer intends to purchase or hire, the Hire Charges or Purchase Price and any other applicable charges, the Commencement Date, the Minimum Hire Period (if any), the address for delivery of the Equipment and any other information the Company may require.

**Services** means services provided by the Company to the Customer, including delivery, collection, installation, rigging and engineering services in relation to the Equipment and any other services agreed between the Parties from time to time.

**Terms** means these terms, as amended from time to time.

## 1.2 Interpretation

In this document, unless the context otherwise requires:

- (a) words denoting any gender include all genders;
- (b) headings are for convenience only and do not affect interpretation;
- (c) the singular includes the plural and vice versa;
- (d) any schedule attached to this document forms part of it;
- (e) a reference to a Party includes its legal personal representatives, successors and permitted assigns;
- (f) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;

- (g) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and separately;
- (i) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of, or seeks to rely on, this document or any part of it;
- (j) unless expressly stated to be otherwise, the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar inclusive expressions; and
- (k) a reference to this document means this document and includes any variation or replacement of this document.

## **2 Hires**

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The Company may agree to hire Equipment to the Customer for the Hire Period on the terms of this document.

## **3 Hire Period**

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- 3.1** The Hire Period commences on the earlier of the following:
  - (a) when the Customer takes possession of the Equipment;
  - (b) if the Customer requests delivery and collection of the Equipment, the time the Company delivers the Equipment to the address in the Schedule; or
  - (c) the Commencement Date specified in the relevant Schedule.
- 3.2** The Hire Period is for an indefinite term, includes weekends and public holidays and, subject to clause 3.3, ends when the Equipment is back in the Company's control or possession.
- 3.3** If The Company does not have, at the Commencement Date and within 20 Business Days of this document, a registration under the PPSA ensuring a perfected first priority security interest in the Equipment, the Hire Period (including any extension or the aggregate of consecutive Hire Periods during which the Customer has substantially uninterrupted possession) will despite anything else in this document or any Schedule be one day shorter than the applicable threshold period for a PPS lease under the PPSA in respect of the hire.

## **4 Sales**

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- 4.1** The Company may agree to sell Equipment to the Customer.
- 4.2** Unless otherwise agreed in writing, the Customer must pay the Purchase Price before delivery.
- 4.3** Risk in Equipment sold by the Company passes on delivery to the Customer. If the Customer fails to take possession of the Equipment within seven days of being notified that the Equipment is ready for delivery:
  - (a) the risk in the Equipment passes to the Customer at the end of the seven day period;
  - (b) The Customer must pay for the Equipment in accordance with these Terms; and
  - (c) The Customer will compensate the Company against all losses and expenses incurred by the Company, including any additional transport and storage charges, as a result of that failure.
- 4.4** The Company remain the legal and beneficial owner of all Equipment sold by the Company to the Customer until all amounts owing in respect of the Equipment and all other amounts owing by the Customer to the Company on any other account have been paid to the Company in cleared funds.

Until that payment is received, the Customer must hold the Equipment as the Company's fiduciary bailee and ensure that it is identifiable as the Company's property.

- 4.5** The Customer grants the Company an irrevocable licence to enter at any time the Customers premises, or any other premises under the Customers control, for the purposes of repossessing the Company's Equipment.

## **5 Services**

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In connection with any hire or separately, the Company may agree to provide Services to the Customer if requested by the Customer. The Services may be described in a Schedule or separately.

## **6 Charges**

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- 6.1** The Customer agrees to pay the Company the Hire Charges for the hire of the Equipment by the due date stated in the Company's invoice.
- 6.2** The Customer will be charged for the hire of Equipment for the full Hire Period until the Off-Hire Date, whether or not the Equipment is used at any point during that Hire Period. For the avoidance of doubt, the Customer must continue to pay the Hire Charges and other charges until the Equipment is returned. This obligation survives termination of the agreement.
- 6.3** If the Customer returns the Equipment before the expiry of its Minimum Hire Period, the Customer is required to pay all Hire Charges in respect of the Minimum Hire Period.
- 6.4** The Company may charge additional Hire Charges for periods during which:
- (a) the Equipment is being delivered to or collected from the Customer;
  - (b) The Company is unable to deliver or collect the Equipment through no fault of the Company; or
  - (c) the Equipment is unavailable for hire by the Company due to damage caused by the Customer.

The imposition of these additional Hire Charges does not mean that the Company agrees to extend the Hire Period.

- 6.5** In addition to the Hire Charges and the Purchase Price (if applicable), the Customer must compensate the Company for and pay to the Company:
- (a) costs for any consumables, fuel or trade materials the Company supplies to the Customer;
  - (b) Damage Waiver charges unless excluded under Clause 7;
  - (c) charges for Services as quoted by the Company to the Customer or otherwise agreed by the Customer or, failing that, the Company's generally applicable charges for those Services;
  - (d) any costs of repairing or replacing damaged or missing hired Equipment or cleaning hired Equipment;
  - (e) any costs incurred in recovering Equipment whether abandoned, unlawfully detained or otherwise not returned in accordance with this document;
  - (f) interest on all amounts not paid by the Customer by the time required for payment at a rate of 1.25% per calendar month calculated from the due date and accruing monthly thereafter until the date of payment;
  - (g) any GST or similar tax imposed on any supply by the Company to the Customer under this document and any other state or federal taxes, duties or charges imposed in respect of this document including stamp duty; and
  - (h) all costs and expenses incurred by the Company related to the Customer's use of the Equipment or any default by the Customer.

- 6.6** Any requests for credit by the Customer must be made prior to delivery of the Equipment. The Customer acknowledges that the Company has no obligation to grant any such request for a credit account.
- 6.7** The Company reserve the right to revise its Hire Charges, Purchase Prices, charges for Services and related charges without prior notice. The Company may also revise those charges and prices in the case of genuine error on the Company's part or in circumstances where the Company incurs expenses as a result of non-disclosure by the Customer or unforeseen site problems.

## **7 Damage Waiver**

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- 7.1** The Customer must accept the Company's Damage Waiver charge as a term of hire unless evidence is provided of insurance that covers loss and damage to the Equipment arising from or associated with the hire and the use by the Customer of the Equipment for an amount not less than full new replacement cost of the Equipment. Damage Waiver is not insurance. The Customer shall pay to the Company as a charge in addition to the Hire Charges a Damage Waiver charge equal to 12.5% of the Hire Charges.
- 7.2** If Damage Waiver applies, then the Company agrees to waive, to the extent specified herein, its right to claim from the Customer damages, save for and conditional on the Customer paying to the Company an excess of up to \$1,500 of any claim within fourteen (14) days of receiving a request for payment of that sum.
- 7.3** Notwithstanding the Customer's payment of the Damage Waiver charge, the Customer will be liable to the Company for all loss of or damage to the Equipment and related expenses incurred by resulting from breach of any of the Customer warranties or other obligations including in any of the following circumstances:
- 7.3.1 The Customer's failure to notify the Company within 24 hours of an incident that has resulted in loss or damage to the Equipment.
  - 7.3.2 The Customer's failure to pay all invoices including the Damage Waiver within applicable payment terms;
  - 7.3.3 The Customer's failure to pay the excess within the agreed time.
- 7.4** Damage Waiver does not include and the Company does not waive any rights in respect of:
- (a) damage due to misuse, abuse or overloading of the Equipment or any components.
  - (b) wrongful conversion of the Equipment or any components.
  - (c) loss or damage in contravention of the conditions of this hire agreement or violation of any statutory laws and regulations.
  - (d) loss or damage of tools, accessories, grease guns, hoses and similar or loss or damage caused by lack of lubrication or other normal servicing and cleaning of Equipment.
  - (e) damage caused to tyres and tubes by blowout, bruises, cuts or other causes inherent in the use of the Equipment.
  - (f) loss or damage to motors or other electrical appliances or devices caused by overloading or artificial electrical current, including use of under-rated or excessive length of extension leads on electrical powered tools and machines.
  - (g) damage caused by exposure to any corrosive or caustic substance.
  - (h) theft of the Equipment unless reasonably locked and secured.
  - (i) loss or damage to the Equipment during transport, except where transported by the Company.
  - (j) loss or damage where Customer has acknowledged fault or accepted liability.
  - (k) loss or damage caused by the negligence of the Customer.

- 7.5** Where the Company determines that one of the exclusions in Clause 7.4 applies, the Customer shall be provided 14 days to state their reasons and provide evidence the Damage Waiver should apply. The Company will consider the reasons and advise the Customer and the basis of the decision.

## **8 What The Customer agrees**

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### **8.1** The Customer agrees that:

- (a) The Customer has not relied on any representation made by the Company or on the Company's behalf about the suitability of the Equipment for any purpose or its selection or performance and that any opinion or assistance offered by the Company or on the Company's behalf is based on limited information and, subject to clause 11, the Company disclaims all liability in respect of that opinion or assistance;
- (b) if the Company is unable to supply the Equipment to the Customer, the Company may in the Company's discretion supply alternative suitable equipment to the Customer and, subject to clause 11, if the alternative equipment is not suitable, the Company will not be liable for any claims arising out of our inability to supply the Equipment or alternative suitable equipment to the Customer;
- (c) all Equipment is hired or purchased and used by the Customer at the Customer's sole risk and, subject to clause 11, the Company will not be liable to the Customer for any loss the Customer may incur for any reason, including any fault or other defect in the Equipment;
- (d) The Customer requires the Account Facility predominantly for the purposes of carrying on or in connection with the carrying on or establishment of a trade, business or profession;
- (e) if the Company approve an Account Facility, The Company may terminate the Account Facility at any time without any prior notice;
- (f) the full amount of all charges payable by the Customer to the Company under an Account Facility will become due and payable 30 days after the date on which the charges were first invoiced;
- (g) the Account Facility is not a credit facility;
- (h) The Company is entitled to assume that anyone appearing to be an Authorised Person is authorised to sign a Schedule and enter into any dealings in respect of these Terms;
- (i) The Customer accepts delivery of the Equipment in an 'as is' condition unless the Customer indicates otherwise at the time of delivery;
- (j) The Company owns the Equipment and in all circumstances the Company retains title to all Equipment hired to the Customer and the Customer's rights to use the Equipment are as a bailee only;
- (k) in no circumstances will the Equipment be deemed to be a fixture;
- (l) The Customer understands the safe and proper use of the Equipment and has received adequate training in its operation and use;
- (m) The Company may inspect, maintain, repair or (in the event of any default by the Customer) remove the Equipment at any time during the Hire Period and access to the Equipment must be granted for that purpose;
- (n) it is the Customer's responsibility to collect and return the Equipment, but the Company may agree to collect or return the Equipment as a Service;
- (o) The Customer must arrange for labour necessary to load and unload the Equipment and, if the Customer or the Customer's Authorised Persons are not at the delivery site, the Company may elect to unload the Equipment, which will be at the Customer's risk from the time of delivery;



- (p) if The Company is collecting the Equipment at the expiry or earlier termination of the Hire Period, the Equipment must be left in an appropriate, easily identified and accessible area; and
- (q) The Company will not be deemed to have accepted return of the Equipment in good repair and condition until the Equipment has been fully inspected by the Company following its return.

## **9 The Customers obligations**

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### **9.1 The Customer must:**

- (a) ensure that the Customer or an Authorised Person is available to accept the Equipment on delivery;
- (b) before accepting delivery of the Equipment, satisfy itself as to the Equipment and as to the suitability, condition and fitness for purpose of the Equipment for the purpose the Customer intends to use it for;
- (c) ensure the Equipment is used:
  - (i) for the purpose for which it was designed by the manufacturer;
  - (ii) by the Customer or an Authorised Person having the appropriate qualifications, training and licences to operate the Equipment; and
  - (iii) in accordance with all applicable laws and regulations in a skilful and safe manner not extending beyond its capacity (having regard to the manufacturer's specifications) and not having to endure more than normal wear and tear;
- (d) properly attach any operating or safety signs supplied with the Equipment and ensure that they are visible, legible and drawn to the attention of every person who operates the Equipment before they do so;
- (e) notify the Company immediately if any Equipment breaks down, malfunctions or is damaged;
- (f) not repair the Equipment without the Company's consent;
- (g) properly maintain and clean the Equipment during the Hire Period;
- (h) return the Equipment to the Company in good clean repair and condition before the end of the Hire Period;
- (i) maintain insurance throughout the Hire Period to cover the full value of the Equipment subject to clause 7;
- (j) At its own expense, clean, fuel, lubricate and provide daily maintenance for the Equipment as detailed in the operators manual and in compliance with the requirements of the Company;
- (k) not transfer, assign, lend, sell, lease, hire, bail, give possession of or create an Encumbrance over the Equipment or, except for the purpose of returning the Equipment to the Company, remove the Equipment or allow it to be removed from the site address notified to the Company for use of the Equipment without the Company's prior written consent;
- (l) not alter, make any additions to or deface or alter any identifying mark, plate or number on or in the Equipment or interfere with the Equipment in any other manner;
- (m) accept full responsibility for the safe-keeping of the Equipment; and
- (n) subject to clause 7, compensate the Company for:
  - (i) any loss, theft or damage to the Equipment; and
  - (ii) any liability for any injury or damage to persons or property arising out of the Customers use of the Equipment (whether or not the Equipment was being operated or transported by the Company's employee or any other person for whose acts The Company is or may be held responsible),
 and maintain adequate insurance to cover all such liabilities.

## **10 PPSA**

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- 10.1** This clause applies to the extent that the Company's interest in respect of a hire or sale of Equipment is a 'security interest' for the purposes of the PPSA.
- 10.2** The Company may register any actual, impending or likely security interest. The Customer may not make any claim against the Company in respect of any registration even if it is determined that the Company should not have registered a security interest. The Customer must do anything (such as obtaining consents and signing documents) which the Company requires for the purposes of ensuring that the Company's security interest is enforceable, perfected, first in priority and otherwise effective under the PPSA.
- 10.3** The Company's rights under this document are in addition to and not in substitution for the Company's rights under other law (including the PPSA) and the Company may choose whether to exercise rights under this document or under such other law (or both) as the Company sees fit.
- 10.4** To the extent that:
- (a) section 115 of the PPSA permits the Company and the Customer to contract out of any provision of Chapter 4 of the PPSA; and
  - (b) such a provision requires the Company to give a notice, allow time, give an account, or allow reinstatement or similar rights to the Customer in connection with enforcement,
- The Company and the Customer agree that all such provisions are contracted out of.
- 10.5** Provisions of Chapter 4 of PPSA confer rights on the Company. The Customer agrees that in addition to those rights, the Company will, if there is default by the Customer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document, and the Customer agrees that the Company may do so in any manner the Company sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 10.6** The Customer waives the Customers rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPSA. This waiver also extends to any verification statement in respect of security interests arising or provided for under security documents before the date of this document.
- 10.7** The Company and the Customer agree not to disclose information of the kind that can be requested under section 275(1) of the PPSA. The Customer must do everything necessary on the Customers part to ensure that section 275(6)(a) of the PPSA continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing the Company the benefit of section 275(6)(a) and the Company will not be liable to pay damages or any other compensation or be subject to injunction if the Company breaches this sub-clause.
- 10.8** If the Company gives consent under clause 8.1(k) to any sub-hire:
- (a) the sub-hire agreement must be in writing in a form acceptable to the Company and must be expressed to be subject to the Company's rights under this document;
  - (b) The Customer may not vary the sub-hire agreement without the Company's prior written consent;
  - (c) The Customer must ensure that the Company is provided at all times with up-to-date information about the sub-hire including the identity of the sub-Customer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment;
  - (d) The Customer must take all steps including registration under the PPSA as may be required to:
    - (i) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPSA;
    - (ii) enable the Customer to gain (subject always to the Company's rights) first priority (or any other priority agreed to by the Company in writing) for the security interest; and

- (iii) enable the Company and the Customer to exercise our respective rights in connection with the security interest.

**10.9** To assure performance of the Customers obligations, the Customer give the Company an irrevocable power of attorney to do anything the Company considers the Customer should do under this document.

**10.10** The Customer must reimburse to the Company all costs incurred by the Company in exercising its rights under this clause.

## **11 Limitation of liability**

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**11.1** Nothing in this document is or should be interpreted as an attempt to modify, limit or exclude any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by legislation which cannot be modified, limited or excluded.

**11.2** The Company excludes to the extent permitted by law all other guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, which would otherwise be implied into this document concerning the activities covered by this document.

**11.3** The Customer agrees that the Customer does not rely on any guarantee, term, condition, warranty, undertaking, inducement or representation made by the Company or on its behalf which is not expressly stated in this document.

**11.4** Where any legislation implies or imposes a guarantee, term, condition, warranty, undertaking, inducement or representation in relation to this document and the Company is not able to exclude that guarantee, term, condition, warranty, undertaking, inducement or representation (**Non-Excludable Provision**), and the Company is able to limit the Customers remedy for a breach of the Non-Excludable Provision, then the Company's liability for breach of the Non-Excludable Provision is limited to (at the Company's election):

- (a) in the case of goods, the repair or replacement of the goods or the supply of equivalent goods (or the payment of the cost of doing so); and
- (b) in the case of services, the supplying of the services again (or the payment of the cost of doing so).

**11.5** Subject to the Company's obligations under the Non-Excludable Provisions and clause 11.6, the Company's maximum aggregate liability to the Customer in respect of any one claim or series of connected claims under this document or in connection with its subject matter, whether arising in or for breach of contract, negligence or other tort, breach of statutory duty, or otherwise is limited to an amount equal to the minimum Hire Charges paid by the Customer to the Company during the 12 month period before the event giving rise to the claims.

**11.6** Subject to the Company's obligations under the Non-Excludable Provisions, the Company is not liable to the Customer or any third party for any Indirect Loss arising in connection with this document or its subject matter, whether arising in or for breach of contract, negligence or other tort, breach of statutory duty, breach of warranty or guarantee or otherwise and whether or not that loss was foreseeable, even if the Company has been advised of the possibility of such loss.

## **12 Default and termination**

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**12.1** The Customer will be in default of this document if the Customer:

- (a) fail to comply with any term of this document or any other agreement between the Parties; or
- (b) are subject to an Insolvency Event.

**12.2** If the Customer is in default, then, without prejudice to any other rights and remedies:

- (a) The Company may immediately terminate any hire or purchase of Equipment or the provision of Services between the Parties and take possession of the Equipment by entering onto any land or premises owned by the Customer or under the Customers control on which the Equipment is situated; and
- (b) The Customer will compensate the Company for and pay to the Company all losses, damages, costs and other expenses suffered by the Company as a result of that default, including any costs of recovering possession of the Equipment.

**12.3** The Customer acknowledges that the Company may hire or lease the Equipment hired to the Customer from a third party and that, in that event, title to the Equipment remains with that third party. The Customer agrees that:

- (a) on reasonable notice, the Customer must allow that third party to access the location where the Equipment is located from time to time to inspect the Equipment; and
- (b) if the Company's agreement with that third party terminates during the Hire Period, then, unless otherwise agreed by the Company, any hire under this document will automatically terminate and the Company may immediately recover possession of the Equipment from the Customer, with no liability to the Customer in respect of that termination or recovery.

### **13 Intellectual Property Rights**

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**13.1** No rights, including Intellectual Property Rights, in the Equipment or any drawings, designs or similar material are transferred to the Customer by reason of the Customer hiring or purchasing Equipment from the Company or the Company providing the Services to the Customer.

**13.2** The Customer must, if requested, cooperate fully with the Company in relation to any action that is taken with a view to protecting the Company's Intellectual Property Rights from infringement by a third party. The cost of any legal or other action taken or defended under this clause 13 will, unless otherwise agreed in writing between the parties, be borne by the Company.

### **14 Privacy consent**

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**14.1** The Company collect, use, store and disclose personal information in accordance with the Company's privacy policy, which the Customer acknowledges the Customer has had an opportunity to read and understand. The Customer can access the current policy from the Company website located at [www.rollersaustralia.com.au](http://www.rollersaustralia.com.au), or by contacting the Company's privacy officer at [customer@rollersaustralia.com.au](mailto:customer@rollersaustralia.com.au).

**14.2** The Company may give information to third parties about the Customer, The Customers guarantors, directors or proprietors in accordance with the Company's privacy policy, including for the following purposes:

- (a) to obtain a consumer credit report about the Customer, The Customers guarantors, directors or proprietors;
- (b) to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer, The Customers guarantors, directors or proprietors;
- (c) for registration on the PPSR or other public records or registers; and
- (d) to obtain commercial credit information about the Customer, The Customers guarantors, directors or proprietors from a credit reporting agency.

## **15 General**

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- 15.1** The Company may serve any notice or court document on the Customer by hand or by prepaid post to The Customers address last known to the Company or by email to an email address supplied by the Customer. Any such notice is taken to be duly given and received:
- (a) if delivered by hand, when delivered;
  - (b) if delivered by prepaid post, two Business Days after being deposited in the mail with postage prepaid; or
  - (c) if delivered by email, on the day of dispatch provided that no notice of non-delivery is received.
- 15.2** The Company is entitled to set off against any amount the Company owes the Customer any amount owed to the Company by the Customer or any amount owed to the Company by any of the Customers Related Bodies Corporate.
- 15.3** Except as expressly provided to the contrary in this document, a Party may give or withhold an approval or consent in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding a consent or approval or for giving a consent or approval subject to conditions.
- 15.4** This document records the entire agreement between the Parties in relation to its subject matter. It supersedes all prior contracts, arrangements, understandings or negotiations by, or between, the Parties in relation to the subject matter of this document.
- 15.5** The failure, delay or omission by a Party to exercise, or to partially exercise, a right, power or remedy under these Terms (or any connected agreement) does not operate as a waiver of that right, power or remedy. A Party which exercises, or partially exercises, a right, power or remedy maintains its right to further exercise the same right, power or remedy or to exercise another right, power or remedy. A Party waives a right, power or remedy only by explicitly doing so in a written notice to the other Party and the waiver is strictly limited to the matters specified in the notice.
- 15.6** The rights, powers, authorities, discretions and remedies of a Party under this document do not exclude any other right, power, authority, discretion or remedy.
- 15.7** If any provision of this document is determined by a court or other competent tribunal or authority to be illegal, invalid or unenforceable then:
- (a) where the offending provision can be read down so as to give it a legal, valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result;
  - (b) where the offending provision cannot be read down then that provision must be severed from the document in which event, the remaining provisions of this document operate as if the severed provision had not been included; and
  - (c) the legality, validity or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction is not affected,
- but only to the extent that is consistent with giving substantial effect to the intentions of the parties under this document.
- 15.8** This document (and each connected agreement) is governed by the law of New South Wales. Each party submits to the jurisdiction of the courts in New South Wales in connection with matters concerning this document and any connected agreement.