Porter Plant – Terms & Conditions of Hire

1. Application and interpretation

1.1. In these Terms of Hire ('Terms'):

1.1.1. '**the Owner**' means Porter Excavations Pty Ltd (ACN 063 115 346);

1.1.2. '**the Hirer**' means the person, firm, organisation, partnership, corporation, trust or other entity hiring Equipment from the Owner, including any employees, agents and contractors of the Hirer;

1.1.3. '**Contract**' means the hire schedule identified as such which includes the commercial terms of the hire including the details of the Equipment, or in the event there is no such document, any invoices, quotation, authority to hire, or othercorrespondence provided by the Owner to the Hirer documenting the hire.

1.1.4. '**Equipment**' means any of the Owner's equipment, including but not limited to vehicles, plant, machinery, earthmoving equipment and any attached tools, accessories and parts available for hire to the Hirer as described in the Contract;

1.1.5. '**Minimum Hire Period**' means the period identified as such in the Contract;

1.1.6. '**PPSA**' means the *Personal Property Securities Act 2009* (Cth) and '**PPSR**' means the Personal Property Securities Register as established by the PPSA.

1.1.7. '**Hire Charges**' means the cost of the hire of Equipment as detailed in the Contract or otherwise agreed between the Owner and the Hirer, subject to clause 4;

1.1.8. '**Stand Down**' means the Hirer has suspended the hire and '**Stand Down Number**' means the reference number issued by the Owner acknowledging the Stand Down request by the Hirer.

1.2. These Terms, together with any applicable Credit Application completed by the Hirer and Contract apply to the provision of plant or equipment by hire from the Owner to the Hirer unless the Owner agrees in writing that they do not apply. These Terms overrideany terms of the Hirer (if any), any terms contained in any purchase order or other order of the Hirer for hire of equipment from the Owner. All Contracts with the Hirer shall include these Terms as varied from time to time in accordance with clause 19.1.

1.3. Any request to hire Equipment after receipt of these Terms constitutes full acceptance by the Hirer of these Terms.

2. Equipment Hire

2.1. Subject to the Hirer meeting their obligations under these Terms, the Owner will provide the Equipment in good working order andallow the Hirer exclusive use of the Equipment during the Hire Period detailed in clause 3.

2.2. The Hirer agrees that it has satisfied itself as to the suitability, condition and fitness of the Equipment for the purpose the Hirerintends to use the Equipment for. Subject to clauses 15.2 and 15.3, the Owner makes no representations and gives no warranty that the Equipment is suitable for the Hirer's intended purpose.

3. Hire Period

3.1. 'Hire Period' means the period commencing when the Equipment leaves the Owner's premises and ending on:

3.1.1. the date Equipment is returned to the Owner in accordance with the Owner's instructions;

3.1.2. the date the Hirer notifies the Owner that the Equipment is available for collection (where the Owner is providing delivery and collection services by prior agreement);

3.1.3. the expiry of the Minimum Hire Period; or

3.1.4. termination of the Contract in accordance with clause 16;

whichever is the last to occur, upon which the Owner will issue to the Hirer an Off Hire Number ('Off Hire Number') as verification that the Hire Period has ended on that date ('Off Hire Date').

3.2. The Off Hire Date shall be treated as a full days' hire of the Equipment irrespective of what time the Off Hire Number is issued. If Equipment is to be collected by the Hirer, the Equipment must be made available for collection no later than the time of day onwhich the Hire Period commenced or additional charges may apply.

3.3. Any anticipated return date for the Equipment or estimated end date for the Hire Period contained in the Contract or any other agreement between the parties for the hire of the Equipment shall not automatically constitute the end of the Hire Period and for the avoidance of doubt, the Hire Period shall continue and charges continue to apply until the Hirer has complied with clause 3.1 to end the Hire Period.

4. Hire Charges

4.1. Hire Charges and any additional charges applicable to the hire ('Additional Charges') are as contained in the Contract, or if no Contract is documented detailing Hire Charges, any invoices provided by the Owner to the Hirer or if none, the most recent pricelist or quotation (subject to clause 4.2) provided by the Owner, provided such quotation or pricelist shall only be binding on the Owner if it was accepted by the Hirer in writing within 30 days' of issue.

4.2. The Owner reserves the right to vary the Hire Charges at any time to correct any error or omission or to take into account any change in the cost of supply.

4.3. The Owner, in its discretion, reserves the right to require payment of a deposit prior to commencement of the Hire Period or charge a bond refundable upon completion of the hire provided the Hirer has complied with all of its obligations in relation to thehire.

4.4. The Hirer agrees to pay the Hire Charges and Additional Charges as directed by the Owner in its discretion which may require:

4.4.1. payment in full on delivery or collection of the Equipment;

4.4.2. payment in full before delivery or collection of the Equipment;

4.4.3. payment in accordance with the time stated on any invoice issued by the Owner or if no time is stated, within 7 daysfollowing issue of the invoice; or

4.4.4. payment in accordance with the Owner's Credit Terms where approved by the Owner.

4.5. Any accounts not settled on the due date will accrue interest at 2.5% per calendar month and at the Owner's discretion, may compound monthly at such a rate. The Hirer will be liable for costs incurred by the Owner in recovering outstanding amountsincluding administration fees, bank dishonour fees, collection agency fees and legal costs on a solicitor own client basis.

4.6. The Hirer may make payment by cheque, bank cheque, direct credit, or any other method as agreed to between the Hirer and the Owner provided always receipt by the Owner of any form of payment other than cash shall not be deemed to be paid until funds have cleared in the Owner's bank account.

4.7. Where the Hirer is not approved for hire on the Owner's Credit Terms and where payment is made up-front by credit card ('the Hirer's Credit Card'):

4.7.1. the Hirer represents and warrants that the Hirer is authorised to use the Hirer's Credit Card to pay all amounts owing by the Hirer under these Terms and the Contract;

4.7.2. the Hirer authorises the Owner to debit amounts from, or credit funds to, the Hirer's Credit Card in respect of any amounts payable by the Hirer under these Terms and the Contract including but not limited to the Hire Charges and Additional Charges and any charges in clause 5;

4.7.3. the Owner will debit Hire Charges and Additional Amounts as soon as practicable after such amounts are incurred by theHirer or the Owner as applicable;

4.7.4. if the Hirer's Credit Card is cancelled or otherwise unable to be used by the Owner or there are insufficient funds on the Hirer's Credit Card for the Owner to process payment in accordance with this clause 4.7 or a transaction is declined, the Hirer may be charged a dishonour fee by the Owner and the Hirer must provide the Owner with alternative card details to process payment.

4.8. The Hire Charges are exclusive of GST and other taxes or duties that may be applicable except where expressly provided otherwise.

5. Additional Charges

The Hirer agrees to pay any Additional Charges identified in the Contract in addition to the following:

5.1. any fuel or other consumables supplied by the Owner;

5.2. the costs of any delivery (at the Owner's discretion), collection, mobilisation, installation, commissioning or demobilisation services provided by the Owner and freight costs of transporting Equipment to or from the Hirer, or retrieving Equipment that is abandonedfor any reason;

5.3. a waiting fee (charged at cost) if the nominated time for delivery or collection of Equipment is delayed by the Hirer;

5.4. cleaning and repair charges where Equipment is not returned in the same condition as at commencement of the Hire Period;

5.5. a charge for pumping out waste tanks or refilling water or fuel tanks;

5.6. charges for payment made by credit card;

5.7. the cost for provision of operation guidance or training on the use of the Equipment is requested by the Hirer and agreed to be provided by the Owner;

5.8. the cost of replacing any Equipment keys and/or safety documentation (including but not limited to operators

manuals and risk assessments) not returned with the Equipment to the Owner on termination of the hire;

5.9. any reasonable charges incurred by the Owner if the Owner is unable to inspect or carry out maintenance on the Equipment during normal working hours;

5.10. the LDC Fee as provided in clause 12;

5.11. stamp duty or GST arising from the Contract and these Terms and any other applicable levies, fines, penalties and any other government charges arising out of the Hirer's use of the Equipment including any PPSR Fee specified in the Contract and reasonable fees incurred by the Owner in registering its interest in the Equipment in accordance with clause 13.

5.12. repairing or replacing flat or damaged tyres and for excessive or accelerated wear and tear to tyres and track gear which in the Owner's opinion is caused by the particular use made of those tyres or track gear by the Hirer; and

5.13. all wear and tear to blades, cutting edges, buckets, bucket teeth, rippers, ripper teeth, hammer moils and all other ground engaging tools on hire to the Hirer.

6. Delivery

6.1. At the Owner's sole discretion delivery of the Equipment shall take place when the Hirer takes possession of the Equipment at the Owner's address; or the Hirer takes possession of the Equipment at the Hirer's address.

6.2. The Hirer shall make all arrangements necessary to accept delivery of the Equipment whenever it is tendered for delivery by theOwner. In the event that the Hirer is unable to accept delivery of the Equipment as arranged then the Owner shall be entitled tocharge a reasonable fee for redelivery and commence Hire Charges and Additional Charges from the time the Equipment first leaves the Owner's premises for delivery. The Hirer shall indemnify the Owner against all damages, costs, expenses and losses including lost hire fees associated with the Equipment being unavailable from that time.

6.3. The Owner may deliver the Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with these Terms. The Owner shall issue a delivery receipt when the Equipment leaves the Owner's premises and such delivery records shall be deemed prime facie proof of delivery of the Equipment to the Hirer.

6.4. Delivery of the Equipment to a third party nominated by the Hirer is deemed to be delivery to the Hirer for the purposes of this agreement.

6.5. Any delivery date specified in the Contract or any other agreement between the parties for delivery of the Equipment by the Owner to the Hirer is an estimate only and the Owner shall not be in breach of these Terms or the Contract for failure to deliver onany estimated delivery date.

7. Hirer's obligations

For the duration of the Hire Period, the Hirer agrees:

7.1. not to allow any other person or entity to use, re-hire, or have possession or control of the Equipment at any time, or give or permit any other person to hold an interest in or form of security over the Contract or the Equipment, unless agreed by the Owner in writing;

7.2. to operate the Equipment safely and in accordance with all applicable laws, regulations and guidelines, for its intended use and in accordance with any instructions provided by the manufacturer or the Owner;

7.3. to comply with all environmental laws applicable to the use of the Equipment from time to time;

7.4. to ensure only persons who are suitably trained, qualified, licenced and experienced are permitted to operate the Equipment and provide evidence of a current Certificate of Competency and any licence to the Owner upon request;

7.5. to ensure that only persons who hold a valid full licence to operate the Equipment are permitted to operate the Equipment, which for the sake of clarity does not include a person holding a learner's permit or a probationary driver licence.

7.6. to ensure operators of the Equipment wear suitable protective clothing and do not operate the Equipment under the influence of drugs or alcohol;

7.7. to ensure all reasonable on-site precautions have been taken for safe use of the Equipment, including a job safety analysis andcomply with all occupational health and safety laws and regulations relating to the Equipment and its operation;

7.8. to keep the Equipment and the area surrounding the Equipment free from any illegal, prohibited or hazardous substances and display all reasonable safety signage and instructions required by law and to enforce such safety precautions in the use of the Equipment;

7.9. to employ the Equipment solely in its own work and not permit the Equipment of any part thereof to be used by any other partyfor any other work;
7.10. not to exceed the recommended or legal load and capacity limits of the Equipment;
7.11. not to fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
7.12. not to pledge the Owner's credit for repairs to the Equipment or create a lien over the Equipment in respect of any repairs;
7.13. not use the Equipment nor permit it to be used in such a manner as would permit any insurer to decline any claim;
7.14. on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fairwear and tear accepted, to the Owner;
7.15. ensure, at the Hirer's expense:
7.15.1. the Equipment is stored safely and securely during the Hire Period such that it is protected from theft, seizure, loss or damage and permit the Owner to enter the Hirer's premises from time to time to inspect the Equipment;
7.15.2. the Hirer does not remove the Equipment from the place of delivery or any other location reasonably agreed by theOwner in writing during the Hire Period;
7.15.3. any transportation, loading and unloading of the Equipment is carried out safely, in accordance with all applicable laws and regulations and the Owner's or the manufacturer's instructions and with due care so as to ensure the Equipment isnot damaged;
7.15.4. the Equipment is maintained in good order and repair and not in any way altered or modified including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
7.15.5. the Equipment is thoroughly cleaned, fuelled and lubricated at all times;
7.15.6. the Hirer complies with any maintenance requirements and instructions of the Owner and the manufacturer regarding the Equipment; and
7.16. the Hirer must notify the Owner immediately of any breach of these Terms and rectify such breach in accordance with the Owner's instructions at the Hirer's cost;
7.17. in the event of damage to the Equipment, break-down of the Equipment or the Equipment becoming unsafe for use during the HirePeriod, the Hirer agrees to immediately stop using the Equipment, take all steps necessary to prevent injury to persons or property as a result of the condition of the Equipment and further damage to the Equipment itself, notify the Owner immediately and not repair or attempt to repair the Equipment without the Owner's written consent;
7.18. the Hirer is liable for and indemnifies the Owner against damage to the Equipment caused by undue wear and tear; and any costsassociated with repair or replacement of any worn or damaged parts; and
7.19. the Hirer will insure at its cost, or self-insure, the Owner's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the use of the Equipment.

8. Title and risk

The Hirer acknowledges that the Owner retains ownership of the Equipment and the Hirer's rights to use the Equipment are as lessee only. All risk for the Equipment passes to the Hirer on delivery.

9. Defective Equipment and Equipment Breakdown

9.1. The Hirer shall inspect the Equipment on delivery and in the event there is any alleged defect, shortage in quantity, damage or failure to comply with the description or quote ('error'), the Hirer must notify the Owner of such within forty eight (48) hours.
9.2. The Hirer must then afford the Owner an opportunity to inspect the Equipment within a reasonable time following provision of notice in accordance with section 9.1. If the Hirer fails to comply with these clauses 9.1 and 9.2 the Equipment shall be accepted bythe Hirer and deemed to be free from any defect, shortage in quantity, damage or error.
9.3. In the event of Equipment breakdown, upon receiving notice from the Hirer under clause 7.17, the Owner will:
9.3.1. take all reasonable steps to repair the Equipment or provide suitable substitute Equipment as soon as reasonablypossible after being notified by the Hirer; and
9.3.2. not impose a Hire Charge for that portion of the Hire Period for which the Equipment was broken down or unsafe, nor the costs associated with any repair or replacement of the Equipment only if the

breakdown was not caused by neglect,act or omission of the Hirer, except if such break down is caused or contributed to by the act, omission or negligence of the Hirer or the Hirer's breach of these Terms in which event repairs and applicable Hire Charges are at the sole discretion of the Owner.

9.4. The Hirer acknowledges that in the event of Equipment break down or circumstances outlined in clause 9.1, the Hirer's sole remedy is as set out in clause 9.3 and the Owner shall not be liable for any indirect or consequential loss of the Owner includingbut not limited to lost productivity, revenue or profit.

10. Stand Downs

10.1. The Hirer may make a request for Stand Down of the Equipment. Requests must be made to the Owner prior to 10am on the day the Stand Down is to take effect and a stand down number advised.

10.2. A Stand Down will apply for Earthmoving equipment (excluding Mini excavators and rollers and Skid Steer loader 6T and below) and Water Carts on hire only for the following reasons:

10.2.1. Inclement weather (high wind / severe wet)

10.2.2. Industry approved RDO's

10.2.3. Gazetted Public Holidays

10.2.4. Hirer specific RDO's limited to one day per month (which shall not accumulate if not used)

10.3. If equipment is used during a stand down (determined for instance by remote monitoring) full hire charges for that period will be applied.

10.4. If a stand down request exceeds two days (except for Christmas and Easter) the Owner retains the right to have that equipment off-hired and returned to the Owner's site at the Hirer's expense.

10.5. Stand downs will not apply to light commercial and passenger vehicles.

11. Cancellations

11.1. The Owner may cancel the Contract or delivery of Equipment at any time before the Equipment is delivered by giving written notice.On giving such notice the Owner shall repay to the Hirer any sums paid in respect of the Hire Charges. The Owner shall not be liable for any costs, loss or damage of the Hirer whatsoever arising from such cancellation.

11.2. In the event that the Hirer cancels delivery of the Equipment the Hirer shall be liable for any costs, loss or damage incurred by the Owner (including, but not limited to, any loss of profits) up to the time of cancellation.

12. Loss and Damage Cover

12.1. The Hirer shall be liable for and indemnify the Owner against, any theft, loss or damage to the Equipment during the Hire Period (including consequential losses suffered by the Owner such as a loss of profits) save and except to the extent any such theft, loss or damage is caused by the Owner.

12.2. Notwithstanding clause 12.1, the Hirer's liability for theft, loss or damage to the Equipment may be limited where the Hirer haspaid a Loss and Damage Cover Fee (LDC Fee) in accordance with the provisions of this clause 12.

12.3. Subject to clause 12.9, the LDC Fee is compulsory and the amount of the LDC is as detailed in the Contract.

12.4. Where the Hirer has paid the LDC Fee and the Equipment has been lost, stolen or damaged beyond repair, the Hirer's liability for each item of Equipment is limited to the greater of:

12.4.1. $5,000 per item of Equipment; or

12.4.2. 2.5% of the replacement value of each item of Equipment, plus a $250 administration charge.

12.5. Where the Hirer has paid the LDC Fee and the Equipment has been damaged but is capable of repair, the Hirer's liability for each item of Equipment, for each separate incident or instance of damage is limited to $5,000 per item of Equipment plus a $250 administration charge.

12.6. Notwithstanding clauses 12.4 and 12.5:

12.6.1. Should the replacement value or repair costs for any Equipment be less than $5,000, the Hirer's liability will be limited to such repair costs or replacement value as applicable plus a $250 administration charge.

12.6.2. In the event that the Owner incurs any additional charges under the Owner's insurance due to the age or experience of the operator of the Equipment at the time of loss or damage or the type of use of the Equipment, the Owner reserves the right to charge the Hirer for such amounts.

12.7. Whether an item is considered damaged beyond repair or capable of repair will be determined at the Owner's sole discretion.

12.8. The Hirer's liability will not be limited in accordance with this clause 12 if:

12.8.1. theft of the Equipment has occurred and the Hirer fails to report the theft to the Police within 36 hours and/or fails to provide the Owner with a written police report as soon as practicable thereafter;

or the Hirer has failed to take reasonable steps to ensure the security of the Equipment;

12.8.2. the Hirer fails to co-operate with the Owner or provide the Owner with the details of the relevant evidence, including any written or photographic evidence that the Owner may require;

12.8.3. the relevant damage is caused or contributed to by any misuse, abuse or overloading of the Equipment; a failure to lubricate or to appropriately service and maintain the Equipment; electrical overload, a surge in electrical current or the use of under-rated or excessive lengths of extension leads; exposure to corrosive substances including but not limited to caustic cyanide, salt water or acid;

12.8.4. the Equipment has disappeared under suspicious circumstances;

12.8.5. the Equipment is wrongfully converted;

12.8.6. the Hirer does not hold a valid full licence to operate the Equipment including but not limited to where the Hirer holds a learner's permit or a probationary licence.

12.8.7. the Hirer's use of the Equipment violates any laws or regulations or the Hirer is in breach of a provision of these Terms;

12.8.8. the loss or damage is of tools, accessories, grease guns, hoses and similar, electric cords, welding cable, oxy and acetylene bottles, pneumatic tools, steels and any other similar accessories;

12.8.9. the damage is to tyres or tubes, windscreens, mirrors or glass perspex;

12.8.10. the damage occurs where the Equipment is located, used, loaded, unloaded or transported on or over water, wharves, or vessels of any kind; whilst the Equipment is being transported, except where the Equipment is being transported by the Owner; or is caused by collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object due to insufficient clearance;

12.8.11. no LDC Fee has been charged to or paid by the Hirer; or

12.8.12. the damage or loss is caused or contributed to by the Hirer's act, omission or negligence or that of any of the Hirer's employees, customers, contractors or agents.

12.9. The Hirer is not required to pay the LDC Fee if the Hirer provides a certificate of currency for an insurance policy suitable to the Owner (acting reasonably) with a reputable insurance provider that covers loss, damage and theft of the Equipment during the Hire Period, for an amount not less than the full replacement value of the Equipment, which notes the Owner as an insured party.

If such insurance is accepted by the Owner:

12.9.1. the Hirer is responsible for and indemnifies the Owner against, any excess, premiums and all other costs associated withsuch insurance;

12.9.2. the Hirer must maintain the insurance for the duration of the Hire Period and for a reasonable time thereafter so as toenable the Owner to inspect the Equipment and confirm it has been returned in accordance with these Terms; and

12.9.3. the Hirer is responsible for the payment of any shortfall in the costs of repair or replacement of the Equipment which is not covered by the Hirer's insurance.

13. PPSA and the PPSR

13.1. These Terms and the hire of Equipment from the Owner constitutes a security agreement for the purposes of the PPSA. For thepurposes of section 20(2) of the PPSA, the collateral is the Equipment.

13.2. The Hirer consents to the Owner affecting and maintaining a registration on the PPSR (in any manner the Owner considers appropriate) in relation to any security interest contemplated or constituted by these Terms in the Equipment and the proceeds arising in respect of any dealing in the Equipment and the Hirer agrees to sign any documents and provide all assistance and information to the Owner required to facilitate the registration and maintenance of any security interest. The Owner may at any time register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest). The Hirer waives the right to receive notice of a verification statement in relation to any registration on the register of a security interest in respect of the Equipment.

13.3. The Hirer undertakes to:

13.3.1. do anything (in each case, including executing any new document or providing any information) that is required by the Owner so that the Owner acquires and maintains one or more perfected security interests under the PPSA in respect ofthe Equipment and its proceeds; to enable the Owner to register a financing statement or financing change statement; and to ensure that the Owner's security position, and rights and obligations, are not adversely affected by the PPSA;

13.3.2. not register a financing change statement in respect of a security interest contemplated or constituted by this Hire Agreement without the Owner's prior written consent; and

13.3.3. not register, or permit to be registered, a financing statement or a financing change statement in

relation to the Equipment in favour of a third party without the Owner's prior written consent.

13.3.4. If Chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising under or in connection with these Terms and section 115(1) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and the Hirer will have no rights under them: section 95 (to theextent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and section 115(7) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and the Hirer will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.

13.4. Unless otherwise agreed and to the extent permitted by the PPSA, the Owner and the Hirer agree not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. The Hirer waives any right the Hirer may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.

13.5. The Owner may apply amounts received in connection with this Hire Agreement to satisfy obligations secured by a security interestcontemplated or constituted by this Hire Agreement in any way the Owner determines in the Owner's absolute discretion.

13.6. The Hirer agrees to notify the Owner in writing of any change to the Hirer's details set out in the Contract or any Credit Application, within 5 days from the date of such change.

14. Security and charge

In addition, to secure its obligations under these Terms, the Hirer hereby charges with payment of any moneys owed by it to the Owner pursuant to this contract all the right, title, estate and interest which they now have or may in the future acquire in any freehold or leasehold property and all the Hirer's present and after-acquired property and includes anything in respect of which the Hirer has at any time a sufficientright, interest or power to grant a security interest and anything in respect of which the Hirer as trustee of a Trust has at any time a sufficient right interest or power to grant a security interest and hereby consent to the lodging of any caveats on such freeholds by way of further securing the charge.

15. Indemnity and release

15.1. Subject to clause 15.3 and except as provided otherwise in these Terms, all guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise relating to these Terms or theEquipment are excluded to the maximum extent permitted by law.

15.2. Nothing in these Terms excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any legislation which cannot lawfully be excluded or limited including the Australian Consumer Law if applicable.

15.3. Where any legislation implies or imposes a guarantee, term, condition, warranty, undertaking, inducement or representation in relation to these Terms which cannot be excluded ('Non-Excludable Item') the Hirer agrees that its remedy is limited for a breach of the Non-Excludable Item is limited to the repair or replacement of the Equipment or the supply of substitute Equipment (or the cost of doing so).

15.4. Subject to the Owner's obligations under any Non-Excludable Item and to the maximum extent permitted by law, the Owner's maximum aggregate liability for all claims under or relating to these terms or the Equipment, whether in contract, tort (includingwithout limitation negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, is limited to an amount equal to the Hire Charges paid by the Hirer under these Terms. In calculating the Owner's aggregate liability, any amounts paid or the value of any goods or services replaced, repaired or supplied by the Owner for breach of Non-Excludable Items shall be included.

15.5. Subject to clauses 15.3 and 15.4, the Owner will not be liable to the Hirer for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business, business interruption or costs the Hirer has incurred, amounts that the Hirer is liable to its customers for or any loss suffered by third parties under or relating to these Terms or their subject matter, whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term or on any other basis, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.

15.6. The Hirer is liable for and indemnifies the Owner against all liability, claims, damage, loss, costs and expenses

(including, withoutl imitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against the Owner and anyenvironmental loss, cost, damage or expense) in respect of personal injury; damage to tangible property; or a claim by a third party, in respect of the Hirer's hire or use of the Equipment or breach of these Terms.

15.7. Each indemnity in these Terms is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of the Hire Period. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by these Terms.

16. Default and Termination

16.1. A default event will occur if:

16.1.1. in the sole opinion of the Owner, there is a material risk that the Hirer is, or will be, unable to pay amounts owing to the Owner or perform any other obligation under these Terms and the Owner gives notice in writing to the Customer of its opinion;

16.1.2. the Owner defaults in paying any sums due to the Hirer;

16.1.3. the Hirer is an individual and becomes insolvent, bankrupt, commits any act of bankruptcy, compounds with or entersinto any compromise or arrangement with its creditors;

16.1.4. the Hirer is a company and has a provisional liquidator, liquidator, receiver, receiver and manager or official manager, trustee for creditors or in bankruptcy, voluntary administrator or analogous person appointed to it or its property;

16.1.5. the Hirer has judgment entered against it in any court and the Owner gives notice in writing to the Hirer that, in its sole discretion, the Owner considers it to be a default event; or

16.1.6. a secured creditor seizes or takes possession of the Equipment or any assets of the Hirer and the Owner gives notice inwriting to the Hirer that, in its sole discretion, the Owner considers it to be a default event.

16.2. If a default event occurs, without prejudice to any other remedies the Owner may have:

16.2.1. the Owner may terminate the Hire Period immediately by giving notice to the Hirer;

16.2.2. the Owner may repossess the Equipment, or suspend or terminate the hire of Equipment to the Hirer and any of its otherobligations under these Terms; and

16.2.3. all amounts owing to the Owner shall, whether or not due for payment, become immediately due and payable.

16.3. The Owner will not be liable to the Hirer for any costs, loss or damage the Hirer suffers because the Owner has exercised its rights under this clause.

16.4. The Owner or its agents, contractors, invitees or employees, may enter upon and into land and premises owned, occupied or used by the Hirer, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.

16.5. These rights of termination are in addition to any other rights either party has under these Terms and does not exclude any right or remedy under law or equity.

17. Force Majeure

The Owner shall not be in default or be liable for failure to observe or perform in accordance with these Terms for any reason or cause which isoutside of the reasonable control of the Owner, including without limitation, war, insurrection, riot, civil commotion, strikes, lockouts, industrial disputes, acts of god, act of governments, flood, storm, tempest, power shortages or power failure, or an inability to obtain sufficientlabour, raw materials, fuel or utilities.

18. Privacy

18.1. The Owner will comply with the Australian Privacy Principles in all dealings with the Hirer under these Terms.

18.2. In the course of our dealings with the Hirer, the Owner may need to collect personal information about the Hirer, including but notlimited to, the Hirer's full name and address, date of birth, credit card details, driver's license details, and business or credit history.

18.2.1. The Hirer consents to the Owner using the Hirer's personal information in order to fulfil functions associated with thehire of Equipment to the Hirer, including but not limited to assessing the Hirer's credit worthiness, or exercising the Owner's rights under clause 13; provide services to the Hirer; prevent theft of the Equipment; enter into contracts withthe Hirer or third parties; and to market to the Hirer and maintain a client relationship with Hirer.

18.3. The Hirer consents to the Owner disclosing the Hirer's personal information:
18.3.1. to any credit provider or credit reporting agency for the purposes of obtaining information about the Hirer's consumer orcommercial credit or business history or the Hirer's commercial activities or credit worthiness; and
18.3.2. to the Owner's service providers, contractors and affiliated companies from time to time to help improve and market the Owner's services to the Hirer.
18.4. The Hirer has the right to access the personal information the Owner holds about the Hirer and a copy of the Owner's PrivacyPolicy is available upon request.

19. Miscellaneous

19.1. The Owner may replace or vary these Terms at any time and such varied Terms shall be published online at www.porterplant.com.au. The varied Terms will apply to any hire Contracts entered into after the varied Terms are published. No other variation can be made to these Terms without the written consent of the Owner and the Hirer.
19.2. The person signing any document which forms part of these Terms for and on behalf of the Hirer warrants that they have authority to enter into these Terms, grant the security interests in connection with these Terms and bind the Hirer to these Terms.
19.3. These Terms are governed by the laws of Victoria.
19.4. If any of these Terms are determined invalid, unlawful or unenforceable in whole or in part, such term shall be severed and the remaining terms shall continue to operate to the fullest extent permitted by law.
19.5. These Terms, in conjunction with the Contract and any Credit Terms, constitute the entire agreement between the parties
19.6. The Owner may deduct from amounts otherwise payable to the Hirer any amount which is owed or may become owing by the Hirer under any other agreement or any claim which the Owner reasonably considers it has against the Hirer. The Hirer shall not be entitled to set off against or deduct from the Hire Charges any amounts owed or claimed to be owed to the Hirer by the Owner.

THIS IS TO CERTIFY: that I/We have read, understand and accept these Terms of Hire and that I/We are authorised to agree to these Terms on behalf of the Hirer:

Signature of Hirer (or Director of Hirer if a Company (1))

		x

Signature of Hirer (or Director of Hirer if a Company (2))

		x

*__NOTE:__ If Credit Terms apply, a DIRECTOR signs as the Director of the Hirer and also as GUARANTOR.