

HIRE CONTRACT TERMS AND CONDITIONS (NATIONAL)

NOTE TO HIRER

YOU SHOULD READ THESE CONTRACT CONDITIONS VERY CAREFULLY. THEY CONTAIN TERMS AND CONDITIONS THAT MAY AFFECT YOU, INCLUDING THAT: (A) WBA'S LIABILITY TO ITS HIRERS IS EXCLUDED IN CERTAIN SITUATIONS; (B) HIRERS MAY BE RESPONSIBLE FOR DAMAGE TO HIRED GOODS, AS WELL AS DAMAGE TO GOODS OR PROPERTY OWNED BY A THIRD PARTY; AND (C) WBA'S PRIVACY POLICY ALLOWS WBA, SUBJECT TO COMPLIANCE WITH THE AUSTRALIAN PRIVACY PRINCIPLES, TO PROVIDE DATA ABOUT A HIRER OR DATA PROVIDED BY A HIRER TO A THIRD PARTY IN A WAY THAT MAY ENABLE THE THIRD PARTY TO IDENTIFY THE HIRER.

THE HIRER ACKNOWLEDGES THAT THEY HAVE READ AND AGREE TO THESE TERMS AND CONDITIONS.

1 DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions:

Agreement	means the contract between Wall Brace Australia Pty Ltd (WBA) and the Hirer regarding the hire of Equipment, which is governed by these Terms and Conditions, along with the quotation provided by WBA (if any).
Business Hours	are from 7:00 am to 4:00 pm on weekdays, excluding weekends and public holidays.
Commencement	means the date and time the Hirer takes possession of the Equipment.
Cycle Billing Period	means the time from the end of the Initial Period until the Equipment is returned, collected, or repossessed, during which the Hirer will be billed periodically for the hire of the Equipment. The Cycle Billing Period will start automatically after the Initial Period ends and will continue indefinitely until the Equipment is returned, collected, or repossessed in accordance with this Agreement.
Delivery of the Equipment	is considered to have occurred when it is collected by the Hirer or transported to a location at the request of the Hirer, and 'Delivered' has a corresponding meaning.
Equipment	means the goods hired by the Hirer from WBA in accordance with this Agreement, including parts and accessories.
Excessive Cleaning	means any cleaning beyond a basic wash and wipe needed to restore the Equipment to its condition immediately prior to the hire, excluding fair wear and tear. Excessive Cleaning includes, but is not limited to, the removal of paint stains, resins, concrete, grout, and cement.
Force Majeure Event	means any event or circumstance beyond WBA's reasonable control, including (without limitation) war (declared or undeclared), hostilities, terrorism, civil unrest, government actions or restrictions, strikes, lockouts, labour disputes, acts of God, fire, flood, storm, explosion, epidemic, pandemic, quarantine, supply chain disruptions, or any increase in shipping, freight, or transportation costs arising from these or other causes.
GST Act	means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Hirer	means the person, firm, organisation, partnership, company, or other legal entity (including a trust) that hires the Equipment from WBA. Where the context permits, it includes the Hirer's employees and contractors.
Hire Charge	means the amounts listed on the Hire Schedule that the Hirer must pay for hiring the Equipment.
Hire Period	means the time from Commencement until the end of the period specified in the Hire Schedule. The Hire Period can be extended for one or more fixed periods, but only if the Hirer requests it and WBA agrees. WBA may issue a revised Hire Schedule for any extension of the Hire Period.
Hire Schedule	means a document in the form required by WBA, outlining the terms of equipment hire, including details of the Equipment and the Hire Period, along with any other information WBA may choose to include.
Initial Period	means the fixed initial hiring period agreed upon between WBA and the Hirer, along with any agreed extension to this period.
Kilometre Charge	means the amount shown in the Hire Schedule payable for the kilometres that a Motor Vehicle has, in the reasonable opinion of WBA, travelled during the Hire Period.
Loss	means losses, costs, charges, expenses, damages, and liabilities.
Motor Vehicle	means a truck or utility, but not any other equipment such as a scissor lift, trailer, or skid steer loader.
PPSA	means the <i>Personal Property Securities Act 2009</i> (Cth).
Rates	mean the rates notified by WBA to Hirer from time to time.
Remote Area	means any place over 50 kilometres from where the Equipment is hired.
Rental Period	means: (a) the Initial Period; and (b) the Cycle Billing Period.
Use or Used	means use, installation, removal, storage, maintenance, or transport by or on behalf of Hirer.
WBA	means Wall Brace Australia Pty Ltd ABN 74 096 808 954.

1.2 Each provision of this Agreement is separate from the others. If any provision is prohibited or unenforceable in any jurisdiction, it will be removed only to that extent without invalidating the rest of the Agreement. Unless stated otherwise, the rights under this Agreement are in addition to any rights provided by general law.

1.3 This Agreement is governed by the laws of New South Wales and WBA, and the Hirer agrees to the exclusive jurisdiction of the courts there.

1.4 These Terms and Conditions override all previous versions. WBA is not bound by any terms and conditions in any document issued by the Hirer, whether issued before or after this Agreement.

2. WBA OBLIGATIONS

WBA will:

- 2.1 Allow the Hirer to take and use the Equipment during the Hire Period;
- 2.2 Provide the Equipment to the Hirer clean and in good working order;
- 2.3 Collect the Equipment within five days of the Hirer's request and provide the Hirer with a customer pick-up number.

3. OBLIGATIONS OF THE HIRER

The Hirer must:

- 3.1 Arrange with WBA for the return of the Equipment to WBA when it is due back;
- 3.2 Return the Equipment to WBA in good condition;
- 3.3 Satisfy itself at Commencement that the Equipment is suitable for its purposes;
- 3.4 Notify WBA when the Equipment is available for collection;
- 3.5 Operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instructions, whether supplied by WBA or posted on the Equipment;

NOTE TO HIRER

YOU MUST ADVISE WBA IF YOU REQUIRE ANY FURTHER INSTRUCTION ON THE OPERATION AND SAFE USE OF THE EQUIPMENT.

- 3.6 Indemnify WBA for all injuries and/or damages caused or contributed to by the Hirer to persons and property related to the Equipment and its operation, and maintain adequate insurance to cover all liabilities arising from the use of the Equipment.
 - 3.7 Make sure that any person collecting or accepting delivery of Equipment on behalf of the Hirer is authorised by the Hirer to do so, and the Hirer will not claim that any such person is not authorised.
 - 3.8 Ensure that all persons operating or erecting the Equipment are properly instructed in its safe and correct use, and where necessary, hold a current Certificate of Competency and/or are fully licensed.
 - 3.9 Conduct a thorough hazard and risk assessment before using the Equipment and ensure compliance with all Occupational Health and Safety laws related to its operation;
 - 3.10 Secure all items loaded on or in the Equipment or the Hirer's vehicle safely, or accept responsibility for items loaded and/or secured by WBA and indemnify WBA against any injury and/or damage caused by items falling from the Equipment or any vehicle or trailer operated by or on behalf of the Hirer.
 - 3.11 Operate the Equipment using an adequate motor vehicle and/or power source safely, following the manufacturer's operating instructions and applicable law.
 - 3.12 Report and provide full details to WBA of any accident or damage to the Equipment as soon as practicably possible, and within two business days of the incident.
 - 3.13 Sign any documentation requested by WBA at reasonable intervals as stipulated by WBA to confirm the Hirer's acceptance of these Hire Contract Conditions.
 - 3.14 Assist and cooperate fully and promptly with WBA and/or its insurer in the investigation, settlement, or defence of any claim or matter related to a Hire Schedule on which the Hirer is named.
 - 3.15 Remain responsible for the care and safekeeping of the Equipment until collected by or returned to WBA.
- The Hirer must NOT:**
- 3.16 Tamper with, damage, or repair the Equipment;
 - 3.17 Lose or part with possession of the Equipment;
 - 3.18 Rely on any representation regarding the Equipment or its operation other than those included in this Contract.
 - 3.19 Allow any person to drive a Motor Vehicle if the person: (a) does not hold a suitable licence to drive that class of Motor Vehicle; or (b) is affected by drugs and/or alcohol.
 - 3.20 Exceed the recommended or legal load and capacity limits of the Equipment;
 - 3.21 Use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
 - 3.22 Carry loads beyond the recommended or legal limit for the Equipment.

4 RATES AND RENTAL PERIOD

- 4.1 During the Rental Period, the Hirer must pay WBA a hire fee calculated according to the Rates.
- 4.2 The hire fee must be paid in the manner and according to the payment terms specified on any invoice issued by WBA or otherwise notified to the Hirer from time to time. **WBA will require full payment of the hire fee before Delivery.** The hirer must notify WBA within seven (7) days of any errors in the invoice.
- 4.3 Not receiving an invoice does not exempt the Hirer from their obligation to pay the owed amounts. If the payment is not made within seven (7) days of it becoming due, or within any other period WBA agrees to in writing, it will be considered a breach of this Agreement. The Hirer must pay WBA on demand, on a full indemnity basis, for all costs incurred (including debt collector and legal fees) in recovering any amount owed to WBA by the Hirer.
- 4.4 The Hirer is not allowed to claim a reduction in hire fees for Equipment returned before the end of the Initial Period, and except as outlined in clause 8.1, WBA will not refund any prepaid hire fees for any period outside the Rental Period.
- 4.5 The Hirer must not deduct any part of the hire fee as retention money.
- 4.6 The hire fees and all other consideration payable under this Agreement do not include GST (as defined in the GST Act). If a supply made under this Agreement, or as a result of any breach of a term of this Agreement, is subject to GST: a) the recipient of that supply must pay the supplier an amount equal to the GST payable by the supplier at the same time as the consideration for that supply is given; and b) the supplier agrees to provide the recipient with a tax invoice (as defined in the GST Act) for that additional amount upon payment.
- 4.7 The Hirer agrees to pay WBA a service charge on all overdue balances at the rate of 1.5% per month or part thereof, from the due date until payment is made.
- 4.8 Failure by the Hirer to comply with the payment terms and those specified on the invoice will result in WBA outsourcing debt recovery and/or legal services being charged to the Hirer.
- 4.9 The Hirer must pay WBA the debt recovery and/or legal fees in addition to the outstanding invoice amount.
- 4.10 The Hirer is responsible for all costs or expenses arising directly or indirectly from not complying with the payment terms and conditions and those specified on the invoice.
- 4.11 On or before Commencement, or as otherwise specifically agreed with WBA, the Hirer must pay the Hire Charge.
- 4.12 Immediately on request by WBA, the Hirer will pay:

- (a) the new list price of any Equipment that is, for any reason, not returned to WBA.

NOTE TO HIRER

SUBJECT ONLY TO ANY EXPRESS PROVISION OF THIS CONTRACT TO THE CONTRARY, THE HIRER IS RESPONSIBLE FOR LOSS OR THEFT OF THE EQUIPMENT.

- (b) all Excessive Cleaning of the Equipment costs at \$25.00 per brace;
 - (c) the full cost of repairing any damage to the Equipment caused or contributed to by the Hirer, unless expressly agreed otherwise in this Contract;
 - (d) GST, other taxes or duties, and all tolls, fines, penalties, levies, or charges payable in relation to this Contract or resulting from the Hirer's use of the Equipment;
 - (e) all costs WBA incurs in recovering possession of the Equipment;
 - (f) interest for late payment of amounts owing by the Hirer, at the rate of 1.5% per month or part thereof;
 - (g) the Kilometre Charge;
 - (h) the cost of fuels and consumables supplied by WBA that are not returned by the Hirer.
 - (i) any reasonable expenses and legal costs, including commission payable to a commercial agent, incurred by WBA in enforcing this Contract due to the Hirer's default;
 - (j) if any damage and/or theft waiver applies, the amount for which the Hirer is liable, as set out in this Contract;
 - (k) loading costs when Equipment hired with an hour meter is used for more than 8 hours per day.
 - (l) Hire fees for the period from the Commencement of the hire until the Equipment is returned or a customer pick-up number is obtained from WBA; and
 - (m) all non-recoverable costs incurred by WBA in providing the Equipment and/or services due to cancellation or postponement by the Hirer.
- 4.13 Without limiting WBA's ability to recover all amounts owed, the Hirer authorises WBA to charge any amounts the Hirer owes to any credit card or bank account details provided to WBA.
- 4.14 WBA may tokenise the Hirer's credit card or bank account details to facilitate credit card or online payments.

5 DELIVERY, PICK UP, INSTALLATION AND REMOVAL

- 5.1 The Hirer must appoint WBA to deliver and collect the Equipment.
- 5.2 The Hirer bears the risk for the Equipment from pickup to return and is responsible for any loss or damage to the Equipment caused by any reason, unless otherwise specified in this Agreement.
- 5.3 The Hirer engages WBA to deliver, pick up, install, or remove the Equipment, and WBA will act as the Hirer's agent. Charges for delivery, installation, dismantling, and pickup are additional and will be quoted separately.
- 5.4 If WBA experiences delays in delivering or removing the Equipment from any location due to reasons beyond its reasonable control, it may charge the Hirer extra delivery fees. **These additional charges will be calculated at \$150 per hour or part thereof for any waiting time.**
- 5.5 Before collecting the Equipment, WBA will provide the Hirer with an "off-hire" number. The Hirer must keep the "off-hire" number until WBA collects the Equipment. The "off-hire" number confirms that the Rental Period has ended.
- 5.6 The Hirer is responsible and liable for any Loss, whether caused by the Hirer or any third party, arising directly or indirectly from delivery, collection, installation, or removal of the Equipment.

6 RECEIPT OF EQUIPMENT

- 6.1 On Delivery of the Equipment, the Hirer must ensure that:
- (a) it has received the Equipment in good condition and in the quantity ordered;
 - (b) it, and any employee or contractor using the Equipment, has received full instructions on how to operate the Equipment and understands its proper use, installation, and removal; and
 - (c) the Equipment is suitable and fit for the purpose for which the Hirer intends to Use it, and the Hirer must notify WBA within 24 hours if they are not satisfied. If no such notification is given, the Hirer will be deemed to have accepted the Equipment in the condition it was provided and as suitable and fit for the purpose for which the Hirer intends to use it.
- 6.2 The Hirer acknowledges that it is responsible for properly securing the Equipment for transportation to ensure its safe movement to and from the location where the Equipment will be used by the Hirer.

7 USE OF THE EQUIPMENT

- 7.1 The Hirer must ensure that the Equipment is Used strictly in accordance with WBA's instructions and any procedures recommended by WBA from time to time, and the Hirer indemnifies WBA against any failure to follow such instructions and procedures, as well as against any unintended Use of the Equipment.
- 7.2 The Hirer must always keep the Equipment in good condition and must not, without WBA's prior written consent, alter, add to, deface, remove, or conceal any WBA logo, identifying mark, number, or indication of WBA's ownership of the Equipment.
- 7.3 The Hirer must at all times ensure that the Equipment is Used safely and must not deliberately damage, abuse, or mistreat the Equipment, nor allow it to be deliberately damaged, abused, or mistreated.
- 7.4 If any damage, loss, theft, or destruction of the Equipment occurs, whether the Hirer was responsible or not, the Hirer must immediately notify WBA and provide full details of the damage, loss, theft, or destruction.
- 7.5 The Hirer must ensure that the Use of the Equipment is always strictly in accordance with:
- (a) all applicable laws, including relevant legislation concerning planning, environment, or health and safety; and
 - (b) any relevant industry usage, customs, and standards for goods similar to the Equipment.
- 7.8 The Hirer must obtain and maintain, at its own cost, any insurance, permit, or licence required under any law or by any statutory or other authority for the Use of the Equipment, including its installation or removal. Without limiting the Hirer's obligations under this clause, the Hirer must secure all permits mandated by relevant legislation and ensure that its personnel are properly inducted, trained, and supervised to guarantee the safe and lawful Use of the Equipment.
- 7.9 The Hirer must always store the Equipment safely and securely during the Rental Period.

- 7.10 The Hirer will permit WBA to enter the Hirer's premises to inspect and maintain the Equipment from time to time during the Rental Period within normal working hours. If WBA is unable to inspect or maintain the Equipment during normal working hours, additional charges may apply.
- 7.11 Whenever the Hirer moves the Equipment, the Hirer must ensure it is loaded, secured, and transported safely in accordance with all laws and guidelines. The Hirer must follow any safety directions issued by WBA and carry out any risk assessments necessary to comply with safety laws.

8 UNUSABLE, DAMAGED AND MISSING EQUIPMENT

- 8.1 If the Equipment breaks down, becomes unusable or unsafe during the Rental Period, the Hirer must:
- immediately stop using the Equipment and notify WBA;
 - take all necessary steps to prevent injury to persons or property arising from the condition of the Equipment.
 - take all necessary steps to prevent any further damage to the Equipment itself; and
 - not repair or attempt to repair the Equipment without WBA's written consent.
- 8.2 Except where clause 8.3 applies, upon receipt of notice from the Hirer under clause 8.1, WBA will:
- take all reasonable steps to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by Hirer; and
 - not impose Rates for that portion of the Hire Period where the Equipment was broken down or unsafe, nor the costs related to any repair or replacement of the Equipment, except where a long-distance maintenance and repair fee applies as per clause 8.4.
- 8.3 If the Equipment breaks down or becomes unsafe to use due to the Hirer's acts or omissions (including those of Hirer's employees, contractors, or agents), or if the Equipment is lost, stolen, or damaged beyond fair wear and tear during the Rental Period, the Hirer will be liable for:
- any costs incurred by WBA to recover, repair, or replace the Equipment; and
 - the Rates for that part of the Rental Period during which the Equipment is being recovered, repaired, or replaced, except where the Hirer has paid for insurance, in which case the Hirer's liability shall be in accordance with clause 8.5.
- 8.4 If the Equipment is hired to a location more than 50km from the WBA site it was hired from, a long-distance hire maintenance and repair fee may apply, as follows: after the first 50km of travel, a per-kilometre fee will apply for travel to and from the Equipment's location.
- 8.5 If Equipment is returned, collected or repossessed in a condition that, in WBA's reasonable opinion and sole discretion, makes it unusable for hire, the Hirer must pay WBA on demand the cost of replacing or repairing the Equipment as specified in the following price list: **\$900.00 PER BRACE, \$900.00 PER LADDER, \$1,500.00 PER STILLAGE** or as updated from time to time on WBA's website. Under no circumstances will title to the Equipment or any part of it pass to the Hirer.
- 8.6 In addition to any other obligations the Hirer may have to WBA, the Hirer will be responsible and liable for all losses incurred by WBA resulting from the Equipment not being returned, collected, or repossessed, including cases where the Equipment has been stolen or is missing.

9. PPS LAW

- 9.1 This clause applies only to the extent that this Contract provides for a 'security interest' under the *Personal Property Securities Act 2009 (Cth)* (**PPS Law**). References to PPS Law in this Agreement include references to amended, replacement, and successor provisions or legislation.
- 9.2 WBA may register its security interest. The Hirer must do anything, such as getting consents and signing documents, that WBA requires for the purposes of:
- ensuring that WBA's security interest is enforceable, perfected, and otherwise effective under the PPS Law;
 - enabling WBA to secure first priority (or any other priority agreed to by WBA in writing) for its security interest; and
 - enabling WBA to exercise its rights under the security interest.
- 9.3 The rights of WBA under this document are in addition to, and not a substitute for, WBA's rights under other laws (including the PPS Law). WBA can choose whether to exercise rights under this document or under other laws, as it sees fit. To clarify, WBA's security interest will attach to the proceeds.
- 9.4 To the extent that Chapter 4 of PPSA applies to any security interest under this Agreement, the following provisions of the PPS Law do not apply. For the purposes of s 115 of the PPS Law, they are "contracted out" of this Agreement concerning all goods to which that section applies: s.95 (notice of removal of accession, to the extent it requires WBA to give notice to the Hirer); s 96 (retention of accession); s.121(4) (notice to grantor); s 125 (obligations relating to the disposal or retention of collateral); s 130 (notice of disposal, to the extent it requires WBA to notify the Hirer); ss 129(2) and 129(3); s 132(3)(d) (content of statement of account following disposal); s 132(4) (statement of account if no disposal); s 135 (notice of retention); s 142 (redemption of collateral); and s 143 (re-instatement of security agreement).
- 9.5 The following provisions of the PPS Law: s 123 (seizing collateral), s 126 (apparent possession), s 128 (secured party may dispose of collateral), s 129 (disposal by purchase), and s 134(1) (retention of collateral), confer rights on WBA. The Hirer agrees that, in addition to those rights, WBA shall, if there is default by the Hirer, have the right to seize, purchase, take possession or apparent possession, retain, deal with, or dispose of any goods, not only under those sections but also as additional and independent rights provided herein. The Hirer agrees that WBA may exercise these rights in any manner it considers appropriate, including (regarding dealing and disposal) by private or public sale, lease, or licence.
- 9.6 The Hirer waives its right to receive a verification statement regarding registration events for commercial property under s 157 of the PPS Law.
- 9.7 WBA and the Hirer agree not to disclose information that can be requested under s 275(1) of the PPS Law. The Hirer must take all necessary steps to ensure that s 275(6)(a) of the PPS Law continues to apply. This sub-clause is made solely to enable WBA to benefit from s 275(6)(a), and WBA is not liable to pay damages or any other compensation, nor subject to an injunction, for any actual or threatened breach of this sub-clause.
- 9.8 The Hirer must not dispose of, or attempt to dispose of, create, or allow the creation of any 'security interest' (as defined in PPS Law) in the Equipment without the specific written consent of WBA.
- 9.9 The Hirer must not lease, hire, bail, or give possession (**sub-hire**) of the Equipment to anyone else unless WBA (at its absolute discretion) first provides written consent. Any such sub-hire must be documented in writing, using a form

- acceptable to WBA, and must clearly indicate that it is subject to WBA's rights under this Agreement. The Hirer may not alter a sub-hire without obtaining prior written consent from WBA, which may be withheld at WBA's absolute discretion.
- 9.10 The Hirer must ensure that WBA is always provided with current information about the sub-hire, including the identity of the sub-hirer, the terms, account status, and payment details under the sub-hire, as well as the location and condition of the Equipment.
- 9.11 The Hirer must take all necessary steps, including registration under PPS Law, as may be required to:
- ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected, and otherwise effective under the PPS Law;
 - enabling the Hirer to obtain, subject always to the rights of WBA, first priority (or any other priority agreed to by WBA in writing) for the security interest; and
 - allowing WBA and the Hirer to exercise their respective rights regarding the security interest.

10 INSURANCE REDUCTION

- 10.1 When the Hirer pays an insurance reduction charge at WBA's then-current rate, WBA will not claim against the Hirer for any accidental damage to the Equipment during the period covered by the charge. This reduction is conditional on the Hirer paying a **\$1,000 excess per claim** and only applies if the Hirer has used the Equipment in accordance with this Agreement. Damage Waiver is not an insurance, but an agreement by WBA that the Hirer's liability for damage to the Equipment can be limited in certain cases to an amount known as the Damage Waiver Excess.

NOTE TO HIRER

DAMAGE WAIVER DOES NOT COVER THE COSTS OF RECOVERY OF THE EQUIPMENT, WHICH ARE ALWAYS PAYABLE BY THE HIRER.

- 10.2 For clarity, clause 10.1 does not prevent WBA from making a claim for loss and damage to the Equipment in situations where:
- loss or damage occurred in part or whole as a result of the negligent act or omission of the Hirer;
 - there was misuse or abuse of the Equipment caused or permitted by the Hirer;
 - mysterious disappearance of the Equipment;
 - loss or damage resulting from use in breach of regulations by the Hirer;
 - subject to the provisions of this clause 10, the Damage Waiver applies to each incident in all Hires at no additional fee. The Damage Waiver Excess is the actual repair cost of the Equipment, or 20% of the current replacement cost of the Equipment, as reasonably determined by WBA using the supplier's list prices, whichever is the lesser amount.

DAMAGE WAIVER DOES NOT APPLY AND WILL NOT LIMIT THE HIRER'S LIABILITY IN THE FOLLOWING CIRCUMSTANCES WHERE THE:

- Equipment is lost or stolen;
 - operator is not properly licensed;
 - operator is under the influence of drugs and/or alcohol.
 - Equipment has been deliberately damaged at any time during the Hire Period.
 - damage is caused by rolling or detachment while the Equipment is being driven or towed;
 - damage is caused while the Equipment is being driven or towed on any unsealed or non-public road;
 - damage is caused in any way by overloading;
 - damage results from flash flooding or general water damage;
 - damage is caused by a collision with a bridge, carpark, awning, gutter, tree, or any other overhead structure or object whatsoever due to insufficient clearance; or
 - damage is caused to a truck, Pantech, or truck crane.
- 10.4 The Hirer must pay an additional Equipment Waiver Plus Fee for the hire of medium and large Equipment (such as determined by WBA at the time of hire), which for each incident will:
- reduce the Damage Waiver Excess in relation to Equipment; and
 - add a Theft Waiver component for medium and large machinery.
- Theft Waiver is not insurance but an agreement by WBA that, in certain situations, the Hirer's liability for theft or loss of the Equipment can be limited to a set amount called the Theft Waiver Excess. WBA may request that the Hirer pay the Equipment Waiver Plus Fee when hiring medium or large Equipment, but the Hirer may opt out of this payment.

11 WBA'S RIGHTS

- 11.1 WBA may terminate this Agreement and recover the Equipment at any time by giving the Hirer seven (7) days' written notice. If WBA exercises this right, it will refund the Hirer for any hire fees received by WBA for Equipment hired outside the Rental Period, less a deduction for reasonable expenses WBA incurs in recovering or transporting the Equipment.
- 11.2 WBA may enter any premises where the Equipment or any part of it is, or is believed to be located, for the purpose of:
- inspecting or testing the Equipment,
 - protecting WBA's rights or interests in the Equipment,
 - ensuring compliance with any law, including those related to health and safety, or
 - exercising its right to assume, take possession of, or control the Equipment.
- 11.3 If the Hirer in any way fails to perform, breaches any provision of this Agreement, becomes insolvent, or in WBA's reasonable opinion is likely to become insolvent, WBA may, at its sole discretion, take the following actions:
- terminate this Agreement with seven (7) days' written notice; and
 - retake possession of the Equipment, holding the Hirer responsible and liable for all hire fees; and
 - require the Hirer to pay liquidated damages of \$5.00 per brace per day, which the parties agree is a reasonable estimate of WBA's losses.
- 11.4 Notwithstanding clause 11.3, if the Hirer remedies a failure to perform or breach under this Agreement within seven (7) days of receiving written notice from WBA:
- the Agreement will not terminate; and
 - any damages paid by the Hirer will be retained by WBA.

- 11.5 Clause 11.4 does not apply if the Hirer commits a serious failure to perform or a serious breach of any part of this Agreement, which is reasonably determined at WBA's sole discretion.
- 11.6 Nothing in this clause 11 limits any rights WBA may have: a) in respect of the Equipment; b) against the Hirer; or c) against any other person, at any time.

12 WARRANTIES AND GUARANTEES

- 12.1 WBA acknowledges that the Hirer might be classified as a consumer under relevant State or Federal law, which means that certain:
- (a) warranties or conditions may be implied into this Agreement; and
 - (b) guarantees may be conferred on the Hirer, and certain rights and remedies may also be conferred on the Hirer, which cannot be excluded, restricted, or modified. If so, then, to the maximum extent permitted by law, WBA's liability to the Hirer is limited to, at WBA's option, in the case of:
 - i. goods: replacement or repair of the goods; or payment of the cost of replacing or repairing the goods; and
 - ii. services: resupply of the services; or payment of the cost of resupplying the services.
- 12.2 Subject to clause 12.1 and to the fullest extent allowed by law:
- (a) WBA excludes all conditions, warranties, guarantees, or representations (expressed or implied) to the Hirer regarding this Agreement or its subject matter, including all warranties and guarantees about the quality, suitability, or fitness of the Equipment for any specific purpose.
 - (b) WBA is not responsible to the Hirer or any other person for any Loss, damage, or injury caused by, resulting from, or in any way connected with this Agreement, including the Use of the Equipment.
 - (c) WBA will not be responsible or liable for any failure or delay in Delivery, pick-up, installation, or removal, and it will have no liability to the Hirer or any other person for any loss arising from such failure or delay.
- 12.3 Otherwise, to the fullest extent permitted by law, all terms, conditions, or warranties that would normally be implied into this Agreement or in connection with the supply of the Equipment by law, statute, custom, or international convention (including those regarding quality or fitness for purpose) are expressly excluded.

13 LIABILITY AND INDEMNITY

- 13.1 The Hirer is responsible for and liable for any Loss, whether caused by the Hirer or any other third party, arising directly or indirectly from the Use of the Equipment.
- 13.2 To the fullest extent allowed by law, the maximum amount the Hirer can recover from WBA in relation to this Agreement is limited to the hire fees paid during the Rental Period.
- 13.3 WBA's liability to the Hirer (if any) is reduced to the extent that the Hirer's acts or omissions (or those of any other third party) contribute to or cause the Loss.
- 13.4 The Hirer agrees to indemnify and keep indemnified WBA and WBA's employees, agents, and contractors from all damages, suits, actions, claims, and demands that they may suffer or incur, whether arising directly or indirectly from the Use of the Equipment.
- 13.5 The Hirer must not do or allow to be done any act, matter, or thing that may invalidate or prejudice any:
- (a) insurance policy affected by WBA,
 - (b) WBA defence, prosecution or settlement of any claim, or
 - (c) right WBA may have against any person.

14 TITLE AND SECURITY

- 14.1 The title to the Equipment always remains with WBA. The Hirer must not grant or allow any security interest or encumbrance over the Equipment, nor must they allow WBA's ownership to be harmed in any way.
- 14.2 The Hirer must not make any representation or do anything that might cause others to believe the Equipment is not the property of WBA. If a third party takes possession of the Equipment for any reason, the Hirer authorises WBA to take any action it considers necessary to protect its rights in the Equipment, at the Hirer's expense.
- 14.3 If WBA determines that this Agreement (or a transaction related to it) is or contains a security interest for the purposes of the PPSA, the Hirer agrees, upon request, to do anything (such as obtaining consents, signing and producing documents, completing and signing documents, and providing information) which WBA considers necessary for the purposes of:
- (a) ensuring that the security interest is enforceable, perfected, and otherwise effective;
 - (b) enabling WBA to apply for any registration, or give any notification in connection with the security interest so that the security interest has the priority required by WBA; and
 - (c) enabling WBA to exercise rights related to the security interest, and the Hirer expressly waives any right it may have under PPSA s 175 to receive notice concerning any registration event.
- 14.4 WBA is not required, before exercising a right under this Agreement or by law, to give the Hirer any notice, demand, or allow a period to pass that law mandates, unless such notice, demand, or period cannot be avoided. A reference to a notice under this clause includes any notice under the PPSA.

15 LOCATION AND USE OF EQUIPMENT

- 15.1 The Hirer is responsible for choosing the site where the Equipment will be installed and for obtaining all the necessary permits or approvals required for using the equipment at that location.
- 15.2 The Hirer must clearly inform WBA of the Equipment's location during the Rental Period.
- 15.3 The Hirer must not:
- (a) part with possession of the Equipment;
 - (b) allow any other person to use the Equipment; or
 - (c) permit the removal of the Equipment from the location where Hirer stated it would be situated, without obtaining prior written consent from WBA.
- 15.4 The Hirer must keep the Equipment in a secure location and take all other necessary steps to ensure its ongoing safety and preservation.

16 COLLECTION, STORAGE AND USE OF INFORMATION

- 16.1 The Hirer authorises WBA to collect, store, use, and disclose information about the Hirer for purposes related to providing hire services (including assessing credit on the Hirer's account), reporting information to credit agencies, marketing WBA's goods and services, and enforcing any rights under this Agreement.
- 16.2 The Hirer explicitly agrees to receive commercial electronic messages from WBA and its agents for the purposes of the *Spam Act 2003 (Cth)*. The Hirer may withdraw their consent at any time by providing WBA with written notice.
- 16.3 Where WBA collects, stores, or uses personal information, it will do so in accordance with the *Privacy Act 1988 (Cth)*. Specifically, any individual may access the personal information held about them (subject to the limitations permitted by the *Privacy Act*) and may request that this information be corrected. Further details about how personal information is handled, including how to request access, can be obtained from WBA.
- 16.4 WBA and its agents will adhere to the *Privacy Act* and the Australian Privacy Principles or any future principles. A copy of WBA's privacy statement is available by visiting WBA's website at wallbraceaustralia.com.au.

17 HIRER'S WARRANTIES

- 17.1 Any person signing any document on behalf of the Hirer in relation to the hire of the Equipment warrants that they:
- (a) have Hirer's authority to contract with WBA on the Hirer's behalf; and
 - (b) have been authorised by the Hirer to bind the Hirer to hire the Equipment under this Agreement and agree to indemnify WBA against all Losses and claims incurred by WBA if this is not the case.
- 17.2 If there is any variation in the legal structure or management of the Hirer, including (but not limited to) changes in directors, senior management, or trustee, or a change in partnership or conversion to or from a company or trust, the Hirer must notify WBA in writing within seven (7) days, providing details of that change.
- 17.3 The Hirer must not assign this Agreement or any benefits under it in whole or in part without WBA's prior written consent.

18 FORCE MAJEURE

- 18.1 If WBA is prevented, delayed, or hindered from fulfilling or performing any obligation under this Agreement (including delivery, pick-up, installation, removal, or maintenance of the Equipment) by a Force Majeure Event, WBA will not be in breach of this Agreement, will be entitled to a reasonable extension of time to perform that obligation, and may immediately pass on to the Hirer (and add to any invoice) any additional reasonable costs incurred as a direct result, including, but not limited to, increased shipping, freight, fuel, insurance, tolls, surcharges or transportation costs.
- 18.2 If a Force Majeure Event continues for more than 30 days, WBA may terminate the Agreement with written notice to the Hirer and recover the Equipment, without liability to the Hirer except for Hire Charges accrued up to the date of termination.
- 18.3 The Hirer must pay any additional amounts due under this clause within 7 days of the invoice.

19 AMENDMENT

- 19.1 WBA may amend the Hire Contract Terms and Conditions periodically by notifying the Hirer of any changes.
- 19.2 Notice will be considered given when WBA either:
- (a) sends notification of the modification to the Hirer at any address (including an email) provided by the Hirer; or
 - (b) posts the updated terms on its website.
- 19.3 Any updates to these Hire Contract Conditions will only apply to Hire Schedules entered into after the Hirer has been notified of the change through one of these methods.
- 19.4 If the Hirer does not agree to the amended Terms and Conditions, they may terminate this Agreement by giving WBA written notice within seven (7) days of the date of publication or notification (as applicable) of the changes.
- 19.5 WBA may assign the Agreement to any of its related corporate bodies by notifying the Hirer of such assignment.

20 GENERAL

Severance - Any part of these Terms and Conditions that is unenforceable or only partially enforceable should, if possible, be interpreted to be enforceable. If that cannot be done, it should be severed to the extent necessary to make these Conditions enforceable, unless doing so would significantly change their intended effect.

Waiver - A right may be waived only in writing, signed by the party giving the waiver. No other behaviour by a party, including a failure to act or a delay in acting, constitutes a waiver of that right or otherwise prevents its exercise.

Governing law - These Terms and Conditions are governed by the laws of the State of New South Wales, Australia. The parties agree to submit to the jurisdiction of the NSW courts and any courts that may hear appeals from those courts. If the Equipment is supplied or performed outside Australia, this Agreement is governed by the laws of New South Wales.

Intellectual Property - All Intellectual Property of the Company, including any developed during the supply or performance of the Equipment, shall remain the sole property of the Company. No licence, right, or other interest in respect of such Intellectual Property is granted, created, or transferred to the Client.

Maintenance - This quotation does not include any maintenance or Excessive Cleaning after the Equipment is returned.

No Adverse Interpretation - These Terms and Conditions should not be read against a party simply because that party proposed this document or any part of it, or because that party relies on a provision of these Conditions to defend itself.