

# OZZI KLEEN PLANT AND EQUIPMENT HIRE & SERVICE AGREEMENT

## TERMS AND CONDITIONS:

This Plant and Equipment Hire Agreement ("Agreement") is made on the date stated in the Schedule.

### 1. Hiring of Equipment

1.1 Any reference to "Ozzi Kleen" in this Agreement is a reference to Ozzi Kleen Rentals Pty Ltd ABN 27 160 075 758 and includes associated companies of Ozzi Kleen. The notice details for Ozzi Kleen are:

Address: 59 Industrial Avenue, Kunda Park Qld 4556

Telephone: (07) 5459 4900

Facsimile: (07) 5456 4677

Email: rentals@ozzikleen.com

1.2 Ozzi Kleen agrees to supply on hire to the Customer the plant and/or equipment ("Equipment") identified in Item 3 of the Schedule.

### 2. Customer Responsible for Selecting the Equipment

2.1 The Customer acknowledges that in deciding to enter into this Agreement:

- 1) It has not relied in any way on the skill, judgement or any representations made by Ozzi Kleen (and/or its agents and employees) in respect of the suitability of the Equipment for the purpose required by the Customer or any other matter; and
- 2) It has satisfied itself as to:
  - a) The condition, specifications, quality and fitness of the Equipment for the proposed purpose and safety; and
  - b) the validity of any manufacturers or Ozzi Kleen's warranties or guarantees;and in every other necessary respect.

### 3. Period of Hire

3.1 The hire period has a maximum term of five (5) years or shall be specified in Item 9 of the Schedule.

3.2 The period of hire will commence on the Hire Start Date stated in Item 9 the Schedule and continue until the End of Hire Date as detailed in the Schedule.

3.3 The Customer shall be liable for the Rent as detailed in Item 8 of the Schedule up until the date all of the Equipment is returned to Ozzi Kleen, regardless of the End of Hire date in Item 9 of the Schedule.

3.4 If the period of hire extends beyond five (5) years from the Date of Agreement at Item 1 of the Schedule, the Customer acknowledges and accepts that Ozzi Kleen may replace the Equipment (for the purpose of refurbishment) and the Customer shall be responsible at their own cost for collection of replacement Equipment and return of existing Equipment as per Clause 4 of this Agreement, unless otherwise agreed in writing. The Customer also acknowledges and accepts responsibility of all costs incurred by Ozzi Kleen for the cleaning and repairing the Equipment to bring the Equipment back into good working order and condition, but only if those repairs are outside the scope of fair wear and tear (also refer to Clauses 17.1 (2), 17.1 (4) & 17.1 (5)).

### 4. Delivery and Collection

4.1 The Customer shall be responsible at their own cost for:

- 1) collection of the Equipment from the Collection Address stated in the Item 4 of the Schedule;
  - 2) the return of the Equipment to the Return Address stated in Item 6 of the Schedule; and
  - 3) the loading and off-loading of the Equipment;
- unless otherwise agreed in writing.

### 5. Site

5.1 The Customer is authorised to use the Equipment at the Site Address as stated in Item 5 of the Schedule only.

5.2 The Customer is not allowed to remove or relocate the Equipment from the Site Address without first seeking the consent of Ozzi Kleen which may or may not be granted at Ozzi Kleen's absolute discretion.

## **6. Installation and Commissioning of the Equipment**

6.1 The Customer is responsible for ensuring that the site is ready for the installation and commissioning of the Equipment at the Customer's cost.

This may include but is not limited to site preparation works such as a concrete slab, electrical connections and pipe connections.

6.2 Ozzi Kleen will commission the Equipment for use at the cost of the Customer to be charged on a per technician per day or part day at the rate as detailed in Item 8 of the Schedule unless otherwise notified in writing by Ozzi Kleen.

## **7. Payments**

7.1 The Customer must pay Ozzi Kleen the bond stated in Item 8 of the Schedule or the equivalent of a month's rent prior to the dispatch of the Equipment.

7.2 The Customer must pay Ozzi Kleen the Rent for the Equipment as stated in the Schedule monthly in advance.

7.3 If at the request of the Customer, Ozzi Kleen agrees to arrange delivery and unloading of the Equipment, then the Customer is responsible for all costs associated with the delivery and unloading of the Equipment.

7.4 If Ozzi Kleen agrees at the Customer's request to collect the Equipment, then the Customer is responsible for all costs associated with the collection and return of the Equipment.

## **8. Repair, Maintenance & Regular Servicing**

8.1 The Customer agrees to engage Ozzi Kleen to conduct the regular servicing of the Equipment as detailed in Item 10 of the Schedule.

8.2 Services based in the XXX region each xxx(X) to xxx(X) weeks are included in the Rental. Should more frequent services be required for any reason, the Customer will pay the Service Fee at the rate stated in Item 8 of the Schedule.

8.3 The Customer is responsible for the cost of all consumables (e.g. chlorine and aluminium sulphate) outside Ozzi Kleen's calculated amounts of expected usage within normal working parameters. Responsibility for parts requiring repair or replacement will be determined on site by an Ozzi Kleen Technician and will be payable by the Customer if responsibility is determined to be due to the Customer's fault or attributed to the misuse of the Equipment by the Customer. If parts require repair or replacement at no fault of the Customer, Ozzi Kleen will be responsible for the repair or replacement.

8.4 The Customer agrees to pay all call out charges for urgent or emergency visits by Ozzi Kleen at the then current rate of charge for such visits unless the failure in the Equipment requiring the call out can be attributed to Ozzi Kleen. The responsibility for the charges will be determined on site by an Ozzi Kleen Service Technician.

8.5 The Customer must notify Ozzi Kleen immediately on becoming aware of any damage or defect to the Equipment.

## **9. Responsibility for Equipment**

9.1 The Equipment shall at all times remain the property of Ozzi Kleen and/or the Owner (where applicable).

9.2 The safekeeping of the Equipment shall be the responsibility of the Customer at all times during the period of hire.

9.3 The Customer shall not without the prior consent of Ozzi Kleen:

- 1) sell or otherwise dispose or part with possession of the Equipment;
- 2) share possession of the Equipment or grant to any person a sublease, licence or sub-licence affecting the Equipment or pledge the Equipment;
- 3) use the Equipment for any other purpose than as directed in the equipment parameters and specifications provided to the Customer upon entering into this Agreement which the Customer acknowledges receiving by signing this Agreement;
- 4) use the Equipment when it is damaged or unsafe;
- 5) operate or permit the Equipment to be used for any illegal purpose; or
- 6) allow the Equipment to be overloaded or required to perform work greater than the recommended capacity of the Equipment as per the manufacturer's specification.

9.4 The Customer shall at all times keep the Equipment free from distress, execution or other legal process.

9.5 The Customer shall at its own expense comply with all applicable laws, regulations, rules and requirements necessary for the safe and lawful

use of the Equipment and with all reasonable requirements of the manufacturer or Ozzi Kleen of the Equipment. Any addition, replacement or alteration required to be made to or installed on the Equipment as a result of such compliance will, without any further act of Ozzi Kleen or the Customer, become the property of Ozzi Kleen and be considered part of the Equipment for all purposes of this Agreement.

- 9.6 If any person seizes or attempts to seize or interfere or steal the Equipment, the Customer shall immediately inform Ozzi Kleen by notice of that seizure, attempted seizure, interference or theft. The Customer is to guard the Equipment against theft, damage or negligence until the Equipment is returned to Ozzi Kleen.
- 9.7 The Customer will not remove or deface such name, name plate, identification number, trademark or any other mark (each a "marking") on the Equipment.
- 9.8 Except to the extent that the Agreement expressly requires otherwise, the Customer shall:
- 1) operate, use and keep the Equipment; and
  - 2) comply with its obligations under this Agreement; and
- at its sole risk and expense.
- 9.9 The Customer acknowledges and accepts that Ozzi Kleen is not obliged to replace the Equipment for any reason whatever including, without limitation:
- 1) in the event that the Equipment is deemed to have been damaged after delivery; or
  - 2) because the Equipment does not or may have ceased to function as contemplated by the Customer at the date of execution of this Agreement.
- 9.10 Ozzi Kleen will however replace the Equipment if:
- 1) it is deemed that the Equipment does not perform as per Ozzi Kleen's specification; or
  - 2) the Equipment is damaged prior to the dispatch from the address stated in Item 4 of the Schedule, unless the Equipment can be repaired.

#### **10. Personal Property Securities Act 2009 ("PPSA")**

- 10.1 In this clause "financing statement", "financing change statement", "security agreement", and "security interest" has the meaning given to it by the PPSA.
- 10.2 Upon assenting to this Agreement, in writing, the Customer acknowledges and agrees that this Agreement constitutes a security agreement for the purposes of the PPSA and creates a security interest in:
- 1) all Equipment that has previously been supplied (if any), and that will be supplied in the future, by Ozzi Kleen to the Customer; and
  - 2) all the Customer's present and after acquired property being a charge, including anything in respect of which the Customer has at any time a sufficient right, interest or power to grant a security interest in, for the purposes of securing repayment of all monetary obligations of the Customer to Ozzi Kleen for services – that have previously been provided (if any), and that will be provided in the future, by Ozzi Kleen to the Customer.
- 10.3 The Customer undertakes to:
- 1) indemnify, and upon demand reimburse, Ozzi Kleen for all expenses incurred in registering a financing statement, or financing change statement, on the Personal Property Securities Register established by the PPSA, or releasing any registration made thereby; and
  - 2) not register, purport to register, or permit to be registered a financing statement, or financing change statement (including any in favour of a third party), in respect of the Equipment, without the express written consent of Ozzi Kleen.
- 10.4 The Customer acknowledges and agrees that Ozzi Kleen may register its security interest as a PMSI.
- 10.5 To the extent that Chapter 4 of the PPSA applies to the security interest under this Agreement, the following provisions of the PPSA do not apply, and for the purposes of section 115 of the PPSA are 'contracted out' of this Agreement in respect of all goods to which that section can be applied: section 96 (retention of accession), section 121(4) (notice to grantor), section 125 (obligations to dispose of or retain collateral), section 130 (notice of disposal to the extent it requires Ozzi Kleen to give notice to the Customer), section 129(2) and 129(3), section 132(3)(d) (contents of statement of account after disposal), section 132(4) (statement of account if not disposal), section 135 (notice

of retention), section 142 (redemption of collateral) and section 143 (re-instatement of security agreement.)

- 10.6 The following provisions of the PPSA confer rights on Ozzi Kleen section 123 (seizing collateral), section 126 (apparent possession), section 128 (secured party may dispose of collateral), section 129 (disposal by purchase) and section 134(1) (retention of collateral). The Customer agrees that in addition to those rights, Ozzi Kleen shall, in the event of a Default, 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 Agreement, and the Customer agrees that Ozzi Kleen may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 10.7 Unless otherwise agreed to in writing by Ozzi Kleen, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 Both parties agree not to disclose information of the kind that can be requested under section 275(1) of the PPSA. The Customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPSA continues to apply. The agreement in this sub-clause is made solely for the purposes of allowing Ozzi Kleen the benefit of section 275(6)(a), and Ozzi Kleen shall not be liable to pay any damages (or other compensation), or be subject to injunction, if Ozzi Kleen breaches this sub-clause.
- 10.9 The Customer unconditionally ratifies any actions taken by Ozzi Kleen under clauses 10.3 to 10.8.
- 10.10 Subject to any express provisions to the contrary (including those contained in this clause 10), nothing in this Agreement is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 10.11 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 10 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 10 will apply generally for the purposes of the PPSA.

## **11. Indemnities and Release**

- 11.1 The Customer assumes liability for, and indemnifies Ozzi Kleen and, or its employees unless caused as a result of negligence by Ozzi Kleen and, or its employees against, all losses, liabilities, costs and expenses (including, without limitation, legal expenses on a full indemnity basis) and taxes, of whatever kind or nature (including claims for strict liability in tort), arising (as a result of any or all of the following):
- 1) on account of the delivery, installation, hiring, use, condition (including, without limitation, latent and other defects whether or not discoverable by Ozzi Kleen or the Customer) or operation of the Equipment, regardless of by whom it is used or operated (except where used or operated by Ozzi Kleen) during the delivery, installation, hiring, use or operation of the Equipment and in any event during the term of this Agreement;
  - 2) in respect of any damage to property or death of or injury to any person which may be suffered or sustained in connection with the Equipment;
  - 3) the Customer releases Ozzi Kleen to the fullest extent permitted by law from all claims and demands of every kind arising out of the delivery, installation, hiring, use or operation of the Equipment, including any liability which may arise in respect of any accident or damage to property or death of or injury to any person of whatever nature or kind and for any loss of profits and/or damages suffered by the Customer by the non-operation of the Equipment. The Customer agrees that the Owner or Ozzi Kleen will have no responsibility or liability for any loss of or damage to any property of the Customer;
  - 4) the indemnity and release contained in clauses 11.1(1), 11.1(2) and 11.1(3) continue in full force and effect notwithstanding any termination of this Agreement (whether by expiration of time or otherwise) as to any act or omission up to the return of the Equipment to the Owner or Ozzi Kleen.
- 11.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the Competition and Consumer Act 2010 and the Fair Trading Act applicable to the State or Territory), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the Competition and Consumer Act 2010 or the Fair Trading Act applicable to the State or Territory) may be implied into this Agreement ("Non-Excluded Guarantees"). Ozzi Kleen acknowledges that nothing in this Agreement purports to modify or exclude the Non-Excluded Guarantees. Without limiting clause 11.6, and except as expressly set out in this Agreement, or in respect of the Non-Excluded

Guarantees, Ozzi Kleen makes no warranties or other representations under this Agreement (including, but not limited to, the merchantability, description, quality, suitability, or fitness of the Equipment for any purpose, or as to design, assembly, installation, materials, workmanship or otherwise). Ozzi Kleen's liability to the Customer in respect of these warranties is limited to the maximum extent permitted by law, and the following:

- 1) replacement of the Equipment (or the supply of equivalent equipment), or the payment of the cost of replacing the Equipment (or of acquiring equivalent equipment); or
  - 2) repair of the Equipment, or payment of the cost of having the Equipment repaired.
- 11.3 If Ozzi Kleen is required to replace the Equipment under this clause, or the Competition and Consumer Act 2010, but is unable to do so, Ozzi Kleen may refund any money the Customer has paid for the Equipment.
- 11.4 Notwithstanding anything contained in this clause, if Ozzi Kleen is required by a law to accept the return of the Equipment, then Ozzi Kleen will only accept such return on the conditions imposed by that law.
- 11.5 Subject to clause 11.2, Ozzi Kleen shall be under no liability whatsoever to the Customer in any circumstance for any indirect, economic and/or consequential loss, damage and/or expense (including loss of profit) suffered by the Customer, including arising out of, or by any reason of, any data or information of the Customer being contained in the Equipment on the return or repossession thereof. Alternatively, Ozzi Kleen's maximum aggregate liability for all claims relating to this Agreement, or its subject matter, whether in Agreement, tort (including negligence), in equity, under statute, under an indemnity, based on fundamental breach or breach of a fundamental term, or on any other basis, shall be limited to an amount which under no circumstances shall exceed the Charges payable by the Customer under this Agreement.
- 11.6 The Customer acknowledges that it has not relied upon any statement or representation by Ozzi Kleen in respect of the purpose for which the Customer desires to use the Equipment, and that Ozzi Kleen is not responsible or liable for any failure or unsuitability of the Equipment to perform the purposes required by the Customer.
- 11.7 The Customer shall indemnify, and keep indemnified, Ozzi Kleen against all liability in respect of all actions, proceedings, claims, losses, damages, costs, expenses and injuries to or deaths of persons, and any damage to property suffered (either by the Customer, Ozzi Kleen or any third party) in connection with the supply of the Equipment by Ozzi Kleen and/or otherwise arising out of, or consequent on, the use of the Equipment, and whether or not arising from any negligence, misuse, failure or omission of the Customer or any other persons.

## **12. Customer Warranty**

- 12.1 The Customer represents and warrants to Ozzi Kleen that it meets and will continue to meet for the duration of the period of hire all requirements at law including the holding of all relevant licences and/or permits, relevant to hire the operation and use of the Equipment in accordance with this Agreement.
- 12.2 The Customer shall comply with all statutory requirements, all authority requirements and government code(s) that may apply to the use of the Equipment, to the extent relevant to the hire of the Equipment in accordance with this Agreement.

## **13. Loss of or Damage to the Equipment**

- 13.1 For the duration of this Agreement or any extensions of this Agreement agreed between the parties, if the Equipment is stolen, destructed, compulsorily acquired or damaged to an extent which in the reasonable opinion of Ozzi Kleen renders repair impracticable the Customer shall immediately pay Ozzi Kleen the replacement value of the Equipment less any proceeds of insurance or other compensation moneys received by Ozzi Kleen on or before that date. Upon payment of this amount and any other amounts outstanding under this Agreement, this Agreement will terminate.
- 13.2 If Ozzi Kleen has received payment in full of the replacement value of the Equipment and any other amounts outstanding under this Agreement from the Customer, it shall pay to the Customer any insurance or other compensation moneys it subsequently receives in respect of the Equipment (if any).
- 13.3 The Customer is responsible for, by entering into this Agreement (and the Customer will pay on demand any balance) the following charges:
- 1) all Rent specified in this Agreement;

- 2) the Delivery and/or Collection fee referred to in clause 4;
  - 3) all loss or damage to the Equipment (including loss of use) and consequential third-party damage arising from situation not limited to the Customer failing to secure properly the Equipment, incorrect use of the Equipment or undue rough handling of the Equipment which leads to damage to the Equipment; and
  - 4) any other Charges due subject to clauses 8.3 and 8.4.
- 13.4 If the Customer has paid by use of a credit card or directed Ozzi Kleen to bill charges to some other person, corporation firm or organisation who or which fails to make payment when due the Customer will immediately pay the full amount due to Ozzi Kleen on demand.

#### **14. Insurance**

- 14.1 The Customer must affect a public liability policy of insurance to cover its liability and its subcontractors/agents liability to third parties for loss or damage to property (including loss of use thereof) and death of or injury to any person.
- 14.2 With respect to public liability insurance required under clause 14.1, the insurance shall:
- 1) be for an amount not less than the sum stated in the Schedule; and
  - 2) be maintained during the period of hire including any transit periods in which the Customer and/ or its subcontractors/agents collects or returns the Equipment from Ozzi Kleen.
- 14.3 The Customer must effect a property insurance policy for no less than market value of the Equipment as determined by Ozzi Kleen to cover any loss and damage to the Equipment and shall cover:
- 1) any liability for loss or damage to the Equipment during any period for which it is responsible for the safekeeping of the Equipment including any transit periods in which the Customer collects or returns the Equipment from or to Ozzi Kleen; and
  - 2) liability to third parties for loss or damage to property (including loss of use thereof) and death of or injury to any person arising out of or resulting from the operation of the Equipment.
- 14.4 The Customer must ensure that at all times during the period of Hire, the Equipment is insured as may be required at law.
- 14.5 The Customer shall ensure that each of its subcontractors/agents is similarly insured as per the above.
- 14.6 Each of the insurance policies required to be effected by the Customer shall be effected prior to the commencement of the hire.
- 14.7 Each policy shall be taken out with an insurer and in terms approved by Ozzi Kleen.
- 14.8 Whenever requested by Ozzi Kleen, the Customer shall produce evidence to the satisfaction and approval of Ozzi Kleen that it has satisfied all of its insurance obligations under this Agreement.
- 14.9 Insurance does not limit Ozzi Kleen's liability under this Agreement or otherwise.

#### **15. Default**

- 15.1 Without limiting Ozzi Kleen's rights under any other clause in this Agreement, if the Customer fails to: -
- 1) pay Rent when due;
  - 1) promptly and properly make good any damage or loss for which the Customer is responsible;
  - 2) promptly maintain and/or repair the Equipment;
  - 3) comply with any other requirement of this Agreement;
- then Ozzi Kleen may, in addition to its other rights, at its sole discretion and without obligation, remedy that failure on behalf of the Customer and the cost of doing so shall be invoiced to the Customer by Ozzi Kleen or terminate this Agreement.
- 15.2 In the event of any Default Ozzi Kleen shall be entitled to (at its sole discretion and option, and without prejudice to any other remedies Ozzi Kleen may have under this Agreement, or under law):
- 1) treat this Agreement as breached and repudiated by the Customer, and with (or without) any notice, accept the repudiation and terminate this Agreement; whereupon the Customer shall immediately (at its own cost and expense) return the Equipment to Ozzi Kleen; and/or
  - 2) at any time prior to payment in full of the Charges for the Equipment, or any other Equipment supplied by Ozzi Kleen for which payment is outstanding:
    - a) suspend or terminate this Agreement;

- b) require the immediate payment of all Charges, before Delivery (or the performance of any associated services), irrespective of whether or not such are due for payment, or any payment terms previously specified or agreed to between the parties;
  - c) takeover, or repossess, the Equipment, and dispose of such, without prejudice to any claim Ozzi Kleen may have against the Customer for any damages or loss resulting from any sale or disposal thereof; and/or
  - d) exercise all rights to the Equipment as the owner thereof; and/or
- 3) charge the Customer interest on any overdue payments, which shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Ozzi Kleen's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

15.3 If the Customer owes Ozzi Kleen any money, the Customer shall indemnify Ozzi Kleen from and against all costs and disbursements:

- a) incurred; and/or
- b) which would be incurred and/or
- c) for which by the Customer would be liable;

in regard to legal costs on a solicitor and own client basis, internal administration fees, Ozzi Kleen's contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees, or as a result of Ozzi Kleen's enforcement of any term or condition of this Agreement, or arising out of or in any way connected with the use of the Equipment (subject always to clause 11).

15.4 In consideration of Ozzi Kleen entering into this Agreement, and as an essential condition of these Terms and Conditions, the Customer and each of the Guarantors named in this Agreement or the Schedule to it charge all of their real property whether owned now or in the future with the amount of the Customer's indebtedness to Ozzi Kleen from time to time and each such person must, immediately upon demand being made by Ozzi Kleen, sign all documents and do all such things as Ozzi Kleen may reasonably require to further secure to Ozzi Kleen the amount of such indebtedness including, without limitation, a bill of mortgage over any real property (whether acquired before or after this Agreement) or such bills of sale or mortgage debenture over any or all items of personal property owned by such persons.

15.5 Each such person irrevocably appoints Ozzi Kleen or a representative of its directors, managers or credit managers severally to be the duly constituted attorney of each such person to execute any such consents, to such caveats as may wish to lodge against any dealings in any real property.

## 16. Termination

16.1 Ozzi Kleen may terminate this Agreement for cause by giving 48 hours' notice.

16.2 The Customer may terminate this Agreement for cause by giving thirty (30) days written notice to Ozzi Kleen. The Customer acknowledges and agrees that they shall be responsible for the Rental Charges as specified in Item 8 of the Schedule for the thirty (30) day period or the date of return of the Equipment, whichever is the latter.

16.3 If the Customer fails to comply with its obligations under this Agreement or if the Customer (being a person, or being a partnership, or a member thereof) becomes bankrupt or assigns his/her estate for the benefit of his/her creditors or (being a company) goes into liquidation (other than for amalgamation or reconstruction or has a receiver, or an official liquidator or provisional liquidator appointed to its affairs, or enters into a Deed of Arrangement or composition with its creditors), then Ozzi Kleen may, at its discretion terminate this Agreement.

16.4 Upon termination:-

- 1) Ozzi Kleen will be entitled to retain all Rent and other monies previously paid by the Customer to Ozzi Kleen under this Agreement; and
- 2) Ozzi Kleen may recover from the Customer all Rent and other monies due and owing under this Agreement (including any Delivery or Collection fee referred to in clause 4) at the date of such termination together with interest as provided in clause 15.2(3).

## 17. Procedures on Termination

17.1 Upon the termination or sooner determination of this Agreement the Customer at its own expense shall:-

- 1) return the Equipment to Ozzi Kleen to the Return Address for Equipment as stated in Item 6 of the Schedule without delay;
- 2) pump out and clean the Equipment as per the De-Commissioning Instructions; and

- 3) ensure that the Equipment is returned in good working order and condition; and
  - 4) be responsible for all costs incurred by Ozzi Kleen in cleaning/repairing the Equipment to bring the Equipment back into good working order and condition, outside the scope of fair wear and tear.
  - 5) if the Equipment is damaged or unusable upon return to Ozzi Kleen then the Customer is liable to Ozzi Kleen on demand to a per week loss based on 100% of the monthly Rent or part thereof, specified in the Schedule on the downtime of the Equipment after the Equipment is returned until the Equipment is repaired.
- 17.2 If the Customer fails to return the Equipment to Ozzi Kleen as required in this Agreement, Ozzi Kleen will be entitled to:-
- 1) retake possession of the Equipment and for that purpose Ozzi Kleen or its employees may enter upon any land, motor vehicle or premises on which the Equipment is kept or on which Ozzi Kleen or any of its employees reasonably suspects that the Equipment is kept and the Customer waives any damages it may suffer as a result of this;
  - 2) charge the Customer further Rent at the rate detailed in the Schedule plus interest at the rate of 2.5% compounded per calendar monthly until such time as all of the Equipment is returned together with all reasonable administration and legal fees incurred by Ozzi Kleen;
  - 3) charge the Customer for all costs incurred by Ozzi Kleen in recovering the Equipment.
- 17.3 The Customer authorises Ozzi Kleen to apply the Bond towards any payments or charges required to be paid pursuant to this clause 17.

## 18. Privacy Policy

- 18.1 All emails, documents, images or other recorded information held or used by Ozzi Kleen is “**Personal Information**”, as defined and referred to in clause 18.3, and therefore considered Confidential Information. Ozzi Kleen acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 (“the Act”) including the Part IIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area (“EEA”), under the EU Data Privacy Laws (including the General Data Protection Regulation “GDPR”) (collectively, “EU Data Privacy Laws”). Ozzi Kleen acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by Ozzi Kleen that may result in serious harm to the Customer, Ozzi Kleen will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 18.2 Notwithstanding clause 18.1, privacy limitations will extend to Ozzi Kleen in respect of cookies where the Customer utilises Ozzi Kleen’s website to make enquiries. Ozzi Kleen agrees to display reference to such cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer’s:
- 1) IP address, browser, email client type and other similar details;
  - 2) tracking website usage and traffic; and
  - 3) reports are available to Ozzi Kleen when Ozzi Kleen sends an email to the Customer, so Ozzi Kleen may collect and review that information (“collectively Personal Information”)

In order to enable / disable the collection of Personal Information by way of cookies, the Customer shall have the right to enable / disable the cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with making enquiries via Ozzi Kleen’s website.

If the Customer consents to Ozzi Kleen’s use of cookies on Ozzi Kleen’s website and later wishes to withdraw that consent, the Customer may manage and control Ozzi Kleen’s privacy controls via the Customer’s web browser, including removing cookies by deleting them from the browser history when exiting the site.

- 18.3 The Customer agrees for Ozzi Kleen to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver’s licence details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by Ozzi Kleen.



- 18.4 The Customer agrees that Ozzi Kleen may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- 1) to assess an application by the Customer; and/or
  - 2) to notify other credit providers of a default by the Customer; and/or
  - 3) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - 4) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 18.5 The Customer consents to Ozzi Kleen being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 18.6 The Customer agrees that personal credit information provided may be used and retained by Ozzi Kleen for the following purposes (and for other agreed purposes or required by):
- 1) the provision of Equipment; and/or
  - 2) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Equipment; and/or
  - 3) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - 4) enabling the collection of amounts outstanding in relation to the Equipment.
- 18.7 Ozzi Kleen may give information about the Customer to a CRB for the following purposes:
- 1) to obtain a consumer credit report;
  - 2) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 18.8 The information given to the CRB may include:
- 1) Personal Information as outlined in 18.3 above;
  - 2) name of the credit provider and that Ozzi Kleen is a current credit provider to the Customer;
  - 3) whether the credit provider is a licensee;
  - 4) type of consumer credit;
  - 5) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - 6) advice of consumer credit defaults (provided Ozzi Kleen is a member of an approved OAIC External Disputes Resolution Scheme), overdue, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and Ozzi Kleen has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - 7) information that, in the opinion of Ozzi Kleen, the Customer has committed a serious credit infringement;
  - 8) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 18.9 The Customer shall have the right to request (by e-mail) from Ozzi Kleen:
- 1) a copy of the Personal Information about the Customer retained by Ozzi Kleen and the right to request that Ozzi Kleen correct any incorrect Personal Information; and
  - 2) that Ozzi Kleen does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 18.10 Ozzi Kleen will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 18.11 The Customer can make a privacy complaint by contacting Ozzi Kleen via e-mail. Ozzi Kleen will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

## **19. Assignment and Subcontracting**

19.1 The Customer shall not assign the whole or any part of this Agreement nor any payment, right or interest thereunder nor subcontract the performance of its obligations under this Agreement or any part thereof, without the prior written approval of Ozzi Kleen. Approval to subcontract shall be at the discretion of Ozzi Kleen and may be conditional and shall not relieve the Customer from any liability or obligation under this Agreement.

## **20. Bond**

20.1 The Bond will be held by Ozzi Kleen for the due and punctual performance of all the Customer's obligations under this Agreement. Ozzi Kleen may apply the Bond towards the payment of any money payable by the Customer under this Agreement. If Ozzi Kleen applies the Bond, the Customer must within 14 days of being requested, pay any deficiency in the Bond so that the Bond is reinstated to the full amount.

## **21. Notices**

21.1 Any written notice, consent, approval or other communication under this Agreement shall be deemed to have been given and received:

- 1) by handing the notice to the other party, in person;
- 2) by leaving it at the address of the other party as stated in this contract;
- 3) by sending it by registered post to the address of the other party as stated in this contract;
- 4) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
- 5) if sent by email to the other party's last known email address.

21.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

21.3 The parties by executing this Agreement consent also to giving and receiving any notices required under this Agreement by way of electronic communication pursuant to section 14 of the Electronic Transactions (Queensland) Act 2001.

## **22. Interpretation**

22.1 In this Agreement, unless the context otherwise requires:

- 1) the singular includes the plural and vice versa;
- 2) a reference to an individual or person includes a corporation, firm, partnership, joint venture, association, authority, trust, state or government and vice versa;
- 3) a reference to any gender includes all genders;
- 4) a reference to any party to this Agreement or any other document or Agreement includes that party's executors, administrators, substitutes, successors and permitted assigns;
- 5) a reference to an item, clause or page is a reference to an item, clause or page of this Agreement.

## **23. Goods and Services Tax (GST)**

23.1 Terms used in this clause 23 which are defined in the GST Act have the same meaning in this clause 23. The GST Act means A New Tax System (Goods & Services) Act 1999 (Cth).

23.2 The Customer acknowledges and agrees that:

- 1) at the time of entering into this Agreement, it is registered for GST;
- 2) it shall promptly provide written evidence of its GST registration if so requested by Ozzi Kleen;
- 3) the Customer shall indemnify Ozzi Kleen against any loss that may arise from the Customer not being registered for GST; and
- 4) the Customer shall promptly notify Ozzi Kleen in writing if it ceases to be registered for GST.

23.3 In respect of payments to be calculated under or in connection with the Agreement:

- 1) when calculating the amount payable or other consideration to be provided for a supply, the amounts used in the calculation shall exclude any GST component; and

- 2) if the payment is relevant to a loss, cost or expense incurred by a third party, then the payment will be reduced by any input tax credit to which that party is entitled for that loss, cost or expense.
- 23.4 For each supply made by a party (Ozzi Kleen) under or in connection with the Agreement on which GST is imposed:
- 1) the consideration payable or to be provided for that supply under the Agreement but for the application of this clause (GST exclusive consideration) shall be increased by and the recipient of the supply (Recipient) must also pay to Ozzi Kleen, an amount equal to the GST exclusive consideration multiplied by the prevailing rate of GST; and
  - 2) the amount by which the GST exclusive consideration is increased must be paid to Ozzi Kleen by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided subject to a valid tax invoice (Tax Invoice) being provided in respect of the GST exclusive consideration.

## **24. Special Conditions**

- 24.1 The Special Conditions Schedule annexed to this Agreement forms part of the Terms and Conditions of this Agreement.

## **25. Guarantee**

- 25.1 In consideration of Ozzi Kleen agreeing to hire the Equipment to the Customer pursuant to these Terms and Conditions and any Guarantor/s (*where applicable*) stated in this Agreement acknowledge and accept that they each shall be liable to unconditionally guarantee the due and punctual payment to Ozzi Kleen on demand of all monies ("the secured monies") which the Customer becomes liable to pay to Ozzi Kleen on any account whatsoever under or in relation to the credit trading conditions, including without limitation, interest fees, costs, charges, indemnities and damages, and to Guarantee the performance by the Customer of all of its obligations pursuant to these Terms and Conditions of the Agreement.
- 25.2 Furthermore, where this Agreement is subject to a Guarantor, the attached appendix "Personal/Directors Guarantee and Indemnity", must be signed, witnessed and dated at the time of signing this Agreement.

## **26. General**

- 26.1 This Agreement, and related quotation and/or hire form, constitute the entire Agreement between the parties with respect to the Equipment, and:
- 1) shall not be amended except with both parties consent in writing. The Customer agrees that Ozzi Kleen may amend any term or condition of this Agreement at any time. If Ozzi Kleen makes such amendment, it will notify the Customer in writing of such, and require the Customer to accept the amendment in writing before such amendment will take effect. The Customer:
    - a) will be taken to have accepted such amendment if the Customer makes subsequent payment of any Charges payable by the Customer under this Agreement; or
    - b) may terminate this Agreement, without suffering any liability for doing so hereunder, in the event the Customer notifies Ozzi Kleen in writing that it does not accept such amendment.
  - 2) shall prevail to the extent of any inconsistency with any other document or agreement between the parties; and
  - 3) shall be governed in all respects by the laws of Queensland, and the jurisdiction thereof shall apply to any dispute arising out of this Agreement; and
  - 4) references to any laws or regulations in this Agreement include references to amended, replacement and successor provisions thereof.
- 26.2 Both parties agree that any disputes arising from the rented use of the Equipment (except in regard to payment of Charges or associated costs and fees) shall be negotiated with the view to settlement with the assistance of the Hire and Rental Industry Association before litigation is pursued.
- 26.3 Both parties undertake to do anything, such as obtaining consents and promptly signing any documents and/or providing any information (and such information must be complete, accurate and up-to-date in all respects), which the other party may reasonably require in order to enforce any rights, or satisfy any obligation, under this Agreement, including in order for Ozzi Kleen to:
- 1) register a financing statement, or financing change statement, in relation to a security interest on the Personal Property Securities Register, and:

- a) that such security interest is enforceable, perfected and otherwise effective under the PPSA; and
  - b) that Ozzi Kleen is enabled to gain first priority (or any other priority agreed to by Ozzi Kleen in writing) for the security interest; and
  - c) that Ozzi Kleen is enabled to exercise rights in connection with the security interest.
- 2) register any other document required to be registered by the PPSA; or
- 3) correct a defect in a statement referred to in sub-clauses 1) or 2) above.
- 26.4 The failure by either party to enforce any provision of this Agreement shall not be treated as a waiver of that provision, nor shall it affect party's right to subsequently enforce that provision. If any provision of this Agreement shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 26.5 The rights and remedies of Ozzi Kleen under this Agreement are in addition to, and not in substitution for, Ozzi Kleen's rights and remedies under law (including the PPSA), and Ozzi Kleen may choose (at its sole discretion) whether to exercise rights and remedies under this Agreement, and/or under other law, as its sees fit.
- 26.6 All rights pertaining to industrial or intellectual property including but not limited to copyrights, patents and trademarks, are expressly reserved. The Customer shall not make any copies, or authorise any copying, of anything supplied such as software programs and operating manuals except with the prior written authority of Ozzi Kleen, and the owner/licensor, and in accordance with the licence terms (as applicable). All copies must be delivered up with the Equipment. Furthermore, the Customer agrees they must not;
- 4) alter, modify, tamper with, or reverse engineer the Goods; or
  - 5) design or manufacture products that compete with the Goods.
- 26.7 The covenants, agreements and obligations contained in this Agreement will not merge or terminate upon the termination of this Agreement, and to the extent that they have not been fulfilled or satisfied or are continuing obligations, they will remain in full force and effect.
- 26.8 Neither party shall be liable for any breach of this Agreement due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns or other event beyond the reasonable control of either party. Additionally, Ozzi Kleen shall not be liable for any failure to deliver the Equipment, or to perform services under this Agreement if the failure arises as a consequence of adverse weather conditions/events, embargo, inability to secure materials or labour, or any delay or failure to deliver by any freight company or delivery service, or any consequential loss or damage arising in respect of the delivery, late delivery or non-delivery of the Equipment.
- 26.9 Both parties warrant that it has the power to enter into this Agreement and has obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Agreement creates binding and valid legal obligations on them.

## SPECIAL CONDITIONS

*(delete if not applicable)*

### 1. RENT REVIEW

#### CPI Review

Where CPI Review Dates are inserted in Item 11 of the Schedule the Rent must be reviewed on each CPI Review Date to an amount represented by A where:

$$\frac{A = B \times D}{C}$$

Where

B = the CPI for the quarter ending immediately before the relevant CPI Review Date;

C = the CPI for the quarter 1 year before the quarter in B; and

D = the Rent payable immediately before the CPI Review Date.

CPI means the Consumer Price Index (All Group) for Brisbane published by the Australian Bureau of Statistics.

The Customer is to pay the new Rent from the CPI Review Date as calculated by this clause.

### 2. SERVICING FREQUENCY

Item 10 of the Schedule and clause 8.2 of the Terms and Conditions state "Services based in the XXX region each xxx(X) to xxx(X) weeks are included in the Rental". This is subject to Ozzi Kleen's ability to attend the region which is influenced by weather conditions and availability of Ozzi Kleen Technicians.

### 3. TERMS AND CONDITIONS

The Terms and Conditions of this Agreement override any Terms and Conditions of any credit arrangements otherwise agreed between the parties.