

PremiAir Services Pty Ltd– Terms & Conditions of Hire

1. Definitions

Additional Services means any additional services requested by you and provided by PremiAir, including equipment servicing, delivery and collection, operational guidance, remote or on-site technician support or training (including as set out in the Quotation).

Agreement means the agreement between PremiAir and the Client, comprising these terms and conditions, any Quotation provided by PremiAir to the Client from time to time in respect of Equipment, plus any Special Conditions and schedules. Any terms contained in any document supplied by the Client (including any purchase order) do not form part of this agreement.

Claim means any claim made (whether in the form of an allegation, demand, suit, action or other proceeding of any kind) under or in connection with this agreement or its subject matter, whether arising under contract (including under any warranty or indemnity or any other breach, actual or anticipatory), in equity, in restitution, negligence or any other tort, strict liability, under statute or otherwise at all.

Client, you means the individual, company, firm, partnership, organisation, or other entity whose request for Equipment has been accepted by PremiAir (and includes any Personnel acting on behalf of the Client).

Commencement Date means the earlier of:

- if PremiAir delivers the Equipment to the Site, the date that the Equipment leaves PremiAir's premises for the purpose of delivery to the Client; or
- the date that the Client takes possession or delivery of the Equipment.

Consequential Loss means all loss of actual or anticipated profit, loss of use, loss of productivity, loss of revenue, loss of contracts, loss of opportunity, increased costs and expenses, wasted expenditure, loss arising from delay, loss by reason of shutdown or non-operation or increased cost of borrowing capital or financing and all special, indirect and consequential losses whether caused by or contributed to by a breach of contract or statute, breach of warranty (express or implied), tort, strict liability or any other cause whatsoever.

Consumables means all fuel, oil, fuses, light globes, fire extinguishers, fire systems, buckets, dump bodies, ground engaging tools, undercarriage, tyres, hydraulic hoses, brake linings, drive and ancillary belts, and other non-OEM items (including fast fuels, service couplers, isolation switches, D-Shackles)

Credit Account Application means the credit account application (if any) submitted by the Client to PremiAir in respect of its application for credit in respect of this agreement.

Credit Information Policy means PremiAir's Credit Information Policy, available at www.premiairhire.com.au.

Damage Waiver means Limited Liability Cover and **Damage Waiver Fee** means LLC Fee.

Delivery Date has the meaning given in clause 7.3.

End Date means the later of:

- the expiry of the hire period set out in the Quotation (as may be extended on request by the Client with PremiAir's approval).
- if the Client has notified PremiAir to collect the Equipment in accordance with clause 7.13, the date specified for collection; or
- the date on which PremiAir retakes possession of the Equipment.

or such other date as the parties may agree in writing.

Enforcement Costs means any costs or expenses reasonably incurred by PremiAir in enforcing this agreement (including recovering unpaid amounts and legal fees on an indemnity basis), as a result of the Client's breach.

Equipment means any equipment specified in the Quotation, together with any equipment supplied on hire by PremiAir to the Client, including any and all accessories, tools, attachments, parts, manuals, instructions and packing and transferable materials (such as hoses, points, drills, bits, grease guns, electric leads, tyres, tubes, batteries or other similar fittings) and any substitute or replacement equipment or parts provided.

Equipment Hire Charges means the cost of hire of the Equipment plus any Service Charges as set out in the Quotation (plus GST and any taxes, duties (including stamp duty) levies, charges or imposts payable with respect to this agreement) or as otherwise agreed or varied by the parties in accordance with this agreement.

Equipment Delivery Charges means the cost of delivering and/or collecting the Equipment as set out in the Quotation, plus any costs reasonably incurred and/or charged by PremiAir with respect to:

- the delivery of the Equipment to the Site, including any costs incurred where delivery is cancelled or rescheduled.
- any mobilisation, commissioning, decommissioning, or demobilisation of the Equipment; and/or
- the collection, transport and return of the Equipment to the designated PremiAir branch.

Equipment Refuelling Charges means the charge specified in the Quotation, payable where the Equipment is returned without a full tank of fuel.

Equipment Damage Repair Charges means any costs incurred by PremiAir under clause 10 in respect of any damage repair or replacement of the Equipment during the Term and includes any costs reasonably incurred by PremiAir in returning the Equipment to the condition required by this agreement (including cleaning costs).

Fees means any fees or charges payable by the Client to PremiAir under this agreement.

Guarantor means the party(s) (if any) named as "guarantor" in the execution section of this agreement, who guarantees the payment of all monies owing by the Client to PremiAir in accordance with clause 18.

Hire Period means the period commencing on the Commencement Date and ending on the End Date (including weekends and public holidays).

Hire Rates means the rates and charges payable by you for the hire of the Equipment, being:

- the rates and charges set out in the Quotation, if accepted by you within 30 days of issue.
- if you did not accept the Quotation within the required 30 days of issue and there has been a change in rates and charges, the updated rates and charges as notified by PremiAir prior to the Commencement Date; and
- any additional rates and charges payable in accordance with clause 5.3.

Interest Rate means the rate of three- and one-half percent (3.5%) per calendar month.

Law means any statute, regulation, order, rule subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation.

Liability includes all liabilities, losses, damages, costs, charges, fines, penalties, and expenses (including legal costs on a full indemnity basis) of whatever description however arising, whether actual contingent or prospective and whether present or future, fixed or unascertained.

Limited Liability Cover has the meaning given in clause 11.

LLC Excess has the meaning given in clause 11.3.

LLC Fee means an amount equal to 12.5% of the total Equipment Hire Charge for the Equipment.

Minimum Hire Period means one day, or as otherwise notified under clause 4.2.

Payment Processing Fee means any costs reasonably incurred by PremiAir in processing the Client's payment of the Fees (such as credit card payment administration surcharge).

Personal Information has the meaning given in the *Privacy Act 1988* (Cth).

Personnel means, to the extent applicable, any officers, employees, contractors, agents, executors, administrators, or representatives of the Client.

PremiAir, us, we, our means PremiAir Services Pty Ltd (ACN 074 651 951), its successors and assigns or any person acting on behalf of and with the authority of PremiAir Services Pty Ltd.

Privacy Policy means PremiAir's Privacy Policy, available at www.premiairhire.com.au.

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

PPSR means the Personal Property Securities Register, as established under the PPSA.

Quotation means the document provided by PremiAir to the Client (include any formal hire proposal or quick quote, whether signed or not) which includes details of the Equipment you wish to hire, the Hire Charges, and any Special Conditions.

Replacement Cost means, in respect of Equipment, the cost to replace the Equipment as new.

Service Charges means the cost of any Additional Services provided by PremiAir, and including any additional charges reasonably incurred and charged by PremiAir.

Site means the location(s) where the Equipment will be located, used and/or stored during the Term, as set out in the Quotation or as may be approved by PremiAir in writing.

Special Conditions means any special conditions applicable to your Equipment hire, including as specified in this agreement or agreed between you and us.

Term means the period commencing on the earlier of date of this agreement or the acceptance of these terms in accordance with clause 2.2, and continuing until terminated in accordance with its terms.

Vehicles means a car, truck, utility, or trailer.

2. Agreement to hire

- 2.1 You have requested and we have agreed to hire the Equipment to you for the Hire Period on the terms set out in this agreement. You agree to pay the Fees to us in accordance with this agreement.
- 2.2 Any instructions received by us from you for the hire of Equipment, or your acceptance of possession or delivery of the Equipment, shall constitute acceptance of these terms.
- 2.3 This agreement continues for the Term.

3. Our commitment to you

- 3.1 Subject to this Agreement, we must:
 - (a) allow you to take and utilise the Equipment for the Hire Period.
 - (b) ensure that the Equipment is in good working order as at the Commencement Date.
 - (c) provide and perform any schedule maintenance on the Equipment
 - (d) where set out in the Quotation or otherwise agreed in writing, provide the Additional Services with respect to the Equipment; and
 - (e) where the Equipment is eligible for delivery and/or collection, deliver and/or collect the Equipment in accordance with clause 7.

4. Hire Period

4.1 The Hire Period commences on the Commencement Date and continues until the End Date.

4.2 The Minimum Hire Period applies in respect of all items of Equipment, unless otherwise notified by us. We will notify you of any applicable Minimum Hire Period at the time of hire. If the Hire Period is shorter than the Minimum Hire Period, or the Equipment is returned to us prior to the expiry of the Minimum Hire Period, you are still required to pay all Equipment Hire Charges in respect of the Minimum Hire Period.

5. Fees and Charges Equipment Hire Charges

- 5.1 You must pay us the Equipment Hire Charges for the Hire Period in accordance with this agreement.
- 5.2 The Equipment Hire Charges are calculated based on our Hire Rates, which are set out in the Quotation.
- 5.3 If you hire additional Equipment or extend the Hire Period beyond the expiry of the Hire Period set out in the Quotation, then additional Equipment Hire Charges may apply (including changes to Hire Rates). We will notify you of any additional Equipment Hire Charges at the time of hire or extension.
- 5.4 You acknowledge that Equipment Hire Charges are based on the agreed usage limits set out in the Quotation. Any use of the Equipment in excess of those limits (as may be measured and recorded in the Equipment's timing device) will incur additional charges at Hire Rates set out in the Quotation.
- 5.5 The Equipment Hire Charges are payable notwithstanding any period of the Hire Period during which the Equipment is not in use or is unavailable or subject to repairs or replacement as a result of your use, unless otherwise agreed in writing by us.

Other Charges

- 5.6 In addition to the Equipment Hire Charges, you agree to pay the following additional charges to us:
 - (a) the Equipment Delivery Charges, if applicable. If instructed in the Quotation, then these fees may be payable up front.
 - (b) the LLC Fee, if applicable.
 - (c) the Equipment Refuelling Charge, if applicable.
 - (d) any Enforcement Costs, if applicable.
 - (e) any Services Charges, if applicable.
 - (f) any Payment Processing Fees, if applicable.
 - (g) any Equipment Damage Repair Charges, if applicable; and
 - (h) an amount equal to any tolls, fines, penalties or other statutory or Government charges paid by us arising out of your use of a Vehicle during the Hire Period.

5.7 Set-off

We are entitled to set off against any amount we owe you any amount owed to us by you or any amount owed to us by any of your related bodies corporate. You may not set off against or deduct from the Fees any amount owed or claimed to be owed to you by us.

6. Payment Terms

- 6.1 The Equipment Hire Charges are payable:
 - (a) for Clients that do not hold an active trading account with us, on or before the Commencement Date; or
 - (b) for approved Clients that hold an active trading account with us, within 30 days of the date of invoice.
or as otherwise agreed by us in writing.
- 6.2 All other Fees payable under this agreement are payable within 30 days of receipt of a valid invoice.
- 6.3 Payment of Fees may be made by cash, cheque, bank cheque, credit card or by direct debit or by any other method as agreed approved by us in writing.
- 6.4 If you fail to pay the Fees by the due date, we may:
 - (a) charge interest on the outstanding amount payable at the Interest Rate, calculated daily. Interest is payable on demand and may be capitalised at such times as we determine in our sole discretion.
 - (b) Place your account on hold restricting further hires.
 - (c) if overdue after 30 days then an amount of the greater of \$20 or 10% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable; and/or
 - (d) on written notice to you, suspend access to and/or remotely disable the Equipment until payment has been made. You must, upon receipt of notice, ensure that the Equipment is safely positioned prior to being disabled.
- 6.5 We may, at our sole discretion, require payment of:
 - (a) a deposit, which will be retained by us for the Hire Period and applied to any outstanding Fees at the expiry of the Hire Period; or
 - (b) a bond, which will be retained by us for the Hire Period and refunded upon return of the Equipment in a condition reasonably acceptable to us.

6.6 Time is of the essence with respect to payment of any Fees under this agreement and of the performance by each party of its obligations under this clause 6.

7. Delivery and return

7.1 If the Quotation specifies (or as otherwise agreed by us in writing) that the Equipment will be delivered and/or collected by us, we will deliver to and/or collect the Equipment from the Site in accordance with this clause 7.

7.2 Subject to clause 7.1, we will:

- (a) deliver the Equipment to the Site as soon as reasonably practicable following receipt of your Site details; and/or
- (b) collect the Equipment from the Site as soon as reasonably practicable following receipt of notice in accordance with clause 7.13; or as otherwise agreed with you.

Delivery

7.3 Delivery will be deemed to have occurred on the earlier of (**Delivery Date**):

- (a) if you collect the Equipment, the date that you take possession of the Equipment at our premises; or
- (b) if we deliver (or arrange for a third-party carrier to deliver) the Equipment, the date that you take possession of the Equipment at the Site; or
- (c) if you arrange for a third-party carrier to collect or accept the Equipment from us on as your agent on your behalf, on the date that the carrier takes possession of the Equipment.

7.4 You must take all necessary steps to take delivery of the Equipment on the Delivery Date as reasonably notified to you by us.

7.5 We may deliver the Equipment in separate instalments (in which case the Delivery Date is determined by reference to the date of the first instalment). Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

7.6 We may cancel delivery of Equipment at any time before the Delivery Date by giving written notice to you, in which case we will repay to you any amount paid in respect of the Hire Rates for that Equipment.

7.7 You may cancel delivery of the Equipment at any time before the Delivery Date by giving written notice to us, in which case you will be liable for any Liability we incur as a result of the cancellation.

Inspection and access

7.8 You must inspect the Equipment on the Delivery Date, if you identify any defect, damage, or failure to comply with the description given in the Quotation:

- (a) notify us in writing within 24 hours of the Delivery Date; and
- (b) if requested by us, promptly provide us with access to inspect the Equipment.

7.9 Subject to clause 7.8, you agree that on taking delivery of the Equipment, you have satisfied yourself as to the suitability and condition of the Equipment. Subject to clause 14.2, we make no representations and give no guarantee or warranty that the Equipment is fit for your intended purpose.

7.10 You must provide us with reasonable access to the Site on request for the purpose of:

- (a) inspecting the state of repair of the Equipment.
- (b) to perform any required maintenance or repairs; and
- (c) otherwise exercising its rights under this agreement.

7.11 Access to the Site will be at your cost and take place during normal business hours and reasonable notice will be given to you by us (except in an emergency or circumstances where we reasonably believe that there is a risk of damage to the Equipment or injury or damage to persons or property, in which case no notice is required).

Collection and return

7.12 Unless otherwise agreed or specified in the Quotation, you must and are responsible for returning the Equipment to us (at the premises you collected or hired it from) before 5.00pm on the End Date. Equipment must be returned to us with a full tank of fuel or the Equipment Refuelling Charge will be payable.

7.13 If we have agreed to collect the Equipment from you, you must:

- (a) give us reasonable notice of the time (no later than 12.00pm) and location that the Equipment will be available for collection and ensure the Equipment is available and accessible at that time; and
- (b) ensure the Equipment is kept safe and secure until the time of collection.

Failure to return

7.14 If you fail to return (or make available for inspection or collection) the Equipment to us as agreed in accordance with this agreement, then you must:

- (a) pay any additional Equipment Hire Charges accruing in respect of the additional period after the expiry of the Hire Period during which the Equipment is unavailable to us.
- (b) continue to observe and perform your other obligations under this agreement; and

(c) we may exercise our access rights under clause 7.10 to take possession of the Equipment at your cost and risk.

8. Title and Risk

8.1 Title to the Equipment always remains with us. The Equipment is always our property and you only have a right to use it.

8.2 Risk in the Equipment passes to you immediately upon delivery and remains with you until the Equipment has been collected or returned to us in accordance with this agreement.

9. Your obligations

9.1 You must, with respect to the Equipment:

- (a) operate the Equipment safely, in accordance with all applicable Laws and our reasonable directions, only for its intended use and in accordance with any manufacturer's instruction (whether supplied to you by us or posted on the Equipment). We make no representations and give no guarantee or warranty that the equipment is suitable for your intended purpose.
- (b) satisfy yourself at the Commencement Date that the Equipment is suitable for your purposes.
- (c) ensure that the Site and any locations where the Equipment is operated comply with any applicable health, safety, and environment Laws (including by obtaining any and all licences or accreditations required to operate the Equipment). This also includes wearing suitable clothing and personal protective equipment when operating the equipment as required or recommended by us or the manufacturer.
- (d) take out and maintain throughout the Hire Period any insurance required by applicable Law or as reasonably required by us.
- (e) ensure that all persons operating or erecting the Equipment are suitably trained, licensed (including, where necessary, hold a current certificate of competency) and experienced and properly instructed in its safe and proper use, and provide evidence of the same to us upon request;
- (f) keep the Equipment in your own possession and control and ensure the Equipment is stored securely at the Site when not in use.
- (g) only permit the Equipment to be used for the purpose for which it was designed, in suitable terrain and in a manner, which has regard to the capacity, capabilities and limitations of the Equipment.
- (h) keep it clean, to allow for safe and efficient operation.
- (i) maintain the Equipment in good working condition, including performing daily checks on the condition of the batteries, oil and water levels and belts and tyres.
- (j) only use fuel and Consumables on the Equipment that has been approved by us or recommended by the manufacturer.
- (k) Use best endeavours to ensure that the equipment is not contaminated with any hazardous substances (including asbestos). You must advise us of any risks or hazardous substance contamination to the equipment as soon as they become apparent.
- (l) if you transport the Equipment (including on a trailer), comply with all applicable Laws relating to transport or towing; and
- (m) return of the Equipment to us on expiry of the Hire Period (as set out in the Quotation or agreed with us) in the same clean condition and good working order as it was when you received it, excluding fair wear and tear.

9.2 You must not, with respect to the Equipment:

- (a) give or encumber, or permit any person to take an interest in, or any form of security over, the Equipment and must do all things reasonably necessary to protect and make known our interest in the Equipment.
- (b) alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, logo, branding, signage, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (c) disable, interfere, or tamper with any electronic monitoring systems attached to the Equipment.
- (d) alter, modify, tamper with, or damage the Equipment without our prior written consent.
- (e) part with possession or control of the Equipment without our prior written consent or permit the Equipment or any part thereof to be used by any other party for any other work.
- (f) remove or permit to be removed the Equipment from the Site, without our prior written consent.
- (g) exceed the recommended or permitted load limits, speed, or capacity of any Equipment.
- (h) permit any person to operate the Equipment while under the influence of drugs or alcohol, or to smoke in any Vehicle.
- (i) Permit any person to carry illegal, prohibited, or dangerous substances in or on the equipment.
- (j) not fix any of the Equipment in such a manner as to make it a fixture forming part of any freehold land; or

- (k) continue to use of Equipment after any malfunction becomes evident or would have become evident if you had complied with your obligations under this agreement.
- (l) Remove fuel or oil tank caps, shackles, bund plugs or seals from the equipment and ensure that they are in place when you return the equipment.
- (m) Use the equipment offshore, in a mine, in an area where friable asbestos is present, or move the equipment over water without our prior written consent, which may be reasonably withheld.

9.3 You acknowledge and agree that you are responsible for ensuring and must procure that any sub-hiree complies with the terms of this agreement in their use of the Equipment.

10. Damage and repairs

10.1 You must not repair, or attempt to repair, the Equipment and all repairs must be completed by us, or as otherwise permitted by us in writing. You are not authorised to pledge our credit for repairs to the Equipment except with our prior written consent.

10.2 In the event of any accident, damage, loss, theft, or mechanical breakdown affecting the Equipment, you must immediately:

- (a) notify us immediately and provide full details (including as reasonably requested by us) of the event, including any repairs which are required to maintain the safe and good working order and operation of the Equipment.
- (b) if the event is or is reasonably suspected to involve a theft, promptly notify the police, and provide the police report number to us.
- (c) Will be subject to continuing Hire Charges until the repair or replacement of the Equipment.
- (d) if the Equipment becomes unsafe or may be damaged by continued use, cease use of the Equipment; and
- (e) take reasonable steps to ensure no further damage to the Equipment and prevent the Equipment from causing any injury, loss or damage to persons or property.

10.3 Upon receipt of notice and subject to clause 11, we will use reasonable endeavours to promptly repair or replace (at our discretion) the Equipment at your expense.

10.4 Immediately on request by us and subject to clause 11, you must pay us:

- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to us (other than as a result of our negligence);
- (b) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to 10% of the new list price of the Equipment.
- (c) the cost of repairing any damage to the Equipment as a result of your (or your Personnel) negligence.
- (d) the cost of repairing any damage to the Equipment caused by vandalism, or (in our reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client; and
- (e) the cost of fuels and Consumables provided by us and used by you.

11. Limited Liability Cover (Damage Waiver)

The LLC is not insurance – it is an agreement by us to waive or limit your liability for any loss, theft, or damage to the Equipment in certain circumstances during the Term, in exchange for payment of a fee.

11.1 Subject to clause 11.6, this clause applies to all Clients other than those who hold the insurances referred to in clause 12. If you do not hold insurance in accordance with clause 12, you must pay the LLC Fee in accordance with this clause 11.

11.2 Subject to clause 11.5 if you:

- (a) pay the LLC Fee prior to any loss, theft or damage to the Equipment occurring.
- (b) immediately report any incident to police and notify us in accordance with clause 10, including a copy of any police report, and provide all assistance reasonably requested by us in relation to the incident; and
- (c) in the event of any loss, theft, or damage, pay the LLC Excess. we will waive our rights to Claim against you for loss, theft or damage to the Equipment.

11.3 The **LLC Excess** for each item of Equipment is the amount calculated as follows:

- (a) (Replace) where Equipment is lost, stolen or in our reasonable opinion damaged beyond repair:
 - (i) subject to 11.3(a)(ii), the LLC Excess for each affected item of Equipment will be the amount equal to the greater of:
 - (A) \$500; or
 - (B) 15% of the Replacement Cost.
 - (ii) where Replacement Cost is less than \$500, the LLC Excess will be an amount equal to the Replacement Cost.
- (b) (Repair) where Equipment is damaged and, in our reasonable opinion, can be repaired:
 - (i) subject to 11.3(b)(ii), the LLC Excess for each affected item of Equipment will be the amount equal to the greater of:

(A) \$500; or

(B) 15% of the cost of repairing the damage.

- (ii) where the cost of repairing the damage to the Equipment is less than \$500, the LLC Excess will be an amount equal to the lesser of the cost of repairing the damage, and the Replacement Cost.

11.4 The LLC Fee will be automatically added to the Fees unless you comply with clause 12.

11.5 Notwithstanding clause 11.2, we will not waive our rights to Claim against you for any Liability suffered or incurred in connection with the loss, theft or damage to the Equipment if such loss, theft or damage arises as a result of:

- (a) the Equipment being operated by a person who is unlicensed or under the influence of alcohol or drugs.
- (b) a breach of a clause of this agreement by you or your Personnel.
- (c) any reckless or negligent act or omission by you or your Personnel.
- (d) the use or transport of the Equipment in violation of any laws by you or your Personnel.
- (e) a failure by you or your Personnel to use the Equipment for its intended purpose or as reasonably directed by us.
- (f) overloading, exceeding rated capacity, misuse, abuse or improper servicing of Equipment or lack of lubrication.
- (g) the wrongful conversion of the Equipment or any components of the Equipment.
- (h) a failure by you or your Personnel to comply with any maintenance obligations.
- (i) vandalism by a third party or wilful damage by you or your Personnel.
- (j) you or your Personnel's failure to, in our reasonable opinion, take reasonable precautions to protect, lockup and secure the Equipment; or
- (k) any use whilst located, used, loaded, unloaded, transported on, over or adjoining water including without limiting the generality thereof whilst located, used, loaded, unloaded or transported over or on wharves, bridges, barges and vessels of all kinds; and you will be liable for the full amount of any Liability incurred by us.

11.6 This clause does not apply in respect of any Equipment that is a Vehicle.

12. Insurance

12.1 If you do not wish to pay the LLC Fee, then you must comply with this clause 12.

12.2 On the Commencement Date and throughout the Term, you must effect and maintain at your own expense, with a reputable insurance company in Australia, plant and equipment insurance for the loss or damage to the Equipment for an amount not less than the full replacement cost of the Equipment. The Customer will be responsible for the excess and any shortfall in repair or replacement costs from any insurance payout.

12.3 If requested by us, you must procure that we are noted as an interested party on the above policies and promptly provide certificates of currency of these insurances.

13. Vehicles

13.1 This clause 12 applies to all Clients that hire Vehicles and do not hold insurance under clause 12.

13.2 We will arrange insurance for each Vehicle that you hire in respect of any damage caused by a motor vehicle accident to that Vehicle during the Hire Period on the condition that:

- (a) you must pay us the LLC Fee.
- (b) without limiting clause 13.2(c), you acknowledge and agree that this insurance will not cover you for any loss, cost or damage other than damage sustained by the Vehicle as a result of a Vehicle accident;
- (c) you acknowledge and agree that this insurance will not cover you for any loss, cost or damage that occurs while the Vehicle is being operated by a person:
 - (i) who has previously been refused motor vehicle insurance; or
 - (ii) is otherwise not permitted to operate Equipment under this agreement.
- (d) if the Vehicle is damaged as a result of a vehicle accident, you must also pay:
 - (i) the first \$5,000 of the cost of any damage.
 - (ii) the cost of repairing any damage:
 - (A) to the Vehicle body or pantech, any truck mounting device or tyres.
 - (B) caused by the abnormal use or misuse of the Vehicle.
 - (C) incurred as a result of the Vehicle being driven unsealed or private roads; or
 - (D) that results from your breach of this agreement.

13.3 For the avoidance of doubt, if you do not hold insurance in accordance with clause 12 or pay the LLC Fee, you will be liable to repair or replace the Vehicle in the event it is lost, stolen or damaged during the Hire Period.

14. Liability and Indemnity

Liability

- 14.1 To the extent permitted by law and except as stated in this agreement, we makes no representations and gives no warranties with respect to the Equipment or any ancillary services provided under this agreement and all legal, statutory or equitable liability, conditions or warranties of any type in relation to the Equipment are excluded.
- 14.2 Notwithstanding clause 14.1, nothing in this agreement will limit or exclude any rights accruing to you under the *Competition and Consumer Act 2010* (Cth) including the Australian Consumer Law, nor statutes, rules or regulations from time to time in force in Australia which imply or guarantee certain conditions or warranties or impose obligations on us which conditions, warranties and obligations cannot, or cannot except to a limited extent be excluded, restricted or modified. If any such statutory provisions apply, then to the extent we are entitled to do so, our liability under those statutory provisions will be limited at our option to:
- (a) in the case of goods:
- (i) the replacement of the goods or the supply of equivalent goods.
 - (ii) the payment of the cost of replacing the goods or of acquiring equivalent goods.
 - (iii) the payment of the cost of having the goods repaired; or
 - (iv) the repair of the goods; and
- (b) in the case of services:
- (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again.
- 14.3 Except as expressly stated otherwise in this agreement, we will not be liable to you for any Claim or Liability (including Consequential Loss) suffered or incurred by you in relation to the hiring of the Equipment under this agreement.
- 14.4 Notwithstanding anything else in this agreement and to the full extent permitted by law, our total aggregate liability to you for any Claims or Liability suffered or incurred under or connection with this agreement is limited to the amount paid by you to us for the Equipment.

Indemnity

- 14.5 You irrevocably indemnify and hold harmless us, and our Personnel against any Claims or Liability suffered or incurred as a result of or in connection with:
- (a) any breach of this agreement by you or your Personnel (or any sub-hiree)
 - (b) any breach of law or non-compliance with any registration, licence permit, authorisation, regulation or by-law relating to the use of the Equipment.
 - (c) any gross negligence, fraud or wilful misconduct by you or your Personnel with respect to the Equipment.
 - (d) a request by you for Additional Services which involves any inspection, maintenance, repairs or other dealings by us with assets or equipment owned by a third party.
 - (e) us exercising any of our rights under this agreement; or
 - (f) the use, operation, control, condition, maintenance, repair, or storage of the Equipment (other than fair wear and tear, as determined by us, acting reasonably).
- 14.6 Other than in respect of clause 14.5(d), you are not liable under this clause to the extent that the relevant matter was caused or contributed to by our gross negligence, fraud or wilful misconduct.

15. Termination

- 15.1 We may terminate this agreement at any time on 30 days written notice to you. If we terminate under this clause 15.1, we will refund you any Fees paid in respect of the period after termination.
- 15.2 We may terminate this agreement at any time with immediate effect by written notice to you, if:
- (a) you fail to comply with a fundamental provision of this agreement.
 - (b) you are in breach of any other provision of this agreement and that breach is not remedied within seven Business Days of receipt of notice from us.
 - (c) an order is made, or proceedings are taken for your winding up.
 - (d) you become insolvent or a receiver, manager, provisional liquidator, or administrator/s is appointed or takes possession of the whole or a substantial part of your assets; or
 - (e) if you are an individual, you are declared bankrupt.
- 15.3 On termination of this agreement by us, you must:
- (a) immediately return the Equipment to us in accordance with clause 7;
 - (b) if you fail to comply with subclause (a) above:
 - (i) pay to us on demand an amount equal to the replacement value of the Equipment; and
 - (ii) pay to us on demand an amount equal to the current value of the Equipment Hire Charges payable during the Hire Period (assuming a rate of usage the same as that prior to termination).
 - (c) On termination of this agreement, we may enter the Site or any other premises on which the Equipment is located and take possession of

the Equipment at your cost and risk. You must advise us where the equipment is located.

- (d) Termination of this agreement by us is without prejudice to any other right or remedy which we might have.
- (e) The fundamental provisions of this agreement include clauses 5, 7, 9, 10 and 12.

16. Dispute Resolution

- 16.1 If any dispute arises in relation to this agreement, no party may commence any court or arbitration proceedings, including disputes which arise under this clause 16, unless and until the parties have complied with the procedures set out in this clause 16, except where a party seeks urgent interlocutory relief.
- 16.2 If any dispute arises in relation to this Agreement, including in relation to its interpretation or any aspect of its performance, a party may give written Notice of dispute (**Notice of Dispute**) to the other parties which states that a dispute has arisen, specifies the nature of the dispute and requests that a meeting of the authorised representative of each party be held within 10 working days.
- 16.3 If a party receives a Notice of Dispute, that party must cause an authorised representative to attend a meeting and each party must use their best endeavours to reach a resolution to the dispute.
- 16.4 If, within 10 Business Days of the meeting (or such further period as agreed in writing by them), the parties do not agree as to a resolution to the dispute, then any party may commence court proceedings to resolve the dispute.

17. Privacy

- 17.1 You acknowledge and agree that we may collect, use, and disclose Personal Information:
- (a) from you and your Personnel, including but not limited to name and address, driver's licence details, credit card details, date of birth and business history.
 - (b) about your credit worthiness, or for the purpose of obtaining and maintaining credit information file about you or collecting overdue payments.
- and warrant that, to the extent you provide Personal Information about a third party, that you have the requisite consent or authority to provide that information.
- 17.2 We will manage any Personal Information we collect in accordance with the *Privacy Act 1988* (Cth) and our Privacy Policy and our Credit Information Policy.

18. Guarantee

- 18.1 This clause applies to any Guarantor entering into this agreement.
- 18.2 The parties acknowledge and agree that:
- (a) PremiAir has entered into this agreement at the request of the Client.
 - (b) the Guarantor will derive a benefit (direct or indirect) by the performance of PremiAir of its obligations under this agreement; and
 - (c) PremiAir would not have entered into this agreement without the Guarantor having given the guarantee under this clause 18.
- 18.3 The Guarantor(s) unconditionally guarantees to PremiAir the due and punctual performance by the Client of its obligations under this agreement, including the payment of all monies under this agreement from time to time. The Guarantor must promptly pay an amount equal to the amount of any Liability suffered or incurred by PremiAir due to the Client's breach or failure to comply with this agreement.
- 18.4 PremiAir may enforce this guarantee without first enforcing against the Client. If the Guarantor comprises more than one person, each of them is liable under the guarantee jointly with any one or more of the others and separately on its own and PremiAir may proceed against any or all of them in its discretion.
- 18.5 This guarantee is a continuing and irrevocable guarantee that applies to this agreement as varied or replaced and continues in force until discharged.

19. Payment Claim

Nothing in this agreement is intended to have the effect of contracting out of, and we reserve our right to exercise our rights under the *Building and Construction Industry Security of Payment Act 1999* (NSW), the *Building and Construction Industry Payments Act 2004* (QLD) and any equivalent applicable legislation where the Site is located GST

- 19.1 Unless otherwise specified, all amounts payable under this agreement are exclusive of GST and must be calculated without regard to GST. If a supply made under this agreement is a taxable supply, the recipient of that taxable supply (**Recipient**) must, in addition to any other consideration, pay to the party making the taxable supply (**Supplier**) the amount of GST with respect to the supply.

20. PPS

- 20.1 In this clause, the terms *proceeds*, *Security Interest* and *PPS Lease* have the meanings given to those expressions in the *PPSA*.

20.2 To the extent this agreement gives rise to a Security Interest (including a PPS Lease), we may register a Security Interest with respect to the Equipment and any proceeds.

20.3 You undertake to:

- (a) promptly do all things, execute all documents, and/or provide any information which we may reasonably require to enable us to gain, attach, enforce, register, protect and maintain the perfection of a first priority Security Interest.
- (b) give us not less than 14 days' prior written notice of any proposed change in your name and/or any other change to its details: and
- (c) immediately on request by us (and at your expense) obtain from any third party such agreements and waivers of any Security Interest that any third party has in the Equipment, to ensure that we are provided with or retain a first priority security interest in the Equipment.

20.4 If you default on any monies due under this agreement, we have the right to seize the Equipment after giving written notice of such intention to you. Equipment seized under this clause may be disposed of, retained by, or otherwise dealt with by us, in any way we see fit.

20.5 You must give us notice if another party with a Security Interest in the Equipment seizes or otherwise deals with the Equipment in a way that might impact our Security Interest.

20.6 You waive your rights to receive a copy of any verification statements under Section 157 of the PPSA and, to the maximum extent permitted by law, the following provisions of the PPSA do not apply to the enforcement by us of our Security Interest in the Equipment: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.

20.7 You must not disclose information of the kind referred to in Section 275(1) of the PPSA, unless required to do so by Sections 275(7)(b) to 275(7)(e) of the PPSA. You must not, without our consent, authorise the disclosure of information pursuant to Section 275(7)(c) of the PPSA nor request us to give information pursuant to Section 275(7)(d) of the PPSA.

21. General warranties

21.1 Each party warrants to each other party that:

- (a) this agreement creates legal, valid, and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this agreement in the capacity of trustee of any trust.

22. General

22.1 This agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes any and all prior negotiations, representations, warranties, or agreements.

22.2 Except as otherwise stated, this agreement may only be varied in writing signed by both parties.

22.3 You may not assign the rights or benefits of this agreement without our prior written consent.

22.4 You must give us not less than 10 Business Days prior written notice of any change of ownership or control of the Client, any change of name of the Client or any change of Client details (including address, phone number or key Personnel).

22.5 An obligation or warranty on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally.

22.6 A reference to time in this Agreement is a reference to the time in the State or Territory where the Quotation was issued.

22.7 We may do anything that you should have but have not done under this agreement and you must reimburse us for all costs reasonably incurred by us as a result.

22.8 You, or the person signing this agreement on your behalf, warrant that you are authorised to enter this agreement.

22.9 No time or indulgence by us will be deemed to be a waiver of any of our rights.

22.10 Notices under this agreement must be in writing sent by mail to or left at the addresses set out in the Quotation (or as subsequently advised in writing by the relevant party).

22.11 In this agreement, "including" and "includes" are not words of limitation.

22.12 This agreement is governed by the laws of the State or Territory where the Quotation was issued, and the parties submit to the non-exclusive jurisdiction of the courts of that State and all courts which may hear appeals there from.

22.13 If any provision of this agreement is invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provision will not be affected and such invalid, illegal or unenforceable provision is to be severed from this agreement.

22.14 If our ability to perform our obligations under this agreement is adversely affected by any cause beyond our reasonable control (**Force Majeure Event**), then we may, in our absolute discretion, terminate this agreement by written notice to you.

22.15 In the event of any inconsistency between the:

(a) the Quotation.

(b) any Special Conditions.

(c) these terms and conditions; and

(d) any attached schedules,

the document higher in the above list prevails to the extent of the inconsistency.

Clauses 5, 6, 7.14, 14, 16, 18 and 22 (if applicable and will survive the expiry or termination of this agreement)