For any information, please contact Jesse Malivanek on email jesse@malivanekgroup.com.au

Subject to equipment availability at time of order. Unless otherwise agreed, it is the hirer's responsibility to return the equipment to our yard at the hirer's expense. Where the Hirer is not required to return the equipment to our yard, **it is the hirer's responsibility to off hire the equipment by 3pm** upon completion of the works and obtain an off-hire number to cease billings, if off hire is not completed additional charges may be applied. Equipment off hired by the hirer must be ready for collection at any time.
time. Where the equipment is collected from us by the hirer, the day the equipment is collected commences. Where the equipment is to be returned by the hirer, the equipment will remain on hire until the equipment is returned to the point of origin. All credit card payments of your account will attract a 1.5% surcharge. Diesel/Petrol may be charged on return, based on the amount used, at the applicable rate at the time of hire acceptance. Gas Forklifts may be charged on return for a Full Gas Bottle (LPG), regardless of the amount used, at the applicable rate at the time of hire acceptance. Items must be kept on hire for a minimum of 4 days for the weekly rate to apply, alternative pricing at our higher daily rate will be applied to any items off hired early.

Unless otherwise agreed in writing, the generator pricing provided above is based on a maximum of 10hr per day x 5 days per week. MalivanekGroup being used over and above these hours on any one day will incur additional hire charges. All Fuel cell hires will attract a one-off cleaning fee of $150 + GST per unit upon return.

**Malivanek Electrical & Air**
**47 Marion Street, Tugun, QLD, 4224**
**Phone: 0421714119**
**Email: jesse@malivanekgroup.com.au**

# Terms and Conditions of Hire

# 2025 EDITION

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# TERM AND CONDITIONS OF HIRE

## 1. DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions (**Terms and Conditions of Hire**), unless specified to the contrary, the following words and phrases have the following meanings given to them:

**Claim** means in relation to a person, corporation or other legal entity, a claim, demand, remedy, suit, injury, damage, loss, cost of liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred or to be made or recovered by or against such person, corporation or other legal entity however arising and whether ascertained or unascertained.

**Equipment** means any machine hired by MalivanekGroup to the Hirer and includes all tools, accessories, parts, item of equipment and devices affixed thereto or supplied therewith.

**Environmental Laws** means any statute, policy directions or regulations made or issued by a regulatory body or government body relating to the environment including (without limitation) the protection of the environment.

**MalivanekGroup** means Malivanek Electrical & Air (52 279 295 241)

**Guarantors** means the Guarantors listed in item 2 of the schedule to the Deed of Guarantee and Indemnity.

**Hire Agreement** means every agreement between MalivanekGroup and the Hirer for the hire of Equipment (whether signed or not) including a Hire Docket, all of which will be deemed to include:

(a) the Credit Application (or other order documentation approved by MalivanekGroup in respect of the Equipment); and

(b) these Terms and Conditions of Hire.

**Hire Period** has the meaning given in clause 3.

**Hirer** means the person, firm or corporation to whom the Equipment is hired by MalivanekGroup (including the party named and described in the Credit Application as the “Hirer”) and includes any contractor, employee, servant, agent or other person claiming through, under or in trust for any such person, firm or corporation.

**Location** means the place where the Hirer will use the Equipment.

**Modern Slavery** has the meaning given in section 4 of the *Modern Slavery Act 2018* (Cth).

1.2 In the interpretation of these Terms and Conditions of Hire, the following provisions apply unless the context otherwise requires:

1.1.1 words importing the singular include the plural and vice versa;

1.1.2 words importing any gender includes both genders;

1.1.3 a reference to any matter or thing includes the whole and each part of it separately;

1.1.4 where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;

1.1.5 a reference to a natural person includes a Contractor or other corporate body and vice versa;

1.1.6 a reference to any legislation, regulation, code or local law includes any modification, re-enactment or substitution of it;

1.1.7 the obligations imposed by these Terms and Conditions of Transport on or in favour of a party who is a natural person extends to his heirs, executors, administrators and assigns;

1.1.8 the obligations imposed by these Terms and Conditions of Transport on or in favour of a party which is a Contractor or other corporate body includes its successors and assigns; and

1.1.9 use of the word “including” is to be read and construed without limitation.

## 2. TITLE TO EQUIPMENT

2.1 The Hirer acknowledges that in all circumstances MalivanekGroup (or, if the Equipment is owned by another MalivanekGroup entity, then that MalivanekGroup entity) retains title to the Equipment (even if the Hirer goes into liquidation or becomes bankrupt during the Hire Period) and in no circumstances will it be deemed to be a fixture. The rights of the Hirer to use the Equipment are as a bailee only.

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2.2 Except in the circumstances set out in clause 13, the Hirer must not offer, sell, assign, sub-let, charge, mortgage, pledge, create any form of security interest or otherwise deal with the Equipment in any way which is inconsistent with the rights of MalivanekGroup as owner.

2.3 All risk in the Equipment passes to the Hirer upon delivery to the Hirer or collection of the Equipment by the Hirer, continues during the entirety of the Hire Period and only ceases when MalivanekGroup acknowledges that the Equipment has been returned to MalivanekGroup (or when the Equipment is collected by MalivanekGroup if agreed).

**3. HIRE PERIOD**

3.1 Subject to clause 3.3, the period of hire commences when the Hirer takes possession of the Equipment or when MalivanekGroup delivers the Equipment in accordance with the Hirer's instructions and the period of hire ends when the Equipment is back in the possession of MalivanekGroup (in total, the "**Hire Period**"). The Hire Period includes weekends and public holidays and is irrespective of the time the Equipment is being used.

3.2 The Hirer will be entitled to use the Equipment for the Hire Period on the express understanding that it will be charged for such use in accordance with the Hire Agreement.

3.3 Should MalivanekGroup agree with the Hirer that MalivanekGroup will deliver and collect the Equipment, hire charges will commence from the time the Equipment leaves MalivanekGroup' premises and continue until the date that the Equipment is available for collection from the Location ("**Off-Hire Date**"). The Hirer must notify MalivanekGroup of that date in advance and MalivanekGroup may give the Hirer a number as verification that such notification has been received ("**Off-Hire Number**").

3.4 The notification will be given by the Hirer with sufficient time in advance (prior to 3pm of the day of the off-hire) for the Equipment to be picked up and returned to MalivanekGroup' premises within MalivanekGroup' normal business hours by the Off-Hire Date. If MalivanekGroup considers that insufficient notice has been given, the Hirer will be charged for such additional period of time as MalivanekGroup considers is necessary to arrange collection or delivery of the Equipment, but in any case no less than an extra days hire. Any hire period specified on the Hire Agreement will not be deemed notice to MalivanekGroup that the Equipment is available for collection. Where MalivanekGroup agrees to collect the Equipment, the Hirer remains responsible for theft, loss or damage to the Equipment until the Equipment is collected by MalivanekGroup.

3.5 The Hire Agreement will specify the type of rate that will apply. Equipment hired for at least 5 days in a seven day period, will be charged at the weekly rate.

3.6 MalivanekGroup reserves the right to charge a minimum period of hire for certain types of Equipment. The minimum period of hire may not be varied except if agreed in writing by MalivanekGroup.

3.7 The Hire Period will not be subject to stand down or adjustment for any reason whatsoever unless agreed to by MalivanekGroup in writing.

**4. HIRE CHARGES AND OTHER CHARGES**

4.1 **Hire**: Subject to clause 4.10, the Hirer will pay MalivanekGroup the hire charges set out in the Hire Agreement, as well as other levies or charges that may be applicable. The Hirer is not entitled to any discount or rebate if the Equipment is not used by the Hirer for any part of the Hire Period. If the Equipment is used for more than ten hours on any given day MalivanekGroup may charge a double shift rate calculated as the hire rate x 2.

4.2 **Pricing Confidentiality**: The Hirer acknowledges that all pricing quoted by MalivanekGroup is for the Hirer only and must be kept confidential at all times.

4.3 **Other Services**: MalivanekGroup will, if requested by the Hirer, and only if personnel are available, attend the site and instruct the Hirer in the operation of the Equipment. The Hirer will in addition to the hire charges pay MalivanekGroup for such services at the scheduled rate per hour or part thereof including travelling time plus any associated travel and accommodation costs incurred by MalivanekGroup.

4.4 **Consumables and Trade Materials**: The Hirer will be liable for charges made for consumables and trade materials used at the scheduled rate.

4.5 **Tax and Government Charges**: The Hirer will be liable for stamp duty, GST and all other applicable taxes, duties, levies, penalties and any other government charges imposed on the Hire Agreement or in respect of the Hire Period. If the Hirer wishes to claim exemption from duty or tax, the Hirer must furnish appropriate exemption certificates to MalivanekGroup. Unless otherwise expressly agreed in writing by MalivanekGroup, any quarantine costs payable in respect of the Equipment (including without limitation the costs of any necessary disassembly, reassembly and cleaning of the Equipment) is payable by the Hirer, and the Hirer must also pay the hire charges during the period of such disassembly, reassembly and cleaning of the Equipment.

4.6 **Credit Card Payments**: The Hirer acknowledges that MalivanekGroup may impose a charge for accepting payments by credit card in the amount of 1.5% of the total charges that would otherwise apply.

4.7 **Delivery**: If the Hirer requires MalivanekGroup to deliver, collect or install the Equipment, the Hirer will be liable for the cost of delivery, collection or installation. MalivanekGroup will not be responsible for any loss or damage whatsoever caused by delays in delivery or installation or failure to deliver for any reason whatsoever, including negligence on the part of MalivanekGroup or its agents or employees. MalivanekGroup shall have the right to charge the Hirer for an additional delivery or collection fee for each occasion where the Equipment was not able to be delivered and or collected at the agreed times and location. MalivanekGroup is not a common carrier and does not accept the obligation or liability of common carriers. MalivanekGroup may refuse the handling, lifting and/or carriage of Equipment for any person in its discretion and without being bound to give reason for such refusal.

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4.8 **Return of Equipment**: The Customer will remain liable to be charged for the Equipment until it is returned to MalivanekGroup (if MalivanekGroup agrees to collect the Equipment then clause 3.3 applies). The Hirer will charged a full day hire for the day on which the Equipment is returned by the Hirer (or collected by MalivanekGroup) irrespective of the time at which the Equipment is returned (or collected by MalivanekGroup).

4.9 **Early Return of Equipment**: If the Hirer returns the Equipment before the expiry of the minimum period of hire mentioned in clause 3.6 (if any) , the Hirer will remain liable for all hire and other charges payable to MalivanekGroup for the minimum period of hire.

4.10 **Payment Due Date**: The Hirer is required to pay all fees, charges and costs that may become due and payable under the Hire Agreement within 30 days of the invoice date.

4.11 **Late Payment**: Invoices sent to the Hirer's email address by MalivanekGroup will be deemed to have been received by the Hirer on the date that the email is sent. If a Hirer does not pay the amount of the Hire Agreement invoice by the payment due date, a late payment fee of 4% per month, compounding monthly, may be imposed. In addition, without limiting clause 11.4, the Hirer will be liable to indemnify MalivanekGroup for all expenses incurred by MalivanekGroup in recovering any amounts which the Hirer fails to pay by the payment due date (including any commission payable to any commercial or mercantile agents and legal costs). Where an invoice remains overdue for 3 days or longer, the Hirer's trading account will be placed on stop credit. Where an invoice remains overdue for 15 days or longer, MalivanekGroup reserves the right for all equipment to be off-hired and removed and transported back to MalivanekGroup at the Hirer's cost.

4.12 **Set-off and application of funds**: MalivanekGroup may set-off against any credit owed to the Hirer any amount owing by the Hirer to MalivanekGroup. Any claims for credit by the Hirer shall be made within fourteen days of receiving MalivanekGroup' invoice. The Hirer must not withhold or make any deduction from any payment by way of set-off. The Hirer acknowledges and agrees that any payment made by the Hirer pursuant to this Agreement may be applied by MalivanekGroup to such outstanding moneys due to MalivanekGroup, as MalivanekGroup determines in its sole discretion and notwithstanding any direction given by the Hirer at the time of payment.

4.13 **Return time**: For the sake of certainty the Hirer may only return the Equipment to MalivanekGroup' premises during normal business hours.

4.14 **Extreme Worksite Levy**: The Hirer will pay a 20% Extreme Worksite Levy on all Hire Agreements in addition to MalivanekGroup' hire charge if Equipment is used off-shore, over water or down in under-ground mines. The Hirer must advise MalivanekGroup in writing if the Equipment is proposed to be used off- shore, over water or down in under-ground mines and must produce evidence that they have taken out suitable insurance cover for these items of

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Equipment, with such insurance cover to include MalivanekGroup as an insured and cover MalivanekGroup' ability as a principal in connection with the performance of the Hire Agreement and contain provisions whereby all rights subrogation or action against any of the persons comprising the insured are waived; the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject to the overall sum insured not being increased as a result); and any non-disclosure or misrepresentation by one insured does not prejudice the right of the other insured to claim under any insurance policy.

4.15 **After Hours Servicing and Break-downs**: MalivanekGroup will provide on-site servicing and break-down assistance during standard working hours. If attendance to site is required after hours or on weekends, this will be charged at after-hour rates. Minimum call out charge of 3 hours will be applicable.

4.16 **Non-Potable Water**: Where the use of non-potable water for dust suppression causes corrosion to equipment, the Hirer will be charged for refurbishment of the equipment.

4.17 **Cleaning**: The Hirer is responsible for all costs associated with any cleaning, painting, replacement of decals, repairs and refueling of equipment returned to MalivanekGroup in an unsatisfactory condition as determined by MalivanekGroup. If the Equipment was in any way exposed to asbestos or asbestos containing materials during the period of Hire, the Hirer must ensure that the Equipment is decontaminated (including cleaned, washed and vacuumed) by a licensed asbestos removalist prior to return to MalivanekGroup. The Hirer must pay for all costs associated with this decontamination and provide evidence from a licensed asbestos removalist that this has been carried out.

## 5. HIRER'S HIRE OBLIGATIONS

5.1 **Possession and Use by Hirer**: The Hire Agreement is personal to the Hirer and the Hirer will not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time during the Hire Period.

5.2 **Suitability**: The Hirer agrees that the use of the Equipment is deemed acceptance it has satisfied itself as to the suitability, condition and fitness for purposes of the Equipment. MalivanekGroup gives no warranty that the Equipment is suitable for the Hirer's purpose.

5.3 **Operation of Equipment**: The Hirer warrants that at all times it will:

5.3.1 operate the Equipment safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;

5.3.2 ensure persons operating or erecting the Equipment are suitably instructed/trained in its safe and proper use and where necessary hold a current Certificate of Competency and be licensed to use it;

5.3.3 return the Equipment to MalivanekGroup in the same good and clean condition it was in when the Hirer received it, ordinary fair wear and tear excluded. If the Hirer fails to clean the Equipment, MalivanekGroup will charge the cleaning cost to the Hirer;

5.3.4 display, maintain all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by the operator of the Equipment;

5.3.5 ensure all persons operating the Equipment wear suitable clothing and protective equipment as required or recommended by the manufacturer or by MalivanekGroup;

5.3.6 ensure that no persons operating the Equipment are under the influence of drugs or alcohol;

5.3.7 conduct a job safety analysis prior to using the Equipment at a site;

5.3.8 accept responsibility for the safe-keeping of and insuring the Equipment during the Hire Period;

5.3.9 ensure that no persons carry illegal, prohibited or dangerous substances in or on the Equipment; and

5.3.10 comply with all Environmental Laws from time to time and immediately rectify any breach of an Environmental Law caused by the use of the Equipment.

5.4 **Cleaning and Maintenance**: The Hirer must:

5.4.1 carry out daily checks, clean, fuel, lubricate and maintain the Equipment in good condition and in accordance with the manufacturer's and MalivanekGroup' instructions at the Hirer's cost; and

5.4.2 not in any way alter, modify, tamper with, damage or repair the Equipment without MalivanekGroup' written consent.

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5.5 **Safekeeping**: The Hirer must ensure that during the Hire Period the Equipment is stored safely and securely and is protected from theft, seizure, damage or vandalism.

5.6 **Alteration and Identifying Marks**: The Hirer must not alter, deface, remove or erase any notices, safety information, identifying mark, plate or number on the Equipment.

5.7 **Inspections**: The Hirer consents to MalivanekGroup inspecting the Equipment from time to time during the Hire Period. The Hirer must provide MalivanekGroup to the Equipment and a safe place of work at the Location for MalivanekGroup to carry out any inspection, including as required under the Australian Standards. In addition, the Hirer may arrange a joint inspection with MalivanekGroup at the end of the Hire Period.

5.8 **Safe Loading and Transport**: The Hirer will ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and manufacturer's guidelines. The Hirer and any transporting contractor must observe any safety directions advised by MalivanekGroup and/or manufacturer of the Equipment for its loading and safe handling.

5.9 **Location**: The Hirer must not remove the Equipment from the Location without first obtaining MalivanekGroup' written consent, which consent can be given or withheld at MalivanekGroup' absolute discretion. The Equipment must be returned to MalivanekGroup' premises where the Equipment was collected from by the Hirer or delivered from MalivanekGroup (during normal business hours).

5.10 **Electrical Equipment testing and tagging**: The Hirer is responsible for arranging at the Hirer's cost the testing and tagging of all electrical equipment forming part of the Equipment by the relevant manufacturer's agent in accordance with the manufacturer's instructions and the applicable Australian Standard/s and Regulatory Authority requirements. MalivanekGroup is able to arrange, at the Hirer's cost, for such testing and tagging of the relevant electrical equipment. Any damage caused to the Equipment resulting from incorrect testing will be at the Hirer's cost.

## 6. EQUIPMENT BREAKDOWN

6.1 **Obligations of Hirer**: In the event that the Equipment breaks down or becomes unsafe to use during the Hire Period, the Hirer must:

6.1.1 immediately stop using the Equipment and notify MalivanekGroup;

6.1.2 immediately take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;

6.1.3 immediately take all steps necessary to prevent any further damage to the Equipment; and

6.1.4 not repair or attempt to repair the Equipment without MalivanekGroup' written consent.

6.2 **Obligations of MalivanekGroup**: In the event that the Equipment breaks down or becomes unsafe to use through no fault, negligence, recklessness or misuse by the Hirer or any third party who gains MalivanekGroup to the Equipment at the Location, MalivanekGroup will:

6.2.1 take all steps necessary to repair the Equipment soon as reasonably possible after being notified by the Hirer;

6.2.2 not impose a hire charge for that portion of the Hire Period for which the Equipment was broken down or unsafe, nor, subject to clause 16.5, the costs associated with any repair or replacement of the Equipment; and

6.2.3 not be liable for any expenditure, damages, loss or inconvenience incurred by the Hirer or any Claim made against the Hirer arising from or in any way connected with a breakdown of or a malfunction in the Equipment, no matter the cause of the breakdown or malfunction.

## 7. LOST, STOLEN OR DAMAGED EQUIPMENT

7.1 The Hirer is at all times responsible for the Equipment and its attached tools during the Hire Period.

7.2 If the Equipment is lost, stolen or damaged during the Hire Period, or if the Hirer fails to return the Equipment to MalivanekGroup within agreed timeframes, the Hirer will be liable for:

7.2.1 any costs incurred by MalivanekGroup in repairing the Equipment or for the new replacement cost of the Equipment if it cannot be economically repaired; and

7.2.2 any other costs whatsoever incurred by MalivanekGroup as a result of the loss, theft or damage to the Equipment (including the full hire charges as set out in the Hire Agreement until the Equipment stated in clause 8.2.1 is again available for use by MalivanekGroup).

## 8. SUPPLY DOCUMENTS

8.1 Upon request by MalivanekGroup the Hirer must supply MalivanekGroup with full copies of any document relating to the Equipment in any way including any police report regarding any damage caused to the Equipment by any person.

## 9. INSURANCE

9.1 The Hirer shall effect and maintain at its expense the policies of insurance specified in subclauses 10.1.1 and 10.1.2 providing cover for the whole of the period of hire including any extension or continuation.

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9.1.1 A policy providing indemnity for physical loss, including theft and/or damage to the Equipment for the replacement value of each item of Equipment, including whilst in transit; and

9.1.2 A public liability policy in the usual terms which provides indemnity with respect to the operation of the Equipment to a limit of indemnity of at least $20,000,000.

9.2 The Hirer shall ensure that each policy of insurance names MalivanekGroup as a named insured as owner of the Equipment.

9.3 The Hirer shall provide MalivanekGroup with evidence of the insurance effected in compliance with clauses 10.1.1 and 10.1.2 immediately upon demand by MalivanekGroup.

9.4 The Hirer warrants that it shall not do any of the following:

9.4.1 do anything, or fail to do anything, which would allow an insurer to refuse or reduce a claim;

9.4.2 vary the insurance required by this clause in any way without the written consent of MalivanekGroup; or

9.4.3 enforce, conduct, settle or compromise a claim without the consent of MalivanekGroup.

**10. INDEMNITIES AND EXCLUSIONS OF LIABILITY**

10.1 Subject to clause 11.2 and except as expressly provided to the contrary in the Hire Agreement, all terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to MalivanekGroup' obligations under the Hire Agreement are excluded from the Hire Agreement to the extent permissible by law.

10.2 Where any Act of Parliament implies a term, condition or warranty in this Hire Agreement and that Act prohibits provisions in a contract excluding or modifying the application, exercise or liability under that term, condition or warranty, such term, condition or warranty will be deemed to be included in this Hire Agreement to the minimum extent permissible. The Hirer hereby warrants and agrees with MalivanekGroup that any damages suffered by it as a result of any breach by MalivanekGroup of this Hire Agreement or any breach of any applicable legislation will not exceed and otherwise be capped at the lesser of the actual charges payable pursuant to the Hire Agreement or four months hire charges.

10.3 Subject to clause 11.2, MalivanekGroup will not be under any liability to the Hirer for consequential loss or damage (including loss of actual or anticipated profits or revenue, economic loss of any kind or any loss suffered as a result of any claim or claims by third parties) in contract, tort (including negligence) under statute or otherwise from or in relation to the Equipment or this Hire Agreement.

10.4 The Hirer is liable for and indemnifies MalivanekGroup against all liability, claims, loss, costs and expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor/client basis, determined without taxation, assessment or similar process and whether incurred or awarded against MalivanekGroup and any environmental loss, cost, damage or expense) arising from or incurred in connection with the Hirer's hire and use of the Equipment or its breach of the Hire Agreement.

10.5 Each indemnity in this Hire Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Hire Agreement. It is not necessary for a party to incur expenses or make any payment before enforcing a right of indemnity conferred by this Hire Agreement. The Hirer must pay on demand any amount it must pay under an indemnity in this Hire Agreement.

10.6 For the purposes of clauses 11.3 to 11.5, use of Equipment operated by a person supplied by MalivanekGroup will be use of the Equipment by the Hirer.

**11. MODERN SLAVERY**

11.1 The Hirer must ensure that it:

11.1.1 does not engage in Modern Slavery;

11.1.2 complies with all laws, codes, standards, regulations, legal requirements and directions relating to Modern Slavery;

11.1.3 develops and maintain policies and procedures to avoid engaging in Modern Slavery; and

11.1.4 notifies MalivanekGroup promptly upon becoming aware of any complaint or allegation that the Hirer has engaged in Modern Slavery.

**12. PPS LAW**

12.1 For the purposes of this clause, "**PPS Law**" means the *Personal Property Securities Act 2009* (Cth) and Regulations and any other associated or consequential Act or Regulation, as amended. A term defined in the PPS Law has the same meaning when used in this clause.

12.2 The Hirer acknowledges that this Hire Agreement is a security agreement and a PPS Lease for the purposes of the PPS Law and creates a security interest in all Equipment rented to the Hirer, as security for the Hirer's obligations to MalivanekGroup under this Hire Agreement.

12.3 The Hirer agrees to indemnify MalivanekGroup for any costs, commissions, fees and expenses, including legal expenses, in relation to the registration, maintenance, enforcement or discharge of a security interest.

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12.4 The Hirer agrees to do all such things, sign and/or provide all such documents and/or provide any further information as necessary and required to enable MalivanekGroup to acquire a perfected security interest in all Equipment supplied by MalivanekGroup to the Hirer and, if applicable, a Purchase Money Security Interest.

12.5 The Hirer agrees to contract out of, waive or exclude such sections of the PPS Law as MalivanekGroup may require, to the extent that those sections are able to be excluded under the PPS law. The Hirer expressly agrees to:

12.5.1 contract out of the enforcement provisions referred to in Articles 115(1)(f) to 115(1)(h), 115(1)(l) to 115(1)(n), 115(1)(p), 115(1)(q) and 115(1)(r) of the PPS Law;

12.5.2 waive their right to receive a copy of any notice or statement under Articles 157 and 175 of the PPS Law in respect of the security interest created by this Contract;

12.5.3 not sell or grant any other security interest in the Equipment rented, and

12.5.4 not change or attempt to change any document or registration made or required under the PPS Law in relation to the security interest created by this Contract without the prior written consent of MalivanekGroup.

12.6 If:

12.6.1 a PPS Law applies or commences to apply to this Hire Agreement or any transaction contemplated by it, or MalivanekGroup determines based on legal advice that this is the case; and

12.6.2 in the opinion of MalivanekGroup, the PPS Law:

12.6.2.1 does or will adversely affect its security position or obligations; or

12.6.2.2 enables or would enable its security position to be improved without materially adversely affecting the Hirer,

MalivanekGroup may give notice to the Hirer to do anything (including amending this Hire Agreement or executing a new document) that in MalivanekGroup' reasonable opinion is necessary, to the maximum possible extent, to overcome the circumstances contemplated in subclause 13.6.2.1 above and/or improve the security position as contemplated in subclause 13.6.2.2 above. The Hirer must comply with the requirements of that notice within the time specified in the notice.

12.7 The Hirer will not lease, hire, bail or otherwise deal with ('**sub-hire**') the Equipment unless MalivanekGroup gives its prior written consent. Any such sub-hire must be in writing in a form acceptable to MalivanekGroup and must be expressed to be subject to MalivanekGroup' rights under this Hire Agreement. Hirer may not vary a sub-hire without the prior written consent of MalivanekGroup.

12.8 The Hirer must ensure MalivanekGroup is provided 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.

12.9 The Hirer must take all steps including registration on the PPS register as may be required to:

12.9.1 ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPSA;

12.9.2 enable the Hirer to gain (subject always to the rights of MalivanekGroup and its related entities) first priority (or any other priority MalivanekGroup agrees to writing) for the security interest; and

12.9.3 enable the parties to exercise their respective rights in connection with the security interest.

12.10 If having completed everything reasonably practicable as required under the above clause, in the reasonable opinion of MalivanekGroup its security position or obligations under or in connection with this Hire Agreement have been or will be materially adversely affected, MalivanekGroup may by further notice to the Hirer terminate this Hire Agreement, in which case:

12.10.1 this Hire Agreement will be terminated with effect from the date or time specified in the notice; and

12.10.2 the Hirer must pay to MalivanekGroup all monies owing to it within 30 days of that termination.

**13. TERMINATION**

13.1 MalivanekGroup may terminate the Hire Agreement immediately by notice to the Hirer, if:

13.1.1 the Hirer breaches any term of the Hire Agreement; or

13.1.2 the Hirer becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, comes under external administration, goes into receivership or ceases to carry on business.

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13.2 MalivanekGroup may terminate the Hire Agreement for any other reason by giving the Hirer 2 hours' notice.

13.3 The right of termination is in addition to any other rights under the Hire Agreement and does not exclude any right or remedy under law or equity and the terms of this Hire Agreement (including in respect of payment of the hire charges) continue to apply until the return of the Equipment to MalivanekGroup (or collection by MalivanekGroup if agreed).

**14. RECOVERY OF EQUIPMENT**

14.1 If the Hirer is in breach of the Hire Agreement or if MalivanekGroup has terminated this Hire Agreement, MalivanekGroup may take all steps necessary (including legal action) to recover the Equipment, including entering the Hirer's premises to do so and the Hirer hereby authorises MalivanekGroup to do so.

**15. REMOTE AREA CONDITIONS**

15.1 **Definitions**:

"**Remote Area**" is a location in excess of 50km from nearest MalivanekGroup branch.

"**PMP**" is the electronically managed preventive maintenance programme operated by MalivanekGroup (or its agent) for all Equipment. The PMP involves regular attendance on site by MalivanekGroup' service personnel to conduct routine 3 monthly Equipment servicing and general maintenance requirements.

15.2 Unless otherwise specified in the Hire Agreement the PMP for all Equipment operating in a Remote Area will be subject to a per km charge both to and from the site at the scheduled rate per kilometer plus labour costs at the scheduled rate, per person per hour (including travelling time) plus any other direct travelling costs including airfares and accommodation (**Remote Area Travelling Charges**).

15.3 Multiple items of Equipment hired by the same Hirer on the one site will only be charged as "one call out".

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

15.5 If the Equipment breaks down in a Remote Area, the Hirer must also pay MalivanekGroup the Remote Area Travelling Charges relating to any attendance to the location concerned.

15.6 It is the responsibility of the Hirer to provide MalivanekGroup to site. Refusal to allow MalivanekGroup to equipment at the specified intervals will incur charges. Equipment will be placed out of service at full charge until MalivanekGroup is given for servicing to be completed.

15.7 If the Hirer requires Equipment to be serviced at intervals other than the pre-determined PMP service cycle (to align service cycles with site requirements), then the Hirer must pay all charges relating to attendance to site by a technician to complete the additional service.

15.8 It is the responsibility of the Hirer to provide accommodation for Remote Areas if no accommodation is available within 20 kilometres of that location.

**16. MISCELLANEOUS**

**Severability**

16.1 If any part of the Hire Agreement (including these Terms and Conditions) becomes void or unenforceable for any reason, then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.

**Security of Obligations**

16.2 As security for the obligations and liabilities of the Hirer and Guarantors under the Hire Agreement, the Hirer and Guarantors hereby charges for the due and punctual payment and performance of those obligations and liabilities, all of its legal and equitable interest (both present and future) of whatsoever nature held in any way in any real property. Without limiting the generality of the charge in this clause, the Hirer and Guarantors agree, on request by MalivanekGroup, to execute any documents and do all things necessary required by MalivanekGroup to register a mortgage security over any real property in which the Hirer and Guarantors have an interest (whether legal, equitable, present or future). The Hirer and Guarantors will indemnify MalivanekGroup on an indemnity basis against all costs and expenses incurred by MalivanekGroup in connection with the preparation and registration of any mortgage documents. The Hirer and Guarantors also consent unconditionally to MalivanekGroup lodging a caveat or caveats noting its interest in any real property in which the Hirer and Guarantors have an interest (whether legal, equitable, present or future).

**Entire Agreement**

16.3 The Hire Agreement, including these Terms and Conditions of Hire and the relevant credit application and Hire Docket (or other order documentation approved by MalivanekGroup in respect of the Equipment), comprises the entire agreement between the parties. No additional terms and conditions proposed by the Hirer (including any terms contained in any hire order provided by the Hirer) apply to the hire of the Equipment unless agreed to in writing by MalivanekGroup

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**No Reliance**

16.4 The Hirer acknowledges that neither MalivanekGroup nor any other person acting on MalivanekGroup' behalf has made any representation or other inducement to it to enter into the Hire Agreement and that it has not entered into the Hire Agreement in reliance on any representations or inducements (including in relation to the use of the Equipment) except for those representations or inducements contained herein.

**Variation**

16.5 MalivanekGroup may at any time vary the Hire Agreement, including these Terms and Conditions of Hire, by giving the Hirer 14 days' written notice of its intention to do so. If the Hirer is materially prejudiced by the variation, it may terminate the Hire Agreement by returning the Equipment to MalivanekGroup (or, if agreed, arranging collection by MalivanekGroup, in which case the Hire Agreement terminates upon collection by MalivanekGroup).

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**GST**

16.6 All prices quoted are GST-exclusive and net of all taxes (whether in Australia or otherwise), unless otherwise expressly stated. MalivanekGroup will provide a tax invoice to the Hirer where applicable. All GST, customs duties, Government taxes, import / export permits and documentation fees levied or pertaining to Equipment during the period of rental are payable by the Hirer and the Hirer indemnifies MalivanekGroup to the extent it becomes liable for payment of such a tax or has paid such tax and is unable to recover it from the relevant authority.

**Privacy**

16.7 MalivanekGroup may collect personal information about the Hirer. MalivanekGroup may use the Hirer's personal information to provide services to the Hirer, to fulfil administrative functions associated with these services, to enter into contracts with the Hirer or third parties, and for marketing and client relationship purposes. Generally, the Hirer has a right to MalivanekGroup personal information MalivanekGroup holds about the Hirer.

16.8 The Hirer consents to and authorises MalivanekGroup to use and disclose the Hirer's personal information in accordance with clause 17.8.

16.9 MalivanekGroup will only disclose information that we have about you:

16.9.1 to the extent specifically required by law;

16.9.2 where there is a duty to the public to disclose that information; or

16.9.3 where the interests of MalivanekGroup require disclosure.

16.10 The Hirer irrevocably authorises MalivanekGroup to make such enquiries as it deems necessary to investigate the credit worthiness of the Hirer and any guarantors from credit reporting agencies. MalivanekGroup may obtain personal and commercial credit information regarding the hirer from a credit reporting agency.

**Notice to Hirer**

16.11 Any document which by the Hire Agreement may be given by MalivanekGroup may be served or rendered by leaving it at or posting it to the address of the Hirer as stated in the Hire Agreement or at an address in QLD Australia last notified by the Hirer in writing to MalivanekGroup and will be deemed to have been serviced or rendered at the time of leaving or, if posted, on the business day following the day of postage and any notice may be signed by an officer, manager or solicitor of MalivanekGroup.

**No Waiver**

16.12 No delay or omission to exercise any right, power or remedy accruing to MalivanekGroup upon any continuing breach or default under the Hire Agreement will impair any such right, power or remedy, nor will it be construed to be a waiver of any right of MalivanekGroup to take action or make a claim in respect of a continuing breach or default or to be acquiescence to it.

**Withdrawal of Credit Accommodation**

16.13 Any credit accommodation and/or credit limit granted by MalivanekGroup to the Hirer may be reviewed at any time without notice. Where a credit limit is set by MalivanekGroup and the Hirer exceeds this credit limit, the Hirer's trading account will be placed on stop credit. Credit may be withdrawn for Hirers failing to make payments or use the Equipment in accordance with these Terms and Conditions of Hire and a statement may be issued at that time requiring payment within 7 days of any amount due and owing.

**Authority of Hirer**

16.14 The person signing the Hire Agreement (including the Credit Application) for and on behalf of the Hirer hereby covenants with MalivanekGroup that he or she has the authority of the Hirer to make the Agreement on the Hirer's behalf and is empowered by the Hirer to bind the Hirer to the Agreement and hereby indemnities MalivanekGroup against all losses, costs and claims incurred by MalivanekGroup arising out of the person so signing the Agreement not in fact having such power and/or authority.

**Previous Editions**

16.15 This edition of the Terms and Conditions of Hire replaces and supersedes all of MalivanekGroup' previously issued Terms and Conditions of Hire.

**Time of the Essence**

16.16 Time is to be of the essence of all obligations of the Hirer in the Hire Agreement.

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**Right of Refusal to Hire**

16.17 MalivanekGroup is in no way obliged to hire any Equipment to the Hirer and may refuse to hire Equipment to a Hirer at its absolute discretion

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