

HIRE CONTRACT TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. **AGREEMENT** means these terms and conditions.
- 1.2. **CLIENT** means the party named as Client in the Hire Schedule and includes its assigns, successors or any Person or entity acting on behalf and/or with the authority of the Client.
- 1.3. **EQUIPMENT** means the items of equipment to be hired to the Client pursuant to this Agreement as detailed in the Hire Schedule.
- 1.4. **HIRE COMMENCEMENT** means the date the Equipment is delivered to the Client's premises as detailed in the Hire Schedule,
- 1.5. **HIRE END DATE** means the date the Equipment is returned to the Supplier's address as detailed in the Hire Schedule.
- 1.6. **HIRE FEE** means the hire fee applicable to the hire of the Equipment as detailed in the Hire Schedule.
- 1.7. **HIRE SCHEDULE** means any document provided by the Supplier to the Client that includes the particulars of the Client, the Equipment to be hired, the Hire End Date and the Hire Fee.
- 1.8. **HIRE TERM** means the period commencing on the date of the Hire Commencement and ending on the Hire End Date.
- 1.9. **SUPPLIER** means Heath Pipeline Services Pty Ltd (ACN 112 174 740).

2. GOVERNING CONDITIONS

- 2.1. These terms and conditions shall apply to the hire of Equipment by the Supplier to the Client.
- 2.2. All orders, however made, are accepted upon these terms and conditions, which shall override any terms or conditions incorporated or referred to by the Client in writing, orally or otherwise.
- 2.3. It is expressly agreed that no variation or alteration of this Agreement shall be effective unless in writing and signed by a duly authorised signatory of each Party.
- 2.4. No failure by the Supplier to object to any terms or conditions incorporated or referred to by the Client in writing, orally or otherwise shall be deemed a waiver of these terms and conditions or an acceptance of the Client's terms and conditions by the Supplier.

3. PRICE AND PAYMENT

- 3.1. Unless otherwise agreed in writing, on or before the Hire Commencement, the Client will pay the Hire Fee to the Supplier.
- 3.2. Each payment by the Client must be calculated and made without, and free and clear of any deduction for set-off or counterclaim and any withholding for or on account of any tax or any other deduction.
- 3.3. At the Supplier's sole discretion, the Client may be required to pay a deposit of up to 50% of the Hire Fee.
- 3.4. The Client agrees to pay to the Supplier, immediately on demand, without deduction or set off:
 - (a) the costs incurred by the Supplier in delivering and recovering possession of the Equipment;
 - (b) all stamp duty, financial institution duty, fees, outgoings, penalties, fines, demands, charges or costs imposed by any authority on or in connection with this Agreement or the Client's hire of the Equipment;

- (c) the full cost of repairing any damage to the Equipment caused during the Hire Term or, if in the absolute opinion of the Supplier, the Equipment is not capable of being repaired, the full cost of replacing the Equipment;
- (d) the Hire Fees for the Equipment during the period any damaged Equipment is being repaired or repurchased;
- (e) the full cost of replacing the Equipment if the Equipment is lost or stolen during the Hire Term; and
- (f) any expenses, including legal fees, incurred by the Supplier as a consequence of any default by the Client of this Agreement.

- 3.5. Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to three per cent (3%) of the Hire Fee), or by direct credit, or by any other method as agreed to between the Client and the Supplier.
- 3.6. If the Client does not make a payment by the date stated in an invoice or as otherwise provided for in the Agreement, the Supplier shall be entitled to charge interest on the outstanding amount at rate of 2.5% per month (or such other rate as the Supplier may specify from time to time) from the due date for payment until the date that payment is actually made;

4. RISK, TITLE and USAGE

- 4.1. Risk of loss and damage to the Equipment shall vest solely with the Client from the date of delivery and acceptance of the Equipment by the Client until the Equipment is redelivered to the Supplier in accordance with this Agreement.
- 4.2. The Equipment shall at all times remain the property of the Supplier. The Client shall not sell, mortgage, encumber or dispose of the Equipment without the Supplier's consent.
- 4.3. The Client warrants that:
 - (a) prior to Hire Commencement, it will inspect the Equipment;
 - (b) as a result of the inspection described in clause (a) above and by taking delivery of the Equipment on Hire Commencement, the Client satisfied itself as to the condition, quality and safety of the Equipment, the fitness for its purpose and its compliance with its description; and
 - (c) in selecting the Equipment, it did not rely on the Supplier's skill or judgement or on any representations made by or on behalf of the Supplier and agrees that on taking possession of the Equipment, it will accept the Equipment as it is with all faults and defects, including without limitation, latent and other defects and whether or not discoverable by it or the Supplier.

5. CARE AND USE OF THE EQUIPMENT

- 5.1. Upon expiration of the Hire Term, the Client shall return the Equipment to the Supplier in its original condition, ordinary wear and tear excepted.
- 5.2. The Client will:
 - (a) keep the Equipment in first class condition and only use it as it would be used by a careful and prudent owner;
 - (b) keep the Equipment fully insured during the Hire Term;
 - (c) if requested to do so, provide evidence to the Supplier that the Equipment has been insured;

- (d) report any damage to, or loss of, the Equipment to the Supplier immediately such damage or loss occurs;
- (e) not use the Equipment for any illegal purpose;
- (f) comply with the instructions and recommendations of the manufacturer or the Supplier relating to the Equipment or its use;
- (g) be liable for any breach of this Agreement committed by its servants or agents;
- (h) operate the Equipment in the manner intended and in conformity with the manufacturer's specifications; and
- (i) comply in all respects with all applicable laws, regulations and requirements reasonably necessary for the safe and lawful operation of the Equipment.

5.3. The Client must not:

- (a) tamper with, damage or repair the Equipment; or
- (b) lose or part with possession of the Equipment.

6. WARRANTY, LIABILITIES AND INDEMNITIES

- 6.1. Except to the extent required under Australian law, neither the Supplier nor its affiliates, directors, other contractors, successors or assigns will be liable for any losses, damages, liabilities, claims or expenses (including legal costs and defence or settlement costs) whatsoever, whether in contract, tort (including negligence), statutes or otherwise, arising out of, or in any way related to the hire of the Equipment. This limitation applies to all direct, indirect, consequential, special, punitive or other losses, damages, liabilities, claims or expenses you or others may suffer, including for loss of profits, business interruption or loss or corruption of data or information.
- 6.2. The Supplier's liability for a breach of a condition or warranty which is implied under Australian law and cannot be excluded is limited, to the maximum extent possible, to the replacement or repair of the Equipment or the cost of having the Equipment repaired or replaced.
- 6.3. The Client assumes liability for, and indemnifies and will keep indemnified, the Supplier and its agents and employees from and against any and all injuries, actions, proceedings, claims, demands, liabilities, losses, damages, costs, penalties and all expenses legal or otherwise (including Court costs and legal fees reasonably incurred) and of whatsoever kind and nature (including claims based upon strict liability in tort):
- (a) arising out of the hire of the Equipment; or
 - (b) incurred by the Supplier in respect of any loss or damage to the Equipment caused during the Hire Term and any loss of the Equipment by seizure, distress, execution or other legal process, confiscation or forfeiture of the Equipment.

7. APPLICATION OF THE PPSA

- 7.1. In this clause, 'PPSA' means the *Personal Property Securities Act 2009* (Cth). If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.
- 7.2. This clause applies to the extent that the Supplier's interest in any Equipment is a security interest.
- 7.3. The Client acknowledges and agrees that the Supplier may apply to register a security interest in the Equipment at any time before or after delivery of the Equipment. The Client waives its right under s 157 of the PPSA to receive notice of any verification of the registration.
- 7.4. The Supplier can apply amounts it receives from the Client towards amounts owing to it in such order as the Supplier elects.

7.5. If the Client defaults in the performance of any obligation owed to the Supplier under these conditions or any other agreement for the Supplier to supply Equipment to the Client, the Supplier may enforce its security interest in any Equipment by exercising all or any of its rights under this Agreement or the PPSA. To the maximum extent permitted by law, the Client and Supplier agree that the following provisions of the PPSA do not apply to the enforcement by the Supplier of its security interest in the Equipment: sections 95, 118, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.

7.6. The Client and Supplier agree not to disclose information of the kind mentioned in s 275(1) of the PPSA, except in circumstances required by sections 275(7)(b) to (e) of the PPSA.

7.7. The Client must promptly do anything required by the Supplier to ensure that the Supplier's security interest is a perfected security interest and has priority over all other security interests in the Equipment.

7.8. Nothing in this clause is limited by any other provision of this Agreement or any other agreement between the parties.

8. DEFAULT AND CONSEQUENCES OF DEFAULT

8.1. If the Client breaches any clause in this Agreement, or if the Client becomes bankrupt, insolvent or ceases business, the Supplier can:

- (a) terminate this Agreement;
- (b) sue for recovery of all monies owed by the Client; and
- (c) repossess the Equipment (and is authorised to enter onto any premises where the Equipment is located).

8.2. The Client indemnifies the Supplier for any costs incurred by the Supplier as a consequence of any breach of any clause of this Agreement by the Client.

9. BUILDING AND CONSTRUCTION INDUSTRY PAYMENT ACT 2004 (QLD)

9.1. This Hire Contract is a payment claim pursuant to the provisions of the *Building and Construction Industry Payment Act 2004* (Qld), or the equivalent of that legislation in other states of Australia (the **Act**).

9.2. Except where the Supplier, in its discretion, takes action against the Client under the Act, the parties agree that this Agreement is governed by the laws of the State of Queensland, and the parties submit to the jurisdiction of the Courts of that State.

END OF HIRE CONTRACT TERMS AND CONDITIONS OF SERVICE

Approved by: General Manager

Date: 31 August 2016