



Advanced Dewatering, Pumping & Water Treatment

## ACCOUNT APPLICATION - PINNACLE HIRE PTY LTD ("Company")

DOC NO: HSEQ-MKT-185  
DATE: 11/05/2026  
REV: 02

Please use the following link to access the account application online:

<https://pinnacle.applyeasy.com.au/credit/introduction>

Applicant Name: \_\_\_\_\_

Trading Address: \_\_\_\_\_

Postal Address: \_\_\_\_\_

Telephone #: \_\_\_\_\_

Fax #: \_\_\_\_\_

Email Address: \_\_\_\_\_

Type of Business: \_\_\_\_\_

Please indicate if:  Ltd       Pty Ltd       Trust       Partnership       Sole Trader

If applicant is a company, what is the full company name and the address of registered office: \_\_\_\_\_

ACN: \_\_\_\_\_

ABN: \_\_\_\_\_

Is the company a trustee for a trust?       Yes       No

Issued Capital : \_\_\_\_\_

Paid Up Capital: \_\_\_\_\_

Details Please: \_\_\_\_\_

### DETAILS OF SOLE TRADER, PARTNER AND/OR DIRECTOR

1. Surname: \_\_\_\_\_ Given Name: \_\_\_\_\_ Address: \_\_\_\_\_ Drivers licence number: \_\_\_\_\_  
DOB: \_\_\_\_\_

2. Surname: \_\_\_\_\_ Given Name: \_\_\_\_\_ Address: \_\_\_\_\_ Drivers licence number: \_\_\_\_\_  
DOB: \_\_\_\_\_

Have any of the Directors/Partners or Sole Traders ever been declared bankrupt?       Yes       No

Are your business premises  owned,  mortgaged or  leased?

### TRADING DETAILS

Accounts Payable Contact: \_\_\_\_\_

Telephone #: \_\_\_\_\_

Accounts Payable Email Address: \_\_\_\_\_

Are official orders required for all purchases?       Yes       No

Estimated Credit Requirements: \_\_\_\_\_



*Advanced Dewatering, Pumping & Water Treatment*

## TRADE CREDIT REFERENCES

(Please note: **All details** to be completed)

1. Company: \_\_\_\_\_

Telephone #: \_\_\_\_\_

Fax #: \_\_\_\_\_

Email Address: \_\_\_\_\_

2. Company: \_\_\_\_\_

Telephone #: \_\_\_\_\_

Fax #:a \_\_\_\_\_

Email Address: \_\_\_\_\_

3. Company: \_\_\_\_\_

Telephone #: \_\_\_\_\_

Fax #: \_\_\_\_\_

Email Address: \_\_\_\_\_

4. Company: \_\_\_\_\_

Telephone #: \_\_\_\_\_

Fax #: \_\_\_\_\_

Email Address: \_\_\_\_\_

## GENERAL TERMS & CONDITIONS

For the purposes of this Account Application the "Company" means as the context requires the following entity or entities within the Pinnacle Hire group (tick each entity that is applicable):

- Pinnacle Hire Pty Ltd (ABN: 35 646 593 428);
- Pinnacle Hire NSW Pty Ltd (ABN: 48 658 074 858);
- Pinnacle Hire Tasmania Pty Ltd (ABN: 20 652 170 119);
- Pinnacle Hire WA Pty Ltd (ABN: 20 654 037 180)



*Advanced Dewatering, Pumping & Water Treatment*

The Applicant applies to have an account opened in the Applicant's name with the Company on the terms and conditions contained in the Trading Terms & Conditions below and (as applicable) in the Terms and Conditions of Sale, the Terms and Conditions of Hire and/or the Terms and Conditions of Service as attached to this document.

The Applicant warrants that the information supplied is true and correct as at the date of this Account Application and that if any of the information changes, it will notify the Company of the change.

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_

## GUARANTEE & INDEMNITY

TO: Pinnacle Hire Pty Ltd (ABN: 35 646 593 428);  
Pinnacle Hire NSW Pty Ltd (ABN: 48 658 074 858);  
Pinnacle Hire Tasmania Pty Ltd (ABN: 20 652 170 119);  
Pinnacle Hire WA Pty Ltd (ABN: 20 654 037 180);  
c/o -70 Technology Close  
Corio, VIC,3214  
("Company")

1. In consideration of the Company at our request agreeing to supply and/or continue to supply:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**("the Applicant")** with quipment or provide Services from time to time, WE JOINTLY AND SEVERALLY GUARANTEE the due and punctual payment by the Applicant of all fees, costs and interest charges payable to the Company and the due observance by the Applicant of the Trading Terms & Conditions and (as applicable) the Terms and Conditions of Sale, the Terms and Conditions of Hire and/or the Terms and Conditions of Service **("the Agreement")** and INDEMNIFY AND KEEP INDEMNIFIED the Company against all loss or damage (including the Company's legal costs on a full indemnity basis) which the Company suffers, incurs or is liable for by reason of the Applicant's non-payment of debts to the Company, the Applicant's non-observance of the Agreement or any negligent act or omission by the Applicant.

2. We agree:

- a. to pay any person nominated by the Company any amount the Company certifies is payable;
- b. that this Agreement will remain effective notwithstanding any conduct or event (including any deed of company arrangement) whv ich, but for this clause, may release or vary any obligation of the Applicant or Guarantor(s);
- c. any payment which is subsequently avoided by any Law relating to insolvency shall be deemed not to have been paid; and
- d. each Guarantor signs both in their personal capacity and as trustee of every trust of which the Guarantor is trustee.



*Advanced Dewatering, Pumping & Water Treatment*

3. In this Guarantee **PPSA** means the ***Personal Property Securities Act 2009 (Cth)*** and all italicised and capitalised terms used below have the meaning given to them in the PPSA.
4. To secure payment of all monies which are or may become payable by us to the Company under this Guarantee, we each hereby:
  - i. charge with the due payment of all of those moneys all of our right, title and interest in any and all real property wherever located both present and future and we consent to the Company lodging a caveat or caveats to protect the Company's interest therein; and
  - ii. grant a ***Security Interest*** in all of our present and after-acquired ***Personal Property*** in favour of the Company and consent to the Company registering such Security Interest over us on the ***Register***.
5. We each agree that this Guarantee constitutes a ***Security Agreement*** under the PPSA.
6. We each waive our right to receive any notice under the PPSA (including notice of a ***Verification Statement*** after registration or variation of a registration) unless a requirement for notice cannot be excluded under the PPSA.
7. Upon demand by the Company, we each agree to immediately execute a mortgage or other instrument in terms satisfactory to the Company to further secure our indebtedness to the Company. Should we fail within a reasonable time of such demand to execute such mortgage or other instrument then we each appoint irrevocably the credit manager or a duly authorised officer of the Company to be our lawful attorney to execute any such mortgage or other instrument.
8. In consideration of our promises under this Agreement, the Company may grant credit to the Applicant from time to time at the Company's discretion.
9. For the purpose of giving effect to each of our obligations pursuant to this Agreement, the Applicant irrevocably appoints the Company its attorney.
10. The Company may make any arrangement or compromise with a Guarantor, obtain additional guarantees, indemnities or securities from any party or release or compromise with any Guarantor or party without affecting any Guarantor's liability.
11. The Company may grant or apply a credit limit to the Applicant at the Company's absolute discretion and any such credit limit will not limit our liability to the Company.
12. The Company may handle our personal information (including creditworthiness information) in accordance with the Trading Terms & Conditions.
13. This Guarantee and Indemnity shall be a continuing and irrevocable guarantee and indemnity until released in writing by the Company.
14. The Company shall be at liberty without notice to us at any time and without in any way discharging us from our liability under this Agreement to grant time or other indulgence to the Applicant and accept payment from the Applicant in cash or by means of negotiable instruments.



# PINNACLE HIRE

# GUARANTEE & INDEMNITY

*Advanced Dewatering, Pumping & Water Treatment*

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

EXECUTED AS A DEED

\_\_\_\_\_  
Signature of Guarantor

\_\_\_\_\_  
(Print Name in Block Capitals)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Signature of Guarantor

\_\_\_\_\_  
(Print Name in Block Capitals)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Witness Name



## PINNACLE HIRE PTY LTD - TRADING TERMS & CONDITIONS

### DEFINITIONS

**"Account"** means the credit facility provided by the Company to the Applicant.

**"Agreement"** means these Trading Terms & Conditions and the Terms & Conditions of Hire, Terms & Conditions of Sale and/ or Terms & Conditions of Service (as applicable) as amended from time to time.

**"Company"** means as the context requires either:

- a. Pinnacle Hire Pty Ltd (ABN: 35 646 593 428);
- b. Pinnacle Hire NSW Pty Ltd (ABN: 48 658 074 858);
- c. Pinnacle Hire Tasmania Pty Ltd (ABN: 20 652 170 119);
- d. Pinnacle Hire WA Pty Ltd (ABN: 20 654 037 180);

and each of their respective, subcontractors, employees and agents..

**"Account Application"** means the credit application between the Applicant and the Company.

**"Applicant"** means the natural person, company or other entity specified in the Credit Application.

**"Default"** means any one of the following events:

- a. breach of the Agreement;
- b. a change in the direct or indirect ownership or control of the Applicant; or
- c. the Applicant:
  - i. becoming insolvent;
  - ii. being declared bankrupt;
  - iii. dying;
  - iv. being placed into receivership or if a Receiver and Manager is appointed;
  - v. being placed into liquidation;
  - vi. being wound up or an application to wind up the Applicant being brought; or
  - vii. attempting to assign its rights under this Agreement.

**"Equipment"** means items hired or sold by the Company to the Applicant.

**"Force Majeure Event"** means any failure or delay in the performance of a party's obligations under this Agreement as a result of a national strike, lockout, work stoppage, labour dispute, material shortage, utility outage, delay in transportation, fire flood, earthquake, severe weather, act of God, pandemic, accident, trade sanction, embargo, act of war, act of terror, condition caused by national emergency, new or changed Law, or any other act or cause beyond the reasonable control and without fault of the delayed part, and whether affecting that party or its agents, subcontractors, dealers or suppliers, for as long as the circumstances prevail.

**"Guarantee"** refers to the Guarantee and Indemnity between the Company and the Guarantor(s).

**"Guarantor(s)"** means the person(s) specified in the Guarantee and Indemnity.

**"Law"** means any legislation, regulation or other legislative instrument of the Commonwealth, State or Territory or any government agent from which legal rights and obligations arise

**"Liabilities"** means all damages, losses, liabilities, costs, charges, expenses, outgoings or payments (whether direct or indirect, consequential, or incidental) including any damages, losses, liabilities, costs, charges, expenses, outgoings or payments in respect of any damage property or injury to, or death of, any person.

**"National Credit Code"** means Schedule 1 to the *National Consumer Credit Protection Act 2009* (Cth) as amended from time to time.

**"PPSA"** means the *Personal Property Securities Act 2009* (Cth) as amended from time to time.

**"Privacy Act"** means the *Privacy Act 1988* (Cth) as amended from time to time. All italicised and capitalised terms used in these Trading Terms & Conditions have the meaning given to them in the PPSA.

### OPERATIVE PROVISIONS



## Terms of the Account

1. The Company will provide the Account to the Applicant in accordance with this Agreement.
2. This Agreement:
  - a. applies to the exclusion of all other terms and conditions and supersedes all terms and conditions previously issued by the Company or otherwise agreed by the Company and the Applicant;
  - b. overrides any terms of purchase used by the Applicant to order, purchase or hire Equipment ; and
  - c. can only be varied by an authorised representative of the Company in writing.
3. All Accounts are due and payable on the terms set out in the invoice issued by the Company or as arranged and confirmed in writing by the Company. Payment by cheque or other negotiable instrument is not regarded as received until funds are cleared. Disputes and/or claims do not constitute grounds for non-payment of amounts other than those in dispute.
4. The Applicant agrees that the Applicant is not entitled to use the Account until it receives notice in writing from the Company stating that the facility has been granted. Until the Applicant receives such notice in writing from the Company any Equipment supplied by the Company to the Applicant shall be on a cash basis.
5. Unless the Company agrees in writing to postpone the payment of any monies owing to the Company by the Applicant, interest shall be payable by the Applicant on the highest debit balance of each calendar month on monies owing by the Applicant to the Company calculated daily from the date the monies become due until the actual date of payment at a rate of 12% per annum.
6. Payments received by the Company will be applied as follows:
  - a. first in reduction of interest payable and accruing from month to month; and
  - b. secondly in reduction of all other monies owing to the Company until such a time as all monies owing to the Company have been paid in full.
7. If at any time monies are overdue and owing upon any Account, the whole of the amount of all Accounts then outstanding may, at the option of the Company, become immediately payable.
8. The Company may, withdraw the Account or increase or decrease the limit (if any) of the facility provided by giving the Applicant written notice (which may be by email) as soon as reasonably practicable. The Company will not be liable in damages to the Applicant for the non-supply of Equipment or the non-provision of services as a result of the facility being withdrawn or the limit being altered, except to the extent such liability cannot be excluded by Law.
9. Any legal costs (on a full indemnity basis), stamp duties or any other expenses incurred by the Company in respect of this Application, agreements, guarantees, securities or other documentation required by the Company or other costs reasonably incurred by the Company in consequence of this Application and any other expenses incurred in respect of opening and maintaining the Account together with any collection costs, dishonored cheques, fees and legal costs (on a full indemnity basis) shall be paid by the Applicant on demand.
10. If there is a Default by the Applicant, then the Company, without prejudice to any rights or remedies open to it:
  - a. may treat as discharged all or any obligation of the Company arising from this Agreement or any other agreement with the Applicant;
  - b. may retain any security given or monies paid by the Applicant or available through the enforcement of any guarantee, security or bond and apply this in reduction of any sum which may be lawfully recovered by the Applicant;
  - c. may, if the Applicant fails to pay for the goods within the period specified in clause 3 of these Trading Terms & Conditions, recover possession of the Equipment at any site owned, possessed or controlled by the Applicant and the Applicant agrees that the Company (or any agent or



representative of the Company) has an irrevocable licence to do so;

- d. may take such steps as it may deem necessary to mitigate the damages suffered including, but not limited to, the putting to use, hiring out, sale or disposal of any Equipment supplied or to be supplied under the Agreement and in its possession;
  - e. has a general lien on the Equipment or any other Equipment of the Applicant that the Company has in its possession (whether for the repair, storage or transportation of the Equipment or any other Equipment or any other service the Company may provide) for any monies due or which become due on any account under this Agreement; and
  - f. may deduct or set off any monies due to the Applicant under any contract or agreement against any debt and monies due from the Applicant under this Agreement or any other agreement, provided the Company must not set off amounts that are genuinely disputed in good faith until the dispute is resolved. Should there be any variation to any of the information supplied by the Applicant in this Agreement or other documentation provided to the Company or in the structure of the Applicant (such as a conversion to or from a company or trust or change of control), the Applicant must immediately notify the Company in writing. Unless notification of such variation or change is given and accepted in writing by the Company, the Applicant and Guarantors shall remain liable to the Company as though any Equipment supplied by the Company were supplied to the original Applicant.
11. The Company shall not be deemed to have waived any of the terms or conditions contained in this Agreement or agreed to any variation to them unless the Company has done so expressly in writing. Failure by the Company to insist upon strict performance of any term or condition in this Agreement shall not be deemed a waiver of such term or condition and shall not be deemed a waiver of any subsequent breach of any term or condition.
  12. In these Trading Terms & Conditions words in the singular shall be construed so as to include the plural and words in the masculine gender shall be construed so as to include every other gender.
  13. Where the Applicant is a trustee:

- a. the Applicant agrees to produce a stamped copy of the trust deed (with all amendments) if and when requested by the Company;
  - b. the Applicant warrants that it has full power and authority for the benefit, purposes and objects of the trust to make this Application on behalf of the trust and that it shall be bound by the terms of this Application both personally and as a trustee; and
  - c. the Applicant confirms that the trustees shall be liable for the Account and that in addition the assets of the trust shall be available to meet payment of the Account.
14. The Applicant agrees that the facility hereby applied for does not extend to any transaction, and the Applicant will not use the facility for any transaction, which is or may be a "credit contract" as defined in the National Credit Code.

## Personal Properties Securities Act

15. To secure payment of all monies which are or may become payable by the Applicant to the Company under any Account, the Applicant hereby:
  - a. charges with the due payment of all of those moneys all the Applicant's right, title and interest in any and all real property wherever located both present and future and the Applicant consents to the Company lodging a caveat or caveats to protect the Company's interest therein; and
  - b. grants a **Security Interest** in all of the Applicant's present and after-acquired **Personal Property** in favour of the Company and consent to the Company registering such **Security Interest** over the Applicant on the **Register**.
16. The Applicant agrees that this Guarantee constitutes a **Security Agreement** under the PPSA.
17. The Applicant waives the Applicant's right to receive any notice under the PPSA (including notice of a **Verification Statement** after registration or variation of a registration) unless a requirement for notice cannot be excluded under the PPSA.
18. Upon demand by the Company, the Applicant agrees to immediately execute a mortgage or other instrument in terms satisfactory to the Company to further secure the



Applicant's indebtedness to the Company. Should the Applicant fail within a reasonable time of such demand to execute such mortgage or other instrument then the Applicant appoints irrevocably the credit manager or a duly authorised officer of the Company to be the Applicant's lawful attorney to execute any such mortgage or other instrument.

## Privacy and Credit Information

19. The Applicant and Guarantor separately agree that the Company may:
- a. obtain information about the Applicant's commercial credit activities from any of the trade references named in the Account Application or any business which provides information about the commercial creditworthiness of persons;
  - b. obtain a consumer credit report from a credit reporting body:
    - i. about the Applicant to assess this or any application for credit made by the Applicant, or to collect overdue payments; and
    - ii. about a Guarantor for the purpose of assessing whether to accept them as a guarantor in respect of this Agreement;
  - c. at any time (including before and after any provision of credit to the Applicant), give a credit reporting body certain personal information about the Applicant or Guarantor as authorized by law, including (as applicable):
    - i. permitted identity details;
    - ii. that the Applicant has applied for credit and the amount;
    - iii. that the Company is or is no longer a current credit provider to the Applicant;
    - iv. that the Guarantor has offered to act as guarantor; and
    - v. any other information authorized by law;
  - d. disclose the Applicant's personal information (including credit reports and other information relating to the Applicant's creditworthiness) to the Guarantor or prospective guarantor. Credit reports and creditworthiness information would be disclosed to prospective guarantors for the purpose of them deciding whether to act as guarantor;
  - e. exchange the Applicant's and Guarantor's personal information (including banker's opinions, credit reports and other information relating to creditworthiness) with other credit providers for purposes including:
    - i. assessing the Applicant's application for credit or the Guarantor's application to act as guarantor;
    - ii. notifying other credit providers of the Applicant's defaults or the Guarantor's failure to comply with its guarantor obligations;
    - iii. exchanging information about the status of the person's obligation to the Company where the person is in default with another credit provider;
    - iv. assessing the Applicant's or Guarantor's creditworthiness; and
    - v. any other purpose authorized by law;
    - vi. any exchange the Applicant's and Guarantor's personal information (including credit reports and other information relating to creditworthiness) with its related bodies corporate;
  - f. use or disclose personal information about the Applicant and Guarantor:
    - i. for the management of the Applicant's account and administrative purposes including research, planning, service development, security and risk management;
    - ii. where a third party acquires or wishes to acquire, or makes inquiries in relation to acquiring, an interest in the Company's business;
    - iii. for the investigation and prevention of fraud and crime prevention and investigation; or



- iv. to the extent that the Company is required or authorized by law to do so;
  - g. share personal information with the Applicant's or Guarantor's executor, administrator, trustee, guardian, attorney and agents (such as financial or legal advisers); and
  - h. share personal information with the Company's service providers including organisations that provide archival, auditing, debt collection, banking, marketing, advertising, mailhouse, delivery, recruitment, call centre, technology, research, utility, professional advisory and security services.
20. The Applicant and the Guarantor may request access to any of their personal information which the Company may hold.
21. The Applicant and the Guarantor (if any) agree that the certificate of the Company or any person authorised by the Company, shall be prima facie evidence as to the amount owing to the Company by the Applicant and Guarantor, in the absence of manifest error.
22. The Applicant and the Guarantor(s) agree that this Application is governed by the Laws of Victoria. Each party to this Application submits to the non- exclusive jurisdiction of the courts of Victoria and any courts that may hear appeals from those courts in respect of any proceedings in connection with this Application.
23. The Applicant and Guarantor(s) hereby acknowledge that the Company recommends that independent legal advice be obtained regarding their rights and obligations under this Agreement prior to signing.
24. No party is liable for any failure to perform or delay in performing its obligations under this Agreement if that failure or delay is due to a Force Majeure Event. If that failure or delay exceeds 90 days, the other party may terminate this Agreement with immediate effect by giving written notice to the other party. This clause does not apply to any obligation to pay money.



## PINNACLE HIRE PTY LTD - TERMS & CONDITIONS OF SALE

### 1. Definitions

1.1. In this document unless the contrary intention appears:

**"Agreement"** means this agreement for the sale of Equipment from the Company to the Buyer.

**"Company"** means as the context requires either:

- a. Pinnacle Hire Pty Ltd (ABN: 35 646 593 428);
- b. Pinnacle Hire NSW Pty Ltd (ABN: 48 658 074 858);
- c. Pinnacle Hire Tasmania Pty Ltd (ABN: 20 652 170 119);
- d. Pinnacle Hire WA Pty Ltd (ABN: 20 654 037 180);

and each of their respective, subcontractors, employees and agents..

**"Equipment"** means the equipment offered for sale or sold by the Company to the Buyer.

**"Ex-Hire Fleet Equipment"** means second hand or ex-hire fleet equipment offered for sale or sold by the Company to the Buyer.

**"Buyer"** means any person or entity who requests the Company to sell Equipment to it, its successors, permitted, assigns, employees, agents and any person claiming through, under or in trust for such person.

**"Register"** means the Personal Property Securities Register established pursuant to section 147 of the PPSA.

**"PPSA"** means the *Personal Property Securities Act 2009* (Cth) (as amended) and any other legislation and regulations in respect of it, and the following words in this Agreement have the respective meanings given to them in the PSSA: **"financing charge statement"**, **"purchase money security interest"** (or **"PMSI"**), **"register"**, **"registration"** and **"security interest"**

**"Purchase Price"** means the list price of the Equipment at the date of dispatch.

**"Sale Terms"** means these Terms and Conditions of Sale.

### 2. Orders

- 2.1. Any order placed by the Buyer with the Company is deemed to be an order incorporating these Sale Terms and Trading Terms & Conditions. If there is any inconsistency between these Sale Terms, the terms and conditions stipulated or referred to by the Buyer or the Buyer's order, these Sale Terms prevail.
- 2.2. These Sale Terms replace and supersede all other terms and conditions of sale, if any, previously in force between the Company and the Buyer and no variation of these Sale Terms will bind either party unless confirmed by the Company in writing.
- 2.3. Any order placed by the Buyer with the Company constitutes an offer on the part of the Buyer which may be accepted by the Company. The receipt of an order by the Company does not constitute acceptance of such order by the Company.
- 2.4. The Company will make all reasonable efforts to have the Equipment delivered, or made available, to the Buyer on or before the date as agreed between the Buyer and Company, however any such date is an estimate only. The Company will not be liable for any failure to deliver or make available at the time agreed by the Buyer and the Company, or delay in delivery or availability, of the Equipment, to the extent caused by events beyond the Company's reasonable control, except to the extent such liability cannot be excluded by Law.

### 3. Price

- 3.1. Unless otherwise agreed in writing, the Total Sale price charged for the Equipment shall be the listed price plus any applicable Goods and Services Tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999* ("GST"), which must be paid to the Company by the Buyer when payment for the Equipment is due as specified in the invoice issued by the Company.
- 3.2. Where applicable, any credit account charge will be calculated as a percentage of the total invoice including GST.



## 4. Delivery

- 4.1. If the Company, at the Buyer's request, agrees to arrange for the dispatch of the Equipment to the Buyer, all costs of delivery will be payable by the Buyer. The Equipment dispatched by the Company will be at the Buyer's risk and the Company is under no obligation to insure the Equipment while in transit.

## 5. Personal Properties Securities Act

5.1 The Buyer:

- (a) acknowledges that the Company may register any actual or impending PMSI under the PSSA in respect of all Equipment; and
- (b) consents to the Company registered its PMSI under the PPSA and will do all things reasonably necessary to assist the Company to register its security interest.

5.2. The Company is responsible for:

- (a) the preparation and registration of the financing statement or financing change statement; and
- (b) payment of any fees associated with the registration, and the Buyer waives the right to receive verification of the registration from the Company pursuant to section 157(3)(b) of the PPSA.

5.3. If the Buyer hires or sells the Equipment to its agent, contractor or subcontractor or any third party ("**Sub-hire**") and the Sub-hire is a security interest under the PPSA, the Buyer agrees that it will protect the Company's interest in the Equipment by:

- (a) registering a security interest itself; or
- (b) assigning, by this clause, to the Company all rights as bailor to enforce against an agent, contractor or subcontractor.

5.4. The Buyer has an obligation to give the Company notice if another party with a security interest in the Equipment seizes or otherwise deals with the Company's PMSI in the Equipment.

5.5. If the Buyer grants any security interest in the Equipment to another party, that other party must acknowledge the priority of the Company's PMSI.

5.6. The parties agree that neither party is required to give notice to the other under the PPSA unless the obligation to give the notice cannot be excluded.

## 6. Risk and Property

6.1. The risk of loss of, or damage to, the Equipment will pass to the Buyer on dispatch of the Equipment from the Company's dispatch locations.

6.2. Title to, and ownership of, the Equipment will not pass from the Company to the Buyer until all amounts owing by the Buyer to the Company (including without limitation, the Purchase Price of the Equipment and other debts between the Company and the Buyer) have been paid in full.

6.3. Until title to and ownership of the Equipment passes to the Buyer, the Buyer is a bailee of the Equipment and:

- (a) the Buyer must not on-sell the Equipment;
- (b) the Buyer must insure the Equipment for its full insurable or replacement value (whichever is higher) with an insurer licensed to carry on the business of insurance;
- (c) the Buyer must store the Equipment separately from its own Equipment or those of any other person so they are clearly identifiable as the property of the Company;
- (d) the Buyer must properly store and maintain the Equipment (including keeping the Equipment safe from heat, moisture, compression and impact damage) in accordance with any storage requirements specified by the Company; and
- (e) grants the Company a licence to enter any site owned, possessed or controlled by the Buyer between 9.00am and 5.00pm on any business day (on reasonable prior notice, except in an emergency) to inspect the Equipment.



- 6.4. If the Buyer on-sells the Equipment to any person before all monies payable by the Buyer have been paid to the Company in breach of clause 6.3 above, the Buyer agrees that it holds the proceeds of the on-sale of the Equipment on trust for and as agent for the Company immediately when they are receivable or are received.
- 6.5. If the Equipment is damaged or destroyed before title passes to the Buyer, the Company may (in addition to any other right or remedy under these terms and conditions) receive all insurance proceeds payable for the damaged or destroyed Equipment, whether or not the price of the Equipment has become payable under these Sale Terms or under any other contract for supply.
- 6.6. The Buyer consents that these Sale Terms are sufficient evidence of the Company's right (as against the Buyer) to receive payment of the insurance proceeds for damaged Equipment without the need or further inquiry by any person dealing with the Company.
- 6.7. If payment is not made by the Buyer on the due date, the Buyer must deliver the Equipment to the Company on demand. If the Buyer does not comply with such a demand:
- (a) the Buyer grants the Company a licence to enter any site owned, possessed or controlled by the Buyer, at reasonable times and on reasonable notice (except where urgent action is reasonably required), to do all things necessary in order to take possession of the Equipment, and the Buyer must procure the consent of all other persons having any interest in the premises where the Equipment is situated to entry of those premises by the Company, its employees or agents; and
  - (b) the Company may:
    - i. credit the Buyer's account with the lower of the price for the Equipment and the net realisable value of the Equipment;
    - ii. re-sell the Equipment and apply the proceeds of sale in reduction of the outstanding balance due to the Company under these Sale Terms; or
    - iii. the Buyer must pay the Company any expense of repossession, transportation, storage or re-sale incurred by the Company under this clause
- 6.6. If the Company re-sells the Equipment, it must account to the Buyer for any balance remaining after deduction of any costs and payment of all amounts due to the Company under these Sale Terms.
- ### 7. Returns and Restocking Fee
- 7.1. The Company is under no obligation to accept the return of Equipment after delivery unless required by Law or agreed in writing.
- 7.2. Where the Company, in its sole discretion, agrees to accept the return of Equipment, the Buyer agrees to pay a restocking fee of 10% of the invoiced purchase price of the returned Equipment.
- 7.3. Equipment may only be returned with the prior written consent of the Company and must be:
- (a) In unused and saleable condition;
  - (b) - Accompanied by the original invoice or proof of purchase; and
  - (c) - Returned in original packaging or otherwise in a condition acceptable to the Company.
- 7.4. The Company reserves the right to inspect returned Equipment before determining eligibility for credit or restocking fee waiver.
- 7.5. This clause does not apply where Equipment is returned due to a defect covered under statutory warranty or consumer guarantee.
- ### 8. Set-Off
- 8.1. The Company may, acting reasonably, set-off any amount owing by the Company to the Buyer on any



account whatsoever, including any monies held by the Company for or on account of the Buyer, against any amount owing by the Buyer to the Company in respect of the Equipment supplied by the Company, provided the Company must not set off amounts that are genuinely disputed in good faith until the dispute is resolved.

## 9. Compliance and Fitness of Equipment

- 9.1. The Buyer must comply with all Laws applicable to the Buyer, including, without limitation, all licensing requirements for the Equipment.
- 9.2. The Buyer must not use or re-sell the Equipment for any purpose other than those applications or purposes specified by the Company.
- 9.3. The Buyer acknowledges that it alone is responsible for determining the fitness of the Equipment for the purpose for which the Buyer intends them and that it has not relied upon any representation of statements by the Company in entering this Agreement.

## 10. Conditions, Warranties and Liability

- 10.1. All conditions, warranties, undertakings and representations expressed or implied by Law, the common law, equity, trade, custom or usage or otherwise (including warranties as to the quality or fitness of the Equipment) are expressly excluded to the maximum extent permitted by Law.
- 10.2. So far as the Law permits, the liability of the Company for a breach of a condition, warranty, undertaking or representation that cannot be excluded is limited, at the Company's option, to:
  - (a) the replacement or repair of the Equipment;
  - (b) the supply of equivalent Equipment; or
  - (c) the cost of replacing or repairing the Equipment or of acquiring equivalent Equipment.
- 10.3. The Buyer agrees to indemnify the Company to the maximum extent permitted by Law from and against

any liability to the extent arising from the Buyer's breach of this Agreement or the Buyer's negligent or unlawful acts or omissions in connection with the sale of Equipment by the Company. Nothing in this clause limits any liability that cannot be excluded by Law.

10.4. So far as the Law permits, the Company is not liable in any way for any indirect or consequential loss or loss of actual or prospective revenue or profit of the Buyer or any other person including, without limitation, any loss by reason of delay, defective or faulty Equipment, negligence or any act or matter or thing done, permitted or omitted by the Company.

## 11. Ex-Hire Fleet Equipment

- 11.1. If the Equipment is Ex-Hire Fleet Equipment, the following additional terms and conditions apply to the sale:
  - (a) Ex-Hire Fleet Equipment is sold strictly as is, where is, with all faults, defects, wear, and usage considered. The Buyer acknowledges that the Ex-Hire Fleet Equipment is second-hand and may have been subject to prior use and wear and tear.
  - (b) The Buyer acknowledges that they have had the opportunity to inspect the Ex-Hire Fleet Equipment prior to purchase and accepts the Ex-Hire Fleet Equipment in its current condition.
  - (c) All sales are final, except as required by Law (including the ACL) or as otherwise agreed in writing by the Company. No returns, refunds, or exchanges will be accepted after the sale has been completed except as required by Law.
  - (d) Full payment is required prior to release or delivery of the Ex-Hire Fleet Equipment. No Ex-Hire Fleet Equipment will be released or off hired until payment of the Purchase Price has been received by the Company in cleared funds.

## 12. Miscellaneous

- 12.1. Where a clause in this Agreement is void, illegal or unenforceable, it may be severed without affecting



the enforceability of the other provisions in this Agreement.

12.2. Termination of this Agreement will be without prejudice to any right of action already given to the Buyer or Company in respect of any breach of this Agreement by the other party.

12.3. This Agreement is governed by the Law applicable in the State of Victoria, and the parties consent to the exclusive jurisdiction of the courts of the State of Victoria.

12.4. The parties acknowledge that this Agreement contains the entire agreement concluded between the parties notwithstanding any prior or subsequent negotiations or representations. Any such conditions, warranties or representations are hereby expressly excluded.

12.5. Time is of the essence in relation to all obligations of the Buyer in this Agreement.

12.6. Failure by the Company to insist upon strict performance of any terms of this Agreement, or to exercise in whole or in part any right that it may have under this Agreement at law shall not be deemed to be a waiver of any rights that the Company may have and shall not be deemed a waiver of any subsequent breach of any term in this Agreement.



## PINNACLE HIRE PTY LTD - TERMS & CONDITIONS OF HIRE

### 1. Definitions

1.1 In this document unless the contrary intention appears:

**"Company"** means as the context requires either:

- a. Pinnacle Hire Pty Ltd (ABN: 35 646 593 428);
- b. Pinnacle Hire NSW Pty Ltd (ABN: 48 658 074 858);
- c. Pinnacle Hire Tasmania Pty Ltd (ABN: 20 652 170 119);
- d. Pinnacle Hire WA Pty Ltd (ABN: 20 654 037 180);

and each of their respective, subcontractors, employees and agents..

**"Equipment"** means the items hired out by the Company to the Hirer from time to time, including any associated or attached tools, accessories and parts.

**"Expected Off Hire Date"** means the date the Hirer expects the Hire Period to end as specified in the Hire Schedule.

**"Hire Charge"** means the rates or charges payable by the Hirer for the hire of the Equipment.

**"Hire Period"** means the period of hire of the Equipment as between the Company and the Hirer.

**"Hire Schedule"** means the document provided by the Company to the Hirer which includes details of the Equipment hired, the Hire Charge, any other applicable charges, the Expected Off Hire Date and the address for the delivery of the Equipment.

**"Hire Terms"** mean these terms and conditions of hire as amended from time to time.

**"Hirer"** means any person or entity who requests the Company to hire Equipment to it, its successors, permitted, assigns, employees, agents and any person claiming through, under or in trust for such person.

**"New Replacement Cost"** means the cost to replace the Equipment with a new item of the same equipment or, if the same equipment is not available, then the cost to

replace the Equipment with a new item of equipment of the same quality, function and capacity.

**"PPSA"** means the *Personal Property Securities Act 2009* (Cth) (as amended) and any other legislation and regulations in respect of it, and the following words in this Agreement have the respective meanings given to them in the PPSA: **"financing charge statement"**, **"purchase money security interest"** (or **"PMSI"**), **"register"**, **"registration"** and **"security interest"**

**"Register"** means the Personal Properties Securities Register established pursuant to section 147 of the PPSA.

**"Theft and Damage Waiver"** has the meaning given in clause 9.

### 2. Hire Terms

2.1 These Hire Terms together with:

- (a) each Hire Schedule provided to the Buyer by the Company, whether signed or not; and
- (b) the Company's Trading Terms and Conditions set out the terms of the hire agreement (**Agreement**) between the Company and the Buyer.

2.2 These Hire Terms replace and supersede all other terms and conditions of hire, if any, previously in force between the Company and the Hirer or any terms contained in any document supplied by the Buyer and no variation of these Hire Terms will bind either party unless confirmed by the Company in writing.

### 3. Property

3.1 Ownership of the Equipment will at all times remain with the Company.

3.2 No person will be entitled to use, dispose of or otherwise deal with the Equipment in any way which is inconsistent with the Company's rights or these Hire Terms.

3.3 Neither payment of compensation nor any other



circumstance or event will amount to, constitute or result in any transfer of property or title in the Equipment from the Company to the Hirer.

- 3.4 The Hirer acknowledges that the Company may inspect the Equipment during the Hire Period and gives the Company a licence to enter any site owned, possessed or controlled by the Hirer at reasonable times on reasonable prior notice (except in an emergency) and the Hirer shall provide to the Company all assistance and co-operation necessary to facilitate such inspection of the Equipment. The Hirer shall indemnify the Company in relation to any action for trespass to the extent arising from the Hirer's breach of this Agreement.
- 3.5 This Agreement is between the Company and the Hirer. The Hirer will not:
- (a) assign or subcontract its rights and obligations under any Agreement;
  - (b) sell or alter for sale, assign, mortgage, pledge, lend, part with possession or grant a security interest in the Equipment;
  - (c) allow any other person to use or possess of the Equipment; or
  - (d) allow any lien to be levied upon the Equipment, whether for repairs, or otherwise; without the prior written consent of the Company, which may be withheld at the Company's absolute discretion.
- 3.6 The Hirer will protect the Equipment against destruction or seizure and will indemnify the Company against all losses, costs, charges, damages and expenses (including reasonable legal costs) incurred by the Company to the extent arising from a breach of this Agreement by the Hirer.
- 3.7 The Hirer will maintain the Equipment on a daily basis in compliance with any directions provided by the Company.
- 3.8 The Company may assign or subcontract any of its rights or obligations under this Agreement by giving

the Hirer notice as soon as reasonably practicable. Any assignment will not reduce the Hirer's rights under this Agreement.

#### **4. Loss, Damage or Stolen Equipment**

- 4.1 If the Equipment is lost, stolen, breaks down or is in any way damaged, the Hirer must immediately notify the Company in writing. Notification shall not absolve the Hirer of any of its obligations under this Agreement.
- 4.2 In the event that the Equipment breaks down or becomes unsafe to use, the Hirer shall:
- (a) immediately stop using the Equipment;
  - (b) take all steps necessary to prevent the Equipment from sustaining any further damage;
  - (c) take all steps necessary to prevent injuries from occurring to any person or property as a result of the condition of the Equipment; and
  - (d) not repair or attempt to repair the Equipment without the Company's prior written consent.
- 4.3 The Company shall take all reasonable steps necessary to repair the Equipment or to provide substitute Equipment as soon as is reasonably possible in the circumstances after receipt of notice from the Hirer.
- 4.4 Subject to clause 9, if the Equipment is lost, stolen or damaged, the Hirer shall be liable for:
- (a) costs incurred by the Company in repairing or replacing the Equipment;
  - (b) hire charges for the Equipment until the Equipment is repaired or replaced; and
  - (c) any other costs whatsoever incurred by the Company as a result of damage to, theft or loss of the Equipment.
- 4.5 If the Company is required by any relevant authority,



is requested by the Hirer or elects (acting reasonably to salvage the Equipment, all reasonable salvage costs shall be payable by the Hirer to the extent those costs arise from the Hirer's breach of this Agreement or the Hirer's negligent or unlawful acts or omissions.

acknowledge the priority of the Company's PMSI.

5.6 The parties agree that neither party is required to give notice to the other under the PPSA unless the obligation to give the notice cannot be excluded.

## 5. Personal Properties Securities Act

5.1 The Hirer:

- (a) acknowledges that the Company may register any actual or impending PMSI under the PSSA in respect of all Equipment; and
- (b) consents to the Company registered its PMSI under the PPSA and will do all things reasonably necessary to assist the Company to register its security interest.

5.2 The Company is responsible for:

- (a) the preparation and registration of the financing statement or financing change statement; and
- (b) payment of any fees associated with the registration,

and the Hirer waives the right to receive verification of the registration from the Company pursuant to section 157(3)(b) of the PPSA.

5.3 If the Hirer sub-hires the Equipment to its agent, contractor or subcontractor or any third party ("**Subhire**") and the Sub-hire is a security interest under the PPSA, the Hirer agrees that it will protect the Company's interest in the Equipment by:

- (a) registering a security interest itself; or
- (b) assigning, by this clause, to the Company all rights as bailor to enforce against an agent, contractor or subcontractor.

5.4 The Hirer has an obligation to give the Company notice if another party with a security interest in the Equipment seizes or otherwise deals with the Company's PMSI in the Equipment

5.5 If the Hirer grants any security interest in the Equipment to another party, that other party must

## 6. The Hirer's Obligations

6.1 The Hirer will:

- (a) Pay the Hire Charge together with any other charges or amounts that may become due and payable to the Company under the terms of this Agreement. The Hirer acknowledges and agrees that the Company may charge an environmental levy in respect of the hire of Equipment. The environmental levy will be calculated at 2% of the Hire Charge (excluding GST) for the relevant Hire Period (or such other base amount as is specified in the Hire Schedule) and will be shown as a separate line item on the Company's invoice. The environmental levy is payable by the Hirer at the same time and on the same terms as the Hire Charge and is subject to GST in accordance with the GST provisions of this Agreement.
- (b) Upon delivery or collection of the Equipment, immediately examine the Equipment to satisfy itself as to its condition and suitability and fitness for the purpose to which it requires the Equipment. By taking possession of the Equipment, the Hirer acknowledges that it has duly examined the Equipment and has satisfied itself as required. The Hirer acknowledges that it has not in any way relied upon the skill, judgment or any representations made by or on behalf of the Company in respect of the Equipment, its purpose, use or performance.
- (c) Use the Equipment in a skillful, proper, safe and prudent manner and only for the purpose and within the capacity for which it was designed.
- (d) Ensure that the Equipment is operated by a suitably qualified, trained, experienced and (if necessary) certified operator. If the Company supplies an operator to operate the Equipment, the operator shall be under the sole direction and control of the Hirer, and for the purpose of this Agreement s/he shall be



deemed to be the employee of the Hirer. The Hirer shall be responsible for any claims whatsoever arising in connection with the operation of the Equipment by such an operator or any third party and if an operator is provided by the Company, the Hirer shall not allow any other person to operate the Equipment without the Company's prior written consent.

- (e) At its own expense clean, fuel, lubricate and keep and maintain the Equipment in good condition and repair failing which the Hirer will reimburse the Company for any costs, claims, loss, damage or expenses (including legal expenses on an indemnity basis) incurred by the Company.
- (f) Repair or replace at its own cost any flat and/or damaged tyres on the Equipment.
- (g) Clean the Equipment thoroughly on the expiry of the Hire Period. If the Hirer fails to clean the Equipment properly then, at the Company's discretion, it may undertake the cleaning and the Hirer shall be liable for all cleaning costs.
- (h) Ensure that the Equipment is stored safely, securely and protected from theft.
- (i) Not alter, make additions to, deface or erase any identifying mark, plate, trademark writing or number on or in the Equipment, or otherwise interfere with or modify the Equipment in any other manner.
- (j) Be liable for the cost of freight to retrieve Equipment that has been abandoned for any reason.
- (k) Comply at its own expense with all Laws, but not limited to, any Occupational Health and Safety Laws which may affect the Equipment while it is in the possession of or being used by the Hirer.
- (l) Not, without the prior written consent of the Company, keep or store any volatile spirits, explosive goods, goods which are or may become dangerous, corrosive, highly combustible, offensive (including radioactive materials) or likely to encourage any vermin or pests on, in or near the Equipment. Any

such goods stored on, in or near the Equipment may at any time be destroyed, disposed of, abandoned or rendered harmless by the Company without compensation to the Hirer and without effecting the Company's rights under this Agreement.

- (m) Authorises the Company to have reasonable access to the Equipment at reasonable times (and, where practicable, on reasonable notice) for the purpose of exercising the Company's rights under this clause.
- (n) Supply the operator of the Equipment with all necessary manuals and instructions (both written and oral) for the safe use of the Equipment.
- (o) Be totally responsible for any theft, loss or damage to the Equipment until it is returned to the Company.
- (p) Any electrical Equipment provided by the Company will be tested and tagged before it is hired to the Hirer, but during the Hire Period, the Hirer is responsible for arranging the re-testing and re-tagging of any electrical Equipment in accordance with the manufacturer's instructions and the applicable Australian Standard(s) and Regulatory Authority requirements at the Hirer's cost. The Company is able to arrange for such re-testing and re-tagging of the electrical Equipment at the Hirer's cost. Except where the Company arranges for re-testing and re-tagging of the electrical Equipment, the Hirer will be liable for any damage caused to the Equipment resulting from incorrect testing.
- (q) All fire extinguishers provided by the Company will be tested and tagged prior to the rental. However, during the Hire Period, the Hirer is responsible for organizing any necessary re-testing and re-tagging of the extinguishers, following the manufacturer's instructions and relevant Australian Standards and Regulatory Authority requirements, at the Hirer's own expense. The Company can assist in arranging this re-testing and re-tagging at the Hirer's cost. Except where the Company arranges for re-testing and re-tagging of the extinguishers, the Hirer will be liable for any damage caused to the Equipment resulting from incorrect testing.



## 7. Maintenance and Equipment Condition Responsibility

7.1 Unless otherwise stated in writing by the Company, the Hirer is responsible for conducting and recording daily pre-start inspections and ensuring that all Equipment is serviced and maintained in accordance with the original equipment manufacturer's **(OEM)** recommendations

7.2 If the Equipment is off-hired and returned:

- (a) without evidence of daily inspections, or
- (b) overdue for scheduled service and maintenance,

the Company may charge the Hirer for any additional servicing, repairs, or accelerated wear incurred as a result of insufficient maintenance.

7.3 Where Equipment has been operated outside of its intended application or contrary to OEM or Company guidelines, the Company reserves the right to assess any resulting deterioration, damage or abnormal wear, and to charge the Hirer for any reasonable costs incurred or actual loss suffered as a result.

7.4 Equipment will be assessed by the Company on return of the Equipment, and any additional charges (if applicable) will be determined based on the inspection findings and notified to the Hirer. Any additional charges must be a reasonable estimate of, or reflect, the Company's actual remediation costs and loss suffered as a result of misuse or neglect by the Hirer. As a guideline, the Hirer may be liable for costs of up to 20% of the Equipment's asset value, depending on the condition of the Equipment and the extent of misuse or neglect. The Company reserves the right to adjust this charge based on actual remediation costs incurred.

## 8. Exclusion of Warranties

8.1 Any warranty, condition, description or representation whether express or implied as to the description, state, quality, merchantability or fitness of the Equipment for the purpose for which it is hired is

hereby excluded to the extent that any applicable Law permits.

8.2 To the extent permitted by Law, the Company's liability (if any) for breach of any of the terms of this Agreement (express or implied) is limited to (at the option of the Company):

- (a) the repair or replacement of the Equipment or the supply of the equivalent Equipment; or
- (b) the payment of the cost of repairing or replacing the Equipment or the supply of equivalent Equipment.

## 9. Release and Indemnity

The Hirer hereby releases the Company from and agrees to indemnify the Company in respect of any third party claims, actions, suits, demands, costs and expenses for damage or injury to person or property arising directly or indirectly out of the hire or use of the Equipment by the Hirer.

## 10. Theft and Damage Waiver

10.1 **"Theft and Damage Waiver"** is not insurance but is an agreement between the Hirer and the Company that in consideration of the Hirer paying the Damage Waiver Fee, the Company will limit the Hirer's liability in certain circumstances for each single incident of loss, theft or damage to the Equipment to an amount called the **"Damage Waiver Excess"**.

10.2 The **"Damage Waiver Fee"** is a compulsory payment of 10% of the value of the total Hire Charge (unless otherwise agreed by prior arrangement) and is non-refundable once the Hire Period has commenced, except as required by Law.

10.3 For the purpose of this clause, the term "Equipment" does not include any tools, accessories, parts, grease guns, hoses, electrical cords, lights, light globes and other similar accessories, ground engaging tools, tracks, tyres and glass.

10.4 The Damage Waiver Excess is \$2,500 or 10% of the New Replacement Cost of the Equipment, whichever



is greater.

10.5 The Theft and Damage Waiver does not apply and will not limit the Hirer's liability:

- (a) where the Equipment is lost or stolen, unless the further requirements in clause 10.6 have been met;
- (b) where the operator is not suitably licensed or qualified or is affected by drugs and/or alcohol;
- (c) where the Equipment has been wilfully damaged by the Hirer or its employees or agents;
- (d) where the Equipment is being sub-hired;
- (e) where the damage is caused by a collision with a bridge, carpark, awning, gutter, tree or any other overhead structure of object whatsoever due to insufficient clearance;
- (f) where the damage results from overloading or exceeding the rated capacity of the Equipment or from using the Equipment in violation of any Laws;
- (g) where the loss, theft or damage has arisen as a result of the Hirer's breach of this Agreement or has been caused by the Hirer's negligent act or omission;
- (h) where the loss, theft or damage occurs to the Equipment whilst it is located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
- (i) where the Hirer has failed to use the Equipment for its intended purpose or in accordance with the Company's or the manufacturer's instructions, or to properly service or maintain the Equipment;
- (j) where the loss or damage is to motors or other electrical Equipment or components within the Equipment caused by electrical overload, a surge in electrical current or the use of under-rated or excessive lengths of extension leads with the electrical Equipment;
- (k) where the loss or damage is caused by exposure to any corrosive, toxic or caustic substance, such as

cyanide, salt water or acid;

- (l) where the loss, damage or theft is to tyres, tubes, windscreens, mirrors, glass or Perspex; or
- (m) where the loss or damage is caused by vandalism.

10.6 In the event of the theft or burglary of the Equipment, the Theft and Damage Waiver will only apply if:

- (a) the Hirer has promptly reported the theft or burglary to the police and provided the Company with a written police report; and
- (b) the Hirer cooperates with the Company and provides the Company with details of the incident, including any written or photographic evidence required; and
- (c) the Hirer provides evidence, to the Company's satisfaction, that it took adequate measures and precautions to protect the Equipment against theft or burglary, including keeping all trailerised Equipment in a secured area.

10.7 The Hirer acknowledges that nothing in this clause 9 derogates from the Hirer's other obligations in this Agreement.

## 11. Termination of Hire

11.1 The Company may terminate the hire of the Equipment to the Hirer by giving written notice if the Hirer is in material breach of this Agreement and (where the breach is capable of remedy) fails to remedy that breach within a reasonable time after receiving notice requiring it to do so, or if a Default event occurs. Upon termination, the Hirer must promptly attend to any of the obligations remaining under this Agreement and make the Equipment available for collection.

11.2 The Hirer may terminate the Hire of the Equipment:

- (a) by delivering the Equipment to the Company during normal working hours; or
- (b) if the Hirer requests the Company collect the Equipment, on collection by the Company, however,



the Hirer is liable for keeping the Equipment safe and secure until such collection.

11.3 Further to clause 4.4, if the Equipment is returned to or collected by the Company in a state which is unsatisfactory or in breach of the terms of this Agreement, then the Hire Period will be deemed to continue until the Equipment is in a state which is satisfactory to the Company, or any breach of this Agreement has been remedied (whichever is the later). The Company undertakes to take all reasonable steps to put the Equipment into a satisfactory state as soon as is reasonably possible after the return or collection of the Equipment.

11.4 Upon termination of hire, the Company is entitled to take possession of the Equipment and for this purpose the Hirer irrevocably appoints the Company as their agent, and authorises and grants a licence to the Company to:

- (a) enter upon any land or premises upon which the Equipment is situated or where the Company has any reason to believe that the Equipment may be situated; and
- (b) disconnect, dismantle and remove the Equipment, whether or not it is affixed to the land or the premises, connected to property or equipment not owned by the Company, in use by the Hirer or any other person, or containing property not owned by the Company.

11.5 The Hirer releases the Company from, and fully indemnifies the Company against, any claims arising from the removal and collection of the Equipment in accordance with this clause 10.

11.6 After the termination of the Agreement and until the Equipment has been collected by the Company, the Equipment will remain the sole risk of the Hirer, and the Hirer will indemnify the Company in respect of any loss of or damage to the Equipment.

11.7 If the Hirer cancels, postpones or otherwise terminates a confirmed hire less than 24 hours before the scheduled commencement of the Hire Period (as specified in the relevant Hire Schedule), the Company may charge a late cancellation fee.

11.8 The late cancellation fee will be determined by the Company, acting reasonably, to reflect the Company's costs and loss arising from the late cancellation (including allocation of equipment, transport, preparation and scheduling impacts). Without limiting the foregoing, the Hirer acknowledges and agrees that the minimum late cancellation fee will be the Hire Charge payable in respect of the minimum Hire Period determined in accordance with clause 12.4 (plus any applicable GST).

11.9 The late cancellation fee is payable whether or not the Equipment has been delivered or collected and is a genuine pre-estimate of the Company's loss and is not intended to operate as a penalty.

## 12. Minimum Hire Period

12.1 The Hire Period commences on the earlier of the following:

- (a) when the Hirer takes possession of the Equipment; or
- (b) if the Hirer requests delivery and collection of the Equipment, the time the Company delivers the Equipment to the address specified in the Hire Schedule.

12.2 The Hire Period is for an indefinite term and ends when the Equipment is back in the Company's control or possession.

12.3 The Hire Period includes weekends and public holidays.

12.4 A minimum Hire Period applies to all items of Equipment hired from the Company. The Hirer will be charged for the greater of:

- (a) the actual hire period; or
- (b) a minimum hire period equivalent to 50% of the estimated hire duration specified in the Hire Schedule at the commencement of the hire. For example, if the expected duration was 10 days, then the minimum



hire period will be 5 days.

12.5 The Company reserves the right to specify a longer minimum Hire Period for certain items of Equipment. The Company will advise the Hirer at the time of hiring if a longer minimum Hire Period applies

### 13. Insurance

13.1 The Hirer will maintain at its own expense all appropriate policies of insurance with a duly authorised insurer:

- (a) for all damage to or arising out of the hire of the Equipment in an amount not less than the New Replacement Cost of the Equipment; and
- (b) for all third party and public liability risks in respect of the hire or use of the Equipment by the Hirer for not less than \$20 million for any one occurrence.

### 14. Miscellaneous

14.1 Where a clause in this Agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this Agreement.

14.2 The rights and obligations of the Hirer and the Company will continue and not be affected by termination of the hire of Equipment. Termination of the hire of the Equipment will be without prejudice to any right of action already given to the Hirer or Company in respect of any breach of this Agreement by the other party.

14.3 This Agreement is governed by the Law applicable in the State of Victoria, and the parties consent to the exclusive jurisdiction of the courts of the State of Victoria.

14.4 The parties acknowledge that the Agreement contains the entire agreement concluded between the parties notwithstanding any prior or subsequent negotiations or representations. Any such conditions, warranties or representations are hereby expressly excluded.

14.5 Time is of the essence of all obligations of the Hirer in this Agreement.

14.6 Failure by the Company to insist upon strict performance of any terms of this Agreement, or to exercise in whole or in part any right that it may have under this Agreement at law will not be deemed to be a waiver of any rights that the Company may have will shall not be deemed a waiver of any subsequent breach of any term in this Agreement.



## PINNACLE HIRE PTY LTD - TERMS & CONDITIONS OF SERVICE

### 1. Definitions

1.1 In this document unless the contrary intention appears:

**"ACL"** means The Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

**"Business Day"** means a day on which trading banks are open for business in Melbourne, Australia, except a Saturday, Sunday or public holiday.

**"Client"** means any person or entity who requests the Company to provide the Services to it, its successors, permitted, assigns, employees, agents and any person claiming through, under or in trust for such person.

**"Company"** means as the context requires either:

- a. Pinnacle Hire Pty Ltd (ABN: 35 646 593 428);
- b. Pinnacle Hire NSW Pty Ltd (ABN: 48 658 074 858);
- c. Pinnacle Hire Tasmania Pty Ltd (ABN: 20 652 170 119);
- d. Pinnacle Hire WA Pty Ltd (ABN: 20 654 037 180);

and each of their respective, subcontractors, employees and agents.

**"Consequential Loss"** means any loss or damage suffered by the Client or any other person which is indirect or consequential; or which is by way of loss of revenue, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, damage to credit rating, or loss or denial of opportunity.

**"Engagement"** mean the agreement between the Company and the Client to provide the Services on the terms of this Agreement.

**"Force Majeure Event"** means any failure or delay in the performance of a party's obligations under this Agreement as a result of a national strike, lockout, work stoppage, labour dispute, material shortage, utility outage, delay in transportation, fire, flood, earthquake, severe weather, act of God, pandemic, accident, trade sanction,

embargo, act of war, act of terror, condition caused by national emergency, new or changed Law, or any other act or cause beyond the reasonable control and without fault of the delayed party, and whether affecting that party or its agents, subcontractors, dealers or suppliers, for as long as the circumstances prevail.

**"Loss"** means any loss, damage, debt, cost, charge, expense, fine, outgoing, penalty, diminution in value, deficiency or other liability of any kind or character that a party pays, suffers or incurs or is liable for, including any:

- (a) liabilities on account of any taxation of any kind, including indirect taxation;
- (b) interest, penalties and other amounts payable to third parties;
- (c) legal and other professional fees and expenses (on a full indemnity basis) and other costs incurred in connection with investigating, defending or settling any Claim, whether or not resulting in any liability;
- (d) amounts paid in settlement of any claim; and
- (e) includes any Consequential Loss.

**"Personnel"** means all employees, officers, agents and contractors of the Company.

**"Service Fee"** means the rates or charges payable by the Client for the provision of the Services.

**"Service Schedule"** means the document provided by the Company to the Client which includes details of the Services, the Service Fee any other applicable charges.

**"Services"** means the services specified in the Service Schedule that the Company will provide to the Client in accordance with these Services Terms.

**"Service Terms"** mean these terms and conditions of service as amended from time to time.

### 2. Service Terms

2.1 These Service Terms together with:



- (a) each Service Schedule provided to the Client by the Company, whether signed or not; and
- (b) the Company's Trading Terms and Conditions set out the terms of the service agreement **(Agreement)** between the Company and the Client.

2.2 This Agreement replaces and supersedes all other terms and conditions of service, if any, previously in force between the Company and the Client or any terms contained in any document supplied by the Client and no variation of this Agreement will bind either party unless confirmed by the Company in writing.

### 3. Supply of services

- 3.1 The Client engages the Company to provide, and the Company hereby agrees to provide, the Services to the Client in accordance with the terms of this Agreement.

### 4. Services

- 4.1 Subject to clause 4.2, the scope of the Services is limited to the services described in the Service Schedule.
- 4.2 The scope of the Services:
- (a) may be varied at any time by agreement in writing between the parties; and
  - (b) will not be taken to have been varied without such agreement.
  - (c) where the Services include wellpoint dewatering (including installation, operation, or decommissioning of wellpoint systems) or associated services, the provisions of clause 5 of these Services Terms shall apply.

### 5. Wellpoint Dewatering

- 5.1 **Inconsistency:** In the event of any inconsistency between the provisions of clause 5 and any other provision of these Services Terms, the provisions of

this clause 5 will prevail.

5.2 **Availability:** Any availability advised by the Company is indicative only and is subject to prior bookings and confirmation by the Company at the time of ordering.

5.3 **Freight:** Freight and transport costs will be determined and confirmed at the time of ordering. Unless otherwise stated, any transport cost quoted covers a one-off delivery only and any staggered commissions requiring multiple transport drops will be charged accordingly.

5.4 **Validity:** Any quotation issued by the Company is valid for 30 days from the date of issue, unless withdrawn earlier.

5.5 **Payment Terms and invoicing:** Unless otherwise agreed in the Service Schedule, invoices will be issued monthly and are due within 30 days of the invoice date.

5.6 **Pricing basis:** Unless otherwise stated, quotations are provided as a unit rate per week. Total charges will be calculated by multiplying the quoted unit rate by the required timeframe (and any other applicable charges).

5.7 **Exclusions and additional works:** Any item or service not explicitly quoted in the Service Schedule or quotation is excluded. The Company may provide additional pricing for extra works as required and any such extra works will be treated as a variation under clause 4.2.

5.8 **Project Responsibilities and Site Conditions:** The Client is responsible for:

(a) **(Sewer connection)** connecting the sewer from the back of the flowmeter in accordance with trade waste requirements and the Company's commissioning requirements;

(b) **(Hydrant / water supply)** locating hydrants and obtaining approval from the relevant water authority, or supplying a water cart for jetting wells;



- (c) **(Permits, approvals and licences)** obtaining all permits, approvals and licences required to commence and carry out the Services;
  - (d) **(Underground services)** locating and clearly marking all underground services and ensuring these are communicated to the Company's Personnel by the Client's supervisor;
  - (e) **(Clarifier and tank cleaning)**: cleaning and emptying all clarifiers, sediment tanks and bulk storage tanks before return and throughout the dewatering process (including, where required, by eductor truck at the Client's cost);
  - (f) **(Rain event management)**: managing rain event water and directing it towards the wells where practicable. If this is not possible, additional equipment may be required at additional cost.
- 5.9 **Equipment and methodology**: The Company's equipment selection and methodology are based on the information provided by the Client at the time of the Request for Quotation and/or in the Service Schedule. If that information changes or is inaccurate, the Company may vary the Services and charges in accordance with clause 4.2 and clause 8.2.
- 5.10 **Craneage and fuel**: Unless specifically stated in the Service Schedule, craneage is excluded. The Client is responsible for fuel where required.
- 5.11 **Ancillary items and services**: The Company must receive a purchase order or written confirmation prior to any purchase of ancillary items, delivery of goods, or rendering of additional services.
- 5.12 **Sacrificial spears**: Any sacrificial spears used will be charged per spear.
- 5.13 **Payment schedule for commission and purchases**: Unless otherwise stated in the Service Schedule, all commission costs are due in the first monthly invoice. Purchase items are due in the month the Company purchases them. Payment for any external contractors required will be due in the month services were rendered.
- 5.14 **Additional project costs**: Any additional project costs (including specialised PPE, medical certification, long-term site induction, or specific equipment) will be charged at cost plus 10%.
- 5.15 **Damage**: Any work required due to damage caused by the Client or the Client's subcontractors will be charged at \$125.00 per hour per person, plus the cost of replacing damaged goods.
- 5.16 **Scope changes / variations**: Any changes to the project scope or variations requested by the Client will be charged in accordance with clause 4.2 and clause 8.2.
- 5.17 **Swingarm length**: Unless otherwise stated in the Service Schedule, the swingarm length from the header pipe is 1 metre.
- 5.18 **Subsidence**: To the maximum extent permitted by Law, the Company is not responsible for any form of subsidence resulting from dewatering. The Client should engage a Hydrogeologist or Structural Engineer if there is any risk of subsidence or settlement.
- 5.19 **Water quality and plant performance**: The Client acknowledges that water quality can change over time and that a notable reduction or increase in flow rate and/or contaminant strength may negatively impact plant performance and discharge parameters. To the maximum extent permitted by Law, the Company accepts no liability for possible breaches in flow rate or contaminants discharged where caused by changes in site conditions outside the Company's reasonable control. Nothing in this clause limits any rights or remedies that cannot be excluded or limited under the ACL or any other applicable Law.
- ## 6. Client cooperation
- 6.1 To perform the Services successfully, the Company requires the Client's timely co-operation. Accordingly, the Client must:
- (a) provide in a timely fashion all information and



instructions that the Company reasonably requires to enable the Company to provide the Services;

- (b) arrange access for third parties and Personnel where applicable; and
- (c) make decisions promptly to facilitate the performance of the Services.

### 7. Client's obligations

- 7.1 The Client will provide the Company with all access necessary to enable the Company to carry out its obligations and perform the Services.
- 7.2 The Client will comply with any reasonable directions of the Company or its Personnel with respect to the Services.

### 8. Service Fee

- 8.1 The Service Fee payable to the Company for the provision of the Services will be charged in accordance with the Service Schedule.
- 8.2 The Company reserves the right to vary the Service Fee if the Company is required to undertake any work beyond the scope of the Service Schedule or if any unforeseen circumstances arise, including but not limited to the requirement for:
  - (a) additional site meetings or management attendances;
  - (b) special personal protective equipment;
  - (c) additional unanticipated safety requirements;
  - (d) after-hours call outs;
  - (e) additional approvals;
  - (f) additional soil investigation and development; and/ or
  - (g) additional pumps.

#### 8.3 Late Cancellation Fee

- (a) If the Client cancels or reschedules a confirmed Service less than 24 hours before the scheduled commencement time, the Company reserves the right to charge a late cancellation fee. The amount of the late cancellation fee will be determined by the

Company at its discretion, acting reasonably, to reflect any costs or losses incurred as a result of the late cancellation or rescheduling. At a minimum, the late cancellation fee will be equivalent to 4 hours' labour per technician booked for the Service.

- (b) The late cancellation fee is payable regardless of whether any actual work has commenced and is intended to compensate for actual loss suffered as a result of lost time and technician scheduling impacts, and is not intended to operate as a penalty.

### 9. GST

- 9.1 In this clause expressions that are not defined, but which have a defined meaning in the GST Law, have the same meaning as in the GST Law.
- 9.2 Unless expressly indicated otherwise, any sum payable, or amount used in the calculation of a sum payable, under this Agreement has been determined without regard to GST and must be increased on account of any GST payable in accordance with this clause.
- 9.3 If GST is imposed on any supply made under or in accordance with this Agreement, the recipient of the supply (Receiving Party) must pay to the Company (Supplier) an additional amount equal to the GST payable on the supply, subject to the Receiving Party receiving a valid tax invoice, or a document that the Commissioner will treat as a tax invoice, in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time and in the same manner as payment for the supply is required to be made in accordance with this Agreement.

### 10. Invoicing and payment

- 10.1 The Client will pay the Service Fee together with any other charges or amounts that may become due and payable to the Company under this Agreement within the period specified in the Service Schedule or if no period is specified within 14 days of receipt of an invoice by the Client.



10.2 All Invoices issued by the Company will include details of the Service Fee and any other costs and charges payable by the Client in accordance with this Agreement, including (where relevant) all reasonable charges associated with the delivery of the Services, which will be paid by the Client unless otherwise agreed.

## 11. Liability and Obligations

11.1 To the maximum extent permitted by Law:

(a) **(Liability Cap)** the aggregate liability of the Company for any Losses arising directly or indirectly out of, or in connection with, the Services (including the use by the Client or any other person of any deliverable under this Agreement) is capped at the value of the fees that become payable under this Agreement **(the Liability Cap)**;

(b) **(Disclaimer of warranties)** the Company and its Personnel:

i. exclude all warranties, conditions and guarantees of any nature in respect of the Services and/or the economic, financial or other results that the Client may experience as a result of the provision of the Services. Any warranty, condition or guarantee that is implied by virtue of any Law is limited to the supply of the Services again or the payment of the cost of having the Services supplied again (the choice of which is to be at the Company's option, acting reasonably); and

(c) **(Exclusion of Consequential Loss)** the Company and its Personnel exclude all liability to the Client or any other person for any Consequential Loss arising directly or indirectly out of, or in connection with, the Services (including the use by the Client or any other person of any deliverable under this Agreement), even if the Company has been advised of the possibility of such Consequential Loss.

11.2 The Client acknowledges and agrees that the Company holds the benefit of this Agreement on its own behalf and as agent and trustee for and on behalf of its Personnel, and each of them is entitled to

enforce this Agreement as it were a party to these Service Terms.

11.3 If the Client make any claim against the Company for any Loss arising out of, or in connection with, the Services or this Agreement and some or all of that Loss was due to, or contributed to by:

- (a) the Client's own acts or omissions or the acts or omissions of other persons for whose conduct the Client are responsible; or
- (b) the acts or omissions of one or more other persons, not being partners, employees or agents of the Company for whose conduct the Company is responsible, then, to the maximum extent permitted by Law, the Company will be liable only for that proportion of the Loss which its acts and omissions bear in relation to the total conduct of all persons causing or contributing to that Loss.

## 12. Indemnity

12.1 The Client indemnifies the Company against any Loss which the Company suffers, incurs or is liable for as a result, directly or indirectly, of:

- (a) any breach of this Agreement by the Client; or
- (b) any negligent act or omission by the Client.

## 13. Term and Termination

13.1 The Engagement commences on the commencement date specified in the Service Schedule and shall continue for the initial term specified in the Service Schedule unless and until terminated in accordance with this Agreement.

13.2 The Company may terminate the Engagement with immediate effect by giving written notice to the Client if:

- (a) the Client breaches any material provision of this Agreement (including without limitation any breach of an obligation to pay money) and fails to remedy the breach within 14 days after receiving notice requiring it to do so;



- (b) the Client breaches a material provision of this Agreement where that breach is not capable of remedy; or
  - (c) any equipment supplied by the Company as part of the Services is intentionally or unintentionally damaged.
- 13.3 The Client must notify the Company immediately if:
- (a) it disposes of the whole or any material part of its assets, operations or business;
  - (b) there is a change in ownership of the Client;
  - (c) it ceases to carry on business;
  - (d) it ceases to be able to pay its debts as they become due;
  - (e) any step is taken by a mortgagee to take possession or dispose of the whole or part of its assets, operations or business;
  - (f) any step is taken to enter into any arrangement between it and its creditors; or
  - (g) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or other like person in relation to the whole or part of its assets, operations or business; and upon the occurrence of any such event the Company may terminate the Engagement immediately without notice.

#### 14. Termination

- 14.1 If the Engagement is terminated the Client must, within 5 Business Days of termination, pay the Company all amounts it owes to the Company that are due and payable, and any other amounts properly incurred up to the date of termination, whether or not an Invoice has been issued by the Company.
- 14.2 Termination of the Engagement will not affect any rights or obligations that the parties have accrued under this Agreement prior to such termination, nor

will it affect any provision of this Agreement which are expressly or by implication intended to continue in force after such termination.

#### 15. Force Majeure

No party is liable for any failure to perform or delay in performing its obligations under this Agreement if that failure or delay is due to a Force Majeure Event. If that failure or delay exceeds 90 days, the other party may terminate this Agreement with immediate effect by giving written notice to the other party. This clause does not apply to any obligation to pay money.

#### 16. Dispute

16.1 If a dispute arises under this Agreement, the parties will attempt to negotiate a resolution by good faith negotiations.

16.2 If a dispute persists for more than 14 days, either party can refer the dispute to mediation before a mediator to be appointed by the Australian Commercial Disputes Centre.

#### 17. Variations

- 17.1 The Company may change, modify, add or otherwise alter this Agreement for legitimate business reasons by giving the Client at least 14 days' prior written notice (which may be by email) of any significant or substantive changes, except where a change is required by Law or is to address an urgent security, safety or operational issue, in which case the Company will give notice as soon as reasonably practicable.
- 17.2 Within 7 days of receipt of a notice of variation of this Agreement, a Client may cancel any current Engagement without penalty (other than fees for Services already performed or costs already incurred by the Company up to the date of cancellation).
- 17.3 If a Client does not cancel any current Engagement within the period in clause 17.2, the Client will be deemed to have accepted this Agreement as amended and the amended Agreement will apply to the supply of all future Services.