

Rock Breakers & Equipment Hire Pty Ltd

Hire Contract Standard Terms and Conditions

1. DEFINITIONS

1.1 The Supplier is Rock Breakers & Equipment Hire Pty Ltd A.C.N. 161 202 866 of PO Box 589 Altona North VIC 3025.

1.2 The Customer is the party or any person acting on behalf of and with the authority of the Customer that the Order is provided for.

1.3 The Guarantor is the person, or entity, who agrees to be liable for the debts of the Customer.

1.4 The Equipment are the goods and/or components provided by the Supplier on hire.

1.5 Indirect, Special or Consequential loss or damage includes i) any loss of income profit or business; ii) any loss of good will or reputation; iii) any loss of value of intellectual property.

1.6 GST refers to Goods and Services Tax under the Goods and Services Act 1999 ("GST Act") and the terms used herein have meanings contained within the GST Act.

1.7 Security interest as defined in Section 12 of the Personal Property Securities Act 2009 (Cth) ("PPSA").

1.8 Security Agreement, Commingled Goods, Collateral, Financing Statement, Financing Charge Statement is defined under Section 10 of the PPSA.

2. GENERAL

2.1 This Hire Agreement should be read in conjunction with the Supplier's Credit Application Form if applicable.

2.2 No subsequent correspondence or document or discussion shall modify or otherwise vary this Agreement, including the Hire Period and Hire Charge, unless such variation is in writing and signed by the Supplier.

2.3 This Agreement binding on the Customer, his heirs, assignees, executors, trustees and where applicable, any liquidator, receiver or administrator. Where more than one Customer completes this Agreement each shall be liable jointly and severally.

2.4 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 and the offending provision shall be deemed as severed from this Agreement.

2.5 The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent but the Supplier acknowledges that it remains at all times liable to the Customer.

2.6 The failure by the parties to enforce any provision of this Agreement shall not be treated as a waiver of that provision, nor shall it affect the parties' right to subsequently enforce that provision.

2.7 GST will be charged on the Goods and Services provided by the Supplier that attract GST at the applicable rate.

2.8 The Customer acknowledges that the Supplier may detail these Terms and Conditions on its website.

3. TERMS OF HIRE

3.1 The Customer acknowledges that the Equipment is to remain the property of the Supplier at all times and the Customer has no property or interest in the Equipment or any part thereof. The Supplier is the owner of the Equipment or authorised agent of the owner, and the Customer the contractual license to use the Equipment.

3.2 The Customer will be responsible for the care, security and storage for Equipment on hire, and shall indemnify the Supplier against any loss and damage to the Equipment or theft of the Equipment.

3.3 The Customer shall not remove, obscure or deface any identifying mark, label or device on the Equipment or any part thereof.

3.4 The Customer shall not make any alterations or additions to the Equipment without obtaining the written consent of the Supplier. Any additions or alterations made to the Equipment whether by replacement, substitution or otherwise shall form part of the Equipment and shall be subject to this agreement.

3.5 Notwithstanding the provisions above the Supplier shall be entitled to maintain an action against the Customer for the full retail replacement price for Equipment which are damaged, altered or stolen whilst in the Customer's custody, care or storage as a liquidated demand.

Use and operation of Equipment

3.6 The Equipment hired may only be used for the purpose intended and in accordance with any instructions and/or manuals provided by the Supplier.

3.7 The Customer shall not repair or modify the Equipment without the consent of the Supplier.

3.8 The hired Equipment may only be operated by persons who are competent to operate the Equipment. The Customer shall be responsible for ensuring that the Equipment is operated in a skilful and proper manner.

3.9 The Customer shall not use the Equipment in any manner which would be illegal or otherwise in breach of any laws or regulations, including but not limited to occupational health and safety regulations.

3.10 The Customer acknowledges that the Customer may forfeit any rights if any, he may have against the Supplier if the Equipment is applied for any other use to which the Equipment is not intended for and/or any alteration to the Equipment is carried out.

Delivery and collection of Equipment

3.11 The Customer must return the Equipment to the Supplier on or before the end of the Hire Period in an undamaged condition and, as far as practicable in the same condition in which the Equipment were received by the Customer subject only to damage from normal fair wear and tear.

3.12 Unless otherwise agreed in writing, the Customer shall be responsible for the delivery and cost of delivery of the Equipment to and from the Supplier's premises, and if applicable, the installation and/or uninstallation of the Equipment.

3.13 The Hire Period shall commence on the date stated in this Agreement, notwithstanding any failure of the Customer to take possession of the Equipment by the commencement date.

3.14 Notwithstanding the end date of the Hire Period, the Supplier is entitled to continue charging hire charges at its prevailing rate until the Equipment is returned to the Supplier. The Customer is responsible for ensuring that the Equipment is delivered to the Supplier or available for collection by the Supplier at the end of the Hire Period.

3.15 Subject to otherwise complying with its obligations under this Agreement, the Provider shall be entitled to exercise its independent discretion as to its most appropriate and effective manner of providing the services, in order to satisfy the reasonable directions of the Customer and comply with any applicable laws and regulations.

3.16 The Supplier does not represent that it will provide and/or deliver any Equipment unless it is included in the Hire Agreement.

4. DISHONOUR OF CHEQUE

4.1 If any cheque issued by the Customer or by any third party to the Supplier is dishonoured:

4.1.1 The Supplier may refuse to supply any further Equipment until satisfactory payment is received in full, including bank fees and charges;

4.1.2 The Supplier is entitled to treat the dishonour of the Customer's cheque as a repudiation of this Agreement and to elect between

terminating this Agreement or affirming this Agreement, and in each case claiming and recovering compensation for loss or damage suffered from the Customer.

T4.1.3 The Customer may be liable for a dishonoured cheque fee of \$40.00.

5. PAYMENT AND DEFAULT

5.1 Invoices issued by the Supplier shall be due and payable thirty (30) days from the invoice date. ("Payment Date").

5.2 The Supplier may invoice the Customer monthly for the hire charges.

5.3 If the Supplier does not receive payment on or before the Payment Date, the Supplier may, without prejudice to any other remedy it may have, forward the Customer's outstanding account to a debt collection agency for further action. The Customer acknowledges and agrees that:

5.3.1 The entire balance of the charges owing under this Hire Agreement shall immediately become due and payable;

5.3.2 After the Payment Date, the outstanding balance shall include, but not limited to, all applicable fees and charges under this Agreement;

5.3.3 The Supplier may, in its discretion, calculate interest at the rate of two percent (2%) higher than the rate for the time being fixed from time to time under Section 2 of the Penalty Interest Rates Act 1983(Vic) for all monies due by Customer to the Supplier.

5.3.4 In the event of the Customer being in default of their obligation to pay and the overdue account is then referred to a debt collection agency, and/or law firm for collection the Customer shall be liable for the recovery costs incurred and if the agency charges commission on a contingency basis the Customer shall be liable to pay as a liquidated debt, the commission payable by the Supplier to the agency, fixed at the rate charged by the agency from time to time as if the agency has achieved one hundred per cent recovery and the following formula shall apply:

$$\text{Commission} = \frac{\text{original debt} * 100}{100 - \text{commission \% charged by the agency incl GST}}$$

5.3.5 In the event the agency is Prushka Fast Debt Recovery the applicable commission rate for the amount unpaid is as detailed on www.prushka.com.au.

5.3.6 In the event where the Supplier or the Supplier's agency refers the overdue account to a lawyer the Customer shall also pay as a liquidated debt the charges reasonably made or claimed by the lawyer on the indemnity basis.

6. RISK AND LIABILITY

6.1 The Supplier relies upon the integrity of the information supplied by the Customer. The Customer will ensure that it provides sufficient information to enable the Supplier to provide the hire services and that the Supplier is made aware of any special requirements pertaining to the hire.

6.2 The Supplier takes no responsibility if the specifications provided by the Customer are wrong, inaccurate or insufficient, and the Customer will be liable in that event for:

6.2.1 Any expenses incurred by the Supplier to rectify the Customer's order; and

6.2.2 Any Indirect, Special or Consequential loss resulting in the Equipment being faulty or unfit for purpose as a consequence of the information provided by the Customer.

6.3 The Supplier takes no responsibility for representations made in relation to the Equipment or any delay in the delivery of the Equipment made by a third party which was or is beyond the Supplier's reasonable control.

6.4 The Customer acknowledges that the Supplier shall not be liable for and the Customer releases the Supplier from any Indirect,

Special or Consequential loss incurred as a result of delay or failure to provide the Equipment and/or services or to observe any of these conditions due to an event of force majeure for any cause or circumstance beyond the Supplier's reasonable control.

6.5 The Customer acknowledges sole responsibility for any damage or injury to property or person caused by using the Equipment in any way and shall indemnify in full the Supplier, its servants and/or agents in relation to all such claims.

6.6 Subject to Clauses 7.1 and 7.2 the Customer accepts risk in relation to the Equipment when the Equipment passes to their care and/or control. 2.4.

7. DEFECTIVE EQUIPMENT

7.1 The Supplier does not purport to restrict, modify or exclude any liability that cannot be excluded under the Competition and Consumer Act 2010 or the Fair Trading Acts in each of the States and Territories of Australia.

7.2 The Supplier warrants that the Equipment is of good working order at the time of supply delivery. The Customer acknowledges that it is responsible for inspecting the condition of the Equipment at the time of supply or delivery.

7.3 The Supplier warrants that if any defect in the Equipment becomes apparent and is reported to the Supplier, then the Supplier may, at its discretion:

7.3.1 End the hire agreement and waive any hire charges from the date the defect is reported to the Supplier; or

7.3.2 Provide the Customer with replacement Equipment in good working order;

7.4 Where a claim is made, the Equipment is to be returned to the Supplier or left in the state and conditions in which it was delivered until such time as the Supplier or its Agent has inspected the Equipment. Such inspection is to be carried out within a reasonable time after notification.

7.5 The Supplier shall under no circumstances be liable for any problems with the equipment arising from the improper use of the equipment or negligence of the Customer.

7.6 In respect of all claims, the Supplier's liability shall be limited to the replacement of the Equipment and/or refund of any hire charges from the date the defect is reported to the Supplier. The Supplier shall not be liable for any loss, damage, delay, or inconvenience incurred by the Customer arising as a result of defective or unsuitable Equipment.

7.7 In the event of cancellation under clause 7.3.1, the Supplier shall not be liable for any loss or damage or consequential loss or damage whatsoever arising from such cancellation.

7.8 The Supplier shall not be liable to compensate the Customer for any reasonable delay in replacing the defective equipment or in assessing the Customer's claim.

8. RETENTION OF TITLE

8.1 Subject to Clause 7.1 and 7.2, while the risk in Equipment shall pass on delivery (including all risks associated with unloading), legal and equitable title in the Equipment shall at all times remain with the Supplier.

8.2 While the Equipment is in the possession of the Customer, the Customer:

8.2.1 Shall hold the Equipment as Bailee for the Supplier and shall return the Equipment to the Supplier if so requested.

8.2.2 Agrees to hold the Equipment at the Customer's own risk and is liable to compensate the Supplier for all loss or damage sustained to the Equipment whilst they are in the Customer's possession.

8.2.3 The Customer must not allow any person to have or acquire security interest in the Equipment.

8.2.4 The Customer may use the Equipment in the ordinary course of

business but may not sell the Equipment.

8.3 The Supplier is authorised to enter the premises where the Customer stores the Equipment without liability for trespass or any resulting damage in retaking possession of the Equipment until the accounts owed to the Supplier by the Customer are fully paid.

8.4 Notwithstanding the provisions above, the Supplier shall be entitled to issue legal proceedings to recover any amounts owing by the Customer.

9. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH) ("PPSA")

9.1 The Customer acknowledges that this Agreement will constitute a Security Agreement which creates a security interest in favour of the Supplier over all present and after acquired Equipment and/or Services supplied by the Supplier to the Customer to secure the payment of any amount owing under this agreement from time to time including future advances.

9.2 The Customer acknowledges that by accepting this Agreement and by virtue of the retention of title clause as provided for in Clause 8, the security interest is a purchase money security interest ("PMSI") as defined under Section 14 of the PPSA for all present, after acquired Goods and/or Services including any Commingled Goods.

9.3 The security interest will continue to apply as an interest in the Collateral for the purposes of PPSA with priority over registered or unregistered security interest.

9.4 The Supplier may register the security interest as PMSI on the Personal Property Securities Register ("PPSR") under the PPSA without providing further notice to the Customer.

9.5 The Customer agrees the Supplier is not required to disclose information pertaining to the Supplier's security interest to an interest party unless required to do pursuant to PPSA or under the general law.

9.6 The Customer agrees and undertakes:

9.6.1 To sign any documents and/or provide further information reasonably required by the Supplier to register Financing Statement or Financing Change Statement on the PPSR;

9.6.2 To indemnify the Supplier for all expenses and/or costs incurred by the Supplier in registering a Financing Statement or Financing Change Statement on PPSR including the costs of amending, maintaining, releasing and enforcing any security interests in the Equipment;

9.6.3 Not to register and/or make a demand to alter a Financing Statement in the Collateral without prior written consent of the Supplier;

9.6.4 To provide the Supplier with seven (7) days written notice of any change or proposed change to the Customer's business name, address, contact details or other changes in the Customer's details registered on the PPSR;

9.6.5 To waive any rights of enforcement under Section 115 of the PPSA for Collateral not used predominantly for personal, domestic or household purposes;

9.6.6 To waive any rights to receive Verification Statement in respect of any Financial Statement or Financing Charge Statement under Section 157 of the PPSA.

10. TERMINATION AND CANCELLATION

Cancellation by Supplier

10.1 The Supplier may cancel this Agreement at any time prior to the commencement of the Hire Period by giving written notice to the Customer. The Supplier shall not be liable for any loss or damage or consequential loss or damage whatsoever arising from such cancellation.

10.2 Without prejudice to the Supplier's other remedies at law, the Supplier shall be entitled to cancel all or any part of any services which remain unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in

the event that:

10.2.1 Any money payable to the Supplier becomes overdue; or

10.2.2 The Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

10.2.3 A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

Cancellation by Customer

10.3 Subject to clause 7, this Agreement cannot be cancelled by the Customer unless expressly agreed to by the Supplier in writing.

10.4 Upon cancellation, the Customer must immediately return the Equipment to the Supplier.

10.5 In the event that the Customer cancels this Agreement the Customer shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation.

11. SET-OFF

11.1 The Customer shall have no right of set-off in any suit, claim or proceeding brought by the Supplier against the Customer for default in payment.

11.2 The Customer acknowledges that the Supplier can produce this clause in bar of any proceeding for set-off.

12. INSURANCE

12.1 The Supplier is not liable to provide any insurance cover in relation to the provision of the Equipment. The Customer is responsible to effect whatever insurance cover he requires at his own expense.

13. JURISDICTION

13.1 This Agreement is deemed to be made in the State of Victoria and all disputes hereunder shall be determined by the appropriate courts of Victoria.

14. PRIVACY ACT 1988

14.1 The Customer and/or the Guarantor/s agrees:

14.1.1 For the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Supplier.

14.1.2 That the Supplier may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency.

14.1.3 The Customer consent to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

15. ENTIRE AGREEMENT

15.1 This Hire Agreement as defined in Clause 2.1 constitutes the whole Agreement made between the Customer and the Supplier.

15.2 This Agreement can only be amended in writing signed by each of the parties.

15.3 All prior discussions and negotiations are merged within this document and the Supplier expressly waives all prior representations made by him or on his behalf that are in conflict with any clauses in this document in any way.

15.4 Nothing in these Terms and Conditions is intended to have the effect of contravening any applicable provisions of the Competition and Consumer Act 2010 or the Fair Trading Acts in each of the States and Territories of Australia.

I/We understand and agree to be bound by the Terms and Conditions set out herein.

Name _____ Position _____

Signature _____ Date _____

Name _____ Position _____

Signature _____ Date _____

Witness Name _____ Address _____

Signature _____ Date _____

DEED OF GUARANTEE AND INDEMNITY

We each of the undersigned, for ourselves, our respective executors and administrators jointly and severally agree that if at any time the Customer shall default in any part of its performance of this Agreement, we will on demand by the Supplier pay, to the Supplier the whole of the monies owed by the Customer to the Supplier and we will keep the Supplier indemnified against all losses, costs, charges and expenses whatsoever which the Supplier may incur by any default on the part of the Customer. This is a continuing guarantee and indemnity and shall not be released by any neglect or forbearance on the part of the Supplier enforcing payment of any of the monies owed.

We acknowledge, by signing this Guarantee, that we have read and understood the Hire Agreement and that we have been advised to consult our respective solicitors as to our liability with respect to this Guarantee and we agree to abide by this Deed.

EXECUTED AS A DEED on this _____ day of _____ 20____ SIGNED SEALED AND DELIVERED BY:

Guarantor 1

Name _____ Address _____

Phone (H) _____ Phone (M) _____

in the presence of: _____ Address _____
(witness name)

Signature _____

Guarantor 2

Name _____ Address _____

Phone (H) _____ Phone (M) _____

in the presence of: _____ Address _____
(witness name)

Signature _____

Guarantor 3

1 Name _____ Address _____

Phone (H) _____ Phone (M) _____

in the presence of: _____ Address _____
(witness name)

Signature _____