

## The Glossary

### 1. DEFINITIONS AND INTERPRETATION

**Additional Expenses** means any duties, fees, expenses, taxes (including GST and stamp duty) and disbursements imposed by these Terms, including delivery and freight charges, mobilisation/assembly/installation costs, ground engaging tools, permit and licence fees, toll or other road charges, scaffolding or fence hire charges, traffic management costs, recalibration fees, wet hire operator costs, call-out fees, repair/maintenance/service fees, fuel and other consumables, disassembly/decommissioning costs, cleaning fees, handling and restocking fees, labour charges, costs for third-party services, administration and account keeping fees, merchant fees and surcharges, at amounts advised by Us from time-to-time.

**Credit Account** means the approved commercial account You have with Us to Equipment on credit pursuant to these Terms, or the number of trading days listed on Our invoice.

**Customer** means any person, firm or company placing an Order with Us for Equipment hire, including Your associated, related, subsidiary and parent companies, successors and assigns (all of which are referred to as "You" and "Your").

**"Damage"** means any physical loss of or physical damage to Equipment, including theft, vandalism, loss, and/or damage requiring repair or replacement of the Equipment. Damage does not include fair wear and tear.

**Due Date** means the date listed on Our invoice for Your payment of Equipment hire, Goods and Services.

**Equipment** means the plant, machinery, appliances, tools, vehicles, accessories and other equipment that We hire to You pursuant to these Terms.

**Force Majeure** means something outside a party's reasonable control, including war, strikes, lockouts and lockdowns, epidemics and pandemics, industrial disputes or civil unrest, government restrictions or intervention, transport delays, fire, act of God, storm, flood, theft and vandalism.

**Goods** means any tools, parts, products, materials, consumables, merchandise and other goods that We supply to You as part of the Equipment hire.

**Hire Contract** includes these Terms, the document headed 'Rental Contract' specifying the Equipment and hire services to be supplied to You, and any special conditions listed in the 'Rental Contract' document.

**Hire Period** means the period of time that We will supply the Equipment to You and as stipulated in the Hire Contract. For the avoidance of doubt, or if there is no such time displayed, the Hire Period is the time that You have the Equipment in Your possession (including any rollover of possession or extension of the Hire Period). For the avoidance of doubt, the Hire Period is not the time that the Equipment is in operation unless We otherwise agree.

**Industrial Law** means any industrial or employment contract, award, instrument, rule, statute or legislation and amended from time to time.

**Insolvency Event** means any circumstances where We reasonably believe

that You are unable to pay Your debts as and when they fall due or You have suffered a material adverse change in Your financial circumstances.

**Loss** means any claim, demand, cause of action, loss and damage, liability, costs (including legal costs on an indemnity basis), expenses (including any GST payable) and is not limited by the Losses which were contemplated by the parties at the time of entering into these Terms.

**Order** means Your request to hire Equipment.

**PPSA** means:

- (a) the *Personal Property Securities Act 2009* (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of the PPS Act.

**Quote** means Our written description and price of the Equipment to be supplied to You, which is valid for 30 days.

**Services** means any mobilisation, installation, calibration, inspection, repair, maintenance, decommissioning or other services that We provide to You as part of the Equipment hire.

**Site** means any place where You request Equipment to be supplied.

**Supplier** means the entity or entities specified in these Terms as hiring Equipment to You and includes any associated, related, subsidiary and parent companies, successors and assigns (all of which are referred to as "Us", "We" and "Our").

**Website** means [www.deltarent.com.au](http://www.deltarent.com.au) and [www.deltagroup.com.au](http://www.deltagroup.com.au) as redirected from time to time.

In these Terms:

- (a) A reference to 'Terms' means these Terms and Conditions of Hire;
- (b) Multiple Customers are jointly and severally liable under these Terms;
- (c) A reference to 'dry hire' means the hire of Equipment without an operator;
- (d) A reference to 'wet hire' means the hire of Equipment with an operator;
- (e) All amounts are in the Australian dollar currency;
- (f) A Business Day is any day except Saturday, Sunday or a public holiday in the location where the Goods and/or Services are being supplied;
- (g) a reference to writing includes email and any communication through Our website;
- (h) a reference to a clause or paragraph is a reference to these Terms;
- (i) a reference to a party to these Terms or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (j) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (k) headings and any explanatory notes and paragraphs are for ease of reference only and do not affect the meaning or interpretation of these Terms;
- (l) a reference to 'including' does not convey any limitation and should be interpreted as if the word 'without limitation' also appear; and
- (m) if these Terms require something to be done on a day that is not a

Duly signed and accepted in full on behalf of \_\_\_\_\_

Signature \_\_\_\_\_ Name \_\_\_\_\_ Position \_\_\_\_\_ Date \_\_\_\_\_

Business Day (for example, payment or notice), then it must be done on the preceding Business Day.

## About these Terms

### 2. THIS AGREEMENT AND OUR RELATIONSHIPS

- (a) The Hire Contract contains the entire terms and conditions for all Equipment that We hire to You. Except where the parties agree otherwise (which must be by a duly authorised officer and in writing), the Hire Contract apply notwithstanding any provisions to the contrary which may appear on any other document.
- (b) Where there is any inconsistency in the Hire Contract, these Terms prevail.
- (c) You warrant that You have obtained all the necessary authorisations to enter into and perform the contract created by these Terms. You warrant that any person signing these Terms or instructing Us as to the Equipment hire has Your authority and power to do so.
- (d) If You are a trading trust, You enter into these Terms in your own right and as trustee of the trust. You warrant that the Hire Contract extends to all rights of indemnity that You now have or may in the future have against trust assets.
- (e) You accept these Terms by signing and returning a copy of them to Us or by other conduct, for example by oral acceptance, submitting an Order, or by instructing Us to supply Equipment and/or other Goods and Services.
- (f) You engage Us to Equipment strictly as an independent contractor. We are not engaged as Your employee, partner, agent, joint venture or franchisee, nor is any other person working at Our direction.
- (g) These Terms are interpreted according to the laws of the State or Territory as We may determine in Our sole discretion. Proceedings by either party may be commenced and/or continued in the State or Territory We determine in Our sole discretion. If We do not make any determination, You consent to any proceedings being commenced and heard by a Court in the State of Victoria applying the laws of that State.

### 3. CHANGES TO THESE TERMS

- (a) From time-to-time, We may update or alter Our standard terms and conditions of hire. We will provide You with 7 days' written notice of any updated standard terms and conditions of hire;
- (b) Unless you object to the updated terms and conditions of hire in writing and within the notice period, the updated terms and conditions of hire will apply to all Orders placed after the date of the notice.
- (c) Any other changes to the contract must be agreed by the parties in writing.
- (d) You must notify Us in writing of any material change to Your organisation, including a change of director, bank account details or change of address.
- (e) We may assign and transfer all or any of Our title, estate, interest, benefit, rights, duties and obligations in these Terms to any person, provided that the assignee agrees to assume any of Our duties and obligations owed to You in these Terms.
- (f) You must not assign, transfer, charge, encumber or otherwise deal with any of Your rights and obligations under these Terms, or attempt or purport to do so, without first giving Us 14 days' written notice and obtaining Our written consent.

## How to Equipment From Us

### 4. MINIMUM HIRE PERIODS

- (a) We may impose minimum Hire Periods from time-to-time.
- (b) Unless We otherwise agree in writing, You agree to take possession of or pay for the Equipment for the full Hire Period stipulated by the Hire Contract.
- (c) You agree to pay all charges and Additional Expenses associated with the Equipment for the full Hire Period, plus any rollover or

extension of the Hire Period.

- (d) Hire Periods beginning or ending before 9.00am on any business day will be deemed to have commenced or ended on the previous calendar day. Hire Periods beginning or ending on or after 9.00am on any business day will be deemed to have commenced or ended on that business day.
- (e) You may request to shorten or extend the Hire Period, acceptance of which is in Our sole discretion and will not be unreasonably withheld.
- (f) We may end the Hire Period early by notifying you verbally or in writing. If We end the Hire Period early, You must return the Equipment to Us at the time that We reasonably require and We will adjust all hire charges on a pro-rata basis. For the purpose of pro-rata, a week shall be 7 days and a month shall be 30 days.

### 5. PRICES, QUOTATIONS AND ORDERS

- (a) We may issue a Quote to You, but a Quote is not an offer by Us to supply Equipment to You.
- (b) We may vary or cancel any Quote before an Order is accepted.
- (c) You may hire Equipment by placing an Order with Us verbally or in writing. You warrant that the person who places the Order is authorised by You to do so.
- (d) We may accept or decline any Order by notifying You in writing or by supplying Equipment to You.
- (e) We may ask you to pay a deposit for an Order at any time and in any amount that We advise from time-to-time. We are not required to accept Your Order until payment of the deposit has been made. The balance of the Order must be paid as We reasonably direct.
- (f) You may cancel an Order up to 24 hours after We have accepted it. In all other situations You cannot cancel an Order more than 24 hours after acceptance without Our written consent and at Our absolute discretion.
- (g) Unless the parties otherwise agree in writing, the price You must pay for Equipment hire is specified in Our invoice and is calculated as in accordance with Our price list that is current at the time You place Your Order.
- (h) All prices may include Additional Expenses and You agree to those Additional Expenses.
- (i) We have the right to change the price of Equipment hired under these Terms in the following situations:
  - i) Before accepting any Order or request for a Quote;
  - ii) When Our scope of work changes, including where You request additional Equipment, Goods and Services or the Hire Period is varied; or
  - iii) At any other time with 30 days' written notice to You, which You may object to in writing within the notice period; and
  - iv) Our standard price lists are subject to change without notice to You if You have no Equipment on hire at the time Our prices are changed.

## Paying for Equipment

### 6. CREDIT ACCOUNTS

- (a) You may apply for a Credit Account with Us for hire of Equipment and purchase of Goods and Services.
- (b) We have no obligation to provide or continue to provide credit facilities to You. You are not entitled to credit facilities until You receive an approved Credit Account with Us.
- (c) A Credit Account must only be used by You, which means it cannot be assigned, transferred or made available for use by any other entity or person (including by a subsequent purchaser of You) without Our prior written consent. Any credit limit placed on Your Credit Account is for Our administrative purposes only and does not constitute a term of this or any other contract You have with Us.
- (d) If You exceed the credit limit placed on Your Credit Account, We may require You to make immediate payment on Your Credit Account to return Your Credit Account to the credit limit before placing any

further Orders.

- (e) You also authorise Us to debit Your Credit Account with the price of Equipment supplied to You and all other amounts owed by You to Us (including fees and interest payable under the Contract).
- (f) We may apply any payments You make to Us towards any debt You owe Us. We may also set-off any credit amount that We owe to You against any debt owed to Us by You.
- (g) Time is of the essence in relation to this section. This section survives expiry or termination of these Terms.

## 7. PAYMENT

- (h) Unless the parties otherwise agree in writing, You must pay for all Equipment hire on or before the Due Date.
- (i) All amounts payable by You for Equipment hire are inclusive of GST (unless expressly stated otherwise).
- (j) You must pay Us GST imposed on any Equipment hire made under these Terms. Payment of any GST must be made at the same time as payment for the Equipment hire.
- (k) Payment must be made in a method that is approved by Us. There may be Additional Expenses associated with Your chosen payment method (for example, a surcharge of up to 1.5% of the price of the Goods).
- (l) If You believe You have a set-off or claim against Us (including any query, dispute or claim), You cannot withhold any payment on that basis without Our prior written consent.
- (m) If You do not pay for Equipment by the Due Date, We may:
  - i) Charge You interest on all overdue accounts a rate which is 4% higher than the cash rate last published by the Reserve Bank of Australia as at the Due Date, calculated and payable daily and compounded from the due date until the invoice is paid in full. The parties agree that this interest charge is not a penalty, but a true measure of damages incurred by Us;
  - ii) Require You to pay cash on delivery of any further Goods, Services, Equipment and/or Labour Hire, or suspend or cease supplying Equipment to You;
  - iii) Demand Your immediate payment of all outstanding monies;
  - iv) Charge You a reasonable fee if any payment is dishonoured or returned by Your financial provider (or where we are otherwise unable to process any payment from Your financial provider);
  - v) Credit any payments received from You first against any interest charges and costs and all such charges will be payable on demand; and
  - vi) Preclude You from participating in any special deals, discounts, bonus payments redemptions, rebates and all other incentive programs until Your account is no longer overdue.

## Getting the Equipment to You

## 8. DELIVERY

- (a) Specifications for the Equipment hired under these Terms are contained in the Order/s You submit from time-to-time.
- (b) We will deliver all Equipment to You. You must pay all Additional Expenses associated with delivery of Equipment.
- (c) The method of delivering the Equipment is at Our sole discretion. We may appoint a third-party agent to perform any delivery obligations of these Terms.
- (d) You authorise Us to:
  - i) deliver Equipment to Your nominated Site; and
  - ii) leave the Equipment at the Site whether or not any person is there to accept delivery.
- (e) We are not obliged to obtain a signed receipt, signed delivery docket or other acknowledgement of any Equipment being delivered. But if a signed receipt, delivery docket or other acknowledgement is obtained then that document will be conclusive evidence of Your acceptance of the Goods and/or Equipment delivered.
- (f) All supply and delivery times indicated by Us are given in good faith

and are estimates only. Estimates of time are subject to Goods and Equipment being available, Our reasonable ability to supply on the estimated date, and receiving Your required cooperation.

- (g) We will endeavour to deliver Equipment at the time you need, but if We fail to deliver within a specified time, You are not allowed to cancel Your Order, refuse to accept supply or refuse to pay.
- (h) Delivery of the Equipment is deemed to occur when:
  - i) In respect of Goods and/or Equipment, they are handed to You or Your representative or delivered to the Site;
  - ii) In respect of Services and/or Labour Hire, when We complete the Services or the Personnel starts work for you.
- (i) When delivery occurs Our obligation to supply is discharged.
- (j) You agree to inspect and examine any Goods and Equipment immediately on delivery.
- (k) If You need to return Equipment for any reason, You must notify Us in writing within 24 hours of receiving the Equipment.
- (l) Return of Equipment (and any credits for returns) is at Our sole discretion, consent for which will not be unreasonably withheld.
- (m) We cannot accept return or credit of any Goods or Equipment which are custom, non-stocklist or specially ordered / made to Your specifications.
- (n) Returns may attract Additional Expenses.

## 9. RISK AND OWNERSHIP

- (a) Unless the parties otherwise agree in writing:
  - i) All risk in Equipment passes to You when the Equipment leaves Our premises and remains with You until the Hire Period ends or the Equipment is returned to Our premises, whichever occurs first. This means You are responsible for all risk to the Equipment during transit and delivery; and
  - ii) All risk in any Goods and Services passes to You when Goods are delivered to You (or Your agent, representative or nominated carrier) or when the Services are completed, as the case may be.
- (b) Legal ownership of Equipment remains with Us at all times and never passes to You (even if You enter liquidation, administration, receivership or become bankrupt during the Hire Period). Your rights to use the Equipment are as bailee only.
- (c) Legal ownership of any Goods does not pass to You until We have received all amounts owing by You on any account whatsoever with Us, including any Additional Expenses.
- (d) Until legal ownership of the Goods passes to You, Goods are held by You for Us as bailee. You must store Equipment and any of Our Goods separately from Your own or anyone else's Goods. Storage must be in a way that clearly identifies the Equipment and Goods as Our property and prevents the Equipment and Goods from being lost or damaged.
- (e) You may resell any Goods before legal ownership passes to You, provided that You:
  - i) Resell the Goods to a third party in the ordinary course of business;
  - ii) Act in any transaction as Our fiduciary agent;
  - iii) Hold the proceeds of sale of Goods on trust for Us and in a separate account with separate records;
  - iv) Account to Us for those proceeds or any other payment made by a third party for any sale of the Goods; and
  - v) Allow us to inspect any records of any payments received for Goods.
- ii) If You do not pay for Equipment by the Due Date or You suffer an Insolvency Event, then We may repossess the Equipment and any Goods wherever they are located. You irrevocably grant Us (including Our agents or any other nominated representative) an unrestricted right and licence to enter any Site or premises occupied by You without notice for the purpose of identifying and repossessing any of the Equipment and Goods. We reserve these repossession rights without being liable to You or any other third party in any way.

**10. WHAT YOU MUST DO BEFORE THE HIRE PERIOD BEGINS**

- (a) To facilitate the supply of Our Services, You must:
  - i) Provide all resources that We reasonably require for hire of Equipment, including but not limited to accurate and complete instructions, Site specifications and measurements, files and records, plans, licenses and permits, traffic management systems, third parties where applicable and people (whether engineers, builders, management or staff) with the relevant authority that We reasonably require;
  - ii) Provide and maintain a suitable and safe Site for Us (or Our agents, employees or contractors) to supply the Equipment, including a Site that is compliant with occupational health and safety legislation;
  - iii) Provide clear, close and easy access for Us to deliver Equipment to or around the Site;
  - iv) Erect and maintain all amenities at the Site, including power and water supply, scaffold, barricades, guards, fencing, temporary roadways and footpaths, bathrooms, signs and lighting at the Site that We reasonably require, unless such items are included in the Hire Schedule;
  - v) Ensure that any traffic control equipment and/or personnel are present and ready for the Equipment to be supplied;
  - vi) Arrange suitably qualified, licensed and experienced operators of the Equipment, unless We have agreed to provide a wet hire operator in the Hire Schedule; and
  - vii) Provide adequate storage and protection for Equipment at the Site.
- (b) You acknowledge and agree that:
  - i) Hire of Our Equipment is limited to the particular scope of work that We have agreed to carry out in the Hire Schedule;
  - ii) Equipment is hired on the basis of instructions that You provide to Us for the Hire Schedule and information that is available to Us at the time. We are entitled to rely on the accuracy and completeness of that information, whether it is provided by Your officers, staff, advisors or consultants. You acknowledge and agree that actual Site conditions, Force Majeure Events and changes to Your project may be different or change unexpectedly, and that this may cause an unexpected variation to the hire of Equipment;
  - iii) You must notify Us promptly about any change to information that may have a material impact on the hire of Equipment; and We reserve the right to determine the method of operation, repair, maintenance or other Service that may be required for the Equipment.

- (c) **Before taking possession of the Equipment, You must:**
  - i) **Determine the suitability of the Equipment for any purpose You require;**
  - ii) **Insure the Equipment at Your own cost and expense. Insurance must be to the full insurable value of the Equipment and remain valid at all times during the Hire Period. This includes, but is not limited to, between the time that risk in the Equipment passes to You and the date that the Equipment is off-hired; and**
  - iii) **Provide us with a certificate of currency for Your insurance over the Equipment, on Our reasonable request.**

- (d) You warrant that You are using the Equipment for business purposes.

**11. WHAT YOU MUST DO DURING THE HIRE PERIOD**

- (a) When the Equipment is delivered to You, You must:
  - i) Immediately inspect the Equipment for its condition; and
  - ii) Promptly notify Us in writing of any discrepancy, unsatisfactory condition, damage or defect in the Equipment.
- (b) During the Hire Period, You must:

- i) Operate and use the Equipment in a skilful and workman like manner and only for the purposes and within the capacity for which the Equipment is designed;
  - ii) Ensure that the Equipment is operated by suitably certified, trained or licensed personnel;
  - iii) Conduct an operator pre-start inspection check list for the Equipment at the start of every operator's shift and before the Equipment is used;
  - iv) Ensure that the Equipment is used in accordance with Our instructions, the manufacturer's instructions, Your supervisory directions and any user guides or instruction manuals;
  - v) Ensure the safety of all personnel using the Equipment, including by:
    - 1. Attaching any relevant safety signs, calibration seals and anti-tamper notices to the Equipment, ensuring that they are clearly legible by all operators of the Equipment;
    - 2. Maintaining the safety signs, seals and notices and ensuring that they are not defaced or removed from the Equipment;
    - 3. Ensuring that all safety information supplied with the Equipment is conveyed to any person operating it; and
    - 4. Ensuring that all operators of the Equipment wear suitable clothing and protective equipment that We or the manufacturer require or recommend in the operating instructions;
  - vi) Submit an hour metre reading for the operation of the Equipment on a weekly basis;
  - vii) Keep the Equipment in good condition and repair by conducting a daily service of the Equipment (including cleaning where reasonably practicable, labour, top up oils, grease and coolants, and notify of any Damage to the Equipment). This does not include any Services that We have expressly agreed in the Hire Schedule to supply;
  - viii) Provide access to the Equipment from time to time for Us to inspect the Equipment and supply any Services. You must permit and arrange such access to the Equipment. and
  - ix) Prevent the Equipment from being lost, stolen or damaged in any way.
- (c) During the Hire Period, You must not without Our prior written consent:
    - i) Affix the Equipment to any land or premises;
    - ii) Move the Equipment from the Site;
    - iii) Claim any lien over, sell, transfer, charge, part with possession of, assign, or encumber the Equipment in any way;
    - iv) Sell or On-hire the Equipment;
    - v) Interfere with the Equipment, including altering, adding to, defacing, or erasing any identifying mark, plate or number on or in the Equipment;
    - vi) Exceed the recommended or legal load for the Equipment; or
    - vii) Service or repair the Equipment.

**12. WHAT YOU MUST DO AT THE END OF THE HIRE PERIOD**

- (a) All Equipment must be returned to Us at the end of the Hire Period. Unless We agree otherwise, We will collect the Equipment from You.
- (b) You must give Us at least 24 hours' notice prior to the last day of the Hire Period that the Equipment will be ready for off-hire and Our collection.
- (c) If You do not give Us sufficient notice to collect the Equipment at the end of the Hire Period, or You fail to return the Equipment at the end of the Hire Period:
  - i) You are responsible for the safekeeping of the Equipment until We collect the Equipment and We may charge You additional hire fees at Our discretion; and
  - ii) Hire charges and all hire obligations will continue to apply until the Equipment is returned to Us.
- (d) Unless we agree otherwise, collection of Equipment must occur during business hours.
- (e) Equipment must be returned clean and in good repair. You are responsible for any Additional Expenses associated with the

condition of Equipment at the end of the Hire Period.

- (f) You are responsible for any and all Loss and Damage that occurs to the Equipment or arises out of Your use of the Equipment during the Hire Period. This responsibility includes the costs to repair or replace Equipment that is lost, stolen or damaged during the Hire Period. We reserve all rights to charge You for repair or replacement of such Loss.

### 13. WHAT WE ARE RESPONSIBLE FOR

- (a) Equipment, Goods and Services will be supplied to You with all due care and skill.
- (b) We are responsible for:
- i) Equipment condition inspections at the commencement of the Hire Period;
  - ii) Track/tyre condition inspections at the commencement of the Hire Period;
  - iii) Regular OEM service and scheduled maintenance Services;
  - iv) Repair or replacement of Equipment that is caused by or attributable to fair wear and tear. This does not include any Loss or Damage caused by Your act or omission (such as negligence or misuse);
  - v) Insurance for fire and extraneous perils;
  - vi) Equipment condition inspections at the end of the Hire Period; and
  - vii) We will issue an 'off-hire' receipt only once the Hire Period has ended and the Equipment has returned to Our possession.

## Managing Any Issues That Arise

### 14. MAINTENANCE AND BREAKDOWN OF EQUIPMENT

- (a) The Hire Schedule and the Order/s that You submit from time-to-time contain the specifications for all maintenance and repair Services that We will supply to You pursuant to these Terms.
- (b) If for any reason the Equipment is damaged, breaks down or becomes unsafe to operate during the Hire Period outside of the Services We have agreed to provide, You must immediately:
- i) Stop using the Equipment;
  - ii) Take all reasonable steps to prevent injury to any persons or property as a result of the Equipment's condition; and
  - iii) Notify Us in writing of the Loss, Damage, breakdown or required repair;
  - iv) Take all steps necessary to prevent further Loss or Damage to or by the Equipment; and
  - v) Not repair or attempt to repair the Equipment without Our prior written consent.
- (c) If the breakdown, unsafe operating condition or Damage is not Your fault (for example, Your negligence or misuse), We will:
- i) Place the Equipment on 'stand down';
  - ii) Suspend hire charges for the period of time that the Equipment is inoperable or credit You for the portion of the Hire Period that the Equipment was stood down; and
  - iii) Repair or replace the Equipment as soon as is practicable (unless the reason for the).
- (a) If the breakdown, fault, repair or maintenance of the Equipment is not Your fault, then We will:
- i) Repair, recalibrate or replace the Equipment (as may be required in Our sole discretion) as soon as practicable and at Our expense; and
- (d) If the breakdown, fault, repair or maintenance of the Equipment is due to Your use, act or omission in relation to the Equipment (including Your negligence, recklessness or misuse of the Equipment) then You are liable for all costs of repair or replacement of the Equipment and continuing hire charges while the Equipment is being repaired and/or replaced. This includes charges payable during any stand-down period.
- (e) Breakdown of the Equipment for whatsoever reason does not absolve You from Your hire obligations under these Terms, including to safeguard the Equipment.

### 15. LOSS AND DAMAGE OF EQUIPMENT

- (a) You are responsible for any Loss and Damage to Equipment during the Hire Period (including loss, theft or damage that occurs during delivery and transit) for any cause whatsoever, except where that loss, theft or damage has been directly caused by Us or We otherwise agree in writing.
- (b) If Loss or Damage occurs to the Equipment at any time during the Hire Period, You must pay:
- i) The cost of repairs; or
  - ii) The cost of replacement (if the Equipment cannot be repaired, which will be determined at Our reasonable discretion);
  - iii) Ongoing hire charges until the Equipment is repaired or replaced, unless We otherwise agree in writing; and
  - iv) Any Additional Expenses associated with the repair or replacement of the Equipment.

- (c) **If Loss or Damage occurs to the Equipment at any time during the Hire Period, You must lodge a claim with Your Insurer and You are responsible for managing the insurance claim process. We may, but are not required to, assist You.**
- (d) **Where You are liable for any Loss of or Damage to Equipment pursuant to these Terms, You acknowledge and agree that:**
- i) **The total amount You must pay for such Loss or Damage is reasonably determined by Us, Our repairers, advisors and insurers;**
  - ii) **The total amount You must pay for such Loss or Damage is not dependent upon or reduced by any amounts, monies, pay out or compensation that You:**
    1. Receive from quotes of Your insurer or third party suppliers;
    2. Are paid from an insurer; or
    3. Direct be paid to Us by an insurer;
  - iii) **We are entitled to claim from You the full amount of such Loss or Damage that is reasonably determined and You must pay for such full amounts without deduction; and**
  - iv) **If Your insurance only covers a portion of Our claim amount and not the entirety, You acknowledge and agree that We may recover any difference payable from You.**

## Making Sure We Get Paid

### 16. SECURITY OVER REAL ESTATE

- (a) To secure payment of all monies You owe Us for the supply of Equipment, and any other Goods and Services, You:
- i) Charge all of Your interest in real and personal property (including all property acquired after the date of these Terms) in favour of Us, whether or not a demand has been made on You ("Charge"). This Charge constitutes a General Security Agreement for the purposes of the PPSA;
  - ii) Authorise and consent to Us taking all actions necessary to give effect to the Charge, including the lodgement of a caveat upon any title of Your real property, whether held in Your own right or as trustee of any trust, or any other security document; and
  - iii) Agree to deliver to Us within 7 days of written demand a Memorandum of Mortgage in registrable form. You agree that any amount payable to Us payable on demand incorporating the covenants contained in Memorandum No. Q860000 registered at the Land Registry Services New South Wales as amended to comply with and reflect any appropriate laws in the jurisdiction(s) where You have any beneficial interest in real and personal property and as amended appropriately to comply with any formal requirements of registration.
  - iv) Irrevocably appoint Us and any person nominated by Us severally as Your attorney, with power to execute, sign and deliver (which delivery may be subject to such terms and conditions as the attorney thinks fit) such caveat, mortgage or other security

document to effect the Charge granted under this part.

## 17. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)

### **Security for Goods Supplied**

- (a) You acknowledge and agree that these Terms constitute a security agreement for the purposes of the PPSA ("**Security Agreement**") and create a security interest in:
- v) the Equipment supplied by Us from time to time
  - vi) any Goods supplied by Us from time to time; and
  - vii) any proceeds of the sale or supply of Equipment and/or Goods to secure payment for the Goods and/or Equipment supplied ("**Security Interest**").
- (b) Each sale or supply of Equipment and Goods by Us under these Terms is subject to the Security Agreement for the purposes of the PPSA.
- (c) We may lodge a financing statement on the Personal Property Securities Register ("**PPSR**") in respect of the Security Interest Equipment, Goods and the proceeds of the sale or supply of the Equipment and Goods, including as a purchase money security interest (as that term is defined in the PPSA) ("**PMSI**"), pursuant to these Terms.

### **Assurances**

- (d) You must do all things, provide all information and sign all documents that are necessary and reasonably required to enable Us to acquire a perfected Security Interest in the Equipment and/or Goods (as the case may be) including for the purposes of:
- i) Ensuring that any Security Interest created under, or provided for, by these Terms:
    - a. Attaches to the Equipment and/or Goods that are intended to be covered by that Security Interest; and
    - b. Is enforceable, perfected and otherwise effective; and
    - c. Has the priority required by Us.
  - ii) Enabling Us to prepare and register a financing statement or financing change statement;
  - iii) Enabling Us to register a PMSI pursuant to the PPSA (where applicable); and
  - iv) Enabling Us to exercise and maintain any of Our rights or powers in connection with any such Security Interest.
- (e) If You dispose of the Goods or the Collateral, You must:
- i) Immediately pay any proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as specified by subsection 14(6)(c) of the PPSA, unless otherwise specified by Us in writing; and
  - ii) Not allow any other charge or security interest to exist over those proceeds without Our written consent if that security interest could rank ahead of Our Security Interest.
- (f) If a higher-priority security interest does arise in the Goods, the Collateral and/or their proceeds of sale despite Your obligations under this section, You must:
- i) Ensure that You receive cash proceeds for the Goods and/or Collateral of at least equal to the market value of the Goods and/or Collateral; and
  - ii) Immediately pay those proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as We see fit.
- (g) You must never dispose of Equipment, but if You do dispose of Equipment in any way, You must:
- i) Immediately pay any proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as specified by subsection 14(6)(c) of the PPSA, unless otherwise specified by Us in writing; and
  - ii) Not allow any other charge or security interest to exist over those proceeds or the Equipment without Our written consent if that security interest could rank ahead of Our Security Interest.

- (h) If a higher-priority security interest does arise in the Equipment and the proceeds of sale despite Your obligations under this section, You must:
  - i) Ensure that You receive cash proceeds for the Equipment of at least equal to the market value of the Equipment; and
  - ii) Immediately pay those proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as We see fit.
- (i) You must not change Your name, structure, status or partnership, or assign or sell Your business to another party, or initiate any change to any registered documentation, or act in any other manner which would impact on Our registered Security Interest without Our prior written consent. You agree that Your liability under these Terms is not affected by such an event until a new application for credit in Your new entity name as restructured or changed is made and approved by Us in writing.

### **Exclusion of Notices and Other Obligations**

- (j) To the extent permitted by law and for the purposes of sections 115(1) and 115(7) of the PPSA:
  - i) We do not need to comply with sections 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d) or 132(4); and
  - ii) Sections 142 and 143 are excluded;
  - iii) For the purposes of section 115(7) of the PPSA, We do not need to comply with sections 132 and 137(3).
- (k) To the extent permitted by law, You agree to waive:
  - i) Your rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) or any other law before a secured party or a receiver exercises a right, power or remedy; and
  - ii) Any time period that must otherwise lapse under any law before a secured party or a receiver exercises a right, power or remedy.
- (l) If the law that requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

### **Provision of Information**

- (m) You agree not to exercise Your rights to make any request of Us under section 275(6) of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- (n) The parties must not disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances where:
  - i) Disclosure is required by sections 275(7)(b) to (e) of the PPSA; and/or
  - ii) We disclose information of a kind mentioned in section 275(1) of the PPSA to the extent that We are not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.
- (o) Notwithstanding the obligations of this section, You shall only authorise the disclosure of information for the purposes of section 275(7)(c) of the PPSA, or request information under section 275(7)(d) of the PPSA, if We approve such disclosure or request for information in writing.
- (p) Nothing in this part prevents any disclosure of information by Us that We believe is reasonably necessary to comply with any other obligations that We may have under the PPSA.

### **Other**

- (q) If You default in the timely performance of any obligation owed to Us, We may enforce the Security Interest by exercising all or any of Our rights under these Terms, the general law and the PPSA.
- (r) Nothing in this part limits or is limited by any other provision of these Terms and Conditions or any other agreement between the parties.

## 18. WARRANTIES AND EXCLUSIONS

- (a) Neither party excludes or limits the application of any statute (including the *Competition and Consumer Act 2010* (Cth) as amended from time to time ("the CCA")), where to do so would contravene that statute or cause any provision of these Terms and Conditions to be void. Nothing in these Terms and Conditions modifies or excludes the conditions, warranties, and undertakings and other legal rights under the Act and other laws.
- (b) Except as expressly set out in the CCA, these Terms, or a separate warranty document, We make no warranties or other representations under or in connection with the Equipment, Goods and Services that We supply. Our liability in that respect is limited to the fullest extent permitted by law.
- (c) You acknowledge that We make no representations or warranties as to the fitness or suitability for any purpose of any of the Equipment (whether express or implied and even if that purpose is made known to Us). You agree that You have not relied on any inducement, representation or statement made by or on behalf of Us in hiring the Equipment or purchasing any Goods and Services.
- (d) Specifically, You agree that:
  - i) You are responsible for ensuring that the Equipment is suitable for Your intended Site, project or use;
  - ii) No sale under these Terms constitutes a sale by sample. You acknowledge that any sample may vary from Equipment or Goods that are produced;
  - iii) No sale under these Terms constitutes a sale by description. Any description of Equipment or Goods is by way of identification only; and
  - iv) To the extent permitted by law, all other implied conditions and warranties are excluded.

## 19. LIMITATION OF LIABILITY

- (a) To the extent permitted by law, We may limit Our liability to You pursuant to these Terms by Our choice of:
  - i) Re-supplying Equipment, Goods or Services; or
  - ii) Supplying equivalent Equipment, Goods or Services; or
  - iii) Refunding the price You paid for the Equipment, Goods or Services.
- (b) In all situations, including but not limited to Our breach of these terms, tort law or negligence, then Our liability to You will not exceed the price of the Equipment supplied by Us (to the extent that is permitted by law).
- (c) We are not liable to You for any loss of profits, loss of sales, loss of market, loss of goodwill or reputation, third party claims, incidental or special damages or indirect or consequential loss of any kind.
- (d) We are not liable for any Loss that You incur by Equipment being 'stood down' due to a breakdown, fault or repair caused by You (for example, Your act or omission in relation to the Equipment).
- (e) We will not be liable to You for Loss in relation to the Equipment if:
  - i) You have not paid for hire of that Equipment;
  - ii) Equipment has been abused, misused or neglected by You;
  - iii) The Loss has been caused by personnel or operators under your supervision or control;
  - iv) You have used Equipment other than for the purposes for which they were designed or intended, including for an illegal purpose;
  - v) Equipment is repaired or modified by someone other than Us;
  - vi) Equipment has been subject to abnormal conditions, including environment, temperature, water, fire, humidity, pressure or other stress;
  - vii) A defect has arisen due to Your failure to use and maintain the Equipment in accordance with Our care and maintenance recommendations or industry-accepted standards;
- (f) Neither party will be liable for any breach of these Terms which is wholly or partly caused by a Force Majeure event. This exclusion does not include Your obligation to pay for Goods, Services, Equipment and

any Additional Expenses.

## 20. INDEMNITIES

- (a) For the purpose of this section, any reference to Us includes Our agents, employees or contractors.
- (b) To the extent permitted by law, You indemnify Us against, hold Us harmless from and You must pay Us for any Loss that We may suffer or incur as a result of any act or omission by You (or any entity or person that You are responsible for) pursuant to these Terms or in relation to the Equipment, including but not limited to any breach of these Terms by You, Your negligence, Your failure to perform the obligations in these Terms and any third party claim for whom You are responsible.
- (c) You indemnify Us against, hold Us harmless from and must pay Us for these specific instances of Loss:
  - i) All reasonable legal costs which We incur as a result of any breach, act or omission by You under these Terms, however that breach, act or omission arises. This includes, but is not limited to, legal or mercantile agent fees on an indemnity basis in the recovery or attempted recovery of any overdue amount for Equipment and any action taken to secure any charge;
  - ii) Any stamp duty or other government rates, taxes (including GST) or charges levied on or in connection with any Credit Account and supply of Equipment or other Goods and Services;
  - iii) Any expenses We incur as a result of You cancelling your Order after 24 hours, including but not limited to any Additional Expenses;
  - iv) All costs associated with the registration, maintenance and withdrawal of any Security Interest created under these Terms;
  - v) Any and all Loss arising out of damage to Our Equipment, the Site or third party property during the Hire Period, except to the extent that We directly caused such Loss;
  - vi) Any and all Loss arising out of Your failure to supervise operators of the Equipment or provide a safe, suitable and compliant Site for the hire and operation of Equipment (including any personal injury or death) except to the extent that We have committed an act of negligence, breach of the law or breach of the Terms;
  - vii) Any liability that We incur by relying on information that You have provided which is inaccurate, incomplete or misleading, or where You fail to provide Us with relevant and accurate information.
- (d) This indemnity is a continuing obligation which is separate and independent from your other obligations under these Terms or at law and this indemnity survives termination of these Terms. For clarity, this indemnity does not apply to Loss which is caused by Our breach of these Terms.

## Ending the Agreement

## 21. DISPUTE RESOLUTION

- (a) If the parties have a dispute in relation to the Equipment or these Terms, then the parties must follow this dispute resolution procedure:
  - i) The disputing party must give the other party written notification of the dispute;
  - ii) The parties must refer the dispute to its senior management. Each party's senior management representatives must endeavour to resolve the dispute between each other as soon as the dispute notice is issued, but at least within 30 days (or such other period as agreed between the parties in writing);
  - iii) If the dispute has not been resolved by senior management representatives of each party within 30 days of the dispute notice (or such other period as agreed in writing), then either party **may** elect to resolve the dispute by mediation via the Australian Disputes Centre (**ADC**) before commencing arbitration or litigation. The mediation must be conducted in accordance with the ADC Guidelines for Commercial Mediation which operate at

the time the matter is referred to ADC. The ADC Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. This paragraph survives termination of these Terms;

- iv) Either party must not commence legal proceedings (except proceedings seeking interlocutory relief) about the dispute unless and until the dispute has been referred for resolution under these Terms and this dispute resolution procedure has been completed;
- v) Either party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute, pending the completion or termination of the procedure set out in this paragraph;
- vi) The parties must continue to perform their respective obligations under these Terms, even if a dispute exists (including the referral of the dispute to mediation);
- vii) The parties must keep all information relating to any dispute confidential for the purposes of dispute resolution, unless otherwise required by law or at the direction of a court of competent jurisdiction. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

## 22. TERMINATION

- (a) By giving You written notice, We can:
  - i) Suspend or cancel supply of Equipment (including any current Order);
  - ii) Suspend or terminate Your Credit Account, if You have one;
  - iii) Require immediate payment of the balance of any Credit Account, invoices or any other amounts due and payable whether or not the Due Date has expired;
  - iv) Register a default with any credit reporting agency, where applicable;
  - v) Enforce Our rights under any Security Interest; and/or
  - vi) Suspend or terminate the contract created by these Terms (collectively "**Our Termination Rights**").
- (b) We can exercise Our Termination Rights immediately when:
  - i) You have not paid Our invoice (including any Additional Expenses) by the Due Date;
  - iii) You exceed the limit of Your Credit Account;
  - iv) You breach a material term of these Terms;
  - v) Either of the parties suffer a Force Majeure Event which delays or prevents performance of the whole or any part of these Terms;
  - vi) You allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against Your property including under the PPSA;
  - vii) You engage in illegal activity related to the Equipment;
  - viii) You engage in conduct which, in Our reasonable opinion, may damage Our goodwill or reputation; or
  - ix) An Insolvency Event occurs.
- (c) Either party may terminate these Terms in the following situation:
  - i) Immediately by written notice if the other party is in breach of a material clause of these Terms and the breach is not rectified within 7 days of the termination notice;
  - ii) If there is no minimum Hire Period or such minimum Hire Period has expired, by giving 7 days' written notice to the other party; or
  - iii) If a minimum Hire Period applies, by giving the other party at least 30 days' written notice.
- (d) When these Terms are terminated, We may:
  - i) recover any of Our Equipment, Goods, documentation and records in Your possession, custody or control;
  - ii) recover from You the amount of any Loss sustained as a consequence of termination by You, including any unpaid minimum Hire Period;

- iii) be regarded as discharged from any further obligations under these Terms; and
- iv) pursue any additional or alternative remedies provided by law.

## Other Information

### 23. PRIVACY

- (a) We may collect personal and credit information in Our dealings with You (or any of Your guarantors) in accordance with the Delta Group Privacy Policy pursuant to the Credit Reporting Code, the *Privacy Act 1988* (Cth), the *Privacy (Enhancing Privacy Protections) Act 2012* (Cth), and the Australian Privacy Principles. You consent to that information being collected. You can obtain a copy of Our Privacy Policy by contacting Us in writing or visiting Our Website.

### 24. GENERAL

- (a) Any clauses which are expressed to or are, by their nature, intended to survive expiry or termination of these Terms will survive expiry or termination of these Terms for any reason.
- (b) A failure to exercise or a delay in exercising any right, power or remedy under these Terms does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- (c) If any part of these Terms becomes void or unenforceable for any reason, then that part will be severed and, to the extent possible, all remaining parts continue with full force and effect without being affected by the severance of any other parts.
- (d) These Terms may be executed in any number of counterparts, each of which when executed and delivered constitutes a duplicate original, but all counterparts together constitute one agreement.
- (e) In addition to any other method of service provided by law, a notice may be sent by prepaid post, facsimile, email or courier to the address of a party as that address set out in the Contract or subsequently notified. A notice has no legal effect unless it is in writing.
- (f) A notice is deemed to have been delivered and received on the day if by hand, courier, email or fax, or otherwise on the second business day after posting.
- (g) You agree to accept service of notices via email pursuant to the *Building and Construction Industry Security of Payment Act 2022* (Vic) as amended from time to time, or any like or similar legislation that may be applicable in the State or Territory where the Equipment is delivered to You (in addition to any and all other forms of services authorised by the legislation and its regulations).
- (h) You agree to receive invoices via email.
- (i) You agree that email communications from Us to You constitute an "electronic communication" within the meaning of the *Electronic Transactions Act (Victoria) 2000* ("ETA").
- (j) You agree that the receipt and service of notices via email is "an information system for the purpose of receiving electronic communications" within the meaning of the ETA.
- (k) You agree that evidence of the "dispatch" (within the meaning of the Act) by Us of an email is also prima facie evidence of the "receipt" of the email by You within the meaning of the ETA. Unless the contrary is proven the time of receipt will be deemed to be twenty (20) seconds after the time of the "dispatch" of the email.

Version: August 2023