

STATEWIDE ACCESS

& Equipment Sales

1.0 DEFINITIONS AND INTERPRETATION

1.1 **Definitions.** In these Account Terms and Conditions, unless the context or subject matter otherwise Requires:

- "**Account Facility**" means the billing arrangement between Statewide Access and the Customer, which subject to approval of the Application by Statewide Access, will be administered in accordance with these Account Terms and Conditions;
- "**Application**" means the application for an Account Facility to which these Account Terms and Conditions form part;
- "**Authorised Person**" means such person or persons as may be notified to Statewide Access by the Customer as being entitled to accept delivery of and operate the Equipment;
- "**Business Day**" means any day upon which Statewide Access is open for trade;
- "**Claim**" means in relation to a person, corporation or other legal entity, a claim, demand, remedy, suit, injury, damage, loss, cost liability, action, preceding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against such person; corporation or legal entity however arising and whether ascertained or unascertained;
- "**Conditions**" means these Terms and Conditions of Hire;
- "**Contract**" means any agreement entered into between Statewide Access and the Customer in relation to the hire of equipment from Statewide Access, as evidenced by invoice, delivery form or otherwise;
- "**Customer**" means the party specified as the Customer in a Contract and where the context permits its servants, agents, employees, contractors and Authorised Persons;
- "**Daily Rate**" means Statewide Access' daily charge for hire of the Equipment as specified in a Contract or as otherwise notified to the Customer by Statewide Access;
- "**Equipment**" means any plant and equipment included in a Contract and if the context requires, includes any part of such plant and equipment including any accessories and safety devices;
- "**Statewide Access**" means Kirsandy Pty Ltd ACN 122 709 817 trading as Statewide Access and Equipment Sales ABN 67 122 709 817 and its related bodies corporate within the meaning of the Corporations Act 2001 (Cth) and where the context permits, their servants, agents, employees and contractors;
- "**Hire Charges**" means the amount payable to Statewide Access by the Customer for the use of the Equipment determined in accordance with these Conditions;
- "**Hire Period**" means the period commencing on the day that the Equipment is collected by or delivered to the Customer and expiring on the later of:
- the day upon which the Customer has agreed to return the Equipment to Statewide Access; or
 - the day the Equipment is returned to or made available for collection and is able to be collected by Statewide Access provided that if the Equipment is returned to Statewide Access before 9:00am on any Business Day or the Customer notifies Statewide Access that the Equipment is available for collection by 9:00am on any Business Day, the Customer will be regarded as having returned the Equipment on the day preceding that Business Day; or
 - the day upon which the Equipment has been repaired or replaced by Statewide Access and is made available for hire following any breakdown in the Equipment caused by the Customer's acts, omissions, neglect or default, such period being inclusive of weekends and public holidays and periods during which the Equipment is not used by the Customer for any reason whatsoever including industrial action or suspension of work;
- "**Hire Terms and Conditions**" means the terms and conditions of hire contained in the Application as varied from time to time;
- "**Sundry Charges**" means the costs of all cartage, cleaning, oil, grease, harnesses and such other costs as Statewide Access may incur relating to the Customer's use of the Equipment and where appropriate, to be determined in accordance with Statewide Access' schedule of standard sundry charges as varied from time to time.

1.2 **Interpretation.** In the interpretation of these Account Terms and Conditions, unless the context or subject matter otherwise requires:

- words and expressions defined in the Hire Terms and Conditions have the same meanings in these Account Terms and Conditions unless otherwise defined;
- a reference to a party includes that party's executors, administrator, substitutes, successors and permitted assigns;
- each covenant by two or more persons as a party is made jointly by all and severally by each;
- singular includes plural and vice versa;
- these Account Terms and Conditions will be constructed in accordance with the laws of Victoria; and
- time is of the essence of all the Customer's obligations to Statewide Access, particularly the payment of amounts owing.

2.0 CUSTOMER'S ACKNOWLEDGMENTS

The Customer acknowledges and agrees that:

- the Account Facility is a trader's facility and the Customer is a trader requiring the Account Facility predominantly for the purposes of carrying on or in connection with the carrying on or establishing of a trade, business or profession;
- the Customer has read and agrees to be bound by the Hire Terms and Conditions;
- all Hire Charges and other charges are payable by the Customer at the rate notified by Statewide Access but any agreement to reduce damage waiver charges must be in writing and signed by an authorised officer of Statewide Access;
- Statewide Access may terminate the Account Facility at any time without prior notice;
- the full amount of all Hire Charges and other charges payable by the Customer to Statewide Access will become due and owing 30 calendar days after the date on which the charges were first invoiced. The Account Facility is not a credit facility;
- the Account Facility is personal to the Customer and cannot be assigned or transferred to any other party without the prior written consent of Statewide Access;
- if the Customer is a company (other than a listed public company) the Customer must notify Statewide Access of any action having the effect of altering its control whether by transfer of shares, replacement of its directors or otherwise; and

- the Customer will be responsible for all costs (including legal costs calculated on a solicitor and own client basis incurred by Statewide Access relating to any default by the Customer.

3.0 CREDIT

By signing the applicant's declaration in the Application, the Customer consents to Statewide Access:

- disclosing to a credit reporting agency information about the Customer including identity particulars, the Account Facility limit, payments which may become more than sixty days overdue, any serious infringement of the Account Terms and Conditions which Statewide Access believes has been committed by the Customer and advice that payments are no longer overdue;
- obtaining from a credit reporting agency a report containing personal credit information about the Customer and a report containing information about the Customer's commercial activities or commercial creditworthiness to enable Statewide Access to assess the Application; and
- giving to any guarantor under the Account Facility information including a copy of the Application and any demands for payment of overdue amounts and statements of the Account Facility.

4.0 LIABILITY FOR PAYMENT

4.1 **Customer's Liability.** The Customer agrees to pay:

- Hire Charges, Sundry Charges and all other charges, costs and expenses payable to Statewide Access in the manner directed by Statewide Access;
- interest on all outstanding amounts from the due date for payment calculated at a rate which is the higher of 5% per month or the interest rate applying to debts under judgments or orders of the Supreme Court of Victoria plus 5%;
- damage waiver costs in relation to the Equipment;
- any costs of repairing or replacing the Equipment required as a result of the Customer's acts, omissions, neglect or default;
- any GST or similar tax imposed on any supply by Statewide Access to the Customer under a Contract and any other state or federal taxes, duties or charges imposed in respect of a Contract including stamp duty; and
- costs including legal costs calculated on a solicitor and own client basis incurred by Statewide Access relating to any default by the Customer.

4.2 **Hire Charges.** Hire Charges are calculated by multiplying the number of days in the Hire Period by the Daily Rate.

4.3 **Additional Charges.** Statewide Access may, in its discretion, charge additional hire for periods during which the Equipment is being delivered to or collected from the Customer or during which Statewide Access is unable to deliver or collect the Equipment through no fault of its own.

4.4 **Credit.** Any claims for credit by the Customer must be made within seven (7) days of receiving Statewide Access' invoice.

4.5 **Hire Rate.** Statewide Access reserves the right to revise its schedule of hire rates and related charges without notice. Statewide Access may also revise its hire rates and related charges in circumstances where Statewide Access incurs such charges as a result of non-disclosure by the Customer, unforeseen site problems or incorrect physical dimensions, weights or distances relied on by Statewide Access.

4.6 **Early Return.** Statewide Access may, in its sole discretion, accept return of the Equipment before the scheduled date of return. The Customer will remain liable for all Hire Charges payable to Statewide Access despite early return of the Equipment but Statewide Access will endeavour to re-hire the Equipment in which case the Customer will only be liable for Hire Charges until the date of such re-hire or until expiration of the Hire Period, whichever is earlier.

5.0 USE OF EQUIPMENT

5.1 **Customer's Obligations.** The Customer must-

- ensure that the Customer or an Authorised Person is available to accept the Equipment upon delivery;
 - ensure the Equipment is used;
 - for the purpose for which it was designed by the manufacturer;
 - by the Customer or an Authorised Person having the appropriate qualifications, training and licences to operate the Equipment (such as licences required for boom type lifts over 11m in height); and
 - in accordance with all applicable laws and regulations in a skilful, safe and tradesmanlike manner not extending beyond its capacity (having regard to manufacturers specifications) and not having to endure more than normal wear and tear;
 - notify Statewide Access immediately if the Equipment breaks down, malfunctions or is damaged;
 - not undertake any repair to the Equipment without the consent of Statewide Access;
 - maintain and return the Equipment to Statewide Access in good repair and condition and ensure that a check of battery water levels, fuelling, greasing, oiling and proper servicing of the Equipment is carried out on a daily basis;
 - not transfer, assign, encumber, lease or sell the Equipment and must not (except for the purpose of returning the Equipment) remove the Equipment or allow it to be removed from the site address notified to Statewide Access for use of the Equipment without the written consent of Statewide Access;
 - not alter, make any additions to, deface or Statewide Access any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment and
 - accept full responsibility for the safe-keeping of the Equipment, and indemnify Statewide Access for all loss, theft or damage to the Equipment resulting from any negligence, failure or omission of the Customer.
- 5.2 **Condition of Equipment.** The Customer acknowledges that:
- it accepts delivery of the Equipment in "as is" condition unless it indicates otherwise at the time of delivery;

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- (b) it is liable for all flat and/or damaged tyres and the replacement cost of missing harnesses, generators etc.;
- (c) it understands the safe and proper use of the Equipment and has received adequate training in its operation and use;
- (d) Statewide Access may inspect, repair or remove (in the event of any default of the Customer) the Equipment at any time and access to the Equipment must be granted for that purpose;
- (e) if Statewide Access is collecting the Equipment at the expiration or earlier determination of the Hire Period, the Equipment must be left in an appropriate, easily identified and accessible area; and;
- (f) Statewide Access will not be deemed to have accepted return of the Equipment in good repair and condition until such time as the Equipment has been fully inspected by Statewide Access at its depot following its return.
- 5.3 **Carriage of Equipment.** Statewide Access is not a common carrier and does not accept the obligation or liability of common carriers. Statewide Access 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.
- 6.0 DAMAGE WAIVER AND INDEMNITIES**
- 6.1 **Damage Waiver.** Unless the Customer provides, to the satisfaction of Statewide Access, evidence of insurance cover of at least \$250,000 for the Equipment while in the Customer's possession, Statewide Access will arrange to take out damage waiver in respect of the Equipment whilst in the Customer's possession at the Customer's cost. Unless notified to the contrary, the cost of damage waiver is 10% of the Hire Charge.
- 6.2 **Limitation on Damage Waiver.** The Customer acknowledges that any damage waiver taken out by Statewide Access in respect of the Equipment will not extend to cover any loss or damage resulting from the Customer's failure to comply with its obligations contained in clause 5.1 of these Conditions.
- 6.3 **Liability for Repair.** The Customer is liable for all excess (currently \$2,000.00 but subject to change from time to time) and other costs associated with any insurance claim in relation to the Equipment and must meet any shortfall in repair or replacement of the Equipment following payment of any amount received under insurance, including any loss suffered by Statewide Access as a result of not being able to hire the Equipment.
- 6.4 **Release.** The Customer acknowledges that:
- (a) the Equipment shall be at the sole risk of the Customer and Statewide Access will not be liable for any Claim the Customer may incur or that may arise from any cause whatsoever including any fault or other defect in the Equipment; and
- (b) Statewide Access will not be responsible for and is free from all liability in respect of all such Claims.
- 6.5 **Indemnity.** The Customer shall accept full responsibility for, and indemnify Statewide Access against all Claims in respect of any injury to persons, or damage to property, arising out of the use of the Equipment during the Hire Period however arising, whether from negligence of the Customer or Statewide Access or otherwise and without limiting the foregoing whether or not the Equipment was being operated or transported by a servant of Statewide Access or any other person for whose acts Statewide Access might be or is held to be responsible in connection with the operation of the Equipment.
- 6.6 **Retrieval of Equipment.** The Customer shall indemnify Statewide Access for any costs incurred in recovering Equipment whether abandoned, unlawfully detained or otherwise.
- 7.0 DEFAULT AND TERMINATION**
- 7.1 **Default.** The Customer will be in default of a Contract if:
- (a) it fails to comply with any term of a Contract;
- (b) it becomes bankrupt or makes any arrangement with creditors for liquidation of debts; or
- (c) it is wound up, placed under official management or administration or any administrator, receiver, or receiver and manager is appointed to the Customer.
- 7.2 **Remedies upon Default.** If the Customer is in default then, without prejudice to any other rights or remedies:
- (a) Statewide Access may terminate any Contract and (take possession of the Equipment by entering onto any land or premises owned by or under the control of the Customer upon which the Equipment is situated; and
- (b) the Customer will pay to Statewide Access all losses, damages, costs and other expenses whatsoever suffered by Statewide Access as a result of that default including any costs of recovering possession of the Equipment.
- 7.3 **Inability to Supply.** If Statewide Access is unable to hire the Equipment to the Customer, Statewide Access may in its discretion supply or hire alternative suitable Equipment to the Customer. If the alternative Equipment is not suitable the Customer may terminate the Contract but Statewide Access will not be liable for any Claims arising out of its inability to supply the Equipment or alternative suitable equipment to the Customer.
- 7.4 The Customer acknowledges that Statewide Access may hire or lease the Equipment from a third party (the "Owner") and in that event title to the Equipment remains with the Owner. The Customer agrees, upon reasonable notice, to allow Statewide Access to arrange for the Owner access to the location where the Equipment is located from time to time to inspect the Equipment. The Customer acknowledges and agrees that if Statewide Access' agreement with the Owner terminates during the term of this Contract, unless otherwise agreed by the Owner this Contract will automatically terminate and the Owner may immediately recover possession of the Equipment from the Customer. The Owner will not be liable to the Customer in any circumstance for any claim that the Customer may have against Statewide Access.
- 7.5 Each Contract will expire 85 days from the commencement date of that Contract unless otherwise stated and confirmed in writing by Statewide Access.
- 8.0 SECURITY OVER EQUIPMENT**
- 8.1 Words and phrases used in this Clause 8.0 which are defined in the *Personal Property Securities Act 2009* ("Cth") ("the PPS Act") have the same meanings as the meanings set out in that Act.
- 8.2 The Customer hereby grants a security interest to Statewide Access over all goods supplied by Statewide Access pursuant to this Agreement.
- 8.3 If Statewide Access does not already hold a registered security interest for equipment hired to the Customer at the commencement of these Conditions then the total hire period may not cumulatively exceed 85 days in the case of Equipment capable of being identified by serial number or 12 months in any other case.
- 8.4 The Customer must do all things necessary to assist Statewide Access to perfect and enforce its security interest to the fullest extent available at law, including enabling Statewide Access to gain first priority for its security interest. Accordingly, the Customer must not grant a security interest in the equipment to any other party without Statewide Access' prior written consent.
- 8.5 The Customer must not sell, lease, hire out or dispose of its interest in Statewide Access' Equipment nor give possession of Statewide Access' Equipment to any other party without Statewide Access' prior written consent.
- 8.6 The Customer must not permit any of Statewide Access' Equipment to become an accession to or comingled with any asset or property which is not part of Statewide Access' equipment.
- 8.7 Provided the Equipment is not used predominantly for personal, domestic or household purposes, the parties agree that Sections 95, 96, 121(4), 123(2), 125, 129(2) & (3), 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Act do not apply to this Agreement and the Customer waives its rights to receive any notifications, verifications, statements, disclosures, proposals and any other documentation specified under those Sections and under Section 157 of the PPS Act.
- 8.8 For the purposes of Section 275 of the PPS Act, the Customer agrees not to disclose any information provided by Statewide Access under that Section to any third party without Statewide Access' prior consent in writing (unless required by law or the information has entered the public domain).
- 8.9 The Customer must not change its company or business name without giving Statewide Access at least fourteen days prior notice or relocate its principal place of residence outside of Australia.
- 8.10 The Customer indemnifies Statewide Access for any costs, fees and expenses Statewide Access incurs in the registration or enforcement of Statewide Access' security interest.
- 9.0 GUARANTEE AND INDEMNITY**
- 9.1 The Directors of the Customer, being the persons named in the Credit Application Form, hereby jointly and severally personally guarantee the due payment by the Customer to Statewide Access of all present and future debts, monies, charges and interest payable by the Customer to Statewide Access pursuant to these Conditions and they hereby jointly and severally undertake to Statewide Access that they will pay such debts, monies, charges and interest forthwith upon receiving a demand from Statewide Access .
- 9.2 As a separate and independent obligation, the Directors of the Customer hereby jointly and severally undertake to keep Statewide Access indemnified against all losses, interest and other monies payable pursuant to these Conditions and all losses, costs, charges and expenses whatsoever which Statewide Access may incur by reason of any default or repudiation on the part of the Customer.
- 9.3 This guarantee will be a continuing guarantee to Statewide Access irrespective of any sum or sums which at any time may be paid to or received by Statewide Access for or on account of the Customer; any neglect or forbearance on the part of Statewide Access in enforcing payment of any of the moneys payable pursuant to these Conditions or the performance or observance of any of the parties' obligations; time being given to the Customer for any such payment, performance or observance; or by any other thing which under the law relating to sureties would but for this provision have the effect of releasing the Customer.
- 9.4 Statewide Access will be entitled to demand any of the Directors to liquidate such of their personal assets as may be required to satisfy any amounts owing to Statewide Access pursuant to these Conditions.
- 9.5 Should any payment of money, conveyance or transfer of property or charge thereon made or given by the Customer or its agent to Statewide Access in reduction of its indebtedness to Statewide Access later be declared to be void as against any liquidator of the Customer, the amount of the debt of the Customer to Statewide Access which is guaranteed by the Directors will include the amount for which credit has previously been given for such payment of money, conveyance or transfer of property or charge thereon which was declared void as against the liquidator and any discharge or partial discharge of the obligations of the Directors pursuant to this Clause 9.0, whether by payment or by notice duly given, will be conditional upon no such declaration as aforesaid being made.
- 9.6 This guarantee and indemnity and the agreements and obligations contained in this Clause 9.0 will be binding upon the Directors, their executors and administrators.