



METROPOLITAN CARRIERS PTY LTD (trading as Metro-Lift Cranes)

1. DEFINITIONS

“ACL” means the Australian Consumer Law set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

“Additional Rate” means the Additional Rate for Hire as indicated in the Hire Form.

“Agreement” means these terms and conditions, read together with the Hire Form and including any special conditions included in the Hire Form.

“Breakdown” includes any failure of the Plant and Equipment to operate as designed or to achieve full performance, any mechanical, electrical or other malfunction of the Plant and Equipment, any damage to the Plant and Equipment and loss of any part of the Plant and Equipment at any time for any reason.

“Claim” means any action, claim, suit, allegation, demand, loss, liability, damage or cost of whatsoever nature.

“Consequential Loss” means indirect or consequential losses, damages, costs and expenses including loss of profits, loss of revenue, loss of opportunity, loss of business, the use of any plant or facility or contract, loss of data or information, loss of reputation, loss of goodwill, and any special or punitive damages.

“Expected Hours” means Expected Hours of Use as indicated in the Hire Form.

“GST” has the meaning given to it in *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth).

“Hazardous Materials” means materials as identified in the Australian Dangerous Goods Code 2022 version 7.8 and any other goods which are noxious, inflammable, hazardous, dangerous or explosive in nature.

“Hire” refers to any hire arrangement for particular Plant & Equipment.

“Hire Form” means the METRO-LIFT document with that title (which may be attached to these terms and conditions or which may be separate) which contains commercial terms relating to a Hire.

“Hirer” means the person whose details are included in the Hire Form, who hires the Plant and Equipment from METRO-LIFT.

“Jurisdiction” means the state or territory where the Location of Hire is, as well as each state or territory in which the Hirer or METRO-LIFT operate, where relevant.

“Location of Hire” means the location indicated in the Hire Form.

“Loss of Control” means any loss of practical control of, or possession of, the Plant and Equipment by the Hirer at any time for any reason.

“METRO-LIFT” means Metropolitan Carriers Pty Limited ABN 44 009 662 453.

“OHS laws” means occupational health and safety legislation (however named) and regulations, codes of practice and standards of safety as they apply in the Jurisdiction.

“Plant and Equipment” means the plant and equipment described in the Hire Form together with relevant accessories, machinery, tools and associated items, manuals, log books etc.

“PPSA” means the *Personal Property Securities Act 2009* (Commonwealth) as amended from time to time.

“Rate” means the Rate for Hire as indicated in the Hire Form.

“Relevant Law” means all relevant applicable laws, codes, authorisations or rules in the Jurisdiction including any requirement under equity, statute, regulation, ordinance or by-law whether Commonwealth, territorial, state or local and includes the OHS laws.

“Start Date”, “End Date” and “Date of Review for rates” means those relevant dates as indicated in the Hire Form.



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“Term” means the period of Hire between the Start Date and End Date indicated in the Hire Form, and any extended period which METRO-LIFT and the Hirer agree to.

2. INTERPRETATION

In these terms and conditions, unless the context otherwise states or requires:

- a. any words importing the singular include the plural and vice versa;
- b. capitalised words are defined terms and have their defined meaning;
- c. a reference to a “party” or “parties” means a party or parties to this Agreement;
- d. any reference to gender includes the other gender;
- e. an obligation of two or more Parties binds them jointly and severally;
- f. a reference to a person includes a company or other entity and the legal representatives, successors, and assignees of that person;
- g. a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it, consolidations, amendments, re-enactments or replacements of any of them made by any legislative authority;
- h. a reference to \$ or dollars means Australian Dollars; and
- i. this Agreement is the entire agreement between the Parties and supersedes all other agreements, understanding, representations and negotiations.

3. CONTRACT TO HIRE and TERM

- a. METRO-LIFT hires the Plant and Equipment to the Hirer for the Term and the Hirer accepts the hire of the Plant and Equipment for the Term, on the terms and conditions of this Agreement. The Hirer must make prompt payments to METRO-LIFT in accordance with this Agreement and must comply with all of the terms of this Agreement.
- b. The Term is a minimum period of Hire, and the Hirer agrees to pay for the Hire at the Rate during the whole Term, regardless of whether they actually require the use of the Plant and Equipment for the whole Term.
- c. If the Hirer wishes to request an extension of the Term, then it must give METRO-LIFT at least the period of notice indicated in the Hire Form, so that METRO-LIFT may consider whether to extend the Term (in METRO-LIFT’s discretion).

4. DELIVERY and RISK

- a. If the Hire Form indicates that the Hirer is paying METRO-LIFT for mobilisation of the Plant & Equipment, then METRO-LIFT must arrange the delivery of the Plant and Equipment to the Location of Hire by the Start Date of the Term, and risk in relation to the Plant & Equipment will transfer to the Hirer at the time when the Plant and Equipment is delivered to the Location of Hire.
- b. If the Hire Form does not indicate that the Hirer is paying METRO-LIFT for mobilisation of the Plant & Equipment, then the Hirer must collect the Plant and Equipment from METRO-LIFT’s depot (or another location identified by METRO-LIFT) on the Start Date of the Term and the Hirer must arrange transport of the Plant and Equipment to the Location of Hire. In that case, risk in relation to the Plant & Equipment transfers to the Hirer at the time that possession of the Plant and Equipment is transferred to the Hirer, its employees, agents, contractors or subcontractors (for the avoidance of doubt, this includes any transport provider arranged by the Hirer).
- c. If the Hire Form indicates that the Hirer is paying METRO-LIFT for demobilisation of the Plant & Equipment, then METRO-LIFT must arrange the delivery of the Plant and Equipment from the



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Location of Hire to the location desired by METRO-LIFT immediately after the End Date of the Term and risk in relation to the Plant & Equipment will transfer from the Hirer to METRO-LIFT at the time when possession of the Plant and Equipment is transferred to METRO-LIFT, its employees, agents, contractors or subcontractors (for the avoidance of doubt, this includes any transport provider arranged by METRO-LIFT).

- d. If the Hire Form does not indicate that the Hirer is paying METRO-LIFT for demobilisation of the Plant & Equipment, then the Hirer must deliver the Plant and Equipment from the Location of Hire to METRO-LIFT's depot in Queensland (or to another location reasonably identified by METRO-LIFT) on the End Date of the Term. In that case, risk in relation to the Plant & Equipment transfers to METRO-LIFT at the time that METRO-LIFT actually receives the Plant and Equipment at METRO-LIFT's depot in Queensland (or at the other location identified by METRO-LIFT).

5. CHARGES FOR HIRE

- a. The Hirer must pay METRO-LIFT for hire of the Plant and Equipment at the Rate.
- b. The Hirer must pay the Rate to METRO-LIFT monthly in advance, by not later than the 2nd business day of each month. In respect of any period where the actual hours of use of the Plant and Equipment exceed the Expected Hours, the Hirer must also pay the Additional Rate to METRO-LIFT within 7 days of receiving an invoice from METRO-LIFT, or within 14 days of reporting the actual hours of use of the Plant and Equipment to METRO-LIFT, whichever is sooner.
- c. The Hirer agrees that it must obtain the consent of METRO-LIFT, if it wishes to operate the Plant & Equipment for more than 10% greater than the Expected Hours. If METRO-LIFT provides consent to the increased hours of use then METRO-LIFT may (acting reasonably) increase the Rate to provide for the impact of the increased hours of use. The Hirer must always ensure that maintenance and servicing of the Plant and Equipment is increased to appropriately reflect any increased hours of use of the Plant and Equipment.
- d. The Hirer must also pay METRO-LIFT any other amounts indicated in the Hire Form (for example, mobilisation / demobilisation costs if relevant) at the time indicated in the Hire Form (or if no time is indicated in the Hire Form, then the Hirer must pay those other amounts before the Start Date of the Term).
- e. In addition to any other right to increase the Rate which is contained in this Agreement, METRO-LIFT may elect to review and increase the Rate at any time after the Date of Review for rates which is indicated in the Hire Form. If METRO-LIFT reviews and increases the Rate in that way, then it must provide at least 14 days' notice to the Hirer before the increased Rate applies. The Hirer may elect to terminate this Agreement, without penalty, by providing notice to METRO-LIFT before the increased Rate applies, if the increased Rate is unacceptable to the Hirer. Unless the Hirer terminates this Agreement, the increased Rate will apply from the date that METRO-LIFT advises to the Hirer.
- f. If a supply under this Agreement is subject to GST, then the Hirer must pay METRO-LIFT (at the same time and in the same manner as consideration under this Agreement is otherwise payable), an amount equal to the amount of consideration payable under this Agreement, multiplied by the applicable GST rate. METRO-LIFT must provide the Hirer with relevant tax invoices if a supply under this Agreement is subject to GST. METRO-LIFT reserves the right to not enter into any recipient created tax invoice arrangements with the Hirer.
- g. The Hirer must not deduct any amount from, nor defer the payment of, any amount due to METRO-LIFT, nor seek to set-off any amounts which METRO-LIFT owes to the Hirer, even in the context of a request by the Hirer for credit or where there is a dispute about any amount owed.



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- h. If the Hirer does not pay any amount to METRO-LIFT when it is due, then the Hirer must also pay METRO-LIFT interest on the amount outstanding, at the rate of 8% above the Reserve Bank of Australia cash rate, compounded monthly. In addition and without limiting the Hirer's obligation to pay interest, the Hirer also indemnifies METRO-LIFT from and against all costs and expenses (including commissions payable to debt recovery agents and legal costs on a full indemnity basis) which may be incurred by METRO-LIFT in recovering amounts from the Hirer which remain unpaid after the due date, or in recovering the Plant and Equipment.

6. BREAKDOWN or LOSS OF CONTROL of PLANT AND EQUIPMENT

- a. The Hirer must immediately notify METRO-LIFT if there is a Breakdown in relation to the Plant and Equipment and must provide METRO-LIFT with detailed information about the Breakdown.
- b. The Hirer must not suffer or allow a Loss of Control in relation to the Plant and Equipment.
- c. The Hirer must immediately notify METRO-LIFT if there is a Loss of Control in relation to the Plant and Equipment and must provide METRO-LIFT with detailed information about the Loss of Control.
- d. Upon the occurrence of a Breakdown or a Loss of Control, the Hirer must, at its own expense, secure and safeguard the Plant and Equipment, comply with all Relevant Law, cease using the Plant and Equipment in any way and take all relevant steps to prevent injury to any persons or damage to any property as a result of the condition of the Plant and Equipment.
- e. Upon the occurrence of a Breakdown:
 - 1. the Hirer must also consult with METRO-LIFT and obtain their permission before commencing any works to repair or otherwise correct the Breakdown of the Plant and Equipment;
 - 2. METRO-LIFT may require any works to repair or otherwise correct the Breakdown to be conducted by the original equipment manufacturer or its representatives or its nominated repairers;
 - 3. Because METRO-LIFT is providing dry hire Plant and Equipment without providing an operator, and the Hirer is responsible for assessing operational conditions, requirements and the state of the Plant and Equipment on each occasion when it is operated, the Hirer bears significant responsibility and risk in relation to the Plant and Equipment. As a result of that situation, the Hirer must also bear the cost of the works necessary to repair or otherwise correct the Breakdown of the Plant and Equipment, except to the extent that METRO-LIFT has materially and directly caused or contributed to the Breakdown (which it may have done through its actions or omissions). The cost of the works necessary to repair or correct the Breakdown of the Plant and Equipment may include the cost of having the original equipment manufacturer or its representatives or its nominated repairers travel to, and stay where they have access to, the Location of Hire to assess and repair the Plant and Equipment, and include the cost to transport the Plant and Equipment or components of it from the Location of Hire to and from the location where repairs are to be conducted.;
 - 4. the Hirer must also continue to pay the Rate to METRO-LIFT regardless of the fact that the Plant and Equipment is not being operated by the Hirer during any Breakdown or period of repair. This obligation to pay the Rate to METRO-LIFT during any Breakdown or period of repair is reduced to the extent that METRO-LIFT has materially and directly caused or contributed to the Breakdown (which it may have done through its actions or omissions); and



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5. if the Hirer alleges that METRO-LIFT has materially and directly caused or contributed to the Breakdown, then the Hirer must immediately advise METRO-LIFT of that allegation and must provide detailed particulars of its reasons for that allegation to METRO-LIFT.
- f. Because METRO-LIFT is providing Plant and Equipment which will remain in the physical custody and control of the Hirer for the Term, and METRO-LIFT has no ability to physically secure the Plant and Equipment during the Term, the Hirer bears significant responsibility and risk in relation to the Plant and Equipment. As a result of that situation, upon the occurrence of a Loss of Control:
 1. the Hirer must also immediately do everything which it is possible for the Hirer to do to rectify the Loss of Control; and
 2. the Hirer must also continue to pay the Rate to METRO-LIFT regardless of the fact that the Plant and Equipment is not being operated by the Hirer.

7. SAFETY AND OPERATIONS

Assessment of appropriate tasks and use of Plant and Equipment

- a. The parties acknowledge that the Hirer is a sophisticated professional entity which is skilled in managing the operations of equipment similar to the Plant and Equipment in relevant industries (**Sophisticated Hirer**). The Hirer must assess the functions and tasks to which they intend to put the Plant and Equipment and must assess whether the Plant and Equipment is suitable to perform those functions and tasks. In making that assessment, the Hirer must have regard to Relevant Law and OHS laws, and to the specifications of, and original equipment manufacturer documentation for, the Plant and Equipment and to the purpose for which the Plant and Equipment has been designed and manufactured. The Hirer must also apply appropriate principles and practice for the relevant industry, and must apply appropriate professional judgment, skill, diligence and experience in making that assessment. METRO-LIFT does not warrant that the Plant and Equipment is suitable for any particular function or task and to the extent that this contract is a consumer contract for the purposes of the ACL, METRO-LIFT's obligation to ensure the Plant and Equipment is fit for purpose does not extend to warranting that the Plant and Equipment is suitable for any particular function or task. METRO-LIFT only makes its Plant and Equipment available to Sophisticated Hirers who must be capable of assessing the suitability and fitness for purpose of the Plant and Equipment for the functions and tasks to which they intend to put it.
- b. If the Hirer forms a view at any time that the Plant and Equipment is not suited to the functions and tasks to which they intend to put the Plant and Equipment, then they must notify METRO-LIFT immediately. The Hirer must never put the Plant and Equipment to any function or task for which it is not suited, having regard to the considerations mentioned above. The Hirer must continue to pay the Rate to METRO-LIFT even if it is not suited for functions and task to which the Hirer may desire to put the Plant and Equipment.

Compliance with laws, safety standards and licensing

- c. The Hirer must ensure that all Relevant Law in relation to the use, operation, handling, storage and transport (where relevant) of the Plant and Equipment is complied with throughout the Term (and before and after the Term where relevant).
- d. The Hirer must ensure that all relevant safety standards appropriate to relevant industries (and all relevant safety and other recommendations specified by the original equipment manufacturer, and by METRO-LIFT, if any) in relation to the use, operation, handling, storage and transport (where relevant) of the Plant and Equipment are thoroughly and comprehensively complied with



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- throughout the Term (and before and after the Term where relevant), and that compliance with those standards and recommendations is documented.
- e. If the Hirer wishes to use the Plant and Equipment in association with Hazardous Materials, then the Hirer acknowledges and agrees that it must comply with all additional Relevant Law, safety standards and recommendations which are relevant to use of the Plant and Equipment in association with Hazardous Materials and agrees that compliance with those additional standards and recommendations must be documented.
 - f. The Hirer must provide METRO-LIFT with evidence of compliance with Relevant Law, safety standards and recommendations and with copies of documentation whenever requested by METRO-LIFT.
 - g. The Hirer must always ensure that the use, operation, handling, storage and transport (where relevant) of the Plant and Equipment does not cause injury, illness or damage to the public, the community, the environment, employees of the Hirer or of METRO-LIFT or any other person.
 - h. The Hirer must obtain and maintain any necessary permits, consents, approvals or notices required for the use, operation, handling, storage and transport (where relevant) of the Plant and Equipment during the Term (and before and after the Term where relevant).
 - i. The Hirer must provide METRO-LIFT with evidence of relevant permits, consents, approvals or notices as contemplated above whenever requested by METRO-LIFT.
 - j. Because the Plant and Equipment is in the possession of, and at the risk of, the Hirer, the Hirer must pay all fines and penalties relating to the use, operation, handling, storage and transport (where relevant) of the Plant and Equipment incurred during the Term (and before and after the Term where relevant) or while the Plant and Equipment is in the possession of the Hirer.

Practical operational matters

- k. Prior to first use, the commencement of each new function or task and any daily pre-starts, the Hirer must:
 - 1. thoroughly inspect and walk around the site and the Plant and Equipment;
 - 2. complete pre-start checks as specified by the original equipment manufacturer (and any other pre-start checks recommended by Metro-Lift, if any);
 - 3. review original equipment manufacturer operating manuals, review safety alerts and inspection reports and take such other steps required to determine the suitability of the Plant and Equipment to undertake the particular proposed function or task;
 - 4. identify any foreseeable hazards or risks of harm in respect of the proposed use of the Plant and Equipment and implement appropriate procedures and controls to minimise or where possible, to eliminate the risks; and
 - 5. ensure that Relevant Law is observed and that appropriate principles and practice for the relevant industry are observed, and that appropriate professional judgment, skill, diligence and experience are applied in fulfilling the steps listed above.
- l. The Hirer must ensure that Plant and Equipment are only operated by qualified and trained personnel of the Hirer, who possess current licenses to operate the Plant and Equipment, and who have undergone appropriate vehicle orientation.
- m. The Hirer must provide METRO-LIFT with evidence of relevant qualifications, licenses, orientation and verification of competency (VOC) whenever requested by METRO-LIFT.
- n. The Hirer must also ensure the Plant and Equipment is only used, operated, handled, stored or transported (where relevant) by people who are:
 - 1. fit for duty and not under the influence of drugs or alcohol;



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2. appropriately briefed by the Hirer as to the site, safe work systems, control/restricted zones and any applicable lift plans or studies;
 3. wearing suitable protective and high visibility clothing when working with, on or around the Plant and Equipment; and
 4. behaving in accordance with an appropriate standard of skill, knowledge and competence expected of an experienced and professional operator of the relevant functions and tasks and in compliance with Relevant Law.
- o. The Hirer must immediately notify METRO-LIFT of any incident, near miss, safety breach, fine, penalty or investigation by a regulator which involves the Plant and Equipment.
- p. The Hirer must report the actual hours of use of the Plant and Equipment to METRO-LIFT, in accordance with the Reporting Frequency indicated in the Hire Form, or if no Reporting Frequency is indicated in the Hire Form, then weekly.
- q. Where the Plant and Equipment is equipped to perform electronic reporting of telemetry data, usage information and other information to METRO-LIFT and / or to the original equipment manufacturer, the Hirer must ensure that the information networks of the Location of Hire are configured to allow such electronic reporting to occur reliably and that the other circumstances of the Hire enable such electronic reporting to occur reliably.

8. MAINTENANCE, SAFE KEEPING AND RETURN

- a. The Hirer is responsible for, and must complete, maintenance and servicing of the Plant and Equipment in accordance with original equipment manufacturer maintenance manuals including cleaning, maintaining, lubricating and fueling the Plant and Equipment to the standard and level specified in those manuals (or as otherwise specified by METRO-LIFT) and must record such actions in the log book for the Plant and Equipment. The Hirer must store the Plant and Equipment, between periods of actual use, in accordance with original equipment manufacturer manuals. The Hirer must accurately report to METRO-LIFT about all maintenance and servicing of the Plant and Equipment, at least monthly (or more often if requested by METRO-LIFT) and must also report promptly to METRO-LIFT if any maintenance or servicing has not been completed. The Hirer must complete those reports to METRO-LIFT by no later than the 5th business day of each calendar month (reporting on the maintenance and servicing and on any failures in maintenance and servicing for the previous month). If METRO-LIFT ever requests an immediate update in relation to maintenance and servicing of the Plant and Equipment, then the Hirer must provide an extra, accurate, report about all maintenance and servicing of the Plant and Equipment within 48 hours of METRO-LIFT's request.
- b. Where identified in original equipment manufacturer maintenance manuals (or as otherwise specified by METRO-LIFT), maintenance and servicing must be conducted by the original equipment manufacturer or its representatives or its nominated service providers. In those circumstances, the Hirer must bear the cost of that maintenance and servicing by the original equipment manufacturer or its representatives or its nominated service providers (which may include the cost of having the original equipment manufacturer or its representatives or its nominated service providers travel to, and stay where they have access to, the Location of Hire to maintain and service the Plant and Equipment, and which may include the cost to transport the Plant and Equipment or components of it from the Location of Hire to and from the location where maintenance or service is to be conducted). The Hirer must plan the timing of any such maintenance and servicing, having regard to the availability of the original equipment manufacturer or its representatives or its nominated service providers.



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- c. The Plant and Equipment must be returned to METRO-LIFT in the same condition (fair wear and tear excepted) as it was provided by METRO-LIFT at the start of the Term, including with a full tank of fuel, washed and clean.
- d. The Hirer must pay the cost of repairing any damage which it has caused to the Plant and Equipment (and repairing any damage for which it is otherwise responsible under this Agreement), replacing damaged tyres and rims, cleaning and any repainting which METRO-LIFT reasonably requires to return Plant and Equipment to pre-Hire condition, fair wear and tear excepted. This does not relieve the Hirer from its obligations to repair or otherwise correct the Breakdown of the Plant and Equipment throughout the Term.
- e. The Hirer must secure and protect the Plant and Equipment throughout the Term. The Hirer must not part with possession, remove or allow the Plant and Equipment to be removed from the Location of Hire without METRO-LIFT's approval.
- f. The Hirer holds METRO-LIFT harmless from, and indemnifies METRO-LIFT against all costs, losses or liabilities in connection with the use, operation, handling, storage and transport (where relevant) of the Plant and Equipment during the Term (and before and after the Term where relevant) or while the Plant and Equipment is in the possession of the Hirer, including from and against any Breakdown, Loss of Control, other damage, loss or incident relating to the Plant and Equipment, and including from and against any breach of this Agreement by the Hirer, and including from and against loss of possession, theft, vandalism, negligence, legal process or otherwise. This indemnity does not apply to the extent that METRO-LIFT has materially and directly caused or contributed to any Breakdown (which it may have done through its actions or omissions).
- g. The Hirer will grant access for METRO-LIFT (and take reasonable steps to ensure that METRO-LIFT is able to practically exercise such access) to the Location of Hire and to any other location or premises where the Plant and Equipment may be located (with or without the permission of METRO-LIFT) for the purposes of periodic inspection of the Plant and Equipment by METRO-LIFT or for audit purposes, and the Hirer indemnifies METRO-LIFT from and against any Claims, damages or expenses arising out of any action by METRO-LIFT taken pursuant to this condition.

9. METRO-LIFT OBLIGATIONS

- a. METRO-LIFT will use its best endeavours to ensure that the Plant and Equipment is in good working order at the commencement of the Term. This obligation is qualified by any information about the condition of the Plant and Equipment which is disclosed by METRO-LIFT to the Hirer before or at the time of this Agreement, and by any information which the Hirer obtained (or which they should have expected and understood, as a Sophisticated Hirer) about the Plant and Equipment before or at the time of this Agreement.
- b. If there is a Breakdown or Loss of Control in relation to the Plant and Equipment, or if the Plant and Equipment is not available for use by the Hirer during part or all of the Term for any reason, then there is no obligation on METRO-LIFT to supply the Hirer with replacement Plant and Equipment. The Hirer acknowledges that agreement to this point is necessary because METRO-LIFT has a limited supply of items and in some cases may have only one of the items of Plant and Equipment hired to the Hirer, and that (regardless of whether METRO-LIFT is responsible for any Breakdown, Loss of Control or lack of availability) METRO-LIFT will not have any responsibility or liability to the Hirer for any direct or indirect loss, damage or other consequences which may flow from the Plant and Equipment not being available for use by the Hirer during part or all of the Term, for any reason.



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10. TERMINATION

- a. METRO-LIFT may need to terminate this Agreement earlier than originally intended, due to its own legitimate business needs, including operational requirements and ownership arrangements. METRO-LIFT may terminate this Agreement at any time upon 14 days' notice to the Hirer if METRO-LIFT considers it reasonably necessary to do so for the compliant operation of the business (such as to comply with insurance obligations or in order to undertake maintenance), in the event of restructure or sale of the METRO-LIFT's business, or if the Plant and Equipment is sold to a third party, or for any similar reason.
- b. METRO-LIFT may terminate this Agreement immediately if the Hirer:
 1. breaches a term of this Agreement;
 2. permits any act or thing to be done, or omits to do anything, which may prejudice, diminish or alienate METRO-LIFT's rights to or in the Plant and Equipment;
 3. commits an act of bankruptcy;
 4. becomes insolvent or is unable to pay its debts when they fall due;
 5. enters into or proposes to enter into voluntary liquidation, provisional liquidation, administration or receivership;
 6. has a winding up petition presented against it;
 7. suffers or allows a Loss of Control in relation to the Plant and Equipment;
 8. has any of its property seized by a secured creditor or any secured creditor takes steps to enforce its rights;
 9. ceases to carry on business, or substantially changes its business activities; or
 10. suffers a significant (in the reasonable opinion of METRO-LIFT) change of management, ownership or voting control without prior METRO-LIFT approval.
- c. The Hirer may only terminate this Agreement if METRO-LIFT has materially and directly caused or contributed to the Breakdown of the Plant and Equipment and if METRO-LIFT is unable to have such Breakdown repaired or rectified within a reasonable time after the Hirer has notified METRO-LIFT of the Breakdown. Otherwise, the Hirer may not terminate this Agreement before the end of the Term, and must pay for the Hire at the Rate during the whole Term (except to the extent that METRO-LIFT has materially and directly caused or contributed to any Breakdown (which it may have done through its actions or omissions) in which case the Hirer's obligation to pay the Rate for the whole Term will be reduced to the extent that METRO-LIFT has materially and directly caused or contributed to the Breakdown) , regardless of whether they actually require the use of the Plant and Equipment for the whole Term.
- d. On termination of the Agreement, METRO-LIFT is entitled to immediate possession of the Plant and Equipment and the Hirer irrevocably appoints METRO-LIFT as its agent and authorised attorney to enter upon any land or premises on behalf of the Hirer to recover the Plant and Equipment and agrees to indemnify METRO-LIFT in respect of any Claims, damages or expenses arising out of any action taken to recover the Plant and Equipment.

11. LIABILITY, INDEMNITY AND INSURANCE

- a. The Hirer must effect and maintain at all times insurance covering the Plant and Equipment, statutory workers compensation, product and public liability, professional indemnity and motor vehicles in each instance for the greater of the amount required by any Relevant Law or not less than \$20,000,000 per occurrence or event. Professional indemnity insurance and motor vehicle



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insurance will only be required when required by any Relevant Law or when specified in the Hire Form.

- b. Except for statutory workers' compensation policies, such insurance must note METRO-LIFT as an interested party and the insurer must waive all rights of subrogation against METRO-LIFT and METRO-LIFT's insurers. Any deductible or excess payable in respect of a Claim is at the Hirer's cost. On request, the Hirer must provide METRO-LIFT with certificates of currency in respect of all required insurance.
- c. If the Hirer is a consumer under the ACL, then METRO-LIFT's Hire (which may be a supply of goods or of goods and services) comes with guarantees that cannot be excluded under the ACL. For major failures with the goods, the Hirer is entitled to a replacement or refund. The Hirer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. For major failures with goods and services, the Hirer is entitled:
 - i. to cancel the Hirer's service contract with METRO-LIFT; and
 - ii. to a refund for the unused portion, or to compensation for its reduced value.The Hirer is also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, the Hirer is entitled to have the failure rectified in a reasonable time. If this is not done, the Hirer is entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. The Hirer is also entitled to be compensated for any other reasonably foreseeable loss or damage.
- d. To the extent permitted by the ACL and by law generally, if METRO-LIFT is liable for a breach of a guarantee imposed by the ACL then METRO-LIFT and the Hirer note that none of the goods (or goods and services) are of a kind ordinarily acquired for personal, domestic or household use or consumption, and METRO-LIFT's liability for a breach of any such guarantee (or condition or warranty, express or implied) will be limited, at its option, to any one or more of the following:
 - 1. in the case of goods:
 - i. the replacement of the goods or the supply of equivalent goods;
 - ii. the repair of the goods;
 - iii. the payment of the cost of replacing the goods or acquiring equivalent goods;
 - iv. the payment of the cost of having the goods repaired;
 - 2. in the case of services:
 - i. the supply of the services again;
 - ii. the payment of the cost of having the services supplied again.
- e. To the extent permitted by the ACL and by law generally, METRO-LIFT's liability for any Claims arising out of this Agreement, including liability for breach of this Agreement, in negligence or in tort or for any other common law or statutory action, shall:
 - 1. be limited to the extent the loss the subject of the Claim was caused directly by METRO-LIFT;
 - 2. in all events, exclude any Consequential Loss; and
 - 3. in any one case be limited to (at METRO-LIFT's option) either replacing or repairing the goods or reimbursing the Hirer for the repair or replacement of the goods and (at METRO-LIFT's option) either re-supplying services or reimbursing the Hirer for paying someone else to supply the services.
- f. To the extent permitted by law, every exemption, exclusion, or limitation in this Agreement applicable to METRO-LIFT or to which METRO-LIFT is entitled (under these Agreement or otherwise) shall also be available and shall extend to protect:
 - 1. all personnel of METRO-LIFT; and
 - 2. all persons who are or might be vicariously liable for the acts or omissions of any such person,



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and for the purposes of this Agreement, METRO-LIFT is acting as an agent on behalf of and for the benefit of all such persons and each of them shall to this extent be deemed to be parties to this Agreement.

12. FORCE MAJEURE

- a. A Force Majeure Event is an event which is beyond the reasonable control of the Hirer or METRO-LIFT and includes but is not limited to the following types of events:
 - 1. an act of God;
 - 2. war or some other state of armed hostilities, insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or martial law;
 - 3. weather conditions of a severity that could not reasonably be expected to occur within a 10 year period at the location of the Plant and Equipment and causing inundation or flood that prevents access to the Plant and Equipment; or
 - 4. action or inaction by, or orders, judgments, rulings, decisions or enforcement actions of, any government, governmental authority or court of competent jurisdiction whether local, State or Federal (including denial, refusal or failure to grant any permit, authorisation, licence, approval or acknowledgment despite timely endeavours to obtain same).
- b. Where either the Hirer or METRO-LIFT cannot perform their obligations under this Agreement because of the intervention of a Force Majeure Event, then they must immediately notify the other Party of the Force Majeure Event and will then be temporarily relieved of relevant obligations under this Agreement whilst the Force Majeure Event continues. Regardless of such relief, the Party making the notification of the Force Majeure Event must do everything reasonably possible to minimise the duration and impact of the Force Majeure Event and must notify the other Party immediately upon cessation of the Force Majeure Event.
- c. Without limiting METRO-LIFT's rights under clause 10, if the Force Majeure Event continues for a period in excess of fourteen days, then METRO-LIFT may terminate this Agreement at their discretion without penalty. The Hirer may not terminate this Agreement because of a Force Majeure Event.
- d. Notwithstanding any Force Majeure Event, no Party is relieved or excused from performance of its obligation to pay amounts due to the other under this Agreement.

13. BASIS FOR ACCESS to PLANT AND EQUIPMENT and PPS ISSUES

- a. The rights of the Hirer to use and take possession of the Plant and Equipment are as a bailee. Depending on the circumstances of Hire, the Hire may also be a PPS lease under PPSA.
- b. The Hirer must not offer, sell, assign, sub-let, pledge, mortgage or permit any lien over or otherwise deal with or part with possession of the Plant and Equipment in any way, nor may the Hirer take any other steps or make any other omissions which are inconsistent with the rights of METRO-LIFT as owner of the Plant and Equipment. The Hirer must not deface or cover any name or registration plate on the Plant and Equipment nor may the Hirer deface or cover any site-required accreditation on glass or other surfaces. The Hirer may only mark or paint the Plant and Equipment with the prior approval of METRO-LIFT.
- c. METRO-LIFT may have a security interest under the PPSA in the Plant and Equipment and any proceeds. Neither Party has agreed to postpone the time for attachment of any security interest. The Hirer agrees that value has been given for the creation of the security interest. The Hirer further confirms that:



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1. the Plant and Equipment is acquired for Hire by the Hirer in the course or furtherance of an enterprise by the Hirer, and are commercial property (as defined in s.10 of the PPSA); and
 2. any security interest comprises a purchase money security interest (as defined in s.14 of the PPSA) to the extent it secures purchase money obligations (as defined in s.14(7) of the PPSA);
 3. METRO-LIFT is entitled to register any security interest pursuant to the PPSA, and the Hirer must do everything (such as obtaining consents, completing, signing and supplying signed copies of documents, and supplying information), which METRO-LIFT requires to be done for the purpose of ensuring that each security interest of METRO-LIFT's is enforceable, perfected, has the required and intended priority, is otherwise effective, and can be practically and lawfully enforced by METRO-LIFT against the Hirer (and against third parties as relevant);
 4. The Hirer waives, as permitted by s.157(3) of the PPSA, any right to receive a verification statement or any other notice in relation to a registration event (for example, any right under s.157(1) of the PPSA); and
 5. METRO-LIFT and the Hirer hereby enter into a confidentiality agreement (as contemplated by s.275(6)(a) of the PPSA) and agree that (subject to section 275(7) of the PPSA) neither the Hirer nor METRO-LIFT will disclose information of the kind mentioned in section 275(1) of the PPSA.
- d. If the Hirer disposes of the Plant and Equipment (which would be in breach of this Agreement; this clause does not condone or permit any such disposal) and the Hirer will, in those circumstances, hold a security interest granted by a third party in respect of the Plant and Equipment (a "secondary security interest"), then the Hirer must:
1. establish and implement procedures to perfect that secondary security interest and to maintain it as continuously perfected;
 2. take all necessary steps under the PPSA to obtain the highest possible ranking priority for that secondary security interest;
 3. establish and implement procedures and take all necessary steps to reduce (so far as possible) the risk that a third party might acquire an interest in the Plant and Equipment which is free of METRO-LIFT's security interest or which is free of the secondary security interest; and
 4. do everything which METRO-LIFT reasonably requires to be done to comply with the obligations in this clause 13.d.
- e. To the extent permitted by law, if the PPSA applies, the Hirer irrevocably waives any rights the Hirer may have to:
1. receive notices or statements under sections 95,121 (4), and 130 of the PPSA;
 2. oblige METRO-LIFT to dispose of or retain collateral under s.125 of the PPSA;
 3. rely on or require compliance with sections 132(3)(d), 132(4) or 135 of the PPSA;
 4. redeem the Plant and Equipment under section 142 of the PPSA;
 5. reinstate this Agreement under section 143 of the PPSA; and
 6. receive a verification statement (as defined in the PPSA).
- f. Where METRO-LIFT has other enforcement rights in addition to the enforcement rights provided for in the PPSA, those other enforcement rights will continue to apply.

14. MISCELLANEOUS

- a. The person signing the Hire Form for and on behalf of the Hirer warrants to METRO-LIFT that they have appropriate authority on behalf of the Hirer to enter this Agreement.



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- b. The parties to this Agreement are independent and are not in partnership, nor agents for each other, nor attorneys, nor legal representatives of the other (except where a contrary position is specifically stated in this Agreement).
- c. Notices to a party may be given by email to any email address specified in the Hire Form and cc. to info@metrolift.com.au, for METRO-LIFT, and by email to the email address indicated in the Hire Form, for the Hirer, or to other email addresses subsequently notified to the other Party.
- d. Confidential information obtained by one party from the other party during the performance of this Agreement is confidential and must not be disclosed to any third party except where required by law; securities exchange guidelines and rules, or the requirements of any relevant regulator.
- e. Information about METRO-LIFT's privacy policy is available at <https://www.thryv.com.au/client-privacy-policy/>.
- f. So long as there is no material detriment to the Hirer, METRO-LIFT may assign or subcontract the performance of all or any of METRO-LIFT's rights and obligations under this Agreement to any other person or company without first requiring the consent of the Hirer. However, because of the extent of safety and competence obligations on the Hirer (for instance in clause 7(a)), because METRO-LIFT only makes its Plant and Equipment available to Sophisticated Hirers who must be capable of assessing the suitability and fitness for purpose of the Plant and Equipment for the functions and tasks to which they intend to put it, and because METRO-LIFT needs the reasonable ability to assess credit risk, the Hirer must not assign, subcontract, sub-lease or sub-hire the Plant and Equipment or performance of all or any of the Hirer's rights and obligations under this Agreement, unless it has obtained the prior consent of METRO-LIFT to do so and the proposed assignee, sub-lessee or sub-hirer is of equal or better financial standing and possesses the relevant skill, substance and competence to comply with the Hirer's obligations under this Agreement.
- g. Any delay by METRO-LIFT in exercising any right, power or remedy to which it is entitled under the Agreement, or any failure to exercise such right, power or remedy does not amount to a waiver of that right, power or remedy, nor does it preclude any further exercise of any right, power or remedy which may be provided for under the Agreement.
- h. Any waiver by METRO-LIFT must be in writing by METRO-LIFT and is only effective in relation to the particular obligation or breach for which it is given.
- i. If any provision of the Agreement is invalid or unenforceable in accordance with its terms, then it is to be read down, if possible, so as to be valid and enforceable, and will otherwise be capable of being severed to the extent of the invalidity or unenforceability without effecting the remaining provisions of the Agreement.
- j. This Agreement is governed and construed by the laws of the State of Queensland, Australia. All disputes will be subject to the non-exclusive jurisdiction of the courts of that State. However, this does not diminish the Hirer's obligation to comply with Relevant Law to the extent that the Jurisdiction includes locations outside Queensland.