

## Australian Hammer Supplies Hire Pty Ltd Standard terms and conditions

These terms are part of an agreement governing all sales, hires and services which the Customer may request and which may be provided by Australian Hammer Supplies Hire Pty Ltd ABN 70 143 092 228 (AHSB). The Customer is bound by these terms because the Customer has signed an agreement incorporating them, or because the Customer has requested a sale or hire of Equipment or the provision of Services after being given a copy of these terms, or because the Customer has agreed to be bound by these terms when making an Application. We may in our absolute discretion terminate any agreement the subject of these terms and/or decline to sell or hire Equipment or provide services to the Customer at any time. The order/ quotation and Schedule forms part of these terms, whether signed by the Customer or not (together with the terms, *the agreement*). The Customer should read and consider carefully these terms before accepting delivery.

**Account Facility** means any billing arrangement agreed between AHSB and the Customer, administered in accordance with these terms.

**Application** means any application for an Account Facility of which these terms form part.

**Authorised Person** means such person or persons as may be notified to AHSB by the Customer as being entitled to accept delivery of and operate the Equipment.

**Business Day** means any day other than a Saturday, Sunday or public holiday in New South Wales, Australia.

**Claims** means any present or future, actual or contingent, claim, liability, right, remedy, entitlement, demand, proof of debt, cause of action, suit or proceeding for damages, debt, costs (including legal costs and expenses), restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy, whether by originating claim, cross claim or otherwise, whether arising at common law, in equity, under statute or otherwise, and whether or not known at the date of this agreement, arising out of or relating to this agreement.

**Commencement Date** means in respect of a hire the date specified in the relevant Schedule.

**Customer** means the Customer described in the Schedule and where the context permits, the Customer's servants, agents, employees, contractors and Authorised Persons.

**Equipment** means any kind of goods sold or supplied on hire by AHSB to the Customer under these terms as set out in the Schedule, including but not limited to hydraulic hammers and related goods including parts and accessories.

**Hire Charges** means the amount payable to AHSB by the Customer for the use of the Equipment determined in accordance with this agreement.

**Hire End Date** means in respect of a hire the date specified in the relevant Schedule.

**Hire Period** means a period commencing on the Commencement Date and expiring on the Hire End Date.

**Order** means an order placed by the Customer for the supply of Equipment.

**Purchase Price** means the amount payable by the Customer to AHSB for the purchase of any Equipment as set out in the Schedule.

**Schedule** means a schedule, quote, delivery docket or other document which AHSB may issue and/or require the Customer to sign to hire or purchase particular Equipment or obtain the Services.

**Services** means services provided by AHSB to the Customer as set out in the Schedule.

**Storage Fee** means the amount set out in the Schedule for storage of any Equipment sold, hired or repaired.

**Sundry Charges** means the costs of delivering and collecting of the Equipment to and from the Customer and any other cost that AHSB may incur relating to the Customer's use of the Equipment and where appropriate, will be determined in accordance with AHSB's schedule of standard sundry charges as varied from time to time.

In the interpretation of this agreement, unless the context otherwise requires:

- 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; and
- time is of the essence of all the Customer's obligations to AHSB, particularly payment of amounts owing.

### 1. No other terms to apply

Orders for Equipment placed by the Customer are subject to these terms and conditions. These terms and conditions in conjunction with any applicable credit terms constitute the whole agreement between AHSB and the Customer. No term or condition contained in the Customer's Order will add to, amend or delete these terms and conditions unless expressly pre-agreed in writing by a duly authorised officer of AHSB.

### 2. Sales

2.1 AHSB may agree to sell Equipment to the Customer from time to time in consideration of payment of the Purchase Price.

2.2 Unless otherwise agreed in writing by AHSB, the Customer must pay the Purchase Price before delivery.

2.3 AHSB may also agree to hire Equipment to the Customer with an option to buy or with purchase to occur at a later time. In that case, clause 0 applies to the hire

elements of the transaction along with any other provisions relevant to hire.

### 3. Hire and Hire Period

3.1 AHSB agrees to hire the Equipment to the Customer for the Hire Period.

3.2 The Customer must if AHSB asks complete and sign a Schedule and such other documents as AHSB may require. Each Schedule is not a separate contract but forms a part of this agreement between AHSB and the Customer. AHSB may in its absolute discretion terminate this agreement and/or decline to hire Equipment to the Customer at any time.

3.3 Any extension to the Hire Period is subject to AHSB's prior agreement and AHSB is not liable if for any reason the Equipment is not available for hire after the expiry of the Hire Period.

3.4 AHSB may in its absolute discretion and at the Customer's request, agree to sell the Equipment to the Customer at the expiry of the Hire Period. In that case, clause 0 applies to the sale elements of the transaction along with all other relevant provisions to the sale. Until the Purchase Price for the Equipment bought in accordance with this clause 0 is paid, the Hire Charges will continue to be payable.

### 4. Stand down, off hire requests

4.1 The Customer may make a request to AHSB for stand down or off hire rates, but acknowledges and agrees that AHSB may:

- refuse such request; or
- agree to such request on such conditions as AHSB considers appropriate in its sole and absolute discretion

### 5. Account Facility

5.1 Any Application for Account Facility by the Customer must be made within seven (7) days of receiving AHSB's invoice. The Customer acknowledges that AHSB has no obligation to grant any such request for Account Facility and if AHSB agrees to provide the Customer with an Account Facility, AHSB may decline at any time to provide the Customer with further credit.

5.2 If any amount the Customer owes to AHSB is not paid within seven (7) days of the due date, then without limiting AHSB other rights:

- all of the monies that the Customer owes AHSB on any account become immediately due and payable;
- AHSB may suspend the supply of Services and defer or cancel any outstanding orders or hires for Equipment; and
- AHSB may report the Customer's default to any credit reporting agency (including but not limited to CreditWatch).

### 6. Customer's Acknowledgment

The Customer acknowledges and agrees that:

- all Hire Charges and other charges are payable by the Customer at the rates applicable under this agreement;
- unless otherwise agreed in writing by AHSB, the Purchase Price for Equipment sold must be paid before or on delivery;
- the full amount of all Hire Charges payable by the Customer is due on the date(s) set out in the Schedule, and in any event before delivery unless AHSB agrees to accept payment at a later date.

### 7. Liability for Payment

7.1 The Customer agrees to pay:

- Hire Charges, Sundry Charges and all other charges, costs and expenses payable to AHSB in the manner directed by AHSB;
- unless otherwise agreed with AHSB, all invoices issued by AHSB within 30 days of receipt to an account nominated by AHSB;
- interest on all outstanding amounts from the due date for payment calculated at a rate which is the higher of 1.5% per month or the annual interest rate applying to debts under judgments or orders of the Supreme Court of New South Wales plus 5% per annum;
- 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 AHSB to the Customer under this document and any other state or federal taxes, duties or charges imposed in respect of this document including stamp duty; and
- all costs (including legal costs calculated on a solicitor and own client basis) incurred by AHSB relating to any default by the Customer.

7.2 AHSB may charge additional Hire Charges at a rate agreed between the parties for any time spent when delivering to or collecting from the Customer or the time spent if AHSB is unable to deliver or collect the Equipment through no fault of its own, or the time period Equipment is unavailable for hire by AHSB due to damage caused by the Customer. The imposition of these additional Hire Charges does not mean that AHSB agrees to extend the Hire Period.

7.3 AHSB reserves the right to revise its schedule of hire rates and related charges with notice to the Customer. AHSB may also be required to revise its hire rates and related charges in circumstances where AHSB incurs further charges as a result of non-disclosure by the Customer, unforeseen site problems or incorrect physical dimensions, weights or distances provided by the Customer and relied on by AHSB.

7.4 AHSB may require immediate payment of all unpaid monies (whether or not actually due and payable by the Customer) if any of the following occurs:

- in accordance with clause 5.2(a);
- AHSB considers (in its absolute discretion) that the Customer's creditworthiness has become unsatisfactory;
- an order is made, or a resolution is passed, to wind the Customer up, a meeting is called to consider a resolution to wind the Customer up or a provisional liquidator is appointed;
- a receiver or receiver and manager is appointed over the whole or part of the Customer's business or assets;
- the Customer enters any arrangement or composition with any of the Customer's creditors;
- the Customer is placed under administration or a meeting is called or some other step taken to place the Customer under administration;
- the Customer cannot pay its debts as they fall due; or
- the Customer does not comply with these terms.

7.5 AHSB may in its sole discretion, decide to accept return of the Equipment before the end of the Hire Period. Such an acceptance does not alter the Hire Period and the Customer will remain liable for all Hire Charges payable to AHSB despite early return of the Equipment.

7.6 However, AHSB will endeavour to rehire the Equipment in which case the Customer will only be liable for Hire Charges until the date of such rehire or until expiration of the Hire Period, whichever is earlier.

### 8. Use of Equipment

#### Customer's Obligations

8.1 The Customer must:

- provide to AHSB, at the time of making an order for Equipment, accurate physical dimensions of any goods to which the Equipment is to be attached and any weights or distances or any other information relied on by AHSB to determine the suitable Equipment. The Customer agrees that AHSB may rely on any information provided including as to dimension, suitability, fitment or other aspect of the Customer's goods or its interaction with the Equipment and the Customer indemnifies and releases AHSB for any claim in respect of the information being incorrect, incomplete or misleading;
- ensure 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; and by the Customer or an Authorised Person having the appropriate qualifications, training and licences to operate the Equipment;
  - in accordance with all applicable laws and regulations in a skilful, safe and tradesman like manner not extending beyond its capacity (having regard to manufacturers specifications) and not having to endure more than normal wear and tear; and
  - for a maximum of forty (40) hours per week.
- notify AHSB immediately if the Equipment malfunctions or is damaged;
- not undertake any repair to the Equipment without the consent of AHSB;
- maintain and return the Equipment to AHSB in good repair and condition;
- not transfer, assign, encumber, loan 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 AHSB for use of the Equipment without the written consent of AHSB;
- not alter or make any additions to the Equipment; and

(i) accept full responsibility for the safe-keeping of the Equipment, and indemnify AHSH for all loss, theft or damage to the Equipment whether or not resulting from any negligence, failure or omission of the Customer.

#### *Condition of Equipment.*

8.2 The Customer acknowledges that-

- (a) it accepts delivery of the Equipment in "as is" condition unless it indicates otherwise at the time of delivery;
- (b) it understands the safe and proper use of the Equipment and has received adequate training in its operation and use;
- (c) it, and all persons operating the Equipment hold all necessary certificates of competency and/or licences;
- (d) if AHSH is collecting the Equipment at the expiration or earlier termination of the Hire Period, the Equipment must be left in an appropriate, safe location to avoid theft, easily identified and accessible area; and
- (e) AHSH 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 AHSH at its depot following its return.

#### **9. Title and Risk**

9.1 Risk in Equipment sold and/or hired to the Customer passes on delivery to, or collection by, the Customer (whichever is earlier).

9.2 If the Customer fails to take possession of the Equipment within 7 days of being notified that the Equipment is ready for delivery or collection:

- (a) risk in the Equipment passes to the Customer at the end of the 7 day period;
- (b) the Customer must pay for the Equipment in accordance with these terms; and
- (c) the Customer will indemnify AHSH against all loss and expenses incurred by AHSH, including any additional transport and storage charges, as a result.

9.3 Title to Equipment sold remains with AHSH until the Purchase Price as well as any other amounts payable to AHSH on any other account held by the Customer are paid. Until such payment is received, the Customer holds the sold Equipment as bailee for AHSH.

9.4 Title to hired Equipment remains with AHSH at all times and the Customer agrees the Customer holds the hired Equipment as bailee for AHSH.

9.5 Should AHSH seek to recover the Equipment, the Customer authorises AHSH to enter the Customer's premises, or any other premises where the Equipment is located, to facilitate recovery of the Equipment and the Customer indemnifies AHSH for any damage caused to the Equipment.

9.6 If the Customer sells the Equipment:

- (a) in the case of Equipment sold to the Customer, without payment of the Purchase Price and any other amounts payable to AHSH by the Customer; or
  - (b) in the case of hired Equipment, without AHSH's express written consent,
- then the Customer will hold the proceeds of sale on trust for AHSH. If the proceeds of sale do not cover the Purchase Price, remaining Hire Charges or any other amounts due and payable by the Customer to AHSH (as applicable), AHSH may recover the difference as a debt due by the Customer to AHSH.

#### **10. Storage of Equipment sold to the Customer**

10.1 If the Customer notifies AHSH the Customer will not be ready for delivery or collection of the Equipment either on the required delivery date (as described in each order) or within 7 days of the date AHSH advises the Customer the Equipment is ready for delivery or collection, then AHSH will store the Equipment for the Customer for up to 30 days at no cost to the Customer.

10.2 If after 30 days the Customer is still not ready for the Equipment to be delivered:

- (a) if the Customer has not already paid the Purchase Price for the Equipment, then the Customer agrees to pay AHSH in full for the Equipment being stored for the Customer as well as the Storage Fee;
- (b) if the Customer has paid the Purchase Price for the Equipment, then the Customer agrees to pay AHSH the Storage Fee; or
- (c) AHSH will dispose of the Equipment and charge all reasonable costs associated with the disposal.

10.3 Risk of damage to, loss, theft, or deterioration of, the Equipment passes to the Customer when payment is due, irrespective of whether the Equipment are stored in accordance with this clause 10 by AHSH or not.

#### **11. Delivery and returns**

11.1 Any delivery date provided to the Customer is only an estimate and AHSH will deliver to the address the Customer has nominated on the order or quotation (as applicable) unless otherwise advised to AHSH by the Customer.

11.2 AHSH may deliver the Equipment in instalments and each instalment delivered will be invoiced and payable by the Customer in accordance with these terms.

11.3 Upon delivery, the Customer must carefully check the Equipment and quantities delivered (or returned). Any discrepancies between the Equipment delivered and the

quoted order or return docket must be notified to our representative at the time of delivery or collection.

11.4 All returns to, or collections from, AHSH premises requires three (3) days written notice including the following information:

- (a) the proposed collection or return date;
- (b) name of the Customer's representative who will be present at the return or collection or the name of the intended carrier who is going to deliver or return the Equipment;
- (c) contact telephone number; and
- (d) quantity and nature of Equipment to be collected/ returned.

#### **12. Repair and replacement**

12.1 If, in accordance with clause 16 AHSH agrees to repair or replace the Equipment, the following apply:

(a) AHSH will endeavour to ensure reasonable availability of spare parts for any Goods manufactured by AHSH for at least 5 years from the date of first supply to the Customer. AHSH will not be liable whatsoever if AHSH are unable to supply the same Goods and make no representation or warranty in this respect.

(b) AHSH own any parts removed from Goods AHSH repair or replace and AHSH will not return these to the Customer. The Customer further acknowledges that AHSH may use replacement parts that may not be exactly the same as the originals in repairing the Equipment, and AHSH may instead use reconditioned parts rather than new parts, as replacements.

(c) The Customer must allow AHSH to take the Equipment away to AHSH's workshop, if reasonably required, so AHSH can carry out any maintenance or warranty repairs.

#### **13. Services**

13.1 In connection with any sale or hire of Equipment or separately, AHSH may agree to provide the Services to the Customer.

13.2 AHSH is not obliged to provide services in connection with any accessory item, unless there is an agreement to do so. If any Equipment constitutes part of a total system, AHSH's service obligations only extend to the servicing of that Equipment and not the entire system, unless agreed otherwise.

13.3 No Services provided can guarantee uninterrupted use of the Equipment.

13.4 The Customer must maintain at the Customer's own expense during the service period all appropriate policies of insurance.

#### **14. PPS Law**

14.1 This clause applies to the extent that the interest of AHSH in respect of a hire provided for in this document is a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPS Law"). References to PPS Law in this document include references to amended, replacement and successor provisions or legislation.

14.2 AHSH may register any actual, impending or likely security interest. The Customer may not make any Claim against AHSH in respect of any registration even if it is determined that AHSH should not have registered a security interest. The Customer must do anything (such as obtaining consents and signing documents) which AHSH requires for the purposes of:

- (a) ensuring that the security interest of AHSH is enforceable, perfected and otherwise effective under the PPS Law;
- (b) enabling AHSH to gain first priority (or any other priority agreed to by AHSH in writing) for its security interest; and
- (c) enabling AHSH to exercise rights in connection with the security interest.

14.3 The rights of AHSH under this document are in addition to and not in substitution for AHSH's rights under other laws (including the PPS Law) and AHSH may choose whether to exercise rights under this agreement, and/or under such other law, as it sees fit.

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

14.5 AHSH and the Customer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law if it is requested. The Customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply.

14.6 The Customer must not dispose or purport to dispose of, or create or purport to create, or permit to be created any security interest (as defined in PPS Law) in the Equipment other than with the express written consent of AHSH. The Customer must not lease, hire, bail or give possession ('sub-hire') of the Equipment to anyone else unless AHSH (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to AHSH and must be expressed to be subject to the rights of AHSH under this agreement. Customer may not vary a sub-hire without the prior written consent of AHSH (which may be withheld in its absolute discretion).

14.7 The Customer must ensure that AHSH is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hire, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment.

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

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

14.9 To assure performance of its obligations under this document, the Customer hereby gives AHSH an irrevocable power of attorney to do anything AHSH considers the Customer should do under this agreement. AHSH may recover from the Customer the cost of doing anything under this clause 14, including registration fees.

14.10 To the extent that Chapter 4 of PPS Law applies:

- (a) to any security interest under this agreement, the PPS Law provisions dealing with various notices do not apply and are contracted out of this document in respect of all Equipment to which those provisions can be applied;
- (b) the Customer agrees that AHSH shall, if there is default by Customer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any Equipment, not only under those sections but also, as additional and independent rights, under this agreement and the Customer agrees that AHSH may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

#### **15. Insurance**

##### *Insurance*

15.1 The Customer must provide evidence of insurance cover for the full replacement value of the Equipment while in the Customer's possession.

##### *Release*

15.2 The Customer acknowledges that:

- (a) the Equipment shall be at the sole risk of the Customer and AHSH 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) AHSH will not be responsible for, and is free from all liability in respect of, all such claims to the extent permitted by law.

##### *Indemnity*

15.3 The Customer accepts full responsibility for, and indemnifies AHSH against, all Claims of any injury to persons or damage to property, arising out of the use of the Equipment hired. This includes whether from negligence of the Customer or AHSH or otherwise and without limiting this clause 7.3, whether or not the Equipment was being operated or transported by a employee of AHSH or any other person whose acts AHSH might be, or is held to be, responsible for in connection with the operation of the Equipment. In no circumstances will AHSH be liable for any special, indirect or consequential loss arising in respect of any hire or this agreement.

##### *Retrieval of Equipment*

15.4 The Customer indemnifies AHSH for any costs incurred in recovering the Equipment whether abandoned, unlawfully detained or otherwise.

#### **16. Limitation of liability**

16.1 Nothing in these terms is or should be interpreted as an attempt to modify, limit or exclude any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by legislation which cannot be modified, limited or excluded.

16.2 AHSH excludes to the extent permitted by law all other guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, which would otherwise be implied into this agreement concerning the activities covered by this agreement.

16.3 The Customer agrees that the Customer does not rely on any guarantee, term, condition, warranty, undertaking, inducement or representation made by or on behalf of AHSH which is not expressly stated in this agreement.

16.4 Where any legislation implies or imposes a guarantee, term, condition, warranty, undertaking, inducement or representation in relation to these terms and AHSH are not able to exclude that guarantee, term, condition, warranty, undertaking, inducement or representation (**Non-Excludable Provision**), and AHSH are able to limit the Customer's remedy for a breach of the Non-Excludable Provision, then AHSH's liability for breach of the Non-Excludable Provision is limited to (at AHSH's election):

- (a) in the case of goods, the repair or replacement of the goods or the supply of equivalent goods (or the payment of the cost of doing so); and
- (b) in the case of services, the supplying of the services again (or the payment of the cost of doing so).

16.5 Subject to AHSB's obligations under the Non-Excludable Provisions and clause 16.6, AHSB's maximum aggregate liability to the Customer in respect of any one claim or series of connected claims under this agreement or in connection with its subject matter, whether arising in or for breach of contract, negligence or other tort, breach of statutory duty, or under an indemnity or otherwise is limited to an amount equal to the Purchase Price or the minimum Hire Charges paid by the Customer to AHSB during the 12 month period before the event giving rise to the claims (as applicable).

16.6 Subject to AHSB's obligations under the Non-Excludable Provisions, AHSB are not liable to the Customer or any third party for any indirect loss arising in connection with these terms or its subject matter, whether arising in or for breach of contract, negligence or other tort, breach of statutory duty, breach of warranty or guarantee, under an indemnity or otherwise and whether or not that loss was foreseeable, even if AHSB were advised of the possibility of such loss.

16.7 AHSB is not liable to the Customer for any loss, damage or expense caused by our failure to supply the Equipment or Services as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lock out, war, the inability of our suppliers to supply necessary materials or any other may beyond AHSB's control.

#### **17. Limited Damage Waiver**

17.1 Limited Damage Waiver fee will apply to all hire invoices of 12.5% (plus GST) if the customer does not provide a sufficient certificate of insurance

17.2 Limited Damage Waiver is not a contract of insurance, but an agreement by AHSB to limit the customers liability in certain circumstances for loss, fire, theft or damage to the hired Equipment.

17.3 Limited Damage Waiver does not apply and will not limit the Customers liability in the following circumstances;

- (a) breach of the hire agreement where the breach increases the risk of loss or damage;
- (b) misuse, abuse, wilful and/or malicious acts, negligent and/or reckless use and/or overloading of the equipment;
- (c) theft, loss or damage by whatever cause to tools and/or accessories supplied with the equipment including but not limited to; hoses, drills, tracks, grease guns, electric leads, tyres, tubes, batteries, glass or other parts and accessories;
- (d) lack of lubrication or non-adherence to other normal maintenance requirements that are required by or could reasonably be expected of the customer under this agreement;
- (e) disregard for instructions given to the customer by AHSB in respect of the proper use of the equipment or in contradiction of the manufacturer's instructions supplied with the equipment at the commencement of hire
- (f) theft of the equipment in circumstances where site security is available including, but not limited to, locked yards, buildings and sheds, where proper security is not used by the hirer to secure the equipment whilst it is left unattended
- (g) loading or unloading equipment from maritime vessels, transportation of equipment on maritime vessels or the use of equipment on any wharf or bridge or over any body of water.

17.4 AHSB reserves the right at any time before or during the hire to decline or cancel Limited Damage waiver, in which case (at AHSB discretion);

- (a) The customer must insure the Goods to AHSB satisfaction  
Or
- (b) AHSB may terminate the hireage and the customer will have no claim, right or remedy against AHSB for such termination or in any other way.

#### **18. Default and Termination**

18.1 The Customer will be in default of this agreement if:

- (a) it fails to comply with any term of this agreement or any other agreement the Customer has with AHSB;
- (b) becomes or threatens to become bankrupt or insolvent or makes any arrangement with creditors for liquidation of debts or it is wound up, placed into liquidation, administration or receivership.

##### *Remedies upon Default*

18.2 If the Customer is in default of this agreement then, without prejudice to any other rights or remedies:

(a) AHSB may immediately terminate any hire or purchase of Equipment or the provision of Services to the Customer 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. The Customer expressly consents to AHSB entering onto any land or premises owned by or under the control of the Customer for the purposes of recovering the Equipment; and

(b) the Customer will compensate AHSB for, and pay to AHSB, all losses, damages, costs and other expenses whatever suffered by AHSB as a result of that default including any costs of recovering possession of the

Equipment.

18.3 If these terms are terminated or expire:

(a) AHSB will provide the Customer with an invoice for all Equipment, Services, Hire Charges, Storage Fees and Costs (as applicable) incurred up to the effective date of termination or the date the Equipment are returned (whichever is later) (**Final Invoice**). The Customer must pay the Final Invoice in accordance with the payment terms set out in clause 7.

(b) in respect of hired Equipment:

(i) the Customer must provide AHSB with all reasonable assistance in locating and collecting the Equipment; and

(ii) the Customer agrees that upon reasonable notice AHSB is entitled to enter the Customer's premises where the Equipment is, or AHSB reasonably believes the Equipment is, in order to re-take possession of the Equipment.

##### *Inability to Supply*

18.4 AHSB will not be liable for any Claims arising out of its inability to supply the Equipment or alternative suitable equipment to the Customer.

##### *Third party interests*

18.5 The Customer acknowledges that AHSB 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 AHSB to arrange for the Owner to access the location where the Equipment is located from time to time to inspect the Equipment. The Customer acknowledges and agrees that if AHSB's right of use terminates during the term of this agreement, unless otherwise agreed by the Owner this agreement will automatically terminate and the Owner may immediately recover possession of the Equipment from the Customer. The Owner will not be liable to the Customers in any circumstance for any Claim that the Customer may have against AHSB.

#### **19. General**

19.1 AHSB may serve any notice or court document on the Customer by hand or by prepaid post to the Customer's address stated in the Schedule or by email to an email address supplied by the Customer. Any such notice is taken to be duly given and received:

- (a) if delivered by hand, when delivered;
- (b) if delivered by prepaid post, two Business Days after being deposited in the mail with postage prepaid; or
- (c) if delivered by email, on the day of dispatch provided that no notice of non-delivery is received;
- (d) if an amendment to these terms, as published on AHSB's website [www.hammerhire.com.au](http://www.hammerhire.com.au).

19.2 AHSB is entitled to set off against any amount AHSB owes the Customer, any amount the Customer owes AHSB.

19.3 Except as expressly provided to the contrary in these terms, a party may give or withhold an approval or consent in that party's absolute discretion and subject to any conditions determined by the party. A party is not obliged to give its reasons for giving or withholding a consent or approval or for giving a consent or approval subject to conditions.

19.4 These terms, Schedule and any orders/quotes (as applicable) records the entire agreement between the parties in relation to its subject matter. It supersedes all prior contracts, arrangements, understandings or negotiations by, or between, the parties in relation to the subject matter of these terms.

19.5 The failure, delay or omission by a party to exercise, or to partially exercise, a right, power or remedy under these terms (or any connected agreement) does not operate as a waiver of that right, power or remedy. A party which exercises, or partially exercises, a right, power or remedy maintains its right to further exercise the same right, power or remedy or to exercise another right, power or remedy. A party waives a right, power or remedy only by explicitly doing so in a written notice to the other party and the waiver is strictly limited to the matters specified in the notice.

19.6 The rights, powers, authorities, discretions and remedies of a party under these terms do not exclude any other right, power, authority, discretion or remedy.

19.7 If any provision of these terms is determined by a court or other competent tribunal or authority to be illegal, invalid or unenforceable then:

- (a) where the offending provision can be read down so as to give it a legal, valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result;
- (b) where the offending provision cannot be read down then that provision must be severed from the terms in which event, the remaining provisions of these terms operate as if the severed provision had not been included; and
- (c) the legality, validity or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction is not affected, but only to the extent that is consistent with giving substantial effect to the intentions of the parties under these terms.

19.8 These terms (and each connected agreement) is governed by the law of New South Wales. Each party submits to the jurisdiction of the courts in New South Wales in connection with matters concerning these terms and any connected agreement.

19.9 These terms may be changed by AHSB from time to time by AHSB giving notice of the amendment to the Customer. Notice is deemed given (whether or not actually received) when AHSB sends notice of the amendment to the Customer at any address (including an email address) supplied by the Customer.