| Commercial Terms | | | | | | | | |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| IMPORTANT NOTICE: | This Hire Agreement is made up of the following (**Agreement**):   1. Commercial Terms; and 2. Terms and Conditions.   By signing this Agreement, you acknowledge that you have carefully read and understood the agreement and agree to be bound by its terms and conditions. You should read this Agreement carefully. These terms and conditions may impact you, including that:   1. the liability of MPG to the Hirer is excluded in some circumstances; 2. Hirer may be liable for damage to Plant or Equipment that are hired by them, and for damage to goods or property owned by a third party; and 3. MPG’s Privacy Policy permits, in some circumstances and subject to compliance with the Australian Privacy Principles, to provide data about the Hirer, or data provided by the Hirer, to a third party in a form that may enable the third party to identify the Customer. | | | | | | | |
| **Date of Agreement:** | /       / | | | | | | | |
| **MPG:** | Name: | M Power Generators Pty Ltd | | | | | | |
| ABN: | 15 660 795 068 | | | | | | |
| Address: | 258 Mahoneys Rd Thomastown | | | | | | |
| Contact: | Glenn Martin | | | | | | |
| Phone: | 0403 988 793 | | | | | | |
| Email: | info@m-powergenerators.com.au | | | | | | |
| **Hirer:** | Name: |  | | | | | | |
| ACN: |  | | ABN: | | |  | |
| Address: |  | | | | | | |
| Contact: |  | | | | | | |
| Phone: |  | | | | | | |
| Email: |  | | | | | | |
| Director/s | | | | | | | | |
| **Director (also Guarantor):** |  | Director 1 | | | | Director 2 | | |
| Name: |  | | | |  | | |
| Address: |  | | | |  | | |
| Phone: |  | | | |  | | |
| Email: |  | | | |  | | |
| Date of Birth: |  | | | |  | | |
| Agreement | | | | | | | | |
| Credit Application: | 1. By submitting this credit application to MPG, the Hirer warrants that the information supplied to MPG in this application is true and correct and acknowledges that MPG will use this information for the purposes of assessing the Hirer’s application for commercial credit. 2. By submitting this credit application to MPG, the Hirer agrees to be bound by the attached Terms and Conditions. 3. By submitting this Credit Application to MPG, the Directors (as Guarantors) give the guarantees set out in clause 14 of the Agreement. 4. The Hirer authorises MPG to make enquiries into the banking and business/trade references listed above and acknowledges and agrees that completing and/or submitting the credit application does not infer that credit will be granted. 5. MPG reserves the right to refuse credit to any applicant without explanation. MPG also reserves the right to suspend or withdraw credit facilities at any time without notice. 6. The Hirer acknowledges and agrees that normal trading terms are strictly 30 days and that payment is due at the expiration of the month following the month in which charges are debited to the Hirer’s account. | | | | | | | |
| Special Conditions |  | | | | | | | |
| **Execution:** | Signed by an authorised representative of M Power Generators Pty Ltd: | Name: | Glenn Michael Martin | | | | | |
| Authority: | Director | | | | | |
| Signature: |  | | | | | |
| Date: | /       / | | | | | |
| Signed by an authorised representative of the Hirer: | Name: |  | | Name: | | |  |
| Authority: |  | | Authority: | | |  |
| Signature: |  | | Signature: | | |  |
| Date: | /       / | | Date: | | | /       / |
| Signed by the Guarantor: | Name: |  | | Name: | | |  |
| Signature: |  | | Signature: | | |  |
| Date: | /       / | | Date: | | | /       / |

Hire Agreement - Terms and Conditions

This document records the terms and conditions on which MPG agrees to hire Plant or Equipment to the Hirer. MPG may in its absolute discretion decline to hire any Plant or Equipment to a Hirer.

These Hire Terms and Conditions apply even where a written rental or hire agreement is not provided and/or acknowledged by the Hirer.

MPG may at any time vary these terms and conditions without notice. Variations to these terms and conditions will only apply to hire agreements entered into after the variations have occurred.

In the event of any inconsistency, the following order of priority will apply:

1. Special Conditions; then
2. Commercial Terms; then
3. Terms and Conditions.
4. Definitions and interpretation
   1. Definitions

In these Terms and Conditions, unless the context requires otherwise:

***Accident*** means an unintended and unforeseen incident, including:

* + - 1. a collision between the Plant or Equipment and another vehicle or object, including animals and roadside infrastructure;
      2. rollovers; or
      3. a weather event, including hail Damage,

that results in Damage or Third Party Loss.

***Agreement*** means the agreement between MPG and the Hirer for the hire of the Plant or Equipment, consisting of:

* + - 1. the Commercial Terms;
      2. any Special Conditions; and
      3. these Terms and Conditions.

***Approvals*** means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by these terms and conditions.

***Australian Consumer Law*** means the Australian Consumer Law set out in Schedule 2 of the *Competition Consumer Act 2010* (Cth).

***Authority*** means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person.

***Bank Account*** means the bank account of MPG as advised by MPG from time to time.

***Business Day*** means a day which is not a Saturday, Sunday or public holiday in Victoria.

***Claim*** includes any claim, including a notice, demand, debt, account, action, expense, damage, the loss, cost, lien, liability, proceeding, litigation (including reasonable legal costs), investigation or judgment of any nature, whether known or unknown.

***Commercial Terms*** means the commercial terms completed and submitted by the Hirer to MPG, which has been approved and accepted by MPG, such as the commercial terms to which these Terms and Conditions are attached to.

***Commencement*** means the date set out in an Invoice or when the Hirer takes possession of the Plant or Equipment, whichever is earlier.

***Consumer Guarantee*** means a consumer guarantee as it applies to supplies made under these terms and conditions, as set out in under Part 3-2, Division 1 of the *Australian Consumer Law*.

***Damage*** means:

* + - 1. any loss or damage in relation to the costs of new Plant or Equipment;
      2. any loss or damage to the Plant or Equipment including its parts, components and accessories, that is not Fair Wear and Tear;
      3. towing and salvage costs;
      4. assessing fees; and
      5. Loss of Use,

and for the avoidance of doubt, any damage to the windscreen, headlights, lights or tyres that makes any of the Plant or Equipment unroadworthy is not Fair Wear and Tear.

***Dangerous Goods*** means substances or articles which pose a risk to people, property or the environment due to their chemical or physical properties and includes asbestos, explosives, fireworks, ammunition, toxic, flammable or combustible liquids, solids and gases, refrigerant gases, dangerous when wet chemicals, oxidising substances, infectious substances, clinical or medical waste, radioactive substances, corrosives and dry ice.

***Default Rate*** means 10% per annum.

***Delivery Address*** means the delivery address described in an Order, Invoice or any other document the Hirer presents to MPG or as otherwise agreed in writing.

***Delivery Date*** means:

* + - 1. the estimated delivery date described in an Invoice or any other document MPG presents to the Hirer or otherwise agreed in writing; or
      2. the date when the Hirer first takes possession of the Plant or Equipment and/or signs a receipt acknowledging delivery,

whichever is earlier.

***Event of Default*** means an event of default described in clause 10.1.

***Fair Wear and Tear*** means minor damage, in the reasonable opinion of MPG, caused by ordinary day-to-day use of the Plant or Equipment in compliance with this Agreement.

***Force Majeure Event*** means an act of God, fire, lightning, earthquake, explosions, flood, subsidence, insurrection or civil disorder or military operations or act of terrorism, expropriation, strikes, lock-outs, pandemics (including Covid-19), epidemics, or other industrial disputes of any kind not relating solely to the party affected, and any other event which is not within the reasonable control of the party affected but does not include any act or omission of the other party.

***Guarantors*** means the directors of the Hirer listed in the Commercial Terms, or if none stated, the directors of the Hirer.

***GST*** has the meaning given in GST Law.

***GST Law*** has the meaning given in *A New Tax System (Equipment and Services Tax) Act 1999* (Cth).

***Hire Charge*** means the amounts shown in an Invoice or any other document produced by MPG to the Hirer (including the Schedule of Rates and Standard Terms) which are payable by the Hirer, including any carriage fees and other amounts owing under the Agreement.

***Hire Period*** means the period for which the Hirer is to hire the Plant or Equipment pursuant to this Agreement. If no pre-determined or defined term is specified in an Order or Invoice, ***Hire Period*** means 1 year, 11 months and 14 days from Commencement unless off-hire validly occurs prior in accordance with clauses 3.3, 3.4 or 3.5. The Hire Period only ends once the Hirer has off hired the machine with MPG by written notice and MPG has collected the Plant or Equipment from the Hirer or the Hirer has returned the Plant or Equipment to MPG.

***Hirer*** means the hirer described in the Commercial Terms, Invoice or any other document which MPG presents to the Hirer.

***Insolvency Event*** means the happening of any one or more of the following events:

* + - 1. in relation to a natural person:
         1. that person being unable to pay his or her debts as and when they fall due;
         2. an application and filing for bankruptcy being made in respect of that person; or
         3. a receiver, or receiver and manager, trustee for creditors or trustee in bankruptcy or analogous person being appointed over that person’s assets or undertakings or any of them; or
      2. in relation to a body corporate:
         1. that body corporate being unable to pay its debts as and when they fall due;
         2. a receiver, receiver and manager, administrator or liquidator being appointed over that body corporate’s assets or undertakings or any of them;
         3. an application for winding up or other process seeking orders which, if granted, would render that body corporate an externally-administered body corporate being filed and not being withdrawn within 20 Business Days;
         4. that body corporate being or becoming the subject of an order, or a resolution being passed, for the winding up or dissolution of that body corporate; or
         5. that body corporate entering into, or resolving to enter into, a deed of company arrangement or an arrangement, composition or compromise with, or proceedings being commenced to sanction such a deed of company arrangement or arrangement, composition or compromise, other than for the purposes of a bona fide scheme of solvent reconstruction or amalgamation.

***Invoice*** means an invoice issued by MPG to the Hirer.

***Loss*** means any damage, loss, liability, expense or cost whether direct or indirect, consequential or incidental including but not limited to:

* + - 1. stamp duties, GST any other taxes or duties;
      2. tolls, fines, penalties, levies or charges;
      3. fuels and consumables;
      4. legal costs and/or
      5. any other amount charged by MPG’s insurer regarding any circumstance as notified by MPG to the Hirer.

***Loss of Use*** means MPG’s loss calculated on a weekly basis at the weekly rate shown in an Invoice because the Plant or Equipment is being repaired or replaced, or if it is written off as a result of an Accident or if deemed by MPG to be beyond reasonable repair, or it has been stolen, lost or destroyed.

***Major Breach*** means a breach of any of clauses 3 and 16, that causes Damage, theft of the Vehicle or Third Party Loss.

***MPG*** means M Power Generators Pty Ltd (ABN 15 660 795 068).

***Off-Hire Date*** means, where a pre-determined or fixed Hire Period is not applicable, the date the Hirer advises MPG the Plant or Equipment is no longer required in accordance with clauses 3.3, 3.4 or 3.5.

***Order*** means a completed hire order form completed by the Hirer containing details of the Plant of Equipment requested for hire pursuant to this Agreement.

***Overhead Damage*** means:

* + - 1. Damage at or above the level of the top of the front windscreen of the Plant or Equipment; or
      2. Third Party Loss,

caused by:

* + - 1. contact between the part of the Plant or Equipment that is at or above the level of the top of the front windscreen with objects overhanging or obstructing its path;
      2. objects being placed on the roof of the Plant or Equipment; or
      3. the Hirer or any person standing or sitting on the roof of the Plant or Equipment.

***Plant or Equipment*** means any item or kind of plant, equipment, Vehicles, tools, accessories, attachments, parts, manuals, instructions, packing and transportation materials or substitute and replacement plant or equipment including any other plant or equipment hired to the Hirer by MPG in accordance with the Agreement.

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

***PPSR*** means the personal properties security register established pursuant to the PPSA.

***Schedule of Rates and Standard Terms*** means the schedule of rates contained in Schedule 1 which may contain particulars of the Hire Charge.

***Security Interest*** has the meaning given in the PPSA.

***Sites*** mean sites specified by the Hirer in writing and approved by MPG from which it will use or store the Plant or Equipment.

***Site Procedures*** means the Approvals, policies and procedures in respect of each Site.

***Special Conditions*** means any special conditions set out in the Commercial Terms or Invoice.

***Taxes*** means any tax, levy, charge, impost, rates, duty, fee, deduction, compulsory loan or withholding tax which is (or is able to be) assessed, levied, imposed or collected by or payable to any Authority and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed or made on or in respect of the above.

***Terms and Conditions*** means these terms and conditions.

***Third Party Loss*** means loss or damage to third party property, including other motor vehicles and any claim for third party loss of income.

***Underbody Damage*** means any damage to the Plant or Equipment caused by or resulting from contact between the underside of the Plant or Equipment and any part of the roadway or any object or obstruction, including kerbs, gutters, speed or road humps, barriers or wheel stops and does not arise as a result of an impact with another vehicle.

***Vehicle*** means a vehicle, truck or utility specified in an Invoice or otherwise a vehicle hired by the Hirer pursuant to this Agreement and includes its parts, components and accessories.

***Warranties*** mean the warranties specified in clause 7 or otherwise under these Terms and Conditions.

1. Hire of Plant or Equipment: MPG
   * 1. The Hirer may submit an Order the hire of Plant or Equipment. In consideration of MPG accepting an Order, the Hirer must pay the Hire Charge. Subject to the terms of the Agreement, MPG agrees to hire the Plant or Equipment to the Hirer for the Hire Period.
     2. Upon acceptance by the Hirer of this Agreement and the Hirer paying or continuing to pay the Hire Charge (as applicable), either:
        1. the Hirer shall collect or cause to be collected, the Plant or Equipment from MPG on the Delivery Date; or
        2. MPG shall deliver or cause to be delivered the Plant or Equipment to the Delivery Address on the Delivery Date.
     3. Delivery times and the Delivery Date are estimates only. MPG is not responsible for the failure or delays in delivery, installation or collection. If delivery, installation or collection of the Plant or Equipment is suspended or delayed due to the Hirer's action or inaction, the Hirer must reimburse MPG for its Loss and expenses for any delay, including waiting fees.
     4. All costs for the transport, collection, delivery and return of any Plant or Equipment between MPG and the Hirer must be paid for by the Hirer, unless otherwise stated in an Invoice. Such charge may also include a waiting fee if the nominated time for delivery or collection of the Plant or Equipment is delayed by the Hirer.
     5. MPG will ensure that the Plant or Equipment is clean and in good working order as at the Delivery Date.
     6. The Hire Period for Plant or Equipment is based on a 5-day (Monday to Friday) week unless otherwise specified in an Invoice, the Hire Charge or in the Schedule of Rates and Standard Terms. The Hire Period includes public holidays irrespective of whether the Plant or Equipment is being used by the Hirer or not.
     7. Upon expiration of the Hire Period, the Hire Period can be terminated on 24 hours written notice by either party.
2. Hire of Plant or Equipment: The Hirer
   * 1. The Hirer must:
        1. satisfy itself at the Commencement that the Plant or Equipment is suitable for its purposes;
        2. inspect the Plant or Equipment either at the time it collects or at the time MPG delivers the Plant or Equipment (as applicable). The Hirer must give written notice to MPG of any fault, defect or damage of the Plant or Equipment within 24 hours of collection or delivery of the Plant or Equipment (as applicable). If no written notice is given by the Hirer pursuant to this clause, MPG is entitled to assume the Plant or Equipment was received in good working order and condition;
        3. make arrangements for MPG to collect the Plant or Equipment, at the Hirer’s cost, at the end of the Hire Period. If MPG agrees to allow the Hirer to itself deliver the Plant or Equipment to MPG at the end of the Hire Period, the Hirer must do so at its own costs and must take out insurance for the Plant or Equipment at full replacement value to cover the transit;
        4. return the Plant or Equipment to MPG in clean and good working order. In the event the Plant or Equipment is not returned in clean and good working order, MPG may charge and the Hirer must pay for all cleaning and repair costs incurred by MPG;
        5. operate the Plant or Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer’s instructions whether supplied by Hitch Group or posted on or in the Plant or Equipment;
        6. indemnify MPG for all injury and/or damage caused or contributed to by the Hirer to persons and property in relation to the Plant or Equipment and its operation and have adequate insurance to cover all liabilities incurred as a result of the use of the Plant or Equipment;
        7. ensure that any person collecting or taking delivery of Plant or Equipment on behalf of the Hirer is authorised by the Hirer to do so and the Hirer will not allege that any such person is not so authorised;
        8. ensure that all persons operating or erecting the Plant or Equipment are suitably instructed in its safe and proper use and where necessary hold all necessary Approvals and qualifications required at law to operate the Plant or Equipment;
        9. conduct a thorough hazard and risk assessment before using the Plant or Equipment and comply with all applicable laws (including relevant work, health and safety laws) relating to the Plant or Equipment and its operation. The Hirer acknowledges that a Safety Checklist is located on each piece of Plant or Equipment (“the Checklist”). The Hirer agrees to undertake a daily safety check using the Checklist before using the Plant or Equipment;
        10. safely secure all items loaded in or on the Plant or Equipment or in or on the Hirer’s vehicle and indemnify MPG in respect of any injury and/or damage caused by items falling from the Plant or Equipment or from any vehicle or trailer operated by or on behalf of the Hirer;
        11. operate the Plant or Equipment with an adequate motor vehicle and/or power source;
        12. immediately report and provide full details to MPG as soon as any fault, accident or damage occurs in respect of the Plant or Equipment;
        13. allows MPG’s employees, servants, agents and/or sub-contractors (as applicable) to enter the Delivery Address or Sites or any other premises where the Plant or Equipment is located to inspect, test, repair, replace or remove the Plant or Equipment at reasonable times during the Hire Period on reasonable notice to the Hirer;
        14. except for Fair Wear and Tear, pay MPG for any damage to, loss, theft or destruction of, the Plant or Equipment that occurs during the Hire Period;
        15. inform MPG of the location of the Plant or Equipment at all times;
        16. comply with all laws and Site Procedures in connection with the Plant or Equipment;
        17. ensure that the ground conditions are safe and adequate for all Plant or Equipment and personnel;
        18. supervise the unloading and loading of the Plant or Equipment at the Delivery Address or Sites;
        19. ensure that the Plant or Equipment must never be used or driven in prohibited areas which include:
            1. roads that are prone to flooding or are flooded;
            2. beaches, streams, rivers, creeks, dams and floodwaters;
            3. any road where the police or an authority has issued a warning;
            4. any road that is closed; and
            5. any road where it would be unsafe to use or drive the Plant or Equipment.
     2. The Hirer must not:
        1. tamper with, damage, tow or repair the Plant or Equipment;
        2. lose or part with possession of the Plant or Equipment;
        3. rely upon any representation relating to the Plant or Equipment or its operation other than those contained in the Agreement;
        4. allow any person to drive a Vehicle or operate Plant or Equipment if the person:
           1. does not hold a suitable licence to drive that class of motor vehicle; or
           2. is affected by drugs and/or alcohol.
        5. exceed the recommended or legal load and capacity limits of the Plant or Equipment;
        6. operate the Plant or Equipment while load-measuring instruments are defective, inoperative, or turned off;
        7. exceed the recommended or legal speed limit for the Plant or Equipment;
        8. sell, charge, encumber, grant any right, interest or lien (of any nature) in or over the Plant or Equipment;
        9. use or operate Plant or Equipment for or in connection with oil, gas or geothermal drilling or wells;
        10. use or operate Plant or Equipment underground;
        11. use the Plant or Equipment on a watercraft;
        12. overload the Plant or Equipment;
        13. incorrectly load the Plant or Equipment;
        14. store any illegal, prohibited and/or Dangerous Goods in or on the Plant or Equipment.
     3. When the Hirer no longer requires the Plant or Equipment (unless a pre-determined Hire Period is agreed) and it is available for collection by MPG, it must contact MPG during its usual business hours and provide one (1) Business Day’s written notice of the Hirer’s intention to off-hire the Plant or Equipment. MPG will issue an off-hire number which must be recorded and kept by the Hirer and the Off-Hire Date will be the following Business Day after receipt by MPG of the written notice provided by the Hirer.
     4. Provided the off-hire number is allocated, and access is granted to enable collection of the Plant or Equipment (if applicable), Hire Charges will cease from the Off-Hire Date. If the Plant or Equipment is not returned (or access is not granted to MPG) on the Off-Hire Date or access is not granted to MPG to collect the Plant or Equipment, Hire Charges will continue to apply until MPG is able to collect the Plant or Equipment.
     5. Where there is no specified Hire Period, MPG may require return of the Plant or Equipment within two (2) Business Days of notice to the Hirer at its discretion.
     6. In the event the Hirer seeks or wishes to return the Plant or Equipment prior to the end of the Hire Period (where the Hire Period is pre-determined), the Hirer agrees and acknowledges that MPG may, in its sole discretion, require the Hirer to pay to MPG the balance of the Hire Charge as if the Hirer hired the Plant or Equipment for the full Hire Period. The Hirer acknowledges that the requirement to pay a full Hire Charge under this clause 3.6 is a genuine pre-estimate of Losses to be incurred by MPG as a result of any proposed or requested early off-hire.
     7. MPG will inspect the Plant or Equipment upon its return and notify the Hirer in writing of any fault, defect or damage to the Plant or Equipment or any refuelling charge.
3. Payment Terms
   * 1. MPG charges for periodic amounts for the hire of the Plant or Equipment. The Hire Charge will be charged for the duration of an estimated hire period.
     2. Unless MPG has approved the Hirer to pay the Hire Charge for the Plant or Equipment on credit, the Hirer must pay the Hire Charge in full on Commencement and prior to MPG releasing the Plant or Equipment to the Hirer.
     3. If MPG has approved the Hirer to pay for the Hire Charge for the Plant or Equipment on credit, MPG may render Invoices to the Hirer at Commencement or at the Off-Hire Date or periodically throughout the Hire Period, in its sole discretion
     4. All Hire Charges must be paid on the terms set out in the Invoice.
     5. All payments made under this Agreement must be paid to MPG’s Bank Account or via credit card. If payment is made via credit card, the Hirer is responsible for any credit card fees charged by MPG or any third-party.
     6. The Hirer hereby authorises MPG to capture and store their credit card details and/or pre-authorise an amount set out on Commencement to cover potential future Hire Charges incurred by the Hirer.
     7. The Hirer must pay all amounts due to MPG:
        1. without set-off, deductions, counter-claims or conditions; and
        2. in available cleared funds.
     8. If the Hirer owes any amount to MPG then MPG may, in its sole discretion and without prejudice to any of its other rights, do one or more of the following:
        1. collect the Plant or Equipment; or
        2. set-off that amount against any amount owing by MPG to the Hirer, whether under the Agreement or otherwise.
     9. Immediately on request by MPG, the Hirer will pay the current retail price of any Plant or Equipment as advised by MPG which is for whatever reason not returned to MPG and any charges for Damages.
     10. If an amount due under this Agreement is paid after the due date the Hirer must pay MPG, in addition to the overdue amount:
         1. interest at the Default Rate calculated based on a 365-day year from the date of the default until the date the amount (together with all accrued interest) is paid in full; and
         2. all costs and expenses incurred by MPG in collecting the overdue amount (including MPG’s legal costs).
     11. The Hirer’s obligation to pay an amount owing applies notwithstanding any alleged delay in delivery.
     12. Without limiting the ability of MPG to recover all amounts owing to it, the Hirer authorises MPG to charge any amounts owing by the Hirer to any credit account with MPG pursuant to a credit application contained in the Commercial Terms.
     13. MPG may, in its sole discretion, increase the Hire Charge by providing 7 days’ notice in writing to the Hirer.
     14. MPG reserves its rights under security of payment legislation.
4. Title and Risk
   * 1. Risk in the Plant or Equipment passes to the Hirer upon dispatch of the Plant or Equipment from MPG’s premises by MPG or its agent or representatives or upon collection of the Plant or Equipment by the Hirer’s agent or representative. This clause 5.1 does not apply if this is a consumer contract or a small business contract for the purposes of section 23 of the Australian Consumer Law, in which case risk and responsibility passes on delivery to the Hirer.
     2. Until MPG has received payment in full for all Plant or Equipment supplied by MPG under this Agreement:
        1. title to the Plant or Equipment shall remain with MPG;
        2. the Hirer holds the Plant or Equipment as bailee for the Company; and
        3. the Plant or Equipment shall, so far as practicable, be kept separate from other goods of the Hirer, so as to be readily identifiable as the property of MPG.
     3. For the avoidance of any doubt, title in the Plant or Equipment shall not transfer to the Hirer pursuant to the Agreement.
     4. Upon default of the Hirer of the due performance or observance of any other obligation under this Agreement, including an Insolvency Event, MPG may by notice in writing to the Hirer enter upon the Hirer’s premises or the Delivery Address or any Site to remove any of the Plant or Equipment to which MPG has retained title and for this purpose the Hirer shall afford MPG all reasonable assistance to locate and take possession of the Plant or Equipment.
     5. In the event that MPG repossesses the Plant or Equipment, the Hirer authorises MPG to take possession of any property in, on or attached to the Plant or Equipment which is not the property of MPG.
     6. The Hirer acknowledges that by virtue of clause 5.2, MPG has or will have a Security Interest in the Plant or Equipment, the proceeds from the sale of the Plant or Equipment and the proceeds of any insurance policy for the purposes of the PPSA.
     7. The Hirer also grants MPG a security interest in all of the Hirer’s present and after acquired property and any proceeds until MPG is paid in full under this Agreement.
     8. The Hirer acknowledges that MPG may do anything reasonably necessary, including but not limited to registering its Security Interest on the personal property securities register established under the PPSA in order to perfect this Security Interest and comply with the requirements of the PPSA. The Hirer agrees to do all things reasonably necessary to assist MPG to achieve perfection of this Security Interest under the PPSA.
     9. The Hirer and MPG agree that, pursuant to section 115 of the PPSA, the following provisions in the PPSA do not apply in relation to this Security Interest to the extent, if any, mentioned (words in this provision have the same meaning as in the PPSA):
        1. section 117 (obligations secured by interests in personal property and land);
        2. section 118 (enforcing Security Interest in accordance with land law decisions), to the extent that it allows a secured party to give a notice to the grantor;
        3. section 125 (obligation to dispose of or retain collateral);
        4. section 129 (disposal by purchase);
        5. section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor and other secured parties before disposal;
        6. paragraph 132(3)(d) (contents of statement of account after disposal);
        7. subsection 132(4) (statement of account if no disposal);
        8. section 142 (redemption of collateral); and
        9. section 143 (reinstatement of security agreement).
     10. The Hirer waives its right to receive a verification statement under section 157 of the PPSA.
     11. MPG retains any rights of enforcement arising on the PPSA, under this Agreement, or otherwise, including but not limited to a right to seize the collateral under section 123 of the PPSA.
5. Insurance
   * 1. Upon risk in the Plant or Equipment passing to the Hirer and until all monies owed under this Agreement by the Hirer are paid to MPG, the Hirer must procure and maintain in its own name (noting the interest of MPG) public liability insurance up to $20m in any one occurrence, business insurance as well as insurance for theft, and damage of the Plant or Equipment for an amount of not less than the new replacement value of the Plant or Equipment (**Insurance(s)**).
     2. At the request of MPG, the Hirer must produce a certificate of currency for the Insurance policies. The Hirer is responsible for any excess and any other costs associated with any insurance taken out by the Hirer under this Agreement and the Hirer is responsible for any shortfall in repair or replacement of the Plant or Equipment following payment of any amount received under an insurance claim, including any loss MPG suffers as a result of not being able to hire the Plant or Equipment.
     3. For the avoidance of any doubt, in the event of any claim being made under the Hirer’s insurance policy pursuant to or relating to this Agreement, the parties agree and acknowledge that MPG will have the right of subrogation with respect to any right of the Hirer to recover against any person, firm or corporation. The Hirer agrees to execute and deliver whatever instruments or documents are required and do whatever else is reasonably necessary to give effect to such rights. The Hirer will cooperate fully with MPG and/or its insurer(s) in the prosecution of those rights and will neither take or permit any action to prejudice MPG’s rights with respect thereto.
6. Warranties and Liability
   * 1. Where the Australian Consumer Law applies the Hirer has the benefit of guarantees in relation to the hire of the Plant or Equipment which cannot be excluded.
     2. Where the Australian Consumer Law applies and the goods are not of a kind ordinarily acquired for personal domestic or household use or consumption, MPG’s liability in respect of any guarantee is limited to the replacement or repair of the goods, or the cost of having the goods repaired or replaced.
     3. To the extent that the Australian Consumer Law (or any other law which cannot be excluded) does not apply. MPG makes no representations and gives no warranties other than those set out in these Terms and Conditions, and will not be liable to the Hirer for any Loss, Claims, damages, costs or other liabilities whatsoever (including for consequential loss) in relation to the hiring of the Plant or Equipment by the Hirer.
     4. Subject to this clause 7, the Hirer indemnifies and holds MPG harmless to the full extent permitted by law for any Claim, Loss or damage whatsoever arising in connection with the hire of the Plant or Equipment to the Hirer or this Agreement, including any third party Claims.
     5. MPG’s liability under this Agreement is limited to the Hire Charge and MPG is not liable for any indirect or consequential loss (including loss of profit or opportunity).
7. Release and Indemnity
   * 1. The Hirer agrees to use and possess the Plant or Equipment at its own risk. The Hirer agrees that MPG bears no responsibility or liability for any Loss to any of the Hirer’s property (including the Plant or Equipment).
     2. To the fullest extent permitted by law, the Hirer releases and discharges MPG and its agents and employees from:
        1. all Claims and demands on MPG; and
        2. any Loss whatsoever and whenever caused to the Hirer or its agents or employees or any third party whether by way of death of, or injury to, any person of any nature or kind, accident or damage to property, delay, financial Loss or otherwise,

arising directly or indirectly from or incidental to a defect in any Plant or Equipment or any accident to or involving any Plant or Equipment or its use, repair, maintenance or storage (whether occasioned by negligence or otherwise) or which may otherwise be suffered or sustained in, upon or near any Plant or Equipment.

* + 1. The Hirer indemnifies and holds MPG harmless to the full extent permitted by law for any Loss whatsoever arising in connection with the supply of and use of the Containers by the Hirer, including any breach of this Agreement.

1. Repair and Replacement
   * 1. In addition to any other rights of entry granted under this Agreement, the Hirer grants MPG the right, and will use its best endeavours to ensure that others grant MPG the right, at all times until all monies owing under this Agreement by the Hirer are paid to MPG to:
        1. inspect the state of repair of the Plant or Equipment;
        2. carry out such tests on the Plant or Equipment as may seem necessary to MPG;
        3. observe the use of the Plant or Equipment;
        4. inspect any maintenance records in respect of the Plant or Equipment; and
        5. do any act, matter or thing which may be required to be done to give proper effect to the terms of this Agreement or to protect MPG’s rights in the Plant or Equipment.
     2. In in order to protect its rights in the Plant or Equipment, MPG may, at its discretion, at all times prior to risk in the Plant or Equipment passing to the Hirer:
        1. serve a notice in writing on the Hirer of any defect or deficiency in the Plant or Equipment or its use or both requiring repair or replacement;
        2. if MPG decides repairs are required to the Plant or Equipment it may:
           1. enter upon premises with workmen (if necessary) and all necessary materials for the purpose of carrying out those repairs; or
           2. replace the Plant or Equipment with equivalent Plant or Equipment.
     3. Where damage to or unsatisfactory maintenance of the Plant or Equipment requires MPG to incur costs and expense repairing or replacing the Plant or Equipment, the cost of all repairs and replacements (if any) of the Plant or Equipment will be borne by the Hirer.
     4. If, during the Hire Period, the Plant or Equipment is lost, stolen, destroyed or damaged during the Hire Period beyond Fair Wear and Tear, or becomes unsafe to use due to any act or omission of the Hirer, the Hirer must immediately notify MPG in writing and the Hirer is liable to MPG for and must indemnify MPG for (at MPG’s election):
        1. the full cost of either:
           1. repairing the Plant or Equipment; or
           2. replacing the Plant or Equipment with new equipment, as determined by MPG in its sole and absolute discretion; and
        2. any other costs whatsoever arising from or in connection with the loss, theft or damage to the Plant or Equipment including but not limited to Hire Charges, Claim, Damage and/or Loss until the replacement value is paid to MPG; and
        3. any lost revenue, including Loss of Use, arising from or in connection with the loss, theft or damage to the Plant or Equipment until the replacement value is paid to MPG.
2. Default and termination
   * 1. Each of the following events is an Event of Default, namely:
        1. the Hirer fails to perform or observe any of the covenants or provisions of this Agreement and (if capable of remedy) such default continues for more than 5 Business Days after notice from MPG requiring a remedy for the breach;
        2. the Hirer fails to perform or observe any of the covenants or provisions of this Agreement and (if capable of remedy) such default continues for more than ten (10) Business Days after notice from MPG requiring the Hirer to remedy the breach;
        3. the Hirer fails to return any Plant or Equipment to MPG within five (5) Business Days of request by MPG;
        4. the Hirer sells or closes its business or relocates the Plant or Equipment without written notice to MPG;
        5. the Hirer suffers an Insolvency Event or if it is a partnership, is dissolved or if it is a natural person, dies.
     2. If an Event of Default occurs MPG may at its option:
        1. by proceeding by appropriate court action, either at law or in equity, enforce performance of the applicable terms and provisions of this Agreement or recover damages for the breach concerned; and/or
        2. terminate this Agreement; and/or
        3. repossess the Plant or Equipment (and is authorised to enter any premises where the Plant or Equipment is located to do so).
     3. Without prejudice to MPG’s right to pursue the Hirer for Loss arising from a breach of this Agreement, upon the expiry of this Agreement or early termination under this clause, the Hirer must immediately pay MPG all amounts owing under this Agreement.
     4. On termination of this Agreement, the Hirer must immediately return any Plant or Equipment to MPG and pay all Hire Charges, Claim, Damage and/or Loss. If the Hirer does not return the Plant or Equipment within fourteen (14) days of termination of the Agreement, the Hirer must pay to MPG an amount equal to the new replacement value of the Plant or Equipment as fairly specified by MPG and any Claim, Damage and/or Loss.
     5. The Hirer grants in favour of MPG an irrevocable licence to enter upon its premises, without prior notice, to repossess the Plant or Equipment.
3. Force Majeure

MPG will not be liable for any Loss incurred as a result of delay or failure to observe this Agreement due to an event of Force Majeure. MPG’s obligations under this Agreement will be suspended and will resume as soon as the cause of the Force Majeure has ceased to have effect.

1. Privacy
   * 1. MPG may provide details of this Agreement to a credit reporting agency for the purpose of:
        1. obtaining a credit report; and
        2. allowing the credit agency to maintain a file,

in respect of the Hirer.

* + 1. MPG will endeavour to take reasonable commercial steps to protect all personal information provided by the Hirer in accordance with the Australian Privacy Principles of the *Privacy Act 1998* (Cth).

1. Third Party Rights
   * 1. The parties acknowledge and agree that some or all of the Plant or Equipment may be owned by a third party or under finance from a third party (**Third Party**), giving that Third Party an interest in the relevant Plant or Equipment (**Third Party Rights**).
     2. Where a Third Party Interest is valid and subsisting, the Hirer acknowledges that:
        1. a person other than MPG may be the legal owner of the Plant or Equipment;
        2. the Third Party may enforce the terms of this Agreement, as if it were MPG;
        3. the Third Party shall at all times be entitled to register its interest on the PPSR, if applicable; and
        4. nothing in this Agreement shall limit, reduce, vary or otherwise qualify the rights of the Third Party against MPG or the Plant or Equipment.
2. Guarantee and Indemnity
   1. Definitions

The following definitions apply in this clause 14:

***Guaranteed Money*** means all amounts (including damages) that are payable, owing but not payable, or that otherwise remain unpaid by the Hirer to MPG under or in connection with this Agreement.

***Guaranteed Obligations*** means the obligations of the Hirer to pay the Guaranteed Money and all their other obligations to MPG (monetary or non-monetary, present or future, actual or contingent) in connection with this Agreement.

* 1. Obligations Guaranteed

In consideration of MPG entering into this Agreement, the Guarantor(s) jointly and severally guarantees to MPG the due and punctual payment by the Hirer of the Guaranteed Money and performance by the Hirer of the Guaranteed Obligations.

* 1. Indemnity

In consideration of MPG entering into this Agreement, the Guarantor(s) jointly and severally agree to indemnify MPG against, and must pay MPG on demand the amount of, any Claim or Loss that MPG may suffer because:

* + - 1. the Guaranteed Obligations are unenforceable; or
      2. the Guaranteed Money is not recoverable from the Hirer or is repaid or restored after it has been recovered.
  1. Obligations of Guarantor

The obligations of the Guarantor(s) in this Agreement:

* + - 1. are principal obligations, and not ancillary or collateral to any other right or obligation;
      2. may be enforced against the Guarantor(s) without MPG first being required to exhaust any remedy they may have against the Hirer;
      3. shall continue until payment to MPG of the whole of the Guaranteed Money has been made as cleared funds
  1. Unconditional Obligations

The obligations of the Guarantor(s) in this Agreement are absolute, unconditional and irrevocable. The liability of the Guarantor(s) under this Agreement extends to and is not affected by any circumstance, act or omission which, but for this subclause, might otherwise affect it at law or in equity including:

* + - 1. the grant of any time, waiver or other indulgence or concession;
      2. the discharge or release of the Guarantor;
      3. the Hirer becoming Insolvent;
      4. any legal limitation, disability, incapacity or other circumstance related to the Hirer; or
      5. any invalidity or irregularity in the execution of this document by, or any deficiency in the powers of the Hirer.

1. General
   * 1. These Terms and Conditions, the Commercial Terms, an Invoice and any other documents produced by MPG to the Hirer constitutes the entire understanding between the parties and supersedes all prior agreements, understandings and communications, whether written or oral.
     2. This Agreement operates as a ‘standing agreement’ and each Invoice shall constitute a separate contract for the hire of the Plant or Equipment between the parties. MPG may enforce its rights under this Agreement against an Invoice, multiple Invoices or the Agreement as a whole.
     3. Except as required by law, the parties must not disclose to any person without the other’s prior written consent the existence of, or details in, this Agreement or any other information which is confidential and not otherwise in the public domain.
     4. If any provision of the Agreement is illegal or unenforceable in any relevant jurisdiction, it must be enforced to the maximum extent possible, and if unenforceable may be severed for the purposes of that jurisdiction, without affecting its enforceability in any other jurisdiction or the enforceability of any other part of this Agreement.
     5. All waivers must be in writing. A single or partial exercise or waiver by a party of a right relating to these Terms and Conditions does not prevent any other exercise of that right or the exercise of any other right.
     6. Clauses 1, 8, 10, 15 and any Warranties and indemnities survive termination or expiration of this Agreement.
     7. The Special Conditions set out in the Commercial Terms prevail to the extent of any inconsistency with these Terms and Conditions.
     8. This Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria, Australia.
2. Vehicles
   * 1. This clause 16 applies in respect of Vehicles in addition to any other provision of these Terms and Conditions.
     2. We set a minimum age limit for those hiring the Vehicles. The Hirer warrants that:
        1. the Hirer and the Hirer’s personnel are at least 21 years of age and have no less than 12 months driving experience, unless MPG has agreed to a variation of that restriction before the Commencement;
        2. the Hirer and the Hirer’s personnel have a valid licence to drive the class of Vehicle which is issued in an Australian state or territory or an international licence (with a valid international driving permit if the Hirer’s licence is not issued in English) appropriate for the class of the Vehicle and not subject to any restriction or condition;
        3. the Hirer and the Hirer’s personnel are not learner drivers or provisional or probationary licence holders;
        4. the Hirer and the Hirer’s personnel have not had their licence cancelled within 2 years of Commencement.
     3. The Hirer acknowledges and agrees that it is a Major Breach of this Agreement, if the Hirer breaches any of clauses 16.2(a) to 16.2(d). If there is a Major Breach of these Terms and Conditions there is no cover for the Hirer or the Hirer’s Personnel for any Damage, theft of the Vehicle or Third Party Loss.
     4. At Commencement, the Hirer must inspect the Vehicle to ensure that any pre-existing damage is noted.
     5. At the end of the Hire Period, the Hirer must:
        1. return the Vehicle:
           1. in the same condition it was in at Commencement, Fair Wear and Tear excepted; and
           2. with a full tank of fuel;
        2. pay the balance of the Hire Charge (if any);
        3. pay any Claim, Damage and/or Loss;
        4. pay for all Overhead Damage and/or Underbody Damage; and
        5. pay for any Damage caused by the immersion of the Vehicle in water.
     6. If the Hirer returns the Vehicle with less than a full tank of fuel, a refuelling charge, in addition to the cost of the fuel (at no less than $3.00/litre), will apply.
     7. The Hirer must comply with all mandatory seat belt laws and fines may be imposed by the police on any driver or passenger who does not have a seat belt properly adjusted and fastened.
     8. The Hirer is responsible for the payment of any parking fines or any other traffic violation, including penalties or fines and charges which are claimed from MPG which are incurred during the Hire Period even if received by MPG after the end of the Hire Period. The Hirer must, if requested by MPG, nominate a driver for any parking fines or any other traffic violations.
     9. The Hire Charge includes a 100km a day allowance. Any excess km’s will be charged at a rate of $0.30 per km.
     10. The Hirer and the Hirer’s personnel must make sure that the Vehicle is locked when not in use or unattended and the keys or remote-control device must be kept in the Hirer’s possession, or that of the Hirer’s personnel, at all times.
     11. The Hirer and the Hirer’s personnel must take reasonable care of the Vehicle by:
         1. preventing it from being damaged;
         2. making sure that it is protected from the weather;
         3. maintaining the engine and brake oils and coolant level and tyre pressures and checking these on no less than a weekly basis;
         4. using the correct fuel type; and
         5. making sure it is not overloaded.
     12. Where MPG has given prior authority to the Hirer to repair the Vehicle the Hirer must keep and produce to MPG the original tax invoices and receipts for any repairs, towing or salvage and the Hirer will be reimbursed only if these expenses have been authorised by MPG. Any entitlement to reimbursement is subject to there being no Major Breach of these Terms and Conditions.
     13. MPG is not responsible for:
         1. damage as a result of use of the incorrect fuel type;
         2. a flat battery because the lights or entertainment systems have been left on;
         3. tyre changing of the Vehicle;
         4. lost keys or remote-control device; or
         5. keys or remote-control device locked in the Vehicle,

and extra charges will apply if any of these services are provided at the Hirer’s request.

* + 1. If the Hirer or the Hirer’s personnel:
       1. commit a Major Breach of these Terms and Conditions in a way that causes Damage, theft of the Vehicle or Third Party Loss; or
       2. drive the Vehicle in a reckless manner so that a substantial breach of road safety legislation has occurred,
       3. the Hirer and the Hirer’s personnel:
          1. have no Rental Cover;
          2. are liable for all Damage, theft of the Vehicle and Third Party Loss; and
          3. are liable for and must pay any additional costs or expenses MPG incur as direct consequence.
    2. Acting reasonably, MPG may terminate these Terms and Conditions and take immediate possession of the Vehicle if a breach of any part of clause 16 has occurred.
    3. If the Vehicle is stolen or if the Hirer or the Hirer’s personnel have an Accident where:
       1. any person is injured;
       2. the other party has failed to stop or leaves the scene of the Accident without exchanging names and addresses; or
       3. the other party appears to be under the influence of drugs or alcohol,

the Hirer or the Hirer’s personnel must also report the theft or Accident to the Police.

* + 1. If the Hirer or the Hirer’s personnel have an Accident, the Hirer or the Hirer’s personnel must:
       1. exchange names and addresses and telephone numbers with the other driver;
       2. take the registration numbers of all vehicles involved;
       3. take as many photos as is reasonable showing:
          1. the position of the Vehicles before they are moved for towing or salvage;
          2. the Damage to the Vehicle;
          3. the damage to any Third Party vehicle or property; and
          4. the general area where the Accident occurred, including any road or traffic signs;
       4. obtain the names, addresses and phone numbers of all witnesses;
       5. not make any admission of fault or promised to pay the other party's claim or release the other party from any liability;
       6. forward all Third Party correspondence or court documents to MPG within 7 days of receipt; and

co-operate with MPG in the prosecution of any legal proceedings that MPG may institute or defence of any legal proceedings which may be instituted against the Hirer or MPG as a result of an Accident, including attending MPG’s lawyer's office or any Court hearing.