

## Terms and Conditions of Hire

### DEFINITIONS

**"ACL"** means the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2000* (Cth).

**"Amounts Owning"** means all amounts owing by the Customer to Cockatoo Hire under or in connection with the hire of Equipment.

**"Business Day"** means a day that is not a Saturday, Sunday or public holiday in the State or Territory in which the Hire Equipment was hired from Cockatoo Hire.

**"Business Hours"** means 7am to 4pm on a Business Day

**"Charges"** means the ancillary charges which may be payable by the Customer as set out in clause 6.

**"Claims"** means any claim (whether actual or contingent) including a claim for loss, damages and expenses (including legal fees) arising out of tort, breach of statute, breach of warranty or guarantee or breach of this Agreement.

**"Customer"** refers to the person, firm, organisation, partnership, corporation or other entity (including trust or trustee) hiring the Equipment from Cockatoo Hire as identified in the Credit Application or Hire Agreement.

**"Customer's Premises"** means the premises nominated by the Customer as the location for the delivery, use and collection of the Hire Equipment.

**"Environmental Laws"** means any statute, regulations or law made or issued by a regulatory or government body regulating or relating to the environment including the use or protection of the environment.

**"Equipment"** means all equipment including tools, buildings, vehicles, accessories and parts hired to the Customer.

**"Hire Agreement"** means the agreement between Cockatoo Hire and Customer for the hire of Equipment which includes:

- a) any Commercial Credit Application;
- b) these Standard Terms and Conditions of Hire; and
- c) any applicable Special Conditions of Hire.

**"Hire Charges"** means the rates and Charges payable by the Customer for the hire of the Equipment.

**"Hire Period"** means the period of hire for the Hire Equipment as described in clause 2.

**"Insolvency Event"** means an event where a petition is presented for the winding up of the Customer, an administrator, receiver or receiver and manager is appointed, the Customer is deregistered or makes or proposes to make an arrangement with its creditors, or execution is levied upon the assets of the Customer and is not satisfied within 7 days or the Customer is unable to pay all its debts, as and when they become due and payable.

**"Liability"** means any liability (whether actual, contingent or prospective), loss, damage, cost and expense however arising.

**"Long Distance Location"** means any location in excess of 50km of the nearest Cockatoo Hires partners branch.

**"Off-Hire Date"** means the date the Customer advises Cockatoo Hire the Equipment is no longer required and Cockatoo Hire issues the Customer with an Off-Hire Number in accordance with clause 5.5.

**"Off-Hire Number"** means the number provided to the Customer by Cockatoo Hire pursuant to clause 5.5 confirming Equipment is off-hired.

**"Cockatoo Hire"** means Cockatoo Hire Pty Ltd (ABN 98 666 128 454) or any of its Related Bodies Corporate (as defined in the *Corporations Act 2001* (Cth) and is the owner of the Equipment.

**"Cockatoo Hires Premises"** means the premises nominated by Cockatoo Hire as the location for the collection and return of the Hire Equipment by the Customer.

**"Other Charges"** means all other charges apart from the Hire Charges as set out in clause 6.

**"PPSA"** means the *Personal Property Securities Act 2009* (Cth) and where applicable includes all regulations made pursuant to it. Definitions contained in the PPSA are the same in these Terms and Conditions.

**"Return Date"** means the date on which the Hire Equipment is returned to the physical possession of Cockatoo Hire or Cockatoo Hire's third parties.

**"Start Date"** is the earlier of (a) when the Customer takes possession of the Equipment or (b) when Cockatoo Hire or Cockatoo Hire's third parties delivers the Equipment to the Customer's Premises.

**"Unforeseen Events"** means an event beyond the control of Cockatoo Hires including but not limited to acts of God, war, terrorism, mobilisation, civil commotion, orders or regulations or governments fires, floods and strikes.

### 1. HIRE OF EQUIPMENT

- 1.1. Cockatoo Hire agrees to hire the Hire Equipment to the Customer for the Hire Period and the Customer agrees to pay the Hire Charges and Other Charges.
- 1.2. Cockatoo Hire hires Equipment at its absolute discretion and may refuse to hire to the Customer.

### 2. HIRE PERIOD

- 2.1. The Hire Period commences on the Start Date and ends on the earlier of:
  - a) when the Customer obtains an Off-Hire number (subject to access being granted to collect the Equipment); or
  - b) when back in the possession of Cockatoo Hire (irrespective of any expected Off-Hire Date).
- 2.2. The Hire Period includes weekends and public holidays and is irrespective of the time the Hire Equipment is being used.
- 2.3. Minimum Hire Periods may apply for some Equipment (such as buildings). If the Customer seeks to return the Equipment prior to the end of the Minimum Hire Period, the Customer is still required to pay the Hire Charges for the Minimum Hire Period.

### 3. COLLECTION AND DELIVERY OF HIRE EQUIPMENT

- 3.1. Where Cockatoo Hire or Cockatoo third parties are delivering Equipment to or collecting Equipment from the Customer's Premises, access must be granted to enable timely delivery and collection. The Customer will be responsible for any demurrage, delay or futile deliveries or collection costs of Equipment if access is not granted.
- 3.2. Delivery times and dates are estimates only. Cockatoo Hire is not responsible for the failure or delays in delivery or installation due to an Unforeseen Event.
- 3.3. Cockatoo Hire will notify the Customer of any delay in delivering, collecting or installing the Hire Equipment.

### 4. INSPECTION OF THE HIRE EQUIPMENT

- 4.1. The Customer must inspect all Hire Equipment upon delivery and/or collection. Upon return of the Equipment to Cockatoo Hire or Cockatoo Hire's third parties Premises, Cockatoo Hire will notify the Customer of any defect or damage which may incur Other Charges.

### 5. HIRE CHARGES

- 5.1. **Hire:** The Customer must pay Cockatoo Hire all charges set out in any quote and/or Hire Agreement. In accordance with clause 18.14(b), Cockatoo Hire will advise the Customer at least 10 Business Days in advance of any increase to the Hire Charges. Subject to this clause, Cockatoo Hire reserves the right to amend the Hire Charges in accordance with any change to its standard pricing for the Hire Equipment.
- 5.2. Additional hire charges may apply if the Hire Equipment is used more than 8 hours a day or more than 48 hours per week.
- 5.3. Equipment hired for at least 5 days in a seven-day continuous period, will be charged at a weekly rate.
- 5.4. Subject to clause 11.2(b), stand downs may apply to Equipment where agreed by Cockatoo Hire as follows:
  - a) Any stand down request must be made by 9.00am on the day of the stand down. Stand downs cannot be applied retrospectively;
  - b) The Customer remains responsible for the security of the Equipment and all loss or damage to equipment while it is stood down;
  - c) Stand downs do not apply to fixed plant including (but not limited to) site accommodation, caravans, containers, fencing, barriers, wired power generation, steel plates, shoring, propping and fixed or minimum term rentals;
  - d) Christmas and Easter stand down periods are based on the calendar days and a maximum of two weeks for Christmas and one week for Easter applies;
  - e) Stand downs of sub-hired equipment are subject to the terms of that supplier;
  - f) Unless otherwise agreed in writing, stand downs will only apply to:
    - (i) Equipment breakdown up to 100% for duration of breakdown;
    - (ii) Inclement weather up to 50% of Hire Charge (high wind/severe wet);
    - (iii) Gazetted Public Holiday up to 50% of Hire Charge;
    - (iv) Christmas/Easter period up to 50% of Hire Charge; and
    - (v) Industry Rostered Day Off up to 50% of Hire Charge.

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- g) If the Equipment is used during a stand down (determined for instance by remote monitoring), full Hire Charges for that period will be applied; and
- h) If a stand down request exceeds two days (except for Christmas and Easter) Cockatoo Hire retains the right to have the equipment off-hired and returned to Cockatoo Hire at the customer's expense.
- 5.5 **Off-hire:** When they Customer wants to off-hire the Equipment, it must obtain an Off-Hire Number by 9.00am of the Off-Hire Date and provide access for collection of the Equipment. Hire Charges are payable for the full Hire Period if the customer retains the Equipment past an expected Off Hire Date.
- 6. CHARGES**
- 6.1 All amounts payable in the Hire Agreement are exclusive of GST unless otherwise specified).
- 6.2 In addition to the Hire Charges, the Customer agrees to pay:
- for any training or instruction related to the operation or hire of Equipment;
  - for any consumables and trade materials included but not limited to fuel charges if applicable. Cockatoo Hire shall be exclusively entitled to claim fuel tax credits for any fuel it purchases for the Equipment, even if such charge is passed onto the Customer;
  - Tax (including GST subject to a taxable supply) and Government charges, levies or fines (including any environmental levy) in relation to the hire of the Hire Equipment;
  - charges for transport, installation and dismantling (if applicable); mobilisation and demobilisation (if applicable). Unless expressly specified, transport rates are based on delivery Monday – Friday (7am – 3pm) in the metro region;
  - any charges incurred for demurrage, delay (should time at Site exceed 30 minutes) or futile delivery;.
  - if applicable under clause 13.1, the Loss, Theft & Damage Waiver Fee ("LTD Waiver Fee");
  - any amounts the Customer is responsible for under clause 10.1;
  - for cleaning and repair of Hire Equipment if not returned in clean, good working condition;
  - a charge for pumping out waste tanks or refilling of water tanks;
  - for any modification of Equipment that is necessary or requested by the Customer; and
  - the cost passed on by Cockatoo Hire arising out of a change in law, code, regulations or Customer policy or guideline.
- 7. PAYMENT**
- 7.1 All Hire Charges are payable in full within 30 days of the invoice date.
- 7.2 If payment is not made in full by the due date, Cockatoo Hire may charge a late payment fee of 2% (cumulative) per month. In addition, the
- 7.3 Customer must pay to Cockatoo Hire all expenses in recovering any Amounts Owing (on a full indemnity basis).  
Cockatoo Hire may set-off any monies owing by it to the Customer against any Amounts Owing.
- 8. CUSTOMER'S HIRE OBLIGATIONS**
- 8.1 **Possession and Use by Customer:** The Customer must not allow nor authorise any other person or entity to use, re-hire or have possession of the Hire Equipment at any time during the Hire Period without the prior written approval of Cockatoo Hire.
- 8.2 The Customer remains responsible and liable to Cockatoo Hire irrespective of any sub-hire agreement or arrangement entered into by the Customer.
- 8.3 The Customer is liable to Cockatoo Hire for the acts and omissions of any Sub- Hirer and the employees, agents, contractors and officers of the Sub-Hirer as if they were acts or omissions of the Customer.
- 8.4 **Suitability:** Subject to clause 15, the Customer agrees that before accepting the Hire Equipment it has satisfied itself as to the suitability, condition and fitness for purpose of the Equipment without relying upon the skills or judgment of Cockatoo Hire or any person purporting to act on its behalf. The Customer acknowledges that, to the extent permitted by law, Cockatoo Hire has not made any representation or warranty (other than as expressly set out in writing) as to the suitability, condition and fitness for purpose of the Equipment or any other matter.
- 8.5 **Operation of Hire Equipment:** The Customer warrants it will at all times:
- transport, erect, install and operate Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
  - ensure persons transporting, erecting, installing and operating the Equipment are suitably instructed, trained and qualified (including holding a current licence to perform and/or operate the Equipment) in its safe and proper use and comply with all relevant laws and manufacturer's recommendations relating to the use of the Equipment;
  - without limiting any other requirement in this clause 8.5, ensure that any boomlift that can elevate over 11m in height is only operated by personnel who hold an EWP licence,
  - display and maintain all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Hire Equipment;
  - ensure all persons operating the Hire Equipment wear suitable clothing and protective equipment as required or recommended by relevant law, applicable industry standards and the manufacturer;
  - ensure that no persons operating the Hire Equipment are under the influence of drugs or alcohol or carry any dangerous, hazardous or illegal substances in or onto the Equipment;
  - conduct a job safety analysis prior to using the Hire Equipment at a site;
  - insure the Equipment during the Hire Period (if not electing to pay the Loss, Theft & Damage waiver fee); and
  - comply with all Environmental Laws applying from time to time and immediately rectify any breach of an Environmental Law caused by the use, possession or storage of the Hire Equipment.
- 8.6 **Cleaning and Maintenance:** The Customer must:
- clean, fuel, lubricate and maintain Hire Equipment in good condition and in accordance with the manufacturer's and Cockatoo Hires instructions at the Customer's cost;
  - not in any way alter, modify (including removing any identifying mark or plate), tamper with, damage or repair the Equipment without Cockatoo Hire's prior written consent;
  - provide access to Cockatoo Hire or Cockatoo Hire's third parties to maintain and service the Equipment and undertake statutory inspections when necessary during Business Hours, failing which additional charges for out of hours service and maintenance may apply;
  - arrange for the emptying of any waste tanks and water carts; and
  - return the Equipment to Cockatoo Hire in the same good and clean condition it was in when the Customer received it, ordinary fair wear and tear excepted.
- 8.7 **Safekeeping:** The Customer must ensure that the Equipment is:
- stored safely and securely and is protected from theft, vandalism, seizure and damage or subject to adverse climatic or environmental conditions which may damage the Hire Equipment (ie corrosion, sea-salt and flooding); and
  - not exposed to any hazardous substance including asbestos without prior written consent.
- 8.8 **Hazardous substances:** The Customer must advise Cockatoo Hire of any risks of hazardous substances and/or contamination to the Equipment as soon it becomes apparent (or should have become apparent).  
The Customer will:
- provide to Cockatoo Hire its Asbestos Register upon request; and
  - decontaminate the Hire Equipment and provide to Cockatoo Hire details of the process applied.
- 8.9 If the Hire Equipment has not been properly decontaminated (or not capable of being decontaminated) the Customer may be charged for new Hire Equipment.
- 8.10 **Inspections:** The Customer consents to Cockatoo Hire and Cockatoo Hire's third parties inspecting and maintaining the Hire Equipment with reasonable notice during the Hire Period.  
In addition, the Customer may arrange a joint inspection with Cockatoo Hire or Cockatoo third parties.

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- 8.11 Safe Loading and Transport:** The Customer must ensure the safe loading, securing and transporting of all Equipment in accordance with all laws, industry guidelines and manufacturer's guidelines. The Customer must, and must ensure that any transporting contractor will, observe any safety directions advised by Cockatoo Hire or Cockatoo Hire third parties and/or manufacturer of the Equipment for its loading and safe handling.
- 8.12 Location:** The Customer:
- must not remove the Hire Equipment from the Australian State or Territory in which it was hired without Cockatoo Hire's prior written consent. If consent is provided, the Equipment must be returned to the original site from where the Equipment was delivered by Cockatoo Hire;
  - agrees to pay any costs associated with Cockatoo Hire's attendance for breakdown and maintenance at Long Distance Locations; and
  - must not use the Hire Equipment offshore, underground, or in a mine without the prior written consent of Cockatoo Hire.
- 8.13 Electrical and Fire Suppression Equipment re-testing and re-tagging:** All Equipment supplied by Cockatoo Hire is tagged and tested prior to hire. During the Hire Period, the Customer is responsible for arranging at its cost the re-testing and re-tagging of electrical equipment in accordance with the manufacturer's instructions, relevant law, applicable Australian Standards and regulatory authority requirements. Any damage caused to the Hire Equipment resulting from incorrect testing will be at the Customer's cost.
- 8.14 Fuel:** The Customer is responsible for ensuring any Equipment is returned to Cockatoo Hire or Cockatoo Hire's third parties with a full tank of fuel, or agrees to pay the fuel charges to refuel.
- 8.15 Wear and Tear:** The Customer is responsible for:
- the cost of repairing or replacing flat or damaged tyres and for all wear and tear and damage to tyres and tracks caused by conditions which Cockatoo Hire reasonably considers to be adverse or abnormal. Ordinary wear and tear is considered to be 4,000 service meter units. At all times the Customer must adhere to the manufacturer's recommended tyre pressure and track tension;
  - the cost of all bucket and blade wear or damage caused by conditions which Cockatoo Hire considers are abnormal or adverse use; and
  - all wear and tear to cutting edges, bucket teeth, hardware, ripper teeth and all other ground engaging tools hired.
- All ground engaging tools hired by the Customer are to be returned to Cockatoo Hire or Cockatoo Hire's third parties at the end of the Hire Period in the same condition in which they were supplied.
- Usage of ground engaging tools will be measured by comparing the percentage of use at the commencement of the Hire Period with the percentage of use at the end of the Hire Period.
- 8.16** See "Wear and Tear at [www.cockatoohire.au](http://www.cockatoohire.au) for further examples and exclusions to wear and tear.
- ### 9. TITLE TO HIRE EQUIPMENT
- 9.1** The Customer acknowledges that Cockatoo Hire retains title to the Hire Equipment at all times (even if the Customer goes into liquidation, external administration of any kind or becomes bankrupt during the Hire Period) and in no circumstance will the Hire Equipment be deemed to be a fixture. The Customer has no interest in the Hire Equipment of any kind other than as a bailee.
- 9.2** Cockatoo Hire may hire or lease Equipment from third parties ("sub-hirers") to supply to the Customer and if this occurs title in the Equipment remains with the sub-hirer.
- 9.3** Except with the prior written consent of Cockatoo Hire, the Customer will not be entitled to offer, transfer, sell, assign, sub-let, encumber, charge, mortgage, pledge or otherwise deal with the Hire Equipment in any way whatsoever.
- 9.4** **PPSA:** Cockatoo Hire may register its security interest that arises under this Hire Agreement and in the Equipment and the proceeds from any dealing in the Equipment. The Customer:
- must do all things necessary to enable Cockatoo Hire to register and perfect its security interest in the Equipment under the PPSA including enabling it to register a financing statement;
  - must take all steps to ensure any security interest arising under or in respect of sub-hire is enforceable, perfected and otherwise effective under PPSA;
- must not register a financing change statement in respect of a security interest arising out of this Hire Agreement without Cockatoo Hire's consent;
  - must not create a security interest in the Equipment, register or permit to be registered a financing statement in relation to the Equipment (other than in respect of sub-hire, in which case prior written consent of Cockatoo Hire is required);
  - must notify Cockatoo Hire of any change in writing of the Customer's details set out in the Credit Application;
  - waives all rights under s157 of the PPSA to receive a copy of the verification statement relating to security interest created under this Hire Agreement;
  - agrees to the extent permitted by the PPSA, the following provisions of the PPSA will not apply and are contracted out of:  
s95 (to the extent that it requires the secured party to give notices to the grantor); s96; s118 (to the extent that it allows a secured party to give notices to the grantor); s121(4), s125; s130; s132(3)(d); s132(4); s135; s142 an s143; and
  - agrees that the following provisions of the PPSA will not apply and the Customer will have no rights under them; s127; s192(2) and (3); s130(1); s132; s134(2); s135; s136(3), (4) and (5) and s137.
- 9.5** Unless otherwise agreed, Cockatoo Hire and the Customer will not disclose information referenced in s275(1) of the PPSA to an interested person, or any other person requested by an interested person. The Customer waives any right it may have had under s275(7)(c) of the PPSA to authorise disclosure of that information.
- 9.6** For the purposes of s20(2) of the PPSA, the collateral is the Equipment set out in any quote and/or Hire Agreement. The Quote and/or Hire Agreement is the security agreement for the purposes of the PPSA.
- ### 10. RESPONSIBILITY FOR THE HIRE EQUIPMENT
- 10.1** The Customer is responsible for any loss, theft or damage to the Equipment (from any cause whatsoever) during the Hire Period except to the extent the loss, theft or damage is caused by Cockatoo Hire.
- ### 11. EQUIPMENT BREAKDOWN
- 11.1 Obligations of Customer:** If the Equipment breaks down or becomes unsafe to use during the Hire Period the Customer must:
- immediately stop using the Equipment and notify Cockatoo Hire;
  - take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
  - take all steps necessary to prevent any further damage to the Equipment; and
  - not repair or attempt to repair the Equipment without Cockatoo Hire's prior written consent.
- 11.2 Obligations of Cockatoo Hire:** if the Equipment breaks down or becomes unsafe to use (through no act or omission of the Customer including misuse, recklessness and negligence), Cockatoo Hire will:
- repair the Hire Equipment or provide suitable substitute Hire Equipment when reasonably possible after being notified by the Customer; and
  - not impose Hire Charges for that portion of the Hire Period during which the Equipment could not be used, nor any costs associated with any repair or replacement of the Equipment; and
- 11.3** If the Equipment is broken down or becomes unsafe to use due to any act or omission of the Customer, the Customer will be liable for all costs for the repair or replacement and continuing Hire Charges while the Equipment is being repaired and/or replaced.
- 11.4** Cockatoo Hire's liability for any expenditure, damages, losses, costs or inconvenience incurred by the Customer arising from a breakdown of the Equipment will be limited to the extent provided for in clause 15.

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### 12. LOST, STOLEN OR DAMAGED HIRE EQUIPMENT

- 12.1 If the Equipment is lost, stolen or damaged, the Customer must notify Cockatoo Hire in writing of the facts and circumstances giving rise to the loss, theft or damage of the Equipment within 5 Business Days of the event occurring, and the Customer will remain liable for all Hire Charges up to and including the day that Cockatoo Hire is notified.
- 12.2 Despite any other provision in these Terms, if the Equipment is lost, stolen or damaged the Customer is responsible for:
- the cost of the repairs; or
  - replacement (if it cannot be repaired) at Cockatoo Hire's reasonable discretion; and
  - continuing Hire Charges until the repair or replacement of the Equipment; and
  - other reasonable costs and expenses associated with the repair and/or replacement of the Equipment.
- 12.3 If, the Customer has paid the Loss, Theft & Damage Waiver, the Customer's liability for the cost of the repairs or the replacement cost of the damaged Equipment is limited subject to clause 13 below.

### 13. LOSS, THEFT AND DAMAGE WAIVER

- 13.1 The Customer may seek to limit its liability arising out of loss, theft and damage to the Equipment by paying a fee of 12.5% which is automatically added to the customer's monthly invoice ("LTD Waiver Fee"). The LTD Waiver Fee is not insurance. In the event of a claim for damage, the customer must:
- notify Cockatoo Hire in accordance with clause 12.1;
  - if requested by Cockatoo Hire provide a written Police report of the loss or damage to the Equipment within 5 Business Days and any other written or photographic evidence requested by Cockatoo Hire (which may include sworn statements and statutory declarations); and
  - pay to Cockatoo Hire the LTD Waiver excess which is the greater of:
    - \$500 per item of Equipment (if the repair or replacement cost is less than \$500); or
    - the amount equal to 15% of the cost of repair or (if beyond repair) 15% of the replacement cost.
- 13.2 Even if the Customer pays the LTD Waiver Fee, the Customer is still liable for all loss and damage to the Equipment if:
- the LTD Waiver Fee was not paid prior to any loss or damage;
  - Cockatoo Hire reasonably believes the Customer failed to take reasonable precautions to protect and secure the Equipment;
  - the Equipment is located, used, loaded, unloaded or transported on or over water, wharves, bridges or vessels of any kind, or used in underground mines;
  - the loss or damage is:
    - to tyres and tubes, including punctures, blowouts, bursts, bruises or cuts;
    - to glass or perspex, including breakage or damage to windscreens, windows or mirrors;
    - caused by vandalism, including graffiti on the Hire Equipment;
    - to paintwork;
    - due to wrongful conversion of any components;
  - the loss or damage was caused, or contributed to, by:
    - a breach of this Hire Agreement;
    - an act or omission of the Customer;
    - the use of the Hire Equipment was in contravention of any laws, codes, regulations or contrary to Cockatoo Hire's or the manufacturer's instructions;
    - a lack of, or faulty lubrication or general servicing of the Equipment;
    - the misuse, abuse, overloading or incorrect loading of the Equipment or any of its components;
    - the overloading or artificial electrical current to motors or other electrical appliances or devices, including use of under-rated or excessive length of extension leads on electrical powered tools and machines;
    - an exposure to any corrosive, caustic or toxic substance, including cyanide, asbestos, saltwater, acid or harsh environmental conditions etc; or
    - the transport of the Hire Equipment, except where transported by Cockatoo Hire.

- 13.3 The Customer does not need to pay the LTD Waiver Fee if it produces a certificate of currency evidencing that it holds a policy of insurance in accordance with clause 14 below.
- 13.4 If the Customer proposes to use the Equipment off-shore, over water or in underground mines or is a kind of Equipment ordinarily used off-shore, over water or in underground mines, the Customer should consider the extent of insurance which may be required under clause 14.3.

### 14. INSURANCE

- 14.1 14.1 If the Customer elects not to pay the LTD Waiver Fee, it must take out and maintain a policy of insurance that covers loss or damage to the Hire Equipment during the Hire Period for not less than the full new replacement cost of the Equipment ("Hire Equipment Insurance").
- 14.2 14.2 The Customer must provide a certificate of currency of the Hire Equipment Insurance upon request. The Customer will be responsible for the excess and any shortfall in repair or replacement costs from any insurance payout.
- 14.3 14.3 The effecting and keeping in force of insurances as required by this Agreement shall not in any way limit the responsibilities, obligations and liabilities of the Customer under any other clause of this Agreement.
- 14.4 14.4 **Over-Water, off-shore and underground mines:** If required by Cockatoo Hire, the Customer must also take out and maintain for the Hire Period, insurance for the Equipment which will be used off-shore, over water or in underground mines.

### 15. INDEMNITIES AND EXCLUSION OF LIABILITIES

- 15.1 To the extent permitted by law (unless otherwise expressly set out in this Agreement), all terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to Cockatoo Hire's obligations under the Hire Agreement are excluded.
- 15.2 Nothing in this Hire Agreement limits any condition, guarantee or warranty imposed by legislation, including any Consumer Guarantees that may apply pursuant to the ACL. Where Cockatoo Hire cannot exclude a condition, guarantee or warranty, it can limit its liability (at Cockatoo Hire's election to):
- In the case of goods, the repair or replacement of the Equipment (or the cost of repair or replacement);
  - In the case of services, supplying the services again.
- 15.3 Subject to clause 15.2 and any legislation governing Cockatoo Hire's obligations and liabilities, Cockatoo Hire's liability (in tort, statute, contract, under an indemnity or however arising) is limited to the Hire Charges paid under this Hire Agreement.
- 15.4 Subject to clause 15.2, neither party is liable for consequential loss or damage (including but not limited to loss of actual or anticipated revenue, business interruption, delays, loss of production or economic loss of any kind) in contract, tort, under statute or otherwise.
- 15.5 The Customer is liable for and indemnifies Cockatoo Hire against all Claims arising out of or in connection with Customer's hire and use of the Equipment or breach of this Hire Agreement, including personal injury, damage to property and claims by third parties, or arising from or in connection with the Customer's failure to comply with any law or regulation.
- 15.6 Without limiting clause 8.4, the Customer agrees that Cockatoo Hire does not provide professional advice or advice requiring particular skills or judgment. Cockatoo Hire recommends that if the Customer requires such advice it should seek that advice from an appropriate professional. The Customer acknowledges that it has not relied on any advice or judgment of a professional nature by Cockatoo Hire when entering into any Hire Agreement.



### 16. TERMINATION

- 16.1 Either party may terminate the Hire Agreement with 7 days' notice by serving a written notice on the other party if:
- the other party breaches the Hire Agreement and fails to remedy within 7 days of notification; or
  - the other party becomes insolvent or bankrupt, or executes a personal insolvency agreement, enters into liquidation, administration or receivership or ceases to carry on business.
- 16.2 Where Cockatoo Hire determines there is an immediate and material risk to Cockatoo Hire or the Equipment, Cockatoo Hire may terminate the Hire Agreement at any time by giving the Customer at least 24 hours' notice. Cockatoo Hire may terminate the Hire Agreement with immediate effect if necessary, to address a serious and imminent risk to health or safety.
- 16.3 The right of termination is in addition to any other rights under the Hire Agreement.

### 17. RECOVERY OF HIRE EQUIPMENT

- 17.1 If Cockatoo Hire has terminated the Hire Agreement with the Customer pursuant to clause 16, Cockatoo Hire may take all steps necessary (including legal action) to recover the Equipment, including entering any site occupied by the Customer. The Customer expressly provides Cockatoo Hire consent to enter any site or premises upon of the Customer to recover Equipment.

### 18. MISCELLANEOUS

- 18.1 **Severability:** If any part of this Hire Agreement becomes void or unenforceable for any reason then that part will be severed in respect only with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.
- 18.2 **Governing Law and Jurisdiction:** The Hire Agreement is governed by the laws of New South Wales and each party submits to the non-exclusive jurisdiction of that jurisdiction.
- 18.3 **Disputes:** In the event there is a dispute between the parties to this Hire Agreement or the Customer wishes to make a Claim, the Customer must notify Cockatoo Hire in writing (to the Branch from which the Equipment was hired) of the reasons for the dispute or details of the Claim (including reference to any invoice) within 7 Business Days from the date the Claim or dispute arose (or date of invoice).
- 18.4 The Customer acknowledges and agrees that failure to provide written notice of a Claim within 6 months of the date the Claim or dispute arose (or date of invoice) will mean the Customer is barred from raising any Claims or dispute with Cockatoo Hire after that time period has passed.
- 18.5 Within 14 Business Days of notification of any dispute or Claim, representatives of both parties shall meet to endeavour to resolve the Claim or dispute.
- 18.6 If the Claim or dispute cannot be resolved, the chief executive officers of each party shall confer within 14 days of any meeting convened in accordance with clause 18.5 to endeavour to resolve the Claim or dispute.
- 18.7 If the parties fail to resolve the Claim or dispute pursuant to this clause, and prior to commencing proceedings, the Claim or dispute must first be referred to arbitration to be conducted subject to the Resolution Institute's Arbitration Rules. This clause does not apply to proceedings for injunctive or urgent declaratory relief.
- 18.8 **Security of Obligations:** As security for the obligations and liabilities of the Customer under the Hire Agreement, the Customer charge for its performance of its obligations and liabilities, all of its legal and equitable interest (both present and future) held in:
- the Equipment that is hired to the Customer under this Agreement; or
  - any other property over which the Customer has agreed to provide as security including as a condition of providing the credit to the Customer (which could include real or personal property).
- 18.9 The Customer (and any guarantors) agree, on request by Cockatoo Hire, to execute any documents and do all things required by Cockatoo Hire to register a mortgage security or other security interest over any real property or other asset. The Customer (and its guarantors) must indemnify Cockatoo Hire against all costs and expenses incurred by Cockatoo Hire in connection with the preparation and registration of any such mortgage or security documents. The Customer (and its guarantors) also consents unconditionally to Cockatoo Hire lodging a caveat or caveats noting its interest in any caveatable property.

- 18.10 **Entire Agreement:** To the extent permitted by law, the Hire Agreement comprises the entire agreement between the parties. No additional terms and conditions proposed by the Customer (including in the Purchase Order) apply to the hire of the Hire Equipment unless agreed in writing by Cockatoo Hire.
- 18.11 **Variation:** Cockatoo Hire may at any time vary these Terms and Conditions of Hire which will come into effect 14 days after notice is given to the Customer where possible by email or otherwise by notice through Cockatoo's website. Any other variation of the Hire Agreement must be agreed in writing by Cockatoo Hire and the Customer.
- 18.12 **Privacy:** Cockatoo Hire may collect personal information about a Customer and Cockatoo Hire will treat this information in accordance with Australian Privacy Principles.
- 18.13 The information may be used and disclosed to third parties to provide services to the Customer, to fulfil administrative functions associated with these services (for example assessment of credit worthiness), to enter into contracts with the Customer or third parties and for marketing and client relationship purposes. If the Customer does not provide all personal information required by Cockatoo Hire, Cockatoo Hire may not be able to hire the Equipment or provide the associated services to the Customer. Cockatoo Hire may disclose the Customer's information to Cockatoo Hire's service providers and contractors from time to time to help provide and market Cockatoo Hire's services to the Customer.
- 18.14 The Customer consents to and authorises Cockatoo Hire to use and disclose the Customer's personal information to third parties including any credit provider or credit reporting agency and to Cockatoo Hire's service providers, contractors and affiliated companies from time to time, for the purposes outlined above.
- 18.15 **Notice to Customer:** Any document or notice under this Hire Agreement may be given by:
- In the case of a Notice to Cockatoo Hire – by posting it to Cockatoo Hire's registered office and branch address;
  - In the case of a Notice to the Customer – by posting to the Customer's address (as stated in the Credit Application or last notified by the Customer in writing to Cockatoo Hire) or by email to the Customer's address.
- 18.16 Any Notice given by post will be deemed to have been delivered on the third Business Day after posting and if by email on the day of transmission if before 5.00pm or the following Business Day if sent after 5.00pm.
- 18.17 **No Waiver:** No delay or omission to exercise any right, power or remedy accruing to Cockatoo Hire upon any continuing breach or default under the Hire Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of any right of Cockatoo Hire to take action or make a claim in respect of a continuing breach or default or to be acquiescence to it.
- 18.18 **Withdrawal of Credit Accommodation:** Where Cockatoo Hire determines at its sole discretion that there may be an immediate and material risk to Cockatoo Hire or the Equipment, or where the Customer has failed to comply with the Agreement, any credit accommodation granted by Cockatoo Hire to the Customer may be reviewed without notice and credit withdrawn. The Hire Agreement may be terminated and the Customer will owe to Cockatoo Hire any outstanding amounts until the Hire Equipment is back in the possession of Cockatoo Hire. In all other circumstances, Cockatoo Hire will advise the Customer 7 days in advance of any review.
- 18.19 **Authority of Customer:** The Customer warrants and agrees that the person signing the Hire Agreement for and on behalf of the Customer has the authority of the Customer to enter into and bind the Customer to the Hire Agreement. The Customer indemnifies Cockatoo Hire against all Claims arising out of a breach of the warranty contained in this clause.
- 18.20 **Previous Editions:** This edition of the Standard Terms and Conditions of Hire replaces and supersedes all previously issued Cockatoo Hire Terms and Conditions of Hire.
- 18.21 **Time of the Essence:** Time is to be of the essence of all obligations of the Customer in the Hire Agreement.

- 18.22 **Survival:** Any provision of the Hire Agreement which is capable of having effect after the expiry or termination of the Hire Agreement (or any part thereof) survives and remains in full force and effect after the expiry or termination of the Hire Agreement.
- 18.23 **Special Conditions:** Special Conditions apply where the Customer is hiring:
- a) Motor Vehicles
  - b) Portable Buildings
  - c) Power Generators
  - d) Pumps and dewatering Equipment
  - e) Earthmoving and Compaction Equipment,
- and form part of this Agreement. The applicable Special Conditions are available at [www.cockatoohire.au](http://www.cockatoohire.au)
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# Special Conditions of Hire

## Hire of Earthmoving & Compaction Equipment

These Special Conditions of Hire are in addition to Cockatoo Hire's Standard Terms and Conditions of Hire and apply where the Equipment hired is Earthmoving and Compaction Equipment. The definitions contained in the Terms and Conditions of Hire apply to these Special Conditions unless expressly stated otherwise.

If there is any conflict between Cockatoo Hire's Standard Terms and Conditions of Hire and these Special Conditions of Hire, these Special Conditions of Hire will prevail to the extent of any conflict.

### DEFINITIONS:

**"Earthmoving & Compaction Equipment"** refers to, without limitation, excavators and mini excavators, backhoes, skid steer loaders, wheel loaders, motor graders, tractors, articulated trucks, attachments, smooth drum rollers, padfoot rollers and multi-tyre rollers and includes any Equipment used to move earth, soil, rocks or compact earth or soil.

**"Machine Control and Guidance Devices"** means any device designed to guide the operation of the Earthmoving & Compaction Equipment, including but not limited to cross slope, laser, UTS, GPS or compaction meters.

**"Wear Items"** includes blades, buckets, bucket teeth, rippers, ripper teeth, cutting edges, tyres, track gear, fuel lubricants and all other ground engaging tools, attachments and accessories.

### TERMS:

1. The Customer acknowledges that Cockatoo Hire has made the manufacturer's operating and safety instructions for the Earthmoving and Compaction Equipment available to the Customer.
2. The rates for Compaction and Earthmoving products are based on a single standard shift per day (12 hours each day on a 7 day week). Any usage of the Equipment in excess of the agreed hours will incur an additional charge.
3. The Customer is responsible for replacing any Wear Items of the Earthmoving and Compaction Equipment when they are damaged or become worn or run out during the Hire Period. If the Customer does not replace the Wear Items in accordance with this clause, it will be responsible for the cost of replacing the Wear Items.
4. Unless expressly stated otherwise by Cockatoo Hire, the Customer will at its expense:
  - a. maintain and clean the Earthmoving & Compaction Equipment and undertake all preventative maintenance and minor running repairs (including electrical, hydraulic hoses and oil leaks) in accordance with the manufacturer's specifications; and
  - b. if applicable, completing the manufacturer's required oil sampling analysis on all compartments or pay Cockatoo Hire to do so (if the Customer fails to do so in accordance with paragraph (a)).
5. The Customer must remove any detachable operator display or receiver of a Machine Control and Guidance Device from the Earthmoving & Compaction Equipment at the end of every shift and store it in a safe place to prevent loss, theft or damage.
6. The Customer is responsible for:
  - a. verifying the accuracy of any Machine Control and Guidance Device during the Hire Period; and
  - b. checking the calibration of the Machine Control and Guidance Device on the Earthmoving & Compaction Equipment before each use and calibrate it at frequent intervals during use of the Earthmoving & Compaction Equipment.
7. If any attachments not supplied by Cockatoo Hire are to be fitted to the machine, the Customer must first obtain the written approval of Cockatoo Hire before those attachments are fitted to the machine.

The Customer is responsible for the correct installation, calibration and use, as per the manufacturer's instructions of any attachments fitted to the Earthmoving & Compaction Equipment, not supplied or installed by Cockatoo Hire.
8. The Customer is responsible for undertaking the daily "Operator Safety Check" as outlined in the Cockatoo Hire "Pre-Hire and On-Site Inspection and Operator Safety Check Logbook".

These logbooks are located in protective pouches on the Earthmoving & Compaction Equipment. In the event the logbooks are not supplied with the Equipment, or are damaged, the Customer must stop using the Earthmoving & Compaction Equipment and notify Cockatoo Hire immediately.

# Special Conditions of Hire

## Hire of Motor Vehicles

These Special Conditions of Hire are in addition to Cockatoo Hire's Standard Terms and Conditions of Hire and apply where the Equipment hired by a Customer is a Motor Vehicle. The definitions contained in the Terms and Conditions of Hire apply to these Special Conditions unless expressly stated otherwise. If there is any conflict between Cockatoo Hire's Standard Terms and Conditions of Hire and these Special Conditions of Hire, these Special Conditions of Hire will prevail to the extent of any conflict.

### DEFINITIONS:

**"Motor Vehicle"** means Equipment that is a car, truck, utility, caravan, van, motorbike, bus, prime mover, watercart, forklift, trailer or trailer mounted attenuator.

### TERMS:

1. Prior to the Start Date, the Customer must provide Cockatoo Hire with all the information required under the relevant legislation and/or requested by Cockatoo Hire for those persons who will operate the Motor Vehicle on the Customer's behalf including but not limited to a copy of the drivers licences for the relevant drivers.
2. The Customer must keep a record of all relevant details of any driver of a Motor Vehicle including name, driver's licence details, date and time that the driver used the Motor Vehicle. Cockatoo Hire may require the Customer to provide a copy of that record and the Customer must provide a copy of that record to Cockatoo Hire when requested to do so by Cockatoo Hire.
3. The Customer warrants that it will not permit a person to drive a Motor Vehicle if the person:
  - a. Is unlicensed or holds a restricted licence to drive that class of Motor Vehicle, or if the person's licence is otherwise not recognised in the state in which the Motor Vehicle is being driven or used;
  - b. is under the age of 21 years;
  - c. is impaired by drugs and/or alcohol or prescription or pharmaceutical medication;
  - d. has been convicted of any offence relating to driving a motor vehicle under the influence of drugs or more than the legally prescribed limit of alcohol;
  - e. has had their driver's licence suspended, cancelled or adversely endorsed in the last three years; or
  - f. has previously been refused motor vehicle insurance.
4. The Customer warrants that the vehicle will not be used:
  - a. to carry flammable, explosive or corrosive materials;
  - b. to carry any greater load and/or more persons than is lawful;
  - c. to carry animals
  - d. in a dangerous manner
  - e. for any purpose other than its ordinary and stated purpose; or
  - f. in contravention of any legislation, regulation or in connection with any illegal purpose.
5. Within 5 Business Days of receiving a notice from Cockatoo Hire or any government entity, the Customer will pay all tolls, fines, penalties and other statutory or government charges arising out of its use of the Motor Vehicle during the Hire Period or will reimburse Cockatoo Hire within 5 Business Days of demand if Cockatoo Hire has paid such charges.
6. Cockatoo Hire may charge the Customer for the number of kilometres that the Motor Vehicle has travelled during the Hire Period, or for excess kilometres if an agreed usage is made within the hire charge. If the seal on the odometer is broken, or appears tampered with, the Customer will be reported to the appropriate authority and the Customer will be deemed to have driven the vehicle for a minimum 500km per day of hire.
7. In the event of an accident involving the Motor Vehicle during the Hire Period, the Customer must thoroughly record the circumstances of the accident, and fully co-operate with Cockatoo Hire and/or Cockatoo Hire's insurer.
8. The Customer must return the Motor Vehicle to Cockatoo Hire with a full tank of fuel or the Customer will be liable to pay Cockatoo Hire the fuel charges and the labour cost for filling the fuel tank.
9. Any extension of the Hire Period is at the sole discretion of Cockatoo Hire, and Cockatoo Hire's prior written consent must be obtained prior to any extension. It is the responsibility of the Customer to ensure the Motor Vehicle is returned to the Customer at the end of the Hire Period, and failure to do so may be reported to the relevant authorities to mitigate the possibility of theft or conversion.
10. The payment of the Damage Waiver fee will not cover the Customer's liability in respect of any claim by a third party arising out of the Motor Vehicle being lost, stolen or damaged during the Hire Period.
- 10A. Clause 13.1(c) of the Terms and Conditions of Hire is amended to read the following: "(c) pay to Cockatoo Hire the LTD Waiver excess which is the greater of: the cost of repairing any damage to the Motor Vehicle up to an amount of \$2,500 if the driver is 5 years or over: or cost of repairing any damage to the Motor Vehicle up to an amount of \$3,500 if the driver is under 25 years; and the amount equal to 15% of the cost of repair or (if beyond repair), 15% of the cost to Cockatoo Hire to replace the Motor Vehicle.
11. For the avoidance of doubt, Motor Vehicle Damage Waiver will not cover the Customer's liability in respect of any claim by a third party arising out of the Motor Vehicle being lost or stolen during the Hire Period. Notwithstanding clause 15.5 and subject to clause 13.2, the Damage Waiver Excess will cover a claim by a third party which relates solely to damage sustained to the third party's motor vehicle arising as a result of the Customer's use of the Motor Vehicle.
12. Clause 13.2 of the Terms and Conditions of Hire is varied so that the Loss Theft Damage Waiver will not apply to limit a Customer's liability in the following circumstances, which are in addition to the circumstances listed in clause 13.2:
  - a. loss or damage caused by collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object due to insufficient clearance;
  - b. damage to the Pantech;
  - c. damage to any crane, including but not limited to a truck mounted crane;
  - d. damage to or damage caused by a truck mounting device; or
  - e. damage caused while the Motor Vehicle is being driven on any road that is unsealed or is not a public road.



# Special Conditions of Hire

## Hire of Temporary Buildings (including ablution blocks and portable toilets)

These Special Conditions of Hire are in addition to Cockatoo Hire's Standard Terms and Conditions of Hire and apply where the Equipment hired by a Customer is a temporary building (including ablution units and portable toilets), designed for and capable of being removed from the site at the end of the Hire Period. The definitions contained in the Terms and Conditions of Hire apply to these Special Conditions unless expressly stated otherwise. If there is any conflict between Cockatoo Hire's Standard Terms and Conditions of Hire and these Special Conditions of Hire, these Special Conditions of Hire will prevail to the extent of any conflict.

1. Unless expressly stated otherwise, the minimum period of hire is 6 weeks and minimum hire charges may apply. A cancellation fee of 50% of the Hire Charges will apply if delivery is cancelled under 24 hours from the delivery date.

### Design Specifications:

2. Unless expressly stated otherwise, Cockatoo Hire does not warrant any design specifications for the installation of any temporary buildings and does not warrant the accuracy or otherwise of any design specifications. The Customer acknowledges and agrees that it is solely responsible for ensuring the accuracy and completeness of any design specifications provided by Cockatoo Hire.

### Customer Installation Responsibilities:

3. Unless expressly specified on a quote provided by Cockatoo Hire, the Customer must, at its cost:

- a. have express legal authorisation to have the temporary buildings placed, installed or connected to the site, and grant Cockatoo Hire clear, safe access to the site at the agreed times;
  - b. obtain all necessary approvals, consents and clearances from councils and other statutory authorities, and inform Cockatoo Hire of the terms upon which such approvals, consents or clearances have been granted,
  - c. provide a clear, firm level and compacted area to a minimum 100kPa, suitable for building installation and crane operations;
  - d. provide clear, safe access to facilitate efficient delivery, unloading, installation, relocation or removal of the temporary buildings;
  - e. provide any crane hire for installing the portable buildings on to clients prepared area and any associated permits or documentation i.e. lift plans or under flight paths;
  - f. Provide all traffic management requirements for the safe unloading of the temporary buildings and any wide load permits or escorts.
  - g. arrange connection of all required services including electrical, power, gas, telephone and data, water, sewer and storm-water unless otherwise stated in the hire quotation
  - h. mark all boundaries of the site where work is to proceed along with a set out start point, including laydown areas or locations where soil is to be removed or placed if so required;
  - i. locate, mark and advise Cockatoo Hire in writing of all gas pipes, water pipes, sewage lines, drainage lines, telephone cabling and other utilities that are on, near or adjacent to the site before delivery of the temporary buildings;
  - j. advise Cockatoo Hire of any potential or existing subsidence, slip, erosion, flooding or similar condition which might constitute a hazard
  - k. comply with all relevant and applicable building laws, codes, standards and practices including fire compliance;
  - l. ensure the building is secured with adequate "tie-downs" in accordance with the Australian Specifications and any engineered certified hold down systems (44 gallon drums are not sufficient nor necessarily compliant); Customer is to supply all ground penetrating permits for driven type tie down. ensure road slabs and indirect foundations are able to withstand the pressure from one base of the support on accordance with all current standards and regulations; and provide access for servicing of any portable toilets or waste holding tanks such that the servicing truck can be within 10m of the units at the agreed times.
4. For the avoidance of any doubt, and notwithstanding any other document, the Customer is solely responsible for the condition of the site, and indemnifies Cockatoo Hire for any Claims, losses, expenses or liabilities arising from any condition above or below the surface of the Site, and including any environmental consideration as may apply to the Site.
5. Cockatoo Hire does not provide any warranty in relation to the suitability of the water containing in any water tank supplied, nor that the water quality meets appropriate drinking standards.

### Loss, Theft and Damage Waiver:

6. Clause 13.2 of the Standard Terms and Conditions of Hire is amended to include the following additional provision:

(f) with respect to Portable Buildings or toilets, the Customer failed to comply with the Customer Installation Responsibilities specified in the Special Conditions for Portable Buildings.

### Non-load bearing structures:

7. The Customer acknowledges that portable buildings are not load bearing structures and attachments such as walkways; roofing & electrical risers are not to be fixed to them and permission is required from Cockatoo Hire before any modifications are made.
8. The Customer will be liable for any damage to the structure or integrity of the portable building and any failure to properly maintain (or misuse of) any ancillary equipment (including but not limited to air-conditioning units and fridges).
9. It is a customer requirement to lay down all furniture (evenly and securely throughout the building) to eliminate any damage to the building /accessories whilst loading/transporting. Failure to comply may lead to damage cost to customer.

### Cleaning and Electrical Inspection:

10. The Customer must pay Cockatoo Hire for cleaning and electrical inspection fees charged upon return of the portable building. Please refer to your quotation for details.
11. The Customer agrees to pay an additional cleaning fee per floor and additional charges will apply for the cleaning and removal of concrete splatter, graffiti, paint, overspray, silicon, liquid nails, electrical items.
12. **Air Conditioners:** Unless expressly stated otherwise, the Customer must ensure air-conditioners are removed from walls and other equipment is packed securely for transport upon return to Cockatoo Hire's Premises. The Customer must regularly maintain the air-conditioning units and replace/clean the filters every 2 weeks (or in accordance with manufacturer's instructions) during the Hire Period.
13. Any air conditioner or accessory that is required to be replaced due to unit's not being regularly maintained or mistreated during hire may incur replacement and freight charges.
14. The Customer acknowledges compliance with this special condition may result in additional cost for the Customer and the Customer agrees to inform itself of all costs of complying with this special condition.

# Special Conditions of Hire

## Hire of Power Generation

These Special Conditions of Hire are in addition to Cockatoo Hire's Standard Terms and Conditions of Hire and apply where the Equipment hired by a Customer is a Power Generator. The definitions contained in the Terms and Conditions of Hire apply to these Special Conditions unless expressly stated otherwise: **If there is any conflict between Cockatoo Hire's Terms and Conditions Hire and these Special Conditions of Hire, then these Special Conditions of Hire will prevail to the extent of any conflict.**

### DEFINITIONS

**"Power Generator"** means a device or combination of devices that produces electrical energy (also known as a generator set or power source).

### SPECIAL CONDITIONS

1. The Customer acknowledges that Cockatoo Hire has made the manufacturer's operating and safety instructions for the Power Generator available to the Customer.
2. The Customer will be responsible for the cost of any crane hire if required for the installation and delivery of any Power Generator.
3. Prior to the hire commencing, the Customer:
  - a. warrants that it has received its own independent advice from a qualified and accredited professional as to the specifications of any Power Generator for its required purpose.
  - b. must advise Cockatoo Hire of any proposed modifications, alterations or additions required to the design or operation of the Power Generator as recommended by a qualified and accredited professional, and obtain Cockatoo Hire's written approval for the same.
  - c. must ensure any agreed modifications, alterations or additions to any Power Generator are fitted by authorised Cockatoo Hire or Third parties technicians, a qualified technician retained by the Original Equipment Manufacturer, or a qualified and accredited professional who warrants the work undertaken is of the highest standard, and in accordance with all applicable standards, regulations and laws.
4. Unless Cockatoo Hire is responsible for the installation of the Power Generator, the Customer is responsible for arranging the connection, maintenance and disconnection of the Power Generator by a qualified electrical contractor who will undertake the works strictly in accordance with the applicable State or Territory laws and regulations.
5. If the Customer requires a fuel cell to be fitted to the Power Generator, it must advise Cockatoo Hire in writing of the requirement. Any fuel cell, hoses or other ancillary equipment must be supplied by Cockatoo Hire, must be fitted by an authorised Cockatoo Hire technician only and may incur additional charges. The Customer indemnifies Cockatoo Hire for any Claims, or liability arising from or in any way connected to the Customer's breach of this provision.
6. The Customer is responsible at its expenses for arranging the inspection or reinspection of the Power Generators by the applicable electrical safety authority, when required.
7. Where Cockatoo Hire must maintain and/or service the Power Generator, the Customer will grant reasonable access to Cockatoo Hire during Business Hours and will be liable for any additional expenses of Cockatoo Hire if access is not granted.
8. The Customer must operate the Power Generator strictly in accordance with the applicable State and Territory electrical laws and regulations and indemnifies Cockatoo Hire against any Claim incurred as a result of the Customer's breach of this clause.
9. When the Equipment hired is Power Generation, clause 5.2 of the Standard Terms and Conditions of Hire is amended to read:  
Additional hire charges may apply if the Hire Equipment is used for more than a standard shift (12 hours each day on a 7 day week).
10. When operating the Power Generator, the Customer will:
  - a. ensure there is a minimum 1.2m clearance around all sides of the Power Generator and the area is prepared to allow for clear, safe access, is level and free of any hazards to facilitate Cockatoo Hire or Cockatoo Hire's third parties service technicians a clear, safe working area for undertaking any servicing or repair works, and to allow for daily maintenance to be undertaken by the Customer;
  - b. 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;
  - c. in the event of a leak, spill or dispersal, immediately implement control measures to prevent, limit or reduce the impact;
  - d. evaluate whether spill kits should be available at the site the Power Generator is located;
  - e. ensure the Power Generator is not operated for any purpose beyond its rated capacity, or in a manner likely to result in undue wear; and
  - f. be responsible for the installation, plumbing or bunding of any external fuel cells or additional tanks (unless Cockatoo Hire is expressly responsible).
11. Unless expressly provided otherwise, Cockatoo Hire makes no warranties about the ability of the Power Generator to provide constant, uninterrupted power supply. The Customer is responsible for ensuring the Customer has a contingency power supply in place on site if the event the Power Generator fails. Notwithstanding any other provision in this Agreement, Cockatoo Hire will not be liable for any Claim, loss, cost or expense whatsoever arising from or in any way connected to the Customer's failure to implement a contingency power supply.
12. The Customer acknowledges and agrees that Cockatoo Hire is not liable for any Claims arising from or in any way connected to the hire or use of the Power Generator (including but not limited to any loss or damage arising from or as a consequence of a power failure, power surge or fluctuation in power delivery), except to the extent the Claim is caused solely by Cockatoo Hire's negligence.

# Special Conditions of Hire

## Hire of Pumps

These Special Conditions of Hire are in addition to Cockatoo Hire's Standard Terms and Conditions of Hire and apply where the Equipment hired by a Customer is a Pump. The definitions contained in the Terms and Conditions of Hire apply to these Special Conditions unless expressly stated otherwise. **If there is any conflict between Cockatoo Hire's Standard Terms and Conditions of Hire and these Special Conditions of Hire, these Special Conditions of Hire will prevail to the extent of any conflict.**

### DEFINITIONS

**"Pump"** means Equipment that is used for moving liquid via mechanical means.

**"Uncertified Design"** means any design, calculation, specification, drawing or sketch that has not been accompanied by a certificate from an engineer or agent employed or engaged by Cockatoo Hire.

### TERMS

1. The Customer acknowledges that Cockatoo Hire has made the manufacturer's operating and safety instructions for the Pump available to the Customer.
2. Any designs, calculations, drawings, specifications and sketches ("**the Specifications**") produced by Cockatoo Hire for the Customer are prepared solely on the information supplied by the Customer and unless expressly stated otherwise, Cockatoo Hire is not responsible for checking or verifying the information supplied by the Customer for the purpose of preparing the Specifications.
3. Cockatoo Hire is not responsible for the accuracy of the details of any Uncertified Design. Any Uncertified Design is indicative only and has been prepared for the sole purpose of assisting the Customer in assessing and comparing options. The Customer acknowledges and agrees that Cockatoo Hire is not liable for any loss or damage arising from or in any way connected to the use any Uncertified Design.
4. The Customer acknowledges and agrees that Cockatoo Hire is not liable for any Claims arising from the use of any Specifications, except to the extent the Claim is caused solely by Cockatoo Hire's negligence.
5. The Customer indemnifies Cockatoo Hire against all liability and Claims (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against Cockatoo Hire and any environmental loss, cost, damage or expense) in respect of:
  - a) personal injury;
  - b) damage to tangible property; or
  - c) a claim by a third party,in relation to the Customer's use or reliance on the Specifications or any Uncertified Design.
6. The Customer warrants that it has obtained its own independent advice from a qualified and accredited professional in relation to the proper design, installation and use of the Pumps for its required purpose.
7. Prior to the hire, the Customer must advise Cockatoo Hire of its Pumps requirements including any proposed alterations and adjustments the qualified and accredited professional requires to any Specifications provided by Cockatoo Hire.
8. Cockatoo Hire requires unrestricted access to the site the Customer nominates for the delivery and installation of the Pumps or Dewatering Equipment. Prior to the commencement of the installation, the Customer must at its expense:
  - a) Obtain all necessary approvals from any relevant authority or local council for the installation of the Pumps or Dewatering Equipment, and the supply and discharge of water;
  - b) isolate the power running through electrical wires (either above or below ground) that are in close proximity to where the Pumps will be positioned;
  - c) undertake any necessary pre-drilling of well point holes;
  - d) undertake any excavation, drilling or restoration necessary to ensure that the area for installation of the Pumps is free of any obstruction (including, but not limited to, rubble, road base, footpaths and fencing) and is suitable for the operation of the Pumps;
  - e) organise a power connection for the Pumps if connecting from the main power line;
  - f) provide a crane or excavator for the placement and removal of the Pumps at the Customer's expense, and
  - g) provide Cockatoo Hire with all relevant site information and any other information relevant to the safe delivery and installation of the Pumps.
9. The Customer is responsible for instructing Cockatoo Hire where to position the Pumps at the Customer's site. Where Cockatoo Hire is responsible for the installation, Cockatoo Hire may refuse the Customer's instructions if the Pump or Dewatering Equipment is not suited to the position.
10. Cockatoo Hire discloses and the Customer acknowledges that the Cockatoo Hire's water tanks are non-potable, Cockatoo Hire recommends the use of a suitable UV filtration system in conjunction with its standard filtered water tanks.
11. The Customer is solely responsible for fuelling and oiling Pumps on a daily basis as a minimum and as specified in the operation and maintenance manual. Requisite fuelling and oil levels are to be maintained at all times and engines must be stopped regularly for checking.
12. The Customer is responsible for all pumped discharge and all matters relating to the storage and disposal of the discharge, including, but not limited to:
  - a) identification of contaminated discharge, and
  - b) proper treatment and disposal of contaminated discharge, strictly in accordance with all relevant laws and to the satisfaction of all relevant state environmental authorities; and
  - c) obtaining a discharge licence and paying any applicable fees.
13. Where the Pumps are used for the transfer of sewerage, corrosive liquids or other noxious materials, the Customer is solely responsible for the sterilisation, cleaning and decontamination of all contaminated Equipment and accessories prior to returning it to Cockatoo Hire. If sterilisation or decontamination is not possible, the Customer is responsible for any costs incurred by Cockatoo Hire in the replacement of the Equipment and accessories.
14. Cockatoo Hire excludes from all liability (in addition to its excluded liability under the Terms and Conditions of Hire) in relation to the hire and use of the Pump and Dewatering Equipment, including, but not limited to, liability arising from:
  - a) damage to all adjacent or surrounding structures on, above or below the ground;
  - b) damage caused by subsidence;
  - c) damage to utilities or services located on, above or below the ground;
  - d) handling storm water and pumping waste;
  - e) pumping of abrasive, corrosive, noxious or chemical heavy or acidic/alkaline liquids or waste;
  - f) the misapplication or misuse of the Pump, including but not limited to using the Pump outside of its stated capacity, or specified purpose;
  - g) the operation of the Pump not adequate for external conditions, including ground water conditions, which are outside Cockatoo Hire's control;
  - h) the operation of the Pump by Cockatoo Hire's personnel while under the Customer or the Customer representative's direction and instruction, or exceeding the maximum noise level prescribed by law.
15. On-call, or out of schedule pump out services require a minimum of 48 hours' notice, and attract a minimum charge out fee.