

These Hire Contract Conditions may be changed by WBA from time to time by WBA giving notice of the amendment to the Hirer. Notice is deemed given when WBA does any of the following: (a) sends notice of the amendment to the Hirer at any address (including an email address) supplied by the Hirer; or (b) publishes the amended terms on its website. Changes to these Hire Contract Conditions will only apply to Hire Schedules entered into after the change has been notified to the Hirer by one of the methods mentioned above.

**NOTE TO HIRER: You should read these Hire Contract Conditions very carefully. They contain terms and conditions which may impact you, including that; (a) the liability of WBA to its Hirers is excluded in some circumstances; and (b) Hirers may be liable for damage to goods that are hired by them, and for damage to goods or property owned by a third party; and (c) WBA's Privacy Policy permits WBA in some circumstances and 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 form that may enable the third party to identify the Hirer.**

## 1 Definitions and Interpretation

1.1 In these Terms and Conditions:

(a) **Agreement** means the contract between Wall Brace Australia Pty Ltd ("WBA") and Hirer in relation to the hire of Equipment, which is governed by these Terms and Conditions together with the quotation provided by WBA (if any).

(b) **Business Hours** are 7:00am to 4:00pm on weekdays other than public holidays.

(c) **Cycle Billing Period** means the period between the expiry of the Initial Period and the return, collection or repossession of the Equipment, during which Hirer will be billed on a periodic basis for the hire of the Equipment, The Cycle Billing Period will commence automatically following the expiration of the Initial Period, and will continue indefinitely until the Equipment is returned, collected or reposessed in accordance with this Agreement.

(d) **Delivery of the Equipment** is deemed to have occurred when it is collected by Hirer or transported to a location at the request of Hirer and Delivered has a corresponding meaning.

(e) **Equipment** means the goods hired by Hirer from WBA in accordance with this Agreement and includes parts and accessories.

(f) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

(g) **Hirer** means the person, firm, organisation, partnership, company or other legal entity (including a trust) hiring the Equipment from WBA. Where the context permits, it includes Hirer's employees and contractors.

(h) **Initial Period** means the fixed initial hire period agreed between WBA and Hirer together with any agreed extension to this period.

(i) **Loss** means losses, costs, charges, expenses, damages and liabilities.

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

(k) **Rates** means the rates notified by WBA to Hirer from time to time.

(l) **Rental Period** means: (a) the Initial Period; and (b) the Cycle Billing Period.

(m) **Use** means use, installation, removal, storage, maintenance, or transport by or on behalf of Hirer.

(n) **WBA** means Wall Brace Australia Pty Ltd ABN 74 096 808 954.

(o) **Commencement** means the date and time when the Hirer takes possession of the Equipment.

(p) **Hire Charge** means the amounts shown on the Hire Schedule payable by the Hirer to hire the Equipment.

(q) **Hire Period** means from Commencement until the end of the period shown on the Hire Schedule. The Hire Period may only be extended for one or more definite periods and in each case this can only be done if the Hirer requests it and if WBA agrees. WBA may issue an amended Hire Schedule for any extension of the Hire Period.

(r) **Hire Schedule** means a document in such form as WBA shall require, setting out the terms of the hire of Equipment, including the particulars of the Equipment and the Hire Period and such other information as WBA may decide to include.

(s) **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.

(t) **Motor Vehicle** means a truck or utility but not any other equipment such as a scissor lift, trailer or skid steer loader.

(u) **Remote Area** means any location which is more than 50 kilometres from where the Equipment is hired.

(v) **Excessive Cleaning** means any cleaning, in addition to a basic wash and wipe, required to return the Equipment to the condition immediately prior to the hire, excluding fair wear and tear. Excessive Cleaning includes but is not limited to removal of paint stains, resins, concrete, grout and cement.

1.2 Every provision of this Agreement is independent of the others. Any provision which is prohibited or unenforceable in any jurisdiction will be deemed removed to the extent of the prohibition or unenforceability without invalidating the remaining provisions. Unless stated to the contrary, the rights under this Agreement are in addition to any rights that may be conferred by general law.

1.3 This Agreement will be governed by the laws of New South Wales and WBA and Hirer submits to the exclusive jurisdiction of the courts of that place.

1.4 These Terms and Conditions supersede all previously issued Terms and Conditions. WBA is not bound by any terms and conditions contained in any document issued by Hirer whether issued before or after this Agreement, except Annexure A (if applicable).

## 2. WBA Obligations

WBA will:

2.1 Allow the Hirer to take and use the Equipment for 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 being requested to do so by the Hirer and issuing to the Hirer 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 repair;

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 injury and/or damage to the extent caused or contributed to by the Hirer to persons and property in relation to the Equipment and its operation and have adequate insurance to cover all liabilities incurred as a result of the use of the Equipment;
- 3.7 Ensure that any person collecting or taking delivery of Equipment on behalf of the Hirer is authorised by the Hirer to do so and the Hirer will not allege that any such person is not so authorised;
- 3.8 Ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper 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 comply with all Occupational Health and Safety laws relating to the Equipment and its operation;
- 3.10 Safely secure all items loaded in or on the Equipment or in or on the Hirer's vehicle, or accept responsibility for items loaded and/or secured by WBA and indemnify WBA in respect of any injury and/or damage caused by items falling from the Equipment or from any vehicle or trailer operated by or on behalf of the Hirer;
- 3.11 Operate the Equipment with an adequate motor vehicle and/or power source safely in accordance with the manufacturers 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 not more than two business days of the accident or damage occurring;
- 3.13 Sign any documentation requested by WBA at such intervals as reasonably stipulated by WBA, to confirm the Hirer's acceptance of these Hire Contract Conditions;
- 3.14 Assist and co-operate fully and promptly with WBA and/or its insurer in the investigation, settlement or defence of any claim or matter relating 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 delivered back 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 upon any representation relating to the Equipment or its operation other than those contained 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 Exceed the recommended or legal speed limit for the Equipment.

**4 Rates and Rental Period**

- 4.1 During the Rental Period Hirer must pay WBA a hire fee calculated in accordance with the Rates.
- 4.2 The hire fee must be paid in the manner and in accordance with the payment terms specified on any invoice issued by WBA or otherwise notified to Hirer from time to time. WBA will require payment of all of the hire fee prior to Delivery. Hirer must notify WBA within seven (7) days of any errors with the invoice.
- 4.3 Not receiving an invoice will in no way relieve Hirer of its responsibility for the payment of amounts due. Failure to pay amounts due within seven (7) days of a debt becoming due for payment or such term otherwise agreed to in writing by WBA will be considered a breach of this Agreement. Hirer must pay WBA on demand on a full indemnity basis, all costs incurred in recovering any amount owed to WBA by Hirer.
- 4.4 Hirer is not permitted to claim a reduction in hire fees for Equipment returned before the end of the Initial Period, and except as provided for in clause 8.1, WBA will not refund any hire fees prepaid by Hirer for any period outside of the Rental Period.
- 4.5 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 give the recipient a tax invoice (as defined in the GST Act) for that additional amount upon payment.
- 4.7 Hirer agrees to pay WBA a service charge on all past due balances at the rate of 1.5% per month or part thereof from the due date for payment until the payment is made.
- 4.8 Failure by Hirer to comply with the terms and conditions of payment as specified on the invoice will result in WBA outsourcing debt recovery services at the expense of Hirer.
- 4.9 Hirer must pay WBA the debt recovery fees in addition to the outstanding invoice amount.
- 4.10 Hirer is liable for all costs or expenses which may arise as a direct or indirect result of the failure to comply with the terms and conditions of payment as 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 which is for whatever 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, any other taxes or duties, and all tolls, fines, penalties, levies or charges payable in respect of this Contract or arising from the Hirer's use of the Equipment;
- (e) all costs incurred by WBA in recovering possession of the Equipment;
- (f) Interest for late payment of amounts owing by the Hirer, at the pre-judgement interest rate set by the Local Court of NSW from time to time;
- (g) the Kilometre Charge;
- (h) the cost of fuels and consumables provided by WBA and 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 in excess of 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 the provision of Equipment and/or services due to cancellation or postponement by the Hirer.

4.13 Without limiting the ability of WBA to recover all amounts owing to it, the Hirer authorises WBA to charge any amounts owing by the Hirer to any credit card or bank account details of which are 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 Hirer must retain WBA to deliver and pick up the Equipment.

5.2 Hirer accepts the risk in the Equipment from pick up to return of the Equipment and is responsible for any loss or damage to the Equipment due to any cause except to the extent otherwise set out in this Agreement.

5.3 Hirer retains WBA to deliver, pick up, install, or remove the Equipment and WBA will do so as the agent of Hirer. Delivery, installation, dismantling, and pickup charges are extra and will be quoted separately.

5.4 If WBA is delayed from delivering or removing the Equipment from any location for any reason beyond its reasonable control, it may charge Hirer additional delivery charges. The additional delivery charges will be calculated at \$150 per hour or part thereof of waiting time.

5.5 Before the Equipment is collected by WBA, WBA will issue Hirer with an "off hire" number. The Hirer should retain the "off hire" number until the Equipment is collected by WBA. The "off hire" number confirms the expiration of the Rental Period.

5.6 Hirer is liable for any Loss whether caused by Hirer or any other third party, arising directly or indirectly as a result of the delivery, pick up, installation or removal of the Equipment.

#### **6 Receipt of Equipment**

6.1 On Delivery of the Equipment, Hirer must satisfy itself that:

(a) it has received the Equipment in good condition in the quantity ordered;

(b) it, and any employee or contractor using the Equipment, has been fully instructed in the use of the Equipment and understands its proper use and means of installation and removal; and

(c) the Equipment is suitable and fit for the purpose for which Hirer intends to use it and must notify WBA within 24 hours if it is not so satisfied. Failing such notification, Hirer will be deemed to have accepted the Equipment in the condition in which it was provided and as suitable and fit for the purpose for which Hirer intends to use the Equipment.

6.2 Hirer acknowledges that it is responsible for properly securing the Equipment for the purpose of transportation so as to ensure its safe transport to and from the location where the Equipment will be used by Hirer.

#### **7 Use of the Equipment**

7.1 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 Hirer indemnifies WBA from any failure to comply with such instructions and procedures and unintended Use of the Equipment.

7.2 Hirer must at all times keep the Equipment in good condition and must not, without WBA's prior written consent, alter or make additions to the Equipment, or deface, remove or conceal any WBA logo, identifying mark or number, or indication of WBA's ownership of the Equipment.

7.3 Hirer must at all times ensure that the Equipment is Used in a safe manner, and must not deliberately damage, abuse or mistreat Equipment or allow Equipment to be deliberately damaged, abused, or mistreated.

7.4 If any damage, loss, theft, or destruction of the Equipment occurs, whether Hirer was responsible or not, Hirer must immediately notify WBA and provide full details of the damage, loss, theft or destruction.

7.5 Hirer must ensure that Use of the Equipment is at all times strictly in accordance with:

7.6 all applicable laws including relevant legislation in relation to privacy, data storage, communication and transmission, planning, environment or health and safety, and

7.7 any relevant industry usage, custom and standards for goods similar to the Equipment.

7.8 Hirer must obtain and maintain, at its own expense, any insurance, permit or license that may be required under any law or by any statutory or other authority for the Use of the Equipment, including its installation or removal. Without limiting Hirer's obligations under this clause, Hirer must obtain all permits required under any relevant legislation, and must ensure that its personnel are appropriately inducted, trained and supervised so as to ensure the safe and lawful Use of the Equipment.

7.9 At all times during the Rental Period, Hirer must store the Equipment safely and securely.

7.10 Hirer will allow WBA to enter Hirer premises and inspect and maintain the Equipment from time to time during the Rental Period during normal working hours. If WBA cannot inspect or maintain the Equipment during normal working hours, then additional charges may apply.

7.11 Whenever Hirer moves the Equipment Hirer must ensure the safe loading, securing, and transporting of all Equipment in accordance with all laws and guidelines. Hirer must observe any safety directions advised by WBA and must conduct any risk assessments it deems necessary to comply with the safety laws.

#### **8 Unusable, Damaged and Missing Equipment**

8.1 If the equipment breaks down, is unusable or unsafe during the Rental Period, Hirer must:

(a) immediately stop using the Equipment and notify WBA;

(b) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;

(c) take all steps necessary to prevent any further damage to the Equipment itself; and

(d) not repair or attempt to repair the Equipment without WBA's written consent.

8.2 Except where clause 8.3 applies, upon receiving notice from Hirer under clause 8.1, WBA will:

(a) take all reasonable steps to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by Hirer; and

(b) not impose Rates for that portion of Hirer Period for which the Equipment was broken down or unsafe, nor the costs associated with 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 has broken down or become unsafe to use as a result of Hirer's acts or omissions (or the acts or omissions of Hirer's employees or contractors or agents) or if the Equipment is lost, stolen or damaged beyond fair wear and tear during the Rental Period, Hirer will be liable for:

(a) Any costs incurred by WBA to recover and repair or replace the Equipment; and

(b) The Rates for that portion of the Rental Period during which the Equipment is being recovered, repaired, or replaced, except where Hirer has paid an insurance reduction, in which case 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 from which the Equipment is hired then a long-distance hire maintenance and repair fee may apply, as follows: a) after the first 50km of travel a per kilometre fee will apply for travel both to and from the location of the Equipment.

8.5 If Equipment is returned, collected or repossessed in a condition which in the reasonable opinion of WBA renders it unusable for hire, Hirer must pay WBA on demand the cost of replacement or repair of the Equipment calculated in accordance with the following price list: **\$900 per brace, \$900 per ladder, \$1,500 per stillage** or as updated from time to time on WBA's website. In no circumstances will title to the Equipment or any part of it pass to Hirer.

8.6 In addition to any other obligation Hirer may have to WBA, Hirer will be liable for all Loss, incurred by WBA arising out of the Equipment not being returned, collected or repossessed, including where the Equipment has been stolen or is missing.

#### **9. PPS Law**

9.1 This clause applies to the extent that this Contract provides for a 'security interest' for the purposes of 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 obtaining consents and signing documents) which WBA requires for the purposes of:

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

9.3 The rights of WBA under this document are in addition to and not in substitution for WBA's rights under other law (including the PPS Law) and WBA may choose whether to exercise rights under this document, and/or under such other law, as it sees fit. To avoid any doubt about it WBA security interest will attach to 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 and, for the purposes of s.115 of the PPS Law are "*contracted out*" of this agreement in respect of all goods to which that section can be applied: s.95 (notice of removal of accession to the extent it requires WBA to give a notice to the Hirer); s.96 (retention of accession); s.121(4) (notice to grantor); s.125 (obligations to dispose of or retain collateral); s.130 (notice of disposal to the extent it requires WBA to give a notice to the Hirer); ss.129(2) and 129(3); s.132(3)(d) (contents of statement of account after 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: section 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. Hirer agrees that in addition to those rights, WBA shall, if there is default by 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, under this document and the Hirer agrees that WBA may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.

9.6 The Hirer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under s.157 of the PPS Law.

9.7 WBA and the Hirer agree not to disclose information of the kind that can be requested under s.275(1) of the PPS Law. The Hirer must do everything necessary on its part to ensure that s.275(6)(a) of the PPS Law continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing to WBA the benefit of s.275 (6)(a) and WBA shall not be liable to pay damages or any other compensation or be subject to injunction in respect of any actual or threatened breach of this sub-clause.

9.8 Hirer 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 WBA.

9.9 Hirer must not lease, hire, bail or give possession ('sub-hire') of the Equipment to anyone else unless WBA (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to WBA and must be expressed to be subject to the rights of WBA under this agreement. Hirer may not vary a sub-hire without the prior written consent of WBA (which may be withheld in its absolute discretion).

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

9.11 Hirer 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 Hirer to gain (subject always to the rights of WBA) first priority (or any other priority agreed to by WBA in writing) for the security interest; and
- (c) enabling WBA and the Hirer to exercise their respective rights in connection with the security interest.

#### **10 Insurance Reduction**

10.1 When an insurance reduction charge (at WBA's then current rate) is paid by Hirer, WBA will not make a claim against Hirer for any accidental damage to the Equipment during the period covered by the charge. This insurance reduction is conditional upon Hirer paying a \$1,000 excess per claim event, and only applies when Hirer has used the Equipment in accordance with this Agreement. Damage Waiver is not insurance, but is an agreement by WBA that the Hirer's liability for damage to the Equipment can be limited in some circumstances only, to an amount called 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 the avoidance of doubt clause 10.1 does not apply to prevent WBA from making a claim for loss and damage to the Equipment in circumstances where:

- (a) loss or damage occurred in part or whole as a result of the negligent act or omission of Hirer.
- (b) there was misuse or abuse of the Equipment caused or permitted by Hirer
- (c) mysterious disappearance of the Equipment;
- (d) loss or damage from use in violation of regulations by Hirer
- (e) Subject to the provisions of this clause 10, Damage Waiver applies to each incident occurring in all hires, for 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 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:**

- (a) where the Equipment is lost or stolen;
- (b) where the operator is not suitably licensed;
- (c) where the operator is affected by drugs and/or alcohol;
- (d) where the equipment has been wilfully damaged at any time during the Hire Period;

- (e) Where the damage is caused by rolling or detachment while the Equipment is being driven or towed;
- (f) where the damage is caused while the Equipment is being driven or towed on any road that is unsealed or is not a public road;
- (g) where the damage is caused in any way by overloading;
- (h) where the damage is caused by flash flooding or general water damage;
- (i) where the 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
- (j) where the damage is caused to a truck Pantech or truck crane.

10.4 The Hirer may pay an additional Equipment Waiver Plus Fee in relation to the hire of medium and large Equipment (being such Equipment as determined by WBA at the time of hire), which for each incident will:

- (a) reduce the Damage Waiver Excess in relation to Equipment; and
- (b) add a Theft Waiver component for medium and large machinery. Theft Waiver is not insurance, but is an agreement by WBA that the Hirer's liability for theft or loss of the Equipment can be limited in some circumstances only to an amount called the Theft Waiver Excess. WBA may ask the Hirer to pay the Equipment Waiver Plus Fee on the hire of medium and large Equipment, but the Hirer may decide to opt out of that payment.

#### **11 WBA's Rights**

11.1 WBA may terminate this Agreement and recover the Equipment at any time on seven (7) days written notice to Hirer. If WBA exercises this termination right, WBA will refund Hirer for any hire fees received by WBA which relate to Equipment hired outside the Rental Period, less a deduction for reasonable expenses incurred by WBA in connection with the recovery and/or transport of the Equipment.

11.2 WBA may enter any premises where the Equipment or any part of it is, or believed to be located for the purpose of:

- (a) inspecting or testing the Equipment,
- (b) protecting WBA's rights or interest in the Equipment,
- (c) ensuring compliance with any law, including any law relating to health and safety, or
- (d) exercising its right to take possession or control of the Equipment.

11.3 If 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 discretion do the following:

- (a) terminate this Agreement upon seven (7) days written notice; and
- (b) retake possession of the Equipment, holding Hirer fully liable for all hire fees; and
- (c) require Hirer to pay liquidated damages of \$5.00 per brace per day (which the parties agree to be a reasonable estimate of the costs incurred by WBA in order to retake possession of the Equipment).

11.4 Notwithstanding clause 11.3, if Hirer remedies a failure to perform or breach under this Agreement within seven (7) days of the written notice by WBA:

- (a) the Agreement will not terminate; and
- (b) any damages paid by Hirer will be retained by WBA.

11.5 Clauses 11.4 will not apply where there is a serious failure to perform or serious breach of any provision of this Agreement by Hirer, which is reasonably determined by WBA.

11.6 Nothing in this clause 11 limits any rights WBA may have: a) in respect of the Equipment; b) against Hirer; or c) against any other person, at any time.

#### **12 Warranties and Guarantees**

12.1 WBA acknowledges that Hirer may be a consumer for the purposes of applicable State or Federal law, with the consequence that:

- (a) certain warranties or conditions may be implied into this Agreement; and
- (b) certain guarantees may be conferred on Hirer and certain rights and remedies may be conferred on Hirer, which cannot be excluded, restricted, or modified. If so, then to the maximum extent permitted by law, WBA's liability to Hirer is limited at WBA's option to:

- i. in the case of goods: replacement or repair of the goods; or payment of the cost of replacing or repairing the goods; and
- ii. in the case of services: resupply of the services; or payment of the cost of resupplying the services.

12.2 Subject to clause 12.1 and to the maximum extent permitted by law:

- (a) WBA excludes all conditions, warranties, guarantees or representations (expressed or implied) to Hirer in relation to this Agreement or its subject matter, including all warranties and guarantees as to the quality, suitability, or fitness of the Equipment for any particular purpose;
- (b) WBA is not responsible to Hirer or to 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 for failure or delay in Delivery, pick up, installation or removal and will have no liability to Hirer or any other person for any Loss arising out of such failure or delay.

#### **13 Liability and Indemnity**

13.1 Hirer is liable for any Loss whether caused by Hirer or any other third party, arising directly or indirectly out of the Use of the Equipment.

13.2 To the maximum extent permitted by law, the maximum amount recoverable by Hirer from WBA under or in connection with this Agreement is limited to the hire fees paid by Hirer to WBA during the Rental Period under this Agreement.

13.3 WBA liability to Hirer (if any) is reduced to the extent that Hirer's acts or omissions (or those of any other third party) contribute to or cause the Loss.

13.4 Hirer agrees to indemnify and keep indemnified WBA and WBA's employees, agents and contractors from all damages, suits, actions, claims and demands which they may suffer or incur arising either directly or indirectly out of the Use of the Equipment.

13.5 Hirer must not do or allow to be done any act matter or thing which may invalidate or prejudice any:

- (a) insurance policy effected 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 Title to the Equipment remains with WBA at all times. Hirer must not grant or allow to subsist any security interest or encumbrance over the Equipment or allow WBA's title to be adversely affected in any way.

14.2 Hirer must not make any representation or do anything that may tend to induce any person to believe the Equipment is not the property of WBA. If possession of the Equipment is taken by any third party for any reason, Hirer authorises WBA to take any action it deems necessary to protect its rights in the Equipment, at the cost of Hirer.

14.3 If WBA determines that this Agreement (or a transaction in connection with it) is or contains a security interest for the purposes of the PPSA, Hirer agrees upon request to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying 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 in connection with the security interest, and, Hirer expressly waives any right it may have under PPSA section 175 to be given notice in relation to any registration event.

14.4 WBA is not obliged, before exercising a right under this Agreement or conferred by law, to give Hirer any notice or demand, or allow a lapse of time, that is required by law unless the notice, demand or lapse of time cannot be excluded. A reference to a notice under this clause includes any notice under the PPSA.

#### **15 Location and Use of Equipment**

15.1 Hirer is responsible for selecting the site at which the Equipment is to be installed and for obtaining all necessary permits or approval required for the use of the equipment at that site.

15.2 Hirer must expressly inform WBA of the location of the Equipment during the Rental Period.

15.3 Hirer must not: a) part with possession of the Equipment; b) allow any other person to use the Equipment; or c) permit removal of the Equipment from the location at which Hirer represented it would be located; without the prior written consent of WBA.

15.4 Hirer must store the Equipment in a safe place and do all other things necessary to ensure the continued safety and preservation of the Equipment.

#### **16 Collection, Storage and Use of Information**

16.1 Hirer authorises WBA to collect, store, use and disclose information about Hirer for the purposes related to the provision of hire services (including whether to allow credit on Hirer's account), reporting information to any credit agency, marketing WBA's goods and services, and enforcing any rights under this Agreement.

16.2 Hirer expressly consents to receiving commercial electronic messages from WBA and its agents for the purposes of the Spam Act 2003 (Cth). Hirer may withdraw its consent at any time by notifying WBA in writing.

16.3 Where personal information is collected, stored, or used by WBA, it will be dealt with in accordance with the *Privacy Act 1988* (Cth). In particular, any individual may access personal information held about him or her (subject to the permissible limitations contained in the *Privacy Act 1988* (Cth)) and may request correction of that personal information. Further information about the handling of personal information including requests for access to personal information may be obtained from WBA's Privacy Officer.

16.4 WBA and its agents will comply with the *Privacy Act 1988* (Cth) and the Australian Privacy Principles or successor principles. A copy of WBA's privacy statement can be obtained by visiting WBA's site at [wallbraceaustralia.com.au](http://wallbraceaustralia.com.au).

#### **17 Hirer's Warranties**

17.1 Any person signing any document on behalf of Hirer in respect of the hire of the Equipment warrants that they:

- (a) have Hirer's authority to contract with WBA on Hirer's behalf; and
- (b) have been authorised by Hirer to bind Hirer to hire the Equipment under this Agreement and agrees to indemnify WBA against all Losses and claims incurred by WBA if this is not the case.

17.2 If there is any variation to the legal structure or management of Hirer, including (but not limited to) change in directors, senior management or trustee, or change in partnership or conversion to or from a company or to or from a trust, Hirer must notify WBA in writing within seven (7) days providing details of that change.

17.3 Hirer may not assign in whole or in part this Agreement or any benefit under this Agreement without WBA's prior written consent.

#### **18 Changes to Terms and Conditions**

18.1 WBA may amend these Terms and Conditions at any time by publishing the amendments on its website [wallbraceaustralia.com.au](http://wallbraceaustralia.com.au) or otherwise notifying Hirer in writing. Such amended Terms and Conditions will govern each subsequent hire agreement between WBA and Hirer.

18.2 If Hirer does not consent to the amended Terms and Conditions, Hirer may terminate this Agreement by written notice to WBA within seven (7) days of the date of publication or notification (as applicable) of the amended Terms and Conditions.

#### **19 General**

19.1 Any failure of WBA to insist upon strict performance by Hirer of the conditions and terms of this Agreement will not be construed as a waiver of WBA's right to demand strict compliance.

19.2 WBA may exercise its rights under this Agreement personally or through its agent.

19.3 WBA may assign the Agreement to any of its related bodies corporate by notifying the Hirer of such assignment.

#### **20 Acknowledgement**

20.1 I acknowledge that I have read and agree to the above WBA Terms & Conditions.

#### **21 Special Conditions**

21.1 If the Hirer signs the terms set out in Annexure A, the terms of Annexure A will apply and, to the extent of any inconsistency, will prevail over the Terms and Conditions.