

# HIRE CONTRACT CONDITIONS

These Hire Contract Conditions apply to the exclusion of any other conditions proposed by the Customer, unless otherwise agreed by Pink Boots Hire Pty Ltd and the Customer in writing.

Pink Boots Hire Pty Ltd agrees to hire Equipment to the Customer on terms set out in this document.

## Key points

- If the Customer wishes to hire Equipment the Customer must complete and sign (or otherwise accept in the manner required by Pink Boots Hire Pty Ltd) a **Hire Schedule** and such other documents as Pink Boots Hire Pty Ltd may require.
- **Report and provide full details to Pink Boots Hire Pty Ltd of any accident or damage to the Equipment within 2 business days.**
- **Cover the full cost of repairing any damage** to the Equipment caused or contributed to by the Customer.
- The **Customer authorises Pink Boots Hire Pty Ltd to charge any amounts owing by the Customer to any credit card** or account details of which are provided to Pink Boots Hire Pty Ltd.
- Customer **must not lease, hire, bail or give possession ('sub-hire')** of the Equipment to anyone else unless Pink Boots Hire Pty Ltd (in its absolute discretion) first consents in writing.

Pink Boots Hire Pty Ltd may in its absolute discretion decline to hire Equipment to the Customer at any time if it has reasonable cause to do so.

Each Hire Schedule is not a separate contract but forms a part of this hire agreement between Pink Boots Hire Pty Ltd and the Customer, together with any credit application, guarantee and indemnity or other contractual documents.

**Amendment:** These Hire Contract Conditions may be changed by Pink Boots Hire Pty Ltd from time to time by Pink Boots Hire Pty Ltd giving notice of the amendment to the Customer. Notice is deemed given (whether or not actually received) when Pink Boots Hire Pty Ltd does any of the following: (a) sends notice of the amendment to the Customer at any address (including an email address) supplied by the Customer; (b) publishes the amended terms on its website [www.pinkbootshire.com.au](http://www.pinkbootshire.com.au); or (c) displays the amended terms at premises from which Pink Boots Hire Pty Ltd conducts hire operations.

Changes to these hire Contract Conditions will only apply to Hire Schedules entered into after the change occurs.

## 1. Interpretation of Words in this Contract;

**Pink Boots Hire Pty Ltd** – The company or companies listed on the Hire Schedule.

**Commencement** – The date when the Customer takes possession of the Equipment.

**Equipment** – Means any kind of equipment, vehicles or tools including but not limited to the following kinds of goods or goods suitable for the following kinds of uses: machinery; lifting; access; earthmoving; generation and power distribution; ground equipment and shoring; materials handling; offshore pumps; safety equipment; storage; traffic management including road barriers; signage; vehicles including trucks, vans and trailers, and includes tools and parts and accessories for any of the foregoing.

**Hire Charge** – The amounts shown on the Hire Schedule payable by the Customer to hire the Equipment.

**Hire Period** – Means from Commencement until the end of the period shown on the Hire Schedule. The Hire Period may only be extended for one or more definite periods and in each case this can only be done if the Customer requests it and if Pink Boots Hire Pty Ltd agrees. Pink Boots Hire Pty Ltd may issue and require the Customer to sign an amended Hire Schedule for any extension of the Hire Period.

**Hire Schedule** – Means a document which Pink Boots Hire Pty Ltd may require the Customer to sign (or accept in a way Pink Boots Hire Pty Ltd requires) including particulars of the Equipment, the Hire Period, the Guarantor on behalf of the Customer where applicable, and such other information as Pink Boots Hire Pty Ltd may decide to require.

**Kilometre Charge** – The amount payable for the kilometres that a Motor Vehicle has, in the reasonable opinion of Pink Boots Hire Pty Ltd, travelled during the Hire Period.

**Motor Vehicle** – A truck and any other equipment owned by Pink Boots Hire Pty Ltd such as a scissor lift, trailer or knuckle boom.

**Remote Area** – Any location which is more the 50 kilometres from the Pink Boots Hire Pty Ltd branch from where the Equipment is hired.

## 2. Pink Boots Hire Pty Ltd Obligations, Pink Boots Hire Pty Ltd will:

- 2.1 Allow the Customer to take and use the Equipment for the Hire Period.
- 2.2 Provide the Equipment to the Customer clean and in good working order.
- 2.3 Collect the Equipment within 5 days of being requested to do so by the Customer.

**NOTE TO CUSTOMER: You must return the Equipment at your expense when due back.**

## 3. Obligations of the Customer, The Customer must:

- 3.1 Deliver the Equipment to Pink Boots Hire Pty Ltd when it is due back.
- 3.2 Return the Equipment to Pink Boots Hire Pty Ltd clean and in good repair.
- 3.3 Satisfy itself at Commencement that the Equipment is suitable for its purposes.

3.4 Operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instructions whether supplied by Pink Boots Hire Pty Ltd or posted on the Equipment.

3.5 **Indemnify** Pink Boots Hire Pty Ltd for all injury and/or damage caused or contributed to by the Customer to persons and property in relation to the Equipment and its operation and have adequate insurance to cover all liabilities incurred as a result of the use of the Equipment, including but not limited:

(a) insurance coverage for Commercial General Liability (including public liability and products liability) for an amount not less than \$10,000,000.00 per occurrence and \$10,000,000.00 in aggregate (including for the use of any unregistered vehicle); and

(b) Workers Compensation Insurance in accordance with all applicable laws in all States and Territories in which the Customer, their employees, agents or sub-contractors operate a business.

3.6 Ensure that any person collecting or taking delivery of Equipment on behalf of the Customer is authorised by the Customer to do so and the Customer will not allege that any such person is not so authorized.

3.7 Ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed.

3.8 Conduct a thorough hazard and risk assessment before using the Equipment and comply with all Occupational Health and Safety laws relating to the Equipment and its operation.

3.9 Safely secure all items loaded in or on the Equipment or in or on the Customer's vehicle, and indemnify Pink Boots Hire Pty Ltd in respect of any injury and/or damage caused by items falling from the Equipment or from any vehicle or trailer operated by or on behalf of the Customer.

3.10 Operate the Equipment with an adequate motor vehicle and/or power source.

3.11 Report and provide full details to Pink Boots Hire Pty Ltd of any accident or damage to the Equipment within 2 business days of the accident or damage occurring.

**The Customer must NOT:**

3.12 Tamper with, damage or repair the Equipment.

3.13 Lose or part with possession of the Equipment.

3.14 Rely upon any representation relating to the Equipment or its operation other than those contained in this Contract.

3.15 Allow any person to drive a Motor Vehicle if the person:

(a) does not hold a suitable licence to drive that class of Motor Vehicle; or

(b) is affected by drugs and/or alcohol.

3.16 Exceed the recommended or legal load and capacity limits of the Equipment.

3.17 Use or carry any illegal, prohibited or dangerous substance in or on the Equipment.

3.18 Exceed the recommended or legal speed limit for the Equipment.

**4. Payments by the Customer to Pink Boots Hire Pty Ltd**

4.1 On or before Commencement (or as otherwise specifically agreed with Pink Boots Hire Pty Ltd), the Customer will pay the Hire Charge.

4.2 Immediately on request by Pink Boots Hire Pty Ltd, the Customer will pay:

(a) The new list price of any Equipment which is for whatever reason not returned to Pink Boots Hire Pty Ltd;

**(NOTE TO CUSTOMER: Subject only to any express provision of this Contract to the contrary, the Customer is responsible for loss or theft of the Equipment)**

(b) All costs incurred in cleaning the Equipment in excess of normal usage.

(c) The full cost of repairing any damage to the Equipment caused or contributed to by the Customer, unless expressly agreed otherwise in this Contract;

(d) stamp duties, GST, any other taxes or duties, and all tolls, fines, penalties, levies or charges payable in respect of this Contract or arising from the Customer's use of the Equipment;

(e) all costs incurred by Pink Boots Hire Pty Ltd in delivering and recovering possession of the Equipment;

(f) a late payment fee calculated daily at 3% per month on all amounts owing by the Customer not paid on time;

(g) The Kilometre Charge and any additional Hire Charges at Pink Boots discretion.

(h) The cost of fuels and consumables provided by Pink Boots Hire Pty Ltd and not returned by the Customer;

(i) any expenses and legal costs (including commission payable to a commercial agent) incurred by Pink Boots Hire Pty Ltd in enforcing this Contract due to the Customer's default;

(j) all costs of repairing or replacing tyres, including road service; and

(k) if any damage and/or theft waiver applies, the amount for which the Customer is liable as set out in this Contract.

4.3 Without limiting the ability of Pink Boots Hire Pty Ltd to recover all amounts owing to it, the Customer authorises Pink Boots Hire Pty Ltd to charge any amounts owing by the Customer to any credit card or account details of which are provided to Pink Boots Hire Pty Ltd.

**5. PPS Law**

5.1 This clause applies to the extent that this Contract provides for a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPS Law"). References to PPS Law in this agreement include references to amended, replacement and successor provisions or legislation.

5.2 If Pink Boots Hire Pty Ltd does not have at Commencement a PPS Law registration ensuring a perfected first priority security interest in the Equipment, the Hire Period, (including any extension of the Hire Period or the aggregate of consecutive Hire Periods during which the Customer has substantially uninterrupted possession) may not despite anything else in this document or any Hire Schedule be longer than:

(a) 90 days in the case of Equipment which may or must be described by serial number in a PPS Law registration; or

(b) a year in any other case.

5.3 Pink Boots Hire Pty Ltd may register its security interest. The Customer must do anything (such as obtaining consents and signing documents) which Pink Boots Hire Pty Ltd requires for the purposes of:

(a) Ensuring that Pink Boots Hire Pty Ltd security interest is enforceable, perfected and otherwise effective under the PPS Law;

(b) enabling Pink Boots Hire Pty Ltd to gain first priority (or any other priority agreed to by Pink Boots Hire Pty Ltd in writing) for its security interest; and

(c) Enabling Pink Boots Hire Pty Ltd to exercise rights in connection with the security interest.

5.4 The rights of Pink Boots Hire Pty Ltd under this document are in addition to and not in substitution for Pink Boots Hire Pty Ltd rights under other law (including the PPS Law) and Pink Boots Hire Pty Ltd may choose whether to exercise rights under this document, and/or under such other law, as it sees fit. To avoid any doubt about it Pink Boots Hire Pty Ltd security interest will attach to proceeds.

5.5 To the extent that Chapter 4 of PPSA applies to any security interest under this agreement, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are “contracted out” of this agreement in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires Pink Boots Hire Pty Ltd to give a notice to the Customer); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires Pink Boots Hire Pty Ltd to give a notice to the Customer); section 129(2) and 129(3); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re-instatement of security agreement).

5.6 The following provisions of the PPS Law: section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral) confer rights on Pink Boots Hire Pty Ltd. Customer agrees that in addition to those rights, Pink Boots Hire Pty Ltd shall, if there is default by Customer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the Customer agrees that Pink Boots Hire Pty Ltd may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

5.7 The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.

5.8 Pink Boots Hire Pty Ltd and the Customer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to Pink Boots Hire Pty Ltd the benefit of section 275 (6)(a) and Pink Boots Hire Pty Ltd shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this sub-clause.

5.9 Customer must not dispose or purport to dispose of, or create or purport to create or permit to be created any ‘security interest’ (as defined in PPS Law) in the Equipment other than with the express written consent of Pink Boots Hire Pty Ltd.

5.10 Customer must not lease, hire, bail or give possession (‘sub-hire’) of the Equipment to anyone else unless Pink Boots Hire Pty Ltd (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to Pink Boots Hire Pty Ltd and must be expressed to be subject to the rights of Pink Boots Hire Pty Ltd under this agreement. Customer may not vary a sub-hire without the prior written consent of Pink Boots Hire Pty Ltd (which may be withheld in its absolute discretion).

5.11 Customer must ensure that Pink Boots Hire Pty Ltd is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment.

5.12 Customer must take all steps including registration under PPS Law as may be required to:

- (a) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
- (b) enabling the Customer to gain (subject always to the rights of Pink Boots Hire Pty Ltd) first priority (or any other priority agreed to by Pink Boots Hire Pty Ltd in writing) for the security interest; and
- (c) enabling Pink Boots Hire Pty Ltd and the Customer to exercise their respective rights in connection with the security interest.

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

## **6. Damage Waiver**

6.1 Damage Waiver is not insurance, but is an agreement by Pink Boots Hire Pty Ltd that the Customer’s liability for damage to the Equipment can be limited in some circumstances only, to an amount called the Damage Waiver Excess.

6.2 Damage Waiver applies to all hires, subject to the conditions below, for no additional fee. The Damage Waiver Excess is the actual recovery and repair cost of the Equipment, or 20% of the current replacement cost of the Equipment as reasonably determined by Pink Boots Hire Pty Ltd using suppliers list prices, whichever is the lesser amount.

**DAMAGE WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE CUSTOMER’S LIABILITY in the following circumstances;**

- (a) where the Equipment is lost or stolen;
- (b) where the operator is not suitably licensed;
- (c) where the operator is affected by drugs and/or alcohol;
- (d) where the equipment has been wilfully damaged by the Customer or its employees or agents;
- (e) where the damage is caused by a collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object whatsoever due to insufficient clearance;
- (f) where the damage is caused while the Equipment is being driven or towed on any road that is unsealed or is not a public road; or
- (g) where the damage is caused in any way by overloading.

6.3 The Customer may pay an additional Vehicle Waiver Plus Fee (Excluding Customers driving with “P” plate licences) in relation to the hire of Motor Vehicles, which will:

- (a) reduce the Damage Waiver Excess in relation to Motor Vehicles;
- (b) cover damage to a pantech or van body above cab height; and
- (c) add a Theft Waiver component for Motor Vehicles. Theft Waiver is not insurance, but is an agreement by Pink Boots Hire Pty Ltd that the Customer’s liability for theft or loss of the Motor Vehicle can be limited in some circumstances only to an amount called the Theft Waiver Excess.

Pink Boots Hire Pty Ltd will ask the Customer to pay the Vehicle Waiver Plus Fee on the hire of Motor Vehicles, but the Customer may decide to opt out of that payment.

The reduced Damage Waiver Excess and the Theft Waiver Excess apply to Motor Vehicles when the Vehicle Waiver Plus Fee is paid this will be shown on the Hire Contract and will vary for different classes of vehicles.

6.4 The Customer may pay an additional Equipment Waiver Plus Fee in relation to the hire of medium and large equipment (being such Equipment as determined by Pink Boots Hire Pty Ltd from time to time), which will;

- (a) reduce the Damage Waiver Excess in relation to medium and large equipment; and
- (b) add a Theft Waiver component for medium and large machinery. Theft Waiver is not insurance, but is an agreement by Pink Boots Hire Pty Ltd that the Customer’s liability for theft or loss of the Equipment can be limited in some circumstances only to an amount called the Theft Waiver Excess.

Pink Boots Hire Pty Ltd will ask the Customer to pay the Equipment Waiver Plus Fee on the hire of medium and large equipment, but the Customer may decide to opt out of that payment.

Payment of the Equipment Waiver Plus Fee is compulsory on all earth moving equipment, unless Pink Boots Hire Pty Ltd agrees to accept a certificate of insurance provided by the Customer at its own cost.

The reduced Damage Waiver Excess and the Theft Waiver Excess which apply to medium and large equipment when the Equipment Waiver Plus Fee is paid will be shown on the Hire Contract and will vary for different types of machinery.

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

(a) where the Customer has failed to keep the Equipment in a securely locked Compound, or in the case of a Motor Vehicle, has failed to properly secure or lock the Motor Vehicle; or

(b) where the Customer has failed to submit to Pink Boots Hire Pty Ltd a Police Report on the theft within 7 days of the theft allegedly occurring.

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

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

## **7. Exclusion of Warranties and Liabilities.**

7.1 Where the Australian Consumer Law applies, the Customer has the benefit of guarantees in relation to the hire of the Equipment which cannot be excluded.

7.2 Where the Australian Consumer Law applies and the goods are not of a kind ordinarily acquired for personal domestic or household use or consumption, Pink Boots Hire Pty Ltd 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.

7.3 To the extent that the Australian Consumer Law (or any other law which cannot be excluded) does not apply. Pink Boots Hire Pty Ltd makes no representations and gives no warranties other than those set out in these Hire Contract Conditions, and will not be liable to the Customer for any damages, costs or other liabilities whatsoever (including for consequential loss) in relation to the hiring of the Equipment by the Customer.

## **8. Remote Hire**

Where the Equipment is at any time hired by the Customer to be located in the Remote Area, the following clauses will also apply, in addition to the obligations of the Customer under Clause 3 and elsewhere in these Hire Contract Conditions:

(a) The Customer will pay an additional charge for any delivery, servicing and repair of the Equipment, and for any other attendance at the Remote Area by Pink Boots Hire Pty Ltd ('Remote Area Charges'). The Remote Area Charges will be calculated on a per kilometer rate travelled by Pink Boots Hire Pty Ltd staff to and from the Remote Area, plus labour costs per staff member per hour (including travelling times) at scheduled rates, plus direct travelling cost including all airfares and accommodation charges incurred by Pink Boots Hire Pty Ltd and its staff in connection with travel to and from the Remote Area;

(b) Multiple items of Equipment hire by a Customer on the one site will only be charged for one call out fee ( unless Pink Boots Hire Pty Ltd needs multiple forms of transport);

(c) The Customer is responsible at its cost for daily maintenance and care of all Equipment in its possession, including daily checking of all fluids (fuel, oil, water, battery levels etc) and general tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points.

## **9. Breach of Hire Contract by Customer**

If the Customer breaches any clause whatsoever of this Contract, or becomes bankrupt, insolvent or ceases business then;

9.1 Pink Boots Hire Pty Ltd shall be entitled to:

(a) terminate this Contract; and/or

(b) sue for recovery of all monies owing by the Customer; and/or

(c) repossess the Equipment (and is authorized to enter any premises where the Equipment is located to do so), and any Damage and/or Theft Waiver referred to in clause 6 is immediately invalidated.

9.2 The Customer indemnifies Pink Boots Hire Pty Ltd in respect of any damages, costs or loss resulting from a breach by the Customer of any provision of this Contract.

9.3 The Customer will pay Pink Boots Hire Pty Ltd for all debt collection or legal costs (on a full indemnity basis) incurred by Pink Boots Hire Pty Ltd in its recovery or attempted recovery of any debt in connection with this Contract.

## **10. Guarantee and Indemnity to Pink Boots Hire Pty Ltd**

10.1 In consideration of Pink Boots Hire Pty Ltd entering into this Contract each Guarantor unconditionally and irrevocably guarantees to Pink Boots Hire Pty Ltd the due and punctual payment of all debts and monetary liabilities including without limitation sums of money, interest, costs, damages, charges and expenses which are, or which may become payable by the Customer to Pink Boots Hire Pty Ltd on any account and in any capacity ("Guaranteed Monies") and, as a separate and independent obligation, agrees to indemnify and keep Pink Boots Hire Pty Ltd indemnified from and against any claim, action, loss, damage, cost, expense, outgoing or payment suffered, paid or incurred by Pink Boots Hire Pty Ltd in relation to the non-payment or non-recovery of the Guaranteed Monies.

10.2 Each Guarantor jointly and severally acknowledges and agrees that this Guarantee and Indemnity ("the Guarantee") is given upon and subject to the following conditions:

10.2.1 In the event of the Customer failing to pay Pink Boots Hire Pty Ltd any Guaranteed Monies the Guarantor will immediately pay such monies to Pink Boots Hire Pty Ltd.

10.2.2 In the event of the Customer failing to carry out or perform any of its obligations the Guarantor will immediately carry out and perform those obligations.

10.2.3 The Guarantor shall be deemed to be jointly and severally liable with the Customer (in lieu of being merely a surety for it) for the payment of the Guaranteed Monies and it shall not be necessary for Pink Boots Hire Pty Ltd to make any claim or demand on or to take any action or proceedings against the Customer or make any demand against the Guarantor before commencing proceedings against the Guarantor to pay the Guaranteed Monies or to carry out and perform the obligations herein contained.

10.2.4 No time or other indulgence whatsoever that may be granted by Pink Boots Hire Pty Ltd to the Customer shall in any manner whatsoever affect a liability of the Guarantor hereunder and the liability of the Guarantor shall continue to remain in full force and effect until all monies owing to Pink Boots Hire Pty Ltd have been paid and all obligations have been performed.

10.3 The Guarantor hereby charges their respective right, title and interest as beneficial owner and as trustee of every trust in all real estate which they or any of them now have or at any time hereafter may have to secure their obligations under this Contract with Pink Boots Hire Pty Ltd.

## **11. No Liability and Limitation of Liability by Pink Boots Hire Pty Ltd**

11.1 To the greatest extent permitted by law (including the Australian Consumer Law) Pink Boots Hire Pty Ltd shall not be liable to the Customer for any damages or losses in connection with consequential, special or economic loss suffered by the Customer for whatever reason arising from the hiring of the Equipment.

11.2 To the greatest extent permitted by law (including the Australian Consumer Law) Pink Boots Hire Pty Ltd shall not be liable to the Customer for any damages to or loss of any property whatsoever and however caused, unless that loss or damage resulted solely from Pink Boots Hire Pty Ltd's negligent or intentional acts.

11.3 To the greatest extent permitted by law (including the Australian Consumer Law) the Customer shall rely on its own knowledge and expertise in selecting the Equipment, and any decision to use the Equipment shall be at the Customer's own risk and not by reliance on any advice or representation made by or on behalf of Pink Boots Hire Pty Ltd. Furthermore, Pink Boots Hire Pty Ltd does not give any warranty to the Customer in relation to the condition or capabilities of the Equipment.

11.4 To the greatest extent permitted by law (including the Australian Consumer Law) Pink Boots Hire Pty Ltd's maximum liability shall be limited to the replacement, repair or resupply of the Equipment hired by the Customer under this Contract and/or the Hire Schedule.

## **12. Stand Down**

Unless negotiated otherwise and agreed by Pink Boots Hire Pty Ltd in writing, stand down of any or all of the Equipment during the Hire Period will only take place in the event, for the Hire Period of, and to the extent that, inclement weather or mechanical failure of the Equipment, in the course of ordinary and reasonable use, prevents effective use of the Equipment. The Customer must contact Pink Boots Hire Pty Ltd as soon as the Customer wishes to invoke a period of Equipment stand down and receive written approval from Pink Boots Hire Pty Ltd before the stand down becomes effective as agreed in writing.

## **13. Indemnity to Pink Boots Hire Pty Ltd**

13.1 The Customer will indemnify Pink Boots Hire Pty Ltd for:

13.1.1 all loss, damage or expense caused to persons and property in relation to the use of the Equipment and its operation;

13.1.2 the cost of repairs caused by the Customer or any other operator;

13.1.3 the cost of damage, loss or expenses arising from any breach by the Customer of the conditions of the Contract and/or any laws governing this Contract;

13.1.4 the cost of necessary repairs to the Equipment, unless the damage is attributed to a specific event for which Pink Boots Hire Pty Ltd receives insurance cover, but in any event the Customer will indemnify Pink Boots Hire Pty Ltd for any excess it has incurred for such insurable event;

13.1.5 all claims which may be made against Pink Boots Hire Pty Ltd in respect of any loss, damage, death or injury caused by or in the course of or arising out of the Equipment whilst the Equipment is on hire to, or in the custody of the Customer, his agent and/or subcontractor or any other person acting on behalf of the Customer or is a sub-hirer of the Customer;

13.1.6 any breaches of this Contract by the Customer.

## **14. Disputes**

14.1 The Customer must immediately check all Hire Charges, and any disputes in relation to those Hire Charges must be communicated to Pink Boots Hire Pty Ltd in writing within 30 days of the Hire Contract date. In the event that no communication is received from the Customer within that 30 day period, the Hire Charges are deemed to be accepted by the Customer.

14.2 If a dispute arises relating to this Contract, the hiring or the use of the Equipment (except in regard to payments due to Pink Boots Hire Pty Ltd including any payment under clause 10 by a Guarantor), the parties agree to negotiate to settle the dispute with the assistance of a mediator agreed between the parties the costs of such mediator to be shared equally between the parties. Where the parties are unable to agree on a mediator after thirty (30) days of such dispute arising the parties must use the Hire and Rental Association of Australia before proceeding to litigation to resolve the dispute.

## **15. Privacy**

Pink Boots Hire Pty Ltd will comply with the Australian Privacy Principles in all dealings with Customers. A copy of the Pink Boots Hire Pty Ltd Privacy Statement is available upon request or by visiting: [www.pinkbootshire.com.au](http://www.pinkbootshire.com.au)

## **16. Governing Law**

16.1 This Hire Contract is a payment claim under the Building and Construction Industry Security of Payment Act 1999 NSW, the Building and Construction Industry Security of Payment Act 2002 VIC, the Building and Construction Industry Payments Act 2004 QLD, the Building and Construction Industry Security of Payment Act 2009 SA, the Construction Contracts Act 2004 WA, the Building and Construction Industry (Security of Payment) Act 2009 ACT, the Building and Construction Industry Security of Payment Act 2009 TAS, and/or the Construction Contracts (Security of Payments) Act 2009 NT.

16.2 Except where Pink Boots Hire Pty Ltd in its discretion takes action against the Customer under any of the Building and Construction Industry legislation referred to in this clause, Pink Boots Hire Pty Ltd and the Customer agree that this Contract is governed by the law of the state of Victoria, and the parties submit to the jurisdiction of the courts of that State.

## **17. General**

17.1 **Waiver:** An election by Pink Boots Hire Pty Ltd not to exercise any rights on any breach or default of the terms and conditions under this Contract shall not constitute a waiver of any rights relating to any other breach or default. Furthermore, the failure by Pink Boots Hire Pty Ltd to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Pink Boots Hire Pty Ltd right to subsequently enforce that provision.

17.2 **Force Majeure:** Pink Boots Hire Pty Ltd shall not be in default or in breach of any contract with the Customer as a result of Force Majeure including any strike or lock-out, act of God, war, terrorism, industrial action, fire, flood, storm or other event beyond the reasonable control of Pink Boots Hire Pty Ltd.

17.3 **Severability:** If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

17.4 **Credit Check:** The Customer authorizes Pink Boots Hire Pty Ltd to obtain a report from a Credit Reporting Agency or other Credit provider which contains details of the Customer's personal and commercial credit information, for the purpose of this Contract and in accordance with the Privacy Act 1988.

17.5 **Charge:** The Customer charges as beneficial owner and as trustee of every trust all of the Customer's land (including land acquired in the future) in favour of Pink Boots Hire Pty Ltd to secure the payment of any money under this Contract.

17.6 **Interest:** Interest is due and payable by the Customer to Pink Boots Hire Pty Ltd at 15% per annum on all amounts from the due dates to the date of payment made by the Customer on a compounding basis.

17.7 **Variation:** Where applicable any variation to this Contract must be in writing and signed by the parties.

17.8 **No Liability:** Subject to clause 11 Pink Boots Hire Pty Ltd shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Pink Boots Hire Pty Ltd of these terms and conditions.

17.9 **No Set Off:** The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Pink Boots Hire Pty Ltd nor to withhold payment of any invoice because part of that invoice is in dispute.

17.10 **Right to Licence or sub-contract:** Pink Boots Hire Pty Ltd may licence or sub-contract all or any part of its rights and obligations under this Contract without the Customer's consent.

17.11 **GPS:** The Customer agrees and acknowledges that Pink Boots Hire Pty Ltd may use GPS tracking systems on all Equipment Hired by Customer under this Contract.

## **18. GST**

18.1 In this clause:

18.1.1 GST means any tax or levy imposed by the Commonwealth of Australia on the supply of goods and services in Australia together with any related interest, penalty or other charge imposed by or under GST Law.

18.1.2 GST Law means any law imposing GST.

18.1.3 GST Exclusive Consideration means the charges and other amounts (other than GST) specified in this Contract as payable by the Customer.

18.1.4 Supply means any supply or importation as defined in GST Law.

18.2 The GST Exclusive Consideration is calculated not to include GST.

18.3 In addition to the GST Exclusive Consideration, the Customer must pay or reimburse to Pink Boots Hire Pty Ltd an amount equal to the GST charged to Pink Boots Hire Pty Ltd from time to time in respect of supply under this Contract.

18.4 GST will be payable by the Customer without deduction or set-off at the same time as the GST Exclusive Consideration.

#### **19. Jurisdiction**

19. This Contract and all claims, disputes, and legal proceedings between Pink Boots Hire Pty Ltd and the Customer shall be governed by the laws of Victoria and heard by the courts of Victoria (including its appellate courts).

## **CUSTOMER DECLARATION**

The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

**Effective – January 2017**