

## PORTER GROUP

### MASTER TERMS AND CONDITIONS DATED 1 Nov 2022

#### Application of Master Terms and Conditions

These Master Terms and Conditions are effective from 1 Nov 2022 (**Effective Date**) and include the following parts:

- Part One: General Terms of Trade
- Part Two: Hire Terms and Conditions
- Part Three: Operating Lease Terms and Conditions
- Part Four: Equipment And Accessory Purchase Terms and Conditions
- Part Five: Finance Terms and Conditions
- Part Six: Guarantee and Indemnity

The definitions set out in Part One apply to this first page of the Master Terms and Conditions.

These Master Terms and Conditions apply to the supply of Goods and/or Services by the Porter Group to Customers on or after the Effective Date.

#### Existing Agreements

If, on the Effective Date, the Customer is a party to any one or more of the agreements listed below with the Porter Group, and those agreements remain current and have not expired (**Prior Agreement**), then those Prior Agreements will continue in accordance with their terms and conditions, and will not be subject to these Master Terms and Conditions:

- Hire Agreement
- Maintained Operating Lease Agreement
- Non-Maintained Operating Lease Agreement
- Finance Agreement
- Machinery Sale Agreement

#### Account Application Form

If, on the Effective Date, the Customer is already a party to an Account Application Form (**Prior AAF**), then pursuant to clause 2.1 of the Prior AAF, the terms and conditions attached/referenced within the Prior AAF will be amended and replaced with these Master Terms and Conditions from the Effective Date.

#### Guarantees

Guarantees provided prior to the Effective Date will continue in accordance with the terms and conditions of that guarantee. Guarantees provided on or after the Effective Date will be subject to Part Six of these Master Terms and Conditions.

## PART ONE

### GENERAL TERMS OF TRADE

This Part of the Master Terms and Conditions applies to all Customers purchasing Goods and/or Services from the Porter Group, and to all Customers that have one or more Porter Accounts.

#### 1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** For the purposes of these Master Terms and Conditions and all Transactions, unless the context requires otherwise, or specifically stated, the following definitions shall apply:

- (a) **"Account Holder"** means a Customer that has applied for, and been granted, one or more Porter Accounts and where the context permits, is deemed to include those for whom the Account Holder is responsible.
- (b) **"Account Application Form"** means an Agreement in relation to a Porter Account.
- (c) **"Agreements"** means a document that sets out the particulars for the supply of Goods and/or Services from Porter Group to the Customer, which are issued on a pre-printed form produced by the Porter Group, and which are entered into subject to these Master Terms and Conditions. Agreements include Hire Agreements, Lease Agreements, Equipment and Accessory Purchase Agreements and Finance Agreements.
- (d) **"AML/CTF Laws"** means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007* (No. 1) and any other anti-money laundering or counter-terrorism financing laws, rules or regulations including, but not limited to, any laws, rules or regulations imposing "know your customer" or other identification checks or processes, applicable to the Porter Group, in any jurisdiction in connection with the Agreements or Other Agreements.
- (e) **"At Risk"** means, in relation to Collateral, circumstances where the Porter Group has reasonable grounds to believe that the Collateral has been or will be destroyed, damaged, endangered, disassembled, removed, concealed, sold, or otherwise disposed of contrary to the provisions of these Master Terms and Conditions.
- (f) **"Australian Consumer Law"** means the Australian Consumer Law as contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).  
  
**"Business Practices"** means operating policies and procedures, human resource and contract management arrangements and arrangements for preventing or minimising public risks.
- (g) **"Charges"** means any and all fees, charges, Levies, interest, Standard Charges and other amounts payable by the Customer to Porter Group pursuant to these Master Terms and Conditions and/or a Transaction (as applicable). Unless specific Charges have been agreed by the Customer and Porter Group in a Transaction, the Standard Charges will apply. Charges are subject to variation as set out in clause 5.2.
- (h) **"Collateral"** means any Personal Property that is subject to a Security Interest granted or deemed to be granted by the Customer to the Porter Group pursuant to these Master Terms and Conditions, and includes the Porter Owned Goods.
- (i) **"Corporations Act"** means the *Corporations Act 2001* (Cth).
- (j) **"CoR Laws"** means any laws, in any jurisdiction in connection with the Agreements, in relation to safety concerning the carriage of goods by road, including as to mass, dimension, load restraint, speed, fatigue and vehicle standards, roadworthiness and maintenance and including, without limitation, the HVNL.

- (k) **“Credit Limit”** means the credit limit on a Porter Account specified from time to time by Porter Group in its sole discretion.
- (l) **“Customer”** means any person buying Goods and/or Services from Porter Group, including Account Holders, and where the context permits is deemed to include those for whom the Customer is responsible.
- (m) **“Default Interest Rate”** means an interest rate calculated as being the NAB Business Overdraft Prime rate plus the official cash rate set by the Reserve Bank of Australia, as may be varied from time to time.
- (n) **“Due Date”** means the 20<sup>th</sup> day of the month following the date of a Statement.
- (o) **“Effective Date”** has the meaning set out on page one of these Master Terms and Conditions.
- (p) **“Enforcement Costs”** means all reasonable costs incurred by the Porter Group in relation to, incidental to or in connection with the enforcement or attempted enforcement of any rights, remedies or powers available to the Porter Group pursuant to these Master Terms and Conditions or at law.
- (q) **“Environmental Law”** means statutes, statutory provisions and other laws, and orders, directives, regulations, instruments, by-laws, codes or other subordinated legislation, in connection with or in relation to the Environment or the protection thereof.
- (r) **“Environment”** has the meaning given to that term in the *Protection of Environment Administration Act 1991* (NSW).
- (s) **“Force Majeure Event”** means any event or circumstance beyond the reasonable control of Porter Group or the Customer, including any:
- (i) action by any government, governmental agency or other external agency, including, any change in applicable law;
  - (ii) civil disturbance or disorder, industrial action, civil disorder, any labour disruption;
  - (iii) epidemic or pandemic;
  - (iv) banking or computer system disruption or interruption of power supplies, internet or other utilities; or
  - (v) natural disaster or emergency, adverse weather (including, rain, wind or fog), fire, flood, tsunami, storm, tempest, earthquake or other act of God, nature, contamination, war or government.
- (t) **“Fair Wear and Tear”** means, in respect of Hired/Leased Goods, wear and tear which the Hired/Leased Goods incur that is ordinarily and reasonably incurred in its normal operation in compliance with these Master Terms and Conditions. Fair Wear and Tear expressly excludes the following items:
- (i) damage, loss, theft or destruction of or to the Hired/Leased Goods;
  - (ii) any loss or damage to buckets, teeth or hoses;
  - (iii) excessive wear on ground engaging parts;
  - (iv) paint scratches, glass and panel damage;
  - (v) tyre damage (including punctures, cuts or blow outs); and
  - (vi) any repairs, servicing and/or maintenance that the Customer is liable for or required to undertake, including as required to satisfy any return requirements for the Hired/Leased Goods.

- (u) **"Fines"** means all fines, offences, infringements, penalties and similar costs, incurred in respect of the use of Porter Owned Goods or Goods that Porter Group has an interest in, including without limitation, traffic infringements, parking fines, fines for overloading, operating without the correct licence, carrying hazardous goods without the correct permits or licences, speeding, or failure to maintain road user charges, registration and certificate of fitness (as applicable). An administration fee of 1.5% or \$200 (whichever is the greater) shall be added to all Fines by Porter Group, and be paid by the Customer.
- (v) **"Goods"** means all goods available for purchase by the Customer from Porter Group from time to time, including without limitation, machinery, plant, equipment, vehicles, parts, accessories consumables and other items.
- (w) **"Guaranteed Limit"** means, with respect to a Guarantor, the guaranteed limit specified in a Deed of Guarantee and Indemnity signed by the applicable Guarantor, as may be varied from time to time.
- (x) **"Guarantor"** means any person or entity that provides a guarantee to Porter Group in relation to a Customer.
- (y) **"Guarantor Collateral"** has the meaning given in clause 2.1 of Part Six of the Master Terms and Conditions.
- (z) **"HVNL"** means the Heavy Vehicle National Law and Regulations and any acts and regulations of any Australian State or Territory which give effect to any of them, any similar laws in any Australian State or Territory and any replacement or modification of any of the foregoing and any Industry Code of Practice registered under the Heavy Vehicle National Law.
- (aa) **"Hire Agreement"** means an Agreement in respect of Hired Goods.
- (bb) **"Hired Goods"** means that machinery, plant, equipment and vehicles, and all applicable accessories and other items, that are hired to the Customer from time to time and includes any such replacement or substitute machinery, plant, equipment, vehicles, accessories and other items that Porter Group may supply to the Customer as part of that hire, whether set out in a Hire Agreement or otherwise.
- (cc) **"Hired/Leased Goods"** means Hired Goods and/or Leased Goods.
- (dd) **"Insolvency Event"** means, in relation to a Customer, any of the following occurring:
  - (i) an administrator, controller, managing controller, restructuring practitioner, provisional liquidator, liquidator or analogous person is appointed to it or any of its assets;
  - (ii) it is the subject of any of the following, or an order or application is made, or a resolution is passed or proposed (and, where such a resolution is proposed, that resolution is not withdrawn within 14 days) for any of the following to occur in respect of it: a winding up, dissolution, liquidation, provisional liquidation, administration, bankruptcy, or an arrangement, moratorium, assignment or composition with or for the benefit of creditors or any class or group of them or any re-organisation, deed of company arrangement or other administration involving one or more of its creditors;
  - (iii) it becomes insolvent within the meaning of section 95A of the Corporations Act, or a court must presume it to be insolvent under section 459C(2) of the Corporations Act, or is taken to have failed to comply with a statutory demand under section 459F(1) of the Corporations Act, or any of the grounds specified in section 461 of the Corporations Act apply (whether or not an application to court has been made under that section);
  - (iv) it becomes the subject of an Ipso Facto Event;
  - (v) where the Customer is a registered corporation under the Corporations Act, any action is taken under section 601AA, 601AB or 601AC of the Corporations Act to cancel its registration or strike its name off any register of companies;

- (vi) where the Customer is an individual, that person has committed an 'act of bankruptcy' specified in section 40 the *Bankruptcy Act 1966* (Cth), is or becomes 'bankrupt' within the meaning of section 5 of the *Bankruptcy Act 1966* (Cth), or becomes incapable of managing their own affairs;
  - (vii) where the Customer is a trustee of a trust, it is unable to satisfy out of the assets of the trust the debts incurred by it as and when those debts fall due;
  - (viii) it enters into voluntary administration;
  - (ix) it enters farm debt mediation;
  - (x) it stops or suspends payment to all or a class of creditors generally;
  - (xi) it cannot pay its debts as and when they fall due; or
  - (xii) an analogous or equivalent event to any listed above occurs in any jurisdiction.
- (ee) **"Ipso Facto Event"** means:
- (i) an announcement, application, compromise, arrangement, managing controller, administration or restructuring as described in section 415D(1), section 434J(1), section 451E(1) or section 454N(1) of the Corporations Act respectively; or
  - (ii) any process which under any law with an analogous purpose may give rise to a stay on, or prevention of, the exercise of contractual rights.
- (ff) **"Lease Agreement"** means an Agreement in respect of Leased Goods which are the subject of a Maintained Lease or a Non-Maintained Lease (as defined in Part Three of these Master Terms and Conditions).
- (gg) **"Leased Goods"** means the machinery, plant, equipment and vehicles, and all applicable accessories and other items, that are leased to the Customer from time to time and includes any such replacement or substitute machinery, plant, equipment, vehicles, accessories and other items that Porter Group may supply to the Customer as part of that lease, as set out in the Lease Agreement.
- (hh) **"Levy"** means a fee or levy (as determined by Porter Group from time to time) to meet (in whole or in part) direct or indirect costs incurred or expected to be incurred by Porter Group in connection with the operation of its business including, without limitation, in compliance with Environmental Law.
- (ii) **"Master Terms and Conditions"** means these Master Terms and Conditions, including all parts, as amended, varied, updated, modified, or replaced from time to time by Porter Group, and where the context requires, any Transactions entered into by the Customer which are subject to these Master Terms and Conditions.
- (jj) **"Material Adverse Effect"** means any event, change or occurrence that may have an adverse effect on, or in the reasonable opinion of Porter Group, will materially impact on:
- (i) the Customer or any Guarantor's ability to perform its obligations under these Master Terms and Conditions, any Transaction or any Other Agreement;
  - (ii) the Customer or any Guarantor's financial position;
  - (iii) the effectiveness or enforceability of these Master Terms and Conditions, any Transaction or any Other Agreement;
  - (iv) the value of any Land charged by the Customer or any Guarantor to the Porter Group.
- (kk) **"National Credit Code"** means the National Credit Code which is set out at Schedule 1 of the *National Consumer Credit Protection Act 2009* (Cth).

- (ll) **"Other Agreement"** means any deed or agreement between Porter Group and the Customer that may be entered into at any time on, before, or after the Effective Date, including Prior Agreements but excluding Agreements.
- (mm) **"Porter Account"** means any credit account created in accordance with these Master Terms and Conditions or otherwise, that may be used by the Account Holder as a trading account with any one or more of the Porter Group Parties.
- (nn) **"Porter Group Costs"** means all costs, sums, fees, levies, duties, taxes (including GST), Fines, interest and penalties, legal fees (on a solicitor/client basis) costs and expenses incurred by Porter Group, including without limitation in respect of the negotiation, preparation, execution, registration, Customer's default, Enforcement Costs making good, giving effect to post termination obligations, registration fees, interest, premiums, servicing, maintenance and repair costs, replacement costs, early return fees, maintenance period fees, break costs, loss of profit or margin, levies, payments, rates, rentals, charges, outgoings, expenses, freight, insurance, liabilities, claims, losses and other financial obligations, in each case whether direct or indirect.
- (oo) **"Porter Group"** means all of:
- (i) Porter Hire Pty Ltd, Porter Group Pty Ltd, Porter Finance Australia Pty Ltd, Porter Equipment Australia Pty Ltd, Porter Property Group Pty Ltd, Eagle Equipment Australia Pty Ltd, Hyundai Construction Australia Pty Ltd; and
  - (ii) any Related Body Corporate (as that term is defined in the Corporations Act) of any of the companies specified in clause 1.1(oo)(i); and
- the **"Porter Group Parties"** and **"Porter Group Party"** shall mean any of them.
- (pp) **"Porter Group Website"** means the website available at the domain [www.porterce.com](http://www.porterce.com), as may be updated, amended and/or replaced from time to time.
- (qq) **"Porter Owned Goods"** means:
- (i) all Goods supplied by the Porter Group to the Customer, that remain subject to the retention of title set out in clause 4.3; and
  - (ii) all Hired/Leased Goods.
- (rr) **"Prior Agreement"** has the meaning set out on page one of these Master Terms and Conditions.
- (ss) **"PPSA"** means the *Personal Property Securities Act 2009* (Cth).
- (tt) **"PPSR"** means the register established under section 147 of the PPSA.
- (uu) **"Receiver Powers"** means, unless the terms of a receiver's appointment provide otherwise, the following rights and powers over the Collateral and/or the Guarantor Collateral which the receiver is appointed to:
- (i) the power to deal with all the rights, powers, discretions or remedies provided by law to mortgagees in possession, receivers or receivers and managers (as those terms are defined in the Corporations Act);
  - (ii) the power to enter into possession and control of, manage and use the Collateral and the Guarantor Collateral;
  - (iii) the power to sell, surrender, dispose of, realise or convert into money the Collateral and the Guarantor Collateral on any terms and in any manner;

- (iv) the power to deal with all of the Porter Groups' powers and rights under these Master Terms and Conditions and at law (other than the power to appoint receivers or receivers and managers (as those terms are defined in the Corporations Act)); and
- (v) the power to obtain financial accommodation from the Porter Group and provide guarantees on terms that the receiver considers expedient in connection with the Collateral and the Guarantor Collateral, in each case whether alone or together with any other person, and with or without granting a Security Interest (regardless of priority ranking) over the Collateral and the Guarantor Collateral,

in each case, in respect of the Collateral, in the name of the Customer, and in respect of the Guarantor Collateral, in the name of the Guarantor, and provided always that the powers of a receiver under these Master Terms and Conditions are to be construed separately and are independent of and in addition to any other legal, equitable or statutory powers.

- (vv) **"Security Interest"** has the meaning set out in the PPSA.
- (ww) **"Services"** means all services available for purchase by the Customer from Porter Group from time to time, including without limitation, repair, servicing, maintenance of machinery, plant, equipment and vehicles, and the hire and/or lease of Hired/Leased Goods.
- (xx) **"Statement"** means the monthly transaction statement issued by Porter Group in respect of each Porter Account.
- (yy) **"Standard Charges"** means the Porter Group's standard charges, rates, fees and charging methodology for Goods and/or Services that apply from time to time, and which may be varied in accordance with clause 5.2 of Part One of these Master Terms and Conditions.
- (zz) **"Standard Mortgage Terms"** means the terms and conditions published by Porter Group from time to time on the Porter Group Website.
- (aaa) **"Transaction"** means each transaction entered into between the Customer and Porter Group in relation to the supply of Goods and/or Services that are subject to these Master Terms and Conditions, including (as applicable in the circumstances):
  - (i) Agreements;
  - (ii) agreements between Porter Group and the Customer for Porter Group to supply Goods and/or Services to the Customer;
  - (iii) one off cash sales of Goods and/or Services by the Porter Group to the Customer;
  - (iv) Porter Group invoicing any amount payable by the Customer; and
  - (v) the Customer paying to the Porter Group any amount due or invoiced.
- (bbb) **"Transport and Journey Documentation"** means any Transport Documentation or Journey Documentation as defined in the HVNL.
- (ccc) **"Transport Activities"** means activities, including Business Practices and making decisions associated with the use of a vehicle on a road, including driving or maintaining a vehicle, consigning, scheduling, packing, loading, managing the loading or unloading, unloading or receiving goods for transport by road or carried by road or contracting, directing or employing any person to do any of the foregoing.
- (ddd) **"Uniform Electronic Transactions Legislation"** means:
  - (i) *Electronic Transactions Act 2001 (ACT)*;
  - (ii) *Electronic Transactions Act 2000 (NSW)*;

- (iii) *Electronic Transactions (Northern Territory) Act 2000*;
- (iv) *Electronic Transactions (Queensland) Act 2001*;
- (v) *Electronic Transactions Act 2000 (SA)*;
- (vi) *Electronic Transactions Act 2000 (TAS)*;
- (vii) *Electronic Transactions (Victoria) Act 2000*; and
- (viii) *Electronic Transactions Act 2011 (WA)*.

(eee) **“Working Days”** means a day that is not a Saturday, Sunday or public holiday in New South Wales.

1.2 **References:** For the purposes of these Master Terms and Conditions and all Transactions, unless the context requires otherwise, or specifically stated, reference to:

- (a) the plural includes reference to the singular, and vice versa;
- (b) words importing one gender includes all genders;
- (c) any law, legislation, or legislative provision includes any statutory modification, amendment, or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision whether before or after the Effective Date;
- (d) any agreement will include any agreement which amends or replaces it;
- (e) reference to a party, person(s) or entity includes without limitation:
  - (i) any natural or artificial person, individual, company, body corporate, association of persons (whether corporate or not), trust, state or agency of a state, or other entity, in each case whether or not having separate legal personality; and
  - (ii) where applicable, those for whom the party is responsible;
- (f) any clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, these Master Terms and Conditions;
- (g) “written” and “in writing” include any means of reproducing words, figures or symbols in a tangible and visible form;
- (h) Commingled, Personal Property, Perfected, Proceeds, Financing Statement, Financing Change Statement, Verification Statement and Accession have the meaning given to those terms in the PPSA;
- (i) times or a time of day are references to Sydney times;
- (j) dollars, AUD and \$ means Australian Dollars; and
- (k) ‘including’ (and its similar expressions) shall be interpreted as if followed by ‘without limitation’.

1.3 **Headings:** Headings inserted in these Master Terms and Conditions are for convenience of reference only and do not affect the interpretation of these Master Terms and Conditions.

1.4 **Agreements:** All Parts, annexures, referenced terms and conditions, and all other attachments to these Master Terms and Conditions form part of these Master Terms and Conditions.

1.5 **Rights:** Unless the context requires otherwise, or specifically stated in these Master Terms and Conditions, a right or power specified in these Master Terms and Conditions may be exercised at any time.

1.6 **Negative obligations:** Any obligation not to do anything will be deemed to include an obligation not to suffer, permit or cause that thing to be done.



- 1.7 **Time period:** If a period of time is specified as being from a given day or the day of an act or event, it is to be calculated as excluding that day.
- 1.8 **Rights and remedies:** Any rights and/or remedies specified are without prejudice to any other rights and/or remedies whether available pursuant to these Master Terms and Conditions or at law.
- 1.9 **No Contra Proferentem Rule:** None of the terms nor any of the Parts of these Master Terms and Conditions are to be construed against a party, by reason of the fact that a term or part was first proposed or was drafted by that party.

## 2. **NATURE OF MASTER TERMS AND CONDITIONS AND RELATIONSHIP WITH PORTER GROUP**

- 2.1 **Application:** These Master Terms and Conditions apply to all Customers purchasing Goods and/or Services from the Porter Group on or after the Effective Date, and to all Customers that have or are granted one or more Porter Accounts on or after the Effective Date.

- 2.2 **Variations:** Unless a particular clause of these Master Terms and Conditions states that it cannot be varied without the consent of the Customer:

- (a) the Porter Group may, by giving 60 days' written notice to the Customer and any Guarantor, vary these Master Terms and Conditions from time to time without the Customer's consent for one or more of the following reasons:
  - (i) to comply with any change or anticipated change in any relevant law, code of practice, guidance or general industry practice;
  - (ii) to reflect any decision of a court, ombudsman or regulator;
  - (iii) to reflect a change in the Porter Group's systems, processes or procedures, including for security reasons;
  - (iv) as a result of changed circumstances in the Porter Group's business;
  - (v) to add new products or features;
  - (vi) to satisfy the requirements of any parties with whom the Porter Group transacts to raise capital by way of equity, debt facilities or other forms of financial accommodation;
  - (vii) to rectify any errors or to ensure that these Master Terms and Conditions reflect the commercial terms that were intended; or
  - (viii) to make them clearer.
- (b) Any such variation of these Master Terms and Conditions will take effect from the date specified in the notice to the Customer and any Guarantor (which, for the avoidance of doubt, will not be less than 60 days from the date of the notice).
- (c) The Customer may, prior to the variation taking effect, terminate any Transactions which are subject to these Master Terms and Conditions by written notice to the Porter Group and payment to the Porter Group of all monies due and owing to the Porter Group at the date of termination. Where otherwise applicable, no Early Return Fee shall be payable by the Customer if a Transaction is terminated by the Customer pursuant to this clause 2.2.

- 2.3 **Conflict:** If there is any conflict or inconsistency between these Master Terms and Conditions and any Transaction, the terms and conditions of the Transaction will to the extent of the conflict or inconsistency prevail. If there is a conflict or inconsistency between Part One of these Master Terms and Conditions and any other part of these Master Terms and Conditions, the other part will to the extent of the conflict or inconsistency prevail.

- 2.4 **Relationship with Porter Group:** The Customer acknowledges and agrees that the Porter Group is made up of a group of companies, which may change from time to time. Each Porter Group Party is bound by these Master Terms and Conditions on a joint and several basis. Any Porter Group Party may sign an Agreement or other document on behalf of the Porter Group or any Porter Group Party, and any Agreement purported to relate to any Porter Group Party is deemed to bind, and be for the benefit of, all Porter Group Parties. Each Porter Group Party may, without notice, appoint any other Porter Group Party as their agent for enforcement purposes, and any and all loss suffered by the appointing Porter Group Party will be deemed to have been suffered by the Porter Group Party that is acting as agent, provided that the Porter Group may not recover more loss than it has suffered, in aggregate.
- 2.5 **Joint and several:** Where the Customer comprises two or more people and/or entities, those people and/or entities will be jointly and severally liable for compliance with these Master Terms and Conditions.
3. **HOW TO ORDER**
- 3.1 **Enquiries:** If the Customer wishes to purchase any Goods and/or Services from Porter Group, the Customer must contact Porter Group to discuss their requirements. All enquiries are to be directed to the appropriate Porter Group Party, whose contact details are set out on the Porter Group Website or otherwise made available to the Customer from time to time.
- 3.2 **Information:** The Customer is solely responsible for the accuracy of any requirements, specifications and information supplied by (or on behalf of) the Customer upon which a quote, estimate or Transaction is based.
- 3.3 **Estimates:** Porter Group may provide pricing, quotes and estimates to the Customer from time to time. Pricing, estimates and quotes are estimates only, are not binding on the Porter Group and may be varied or withdrawn by the Porter Group at any time.
- 3.4 **Lead times:** The supply of Goods and/or Services by the Porter Group may be subject to ordering and/or manufacturing lead times. Porter Group will use reasonable endeavours to advise the Customer of any applicable lead times that apply. Any lead times advised by Porter Group are estimates only.
- 3.5 **No Customer cancellation:** If the Porter Group and the Customer agree that the Porter Group will supply Goods and/or Services to the Customer, the Customer shall be bound to proceed with and complete the purchase of such Goods and/or Services, and the Customer cannot cancel or vary the supply of such Goods and/or Services, unless in accordance with these Master Terms and Conditions or otherwise agreed by the Porter Group.
- 3.6 **Authority:** The Customer advising the Porter Group that it accepts pricing, a quote or estimate, issuing a purchase order or signing an Agreement, are deemed (without limitation) to be actions that comprise agreement to the Porter Group supplying the applicable Goods and/or Services to the Customer. The Customer shall ensure that any person agreeing to the supply of Goods and/or Services from Porter Group on behalf of the Customer is properly authorised. Porter Group shall have no obligation to enquire as to whether a person agreeing to the supply of Goods and/or Services on behalf of a Customer is properly authorised.
- 3.7 **Agreements:** Porter Group may require an Agreement to be signed by the Customer and any Guarantors in relation to particular Goods and/or Services to be supplied. Where an Agreement is required, the Customer must sign (and if applicable procure all Guarantors to sign) and return the Agreement to Porter Group within 30 days of being provided to the Customer. Porter Group may refuse to supply any Goods and/or Services until the Agreement has been signed and returned by the Customer and if applicable all Guarantors. The Customer is deemed to accept an Agreement on the earlier of the Customer receiving all or part of the supply of Goods and/or Services set out in the Agreement or the expiry of a 30 day period from the date that the Agreement was provided to the Customer. Porter Group may vary or withdraw an Agreement prior to it being signed by all parties or deemed to be accepted in accordance with this clause. Where an Agreement indicates that it is to be signed by the Porter Group, the Agreement isn't binding on the Porter Group until it is signed by the Porter Group. Porter Group may terminate an Agreement by notifying the Customer if it is signed and returned by the Customer (and if applicable all Guarantors) to Porter Group more than 30 days after the date that the Agreement is provided to the Customer. If, prior to being signed or deemed to be accepted, the Customer considers that an Agreement requires changes, the Customer must notify Porter Group, and if Porter Group agrees with any changes, Porter Group may re-issue the Agreement (and the previously issued Agreement will become void).

Porter Group will not be bound by any changes made to an Agreement by the Customer, unless Porter Group has expressly agreed in writing or countersigned or initialled the change. If two or more Agreements relate to the same Goods and/or Services and they conflict, the later issued Agreement will prevail to the extent of any conflict.

**3.8 Porter Group cancellation:** Porter Group may, in its sole discretion, cancel all or part of any Transaction for the following reasons:

- (a) where the Goods are out of stock;
- (b) where the Goods have a material lead time;
- (c) where the Goods are on back order;
- (d) where the Goods are unavailable for any reason or are unable to be sourced within a reasonable time; or
- (e) where any Services are unable to be performed or are unable to be performed in a reasonable time.

In the event that the Porter Group cancels all or part of any Transaction pursuant to this clause 3.8, the Porter Group will refund any amount that the Customer has paid in advance for Goods and/or Services that have been cancelled by the Porter Group.

**3.9 Supply:** Where the Porter Group has agreed to supply Goods and/or Services to the Customer, and the supply of Goods and/or Services has not been cancelled or terminated by Porter Group, Porter Group will use reasonable endeavours to source and supply the Goods and/or Services within a reasonable time, but Porter Group does not guarantee supply.

**3.10 Changes to Agreements:** Changes to Agreements are not binding on Porter Group unless they have been expressly agreed to in writing by Porter Group.

#### **4. DELIVERY, COLLECTION, RISK AND TITLE**

**4.1 Delivery:** Delivery of all Goods and Hired/Leased Goods shall occur as follows (**Delivery**):

- (a) where it is agreed that the Customer is collecting Goods or Hired/Leased Goods from the Porter Group, Delivery shall occur when the Customer takes the lawful possession of the Goods or Hired/Leased Goods from Porter Group's nominated point of collection; or
- (b) where it is agreed that the Goods or Hired/Leased Goods are being delivered to the Customer by a third party (whether arranged by Porter Group or the Customer), Delivery shall occur when the third party takes lawful possession of the Goods or Hired/Leased Goods from the Porter Group's nominated point of collection.

**4.2 Risk:** Risk in all Goods and Hired/Leased Goods shall transfer to the Customer from Porter Group on Delivery. Risk in Hired/Leased Goods shall only transfer from the Customer to Porter Group on return of the Hired/Leased Goods to Porter Group's nominated return location, and upon Porter Group signing a written acknowledgement of the return of the Hired/Leased Goods.

**4.3 Title:** The Porter Group retains title in and to:

- (a) all Goods supplied to the Customer, until such time that the Customer has paid for those Goods in full, and the Customer has complied with all of its obligations in respect of those Goods pursuant to these Master Terms and Conditions; and
- (b) all Hired/Leased Goods at all times.

**4.4 Ownership of items supplied for Services:** The Customer shall retain title to all items supplied to Porter Group for the Porter Group to provide Services in respect of. The Customer grants the Porter Group a general lien in respect of all Customer owned items in the Porter Group's possession from time to time, to secure all amounts

owed by the Customer to the Porter Group from time to time. The Customer agrees that this general lien is in addition to any statutory or common law lien that may apply, including a workmans lien, and any other security that the Porter Group may have pursuant to these Master Terms and Conditions or Other Agreement. For the avoidance of doubt, the Porter Group has the power of sale in respect of any items subject to a lien.

- 4.5 **Risk in items supplied to Porter Group for Services:** Risk in any items being supplied to the Porter Group for Services to be undertaken in respect of such items shall not transfer to the Porter Group, but shall remain with the Customer. The Customer bears the sole risk to insure any item supplied to the Porter Group for the provision of Services.
- 4.6 **Insurance for Goods:** The Customer shall insure all Goods and Hired/Leased Goods, for their full replacement value, from the point that risk in the Goods or Hired/Leased Goods transfers from the Porter Group to the Customer until to the point in time that title in the Goods transfers to the Customer or risk in the Hired/Leased Goods transfers back to Porter Group (as applicable).
- 4.7 **No security interests:** The Customer shall not sell, dispose of, part with possession of, charge, encumber, grant a Security Interest in, permit or allow a lien to be claimed in (whether for the cost of repairs or otherwise) or enter into a security agreement with any other party that permits that party to register a Security Interest in any Goods and/or Hired/Leased Goods or otherwise do anything else inconsistent with Porter Group's ownership of, any Goods and/or Hired/Leased Goods, while Porter Group retains ownership of or any other interest in those Goods and/or Hired/Leased Goods. While Porter Group retains ownership of or any other interest in those Goods and/or Hired/Leased Goods, the Customer will not represent such Goods and/or Hired/Leased Goods as being its property and will not use such Goods and/or Hired/Leased Goods as security for any loans or credit.
- 4.8 **Delivery costs:** Unless otherwise agreed, all costs associated with the delivery and collection of Goods and/or Hired/Leased Goods are payable by the Customer, whether such delivery is provided by a third party or the Customer collects the Goods and/or Hired/Leased Goods.
- 4.9 **Third party Delivery:** Porter Group makes no representation or warranty regarding third party delivery services.
- 4.10 **Inspection:** The Customer must immediately inspect all Goods and/or Hired/Leased Goods on Delivery, and advise Porter Group of any damage or other failure to comply with any warranty set out in clause 11.

## 5. **PRICE AND PAYMENT**

- 5.1 **Prices:** The Customer agrees to pay the Charges for the Goods and/or Services supplied or agreed to be supplied by Porter Group.
- 5.2 **Price variation:**
- (a) The Standard Charges for Goods and/or Services may be varied by the Porter Group from time to time by giving 60 days' written notice to the Customer for one or more of the following reasons:.
    - (i) as a result of increased costs incurred by the Porter Group in relation to its compliance with any change or anticipated change in any relevant law, code of practice, guidance or general industry practice;
    - (ii) as a result of increased costs incurred by the Porter Group in relation to its compliance with any decision of a court, ombudsman or regulator;
    - (iii) as a result of increased costs incurred by the Porter Group in relation to a change in the Porter Group's systems, processes or procedures, including for security reasons;
    - (iv) as a result of increased costs incurred by the Porter Group in relation to changed circumstances in the Porter Group's business; or
    - (v) as a result of the addition of new products or features benefitting the Customer;

- (b) The Customer may, prior to the variation taking effect, cancel any Transactions which are subject to these Master Terms and Conditions by written notice to the Porter Group and payment to the Porter Group of all monies due and owing to the Porter Group at the date of cancellation. In the event that the Customer elects to cancel any Transactions under this clause 5.2, the Customer will not be charged any increase in the Standard Charges for Good and/or Services from the date that Porter Group provided notice to the Customer to the date of cancellation but will remain liable to pay the Standard Charges for Goods and/or Services for that period.

Charges (other than Standard Charges) are subject to variation in as agreed by the Porter Group and the Customer, and as set out in the other applicable Parts of these Master Terms and Conditions.

- 5.3 **GST:** All Charges are exclusive of and plus GST, which shall be paid by the Customer.
- 5.4 **Invoices:** The Charges for each Transaction will be invoiced by Porter Group on or about the date of the Transaction. Invoices will be issued to the Customer in electronic form, unless otherwise agreed in writing.
- 5.5 **Bill To:** Where the Porter Group is satisfied (in its sole discretion) that the Customer has a billing relationship set up with a third party, Porter Group may agree from time to time to address all or part of one or more invoices to a third party. Addressing an invoice to a third party does not relieve the Customer's liability for the Charges set out in that invoice nor extend the time for payment of the applicable invoice.
- 5.6 **Payment – no Porter Account:** If the Customer does not have a valid and current Porter Account with the Porter Group Party it is purchasing Goods and/or Services from, then all Charges must be paid in full prior to Delivery or performance (as applicable) of the Goods and/or Services. Where Services comprise the hire or lease of Hired/Leased Goods, the Customer must pay all Charges for the duration of the hire or lease in advance of Delivery, unless otherwise agreed by Porter Group.
- 5.7 **Payment – valid Porter Account:** If the Customer has a valid and current Porter Account with the Porter Group Party it is purchasing Goods and/or Services from, then unless the Account Holder pays cash or is otherwise prevented by any other Part of these Master Terms and Conditions, all Charges will be debited to that Porter Account. Porter Group will issue a Statement to the Account Holder for each Porter Account on or about the last day of each calendar month, detailing all Charges debited to the applicable Porter Account. No Statement is required to be issued where a Porter Account has a nil balance. All Statements issued will be issued electronically unless otherwise agreed by Porter Group. The Porter Group reserve the right to correct, alter and/or re-issue Statements to reflect any errors or omissions, including without limitation debits or credits processed on or about the date of the Statement. The total amount set out in each Statement is due and payable by the Account Holder(s) on the Due Date.
- 5.8 **Method of payment:** All payments required to be made by the Customer under these Master Terms and Conditions must be made by electronic payment to Porter Group's nominated bank account, or such other method of payment requested by Porter Group from time to time (including direct debit). All amounts payable by the Customer to Porter Group must be made in cleared funds, without deduction, counter claim or setoff, on or prior to the applicable due date for payment.
- 5.9 **Allocation of payments:** Payments made by a Customer will be applied in the following order (unless otherwise agreed between Porter Group and the Customer):
- (a) any interest accrued to the date of payment;
  - (b) Fines accrued to the date of payment;
  - (c) payment of Porter Group Costs to the date of payment;
  - (d) Charges outstanding to the date of payment, in the order of oldest to most recent; and
  - (e) any other amount due and payable by the Customer to the Porter Group pursuant to these Master Terms and Conditions and/or any Transaction.

- 5.10 **Allocation between Porter Group Parties:** For the avoidance of doubt, the Porter Group may allocate and transfer payments between any Porter Group Parties without notice to the Customer.
- 5.11 **Porter Group set off:** The Porter Group may, without notice to or the consent of the Customer, set off any amount that it owes to the Customer, from any amount that the Customer owes to the Porter Group. The Customer does not have any right to set off or deduction.
- 5.12 **Timing:** Any amount payable on a non-Working Day will be payable on the next Working Day.

## 6. PORTER ACCOUNTS

- 6.1 **Nature:** A Porter Account provides the Account Holder with an account against which Charges from the Porter Group Party issuing the Porter Account can be debited. Porter Accounts are only available to Customers that are in trade. Porter Accounts may be established with one or more Porter Group Parties, subject to this clause 6.
- 6.2 **Application:** If a Customer submits an Account Application Form, Porter Group will review and consider such application.
- 6.3 **Information:** The Customer must provide all information set out in the Account Application Form, together with the Account Application Form, to the Porter Group and otherwise promptly upon request from the Porter Group from time to time, including without limitation financial information related to the business, affairs, financial condition or other operations of the Customer and/or the Guarantors as the Porter Group may request from time to time and all relevant information and documents requested by the Porter Group for it to comply with its identification and verification obligations and all other relevant obligations under the AML/CTF Laws.
- 6.4 **Diligence:** The Customer applying for one or more Porter Accounts authorises Porter Group to do the following, either at the time that the Customer applies for a Porter Account, or at any later date:
- (a) to conduct all checks, make enquiries, collect all and any information from and disclose such information to third parties, and undertake any searches in relation to the Customer's credit, financial, legal, criminal and business affairs and history as is reasonably required to assess the Customer's credit position and as otherwise deemed necessary by Porter Group from time to time, including but not limited to verifying the Customer's identity through third-party credit reporting agencies and disclosing the Customer's personal information as provided in the Account Application Form to a credit reporting body for the purposes of obtaining a credit report about the Customer to assess the Customer's application and obtaining from any credit providers named in the Customer's Account Application Form, and any credit providers that may be named in a credit report issued by a credit reporting body, information about the Customer's credit arrangements including any information about the Customer's credit worthiness, credit standing, credit history, or credit capacity that credit providers are allowed to give or receive from each other under the *Privacy Act 1988* (Cth); and
  - (b) contact third parties to provide Porter Group with such information as Porter Group may reasonably require from time to time in respect of the above authorisations.
- 6.5 **Operation:** If the Porter Group accepts (in its sole discretion) the Account Application Form (in full or in part), the Porter Group will notify the Account Holder of such acceptance, and subject to earlier cancellation or suspension, open and maintain a Porter Account for the Account Holder with the applicable Porter Group Parties. For the avoidance of doubt, Porter Accounts may be opened with additional Porter Group Parties from time to time in Porter Group's sole discretion.
- 6.6 **Credit limit:**
- (a) Upon request by an Account Holder, the Credit Limit for a Porter Account may be increased (at the sole discretion of Porter Group)., In the event that the Credit Limit for a Porter Account is increased, the Porter Group must notify the Account Holder and any Guarantor.
  - (b) The Credit Limit for a Porter Account may be decreased at the sole discretion of Porter Group. In the event that the Porter Group elects to decrease a Porter Account, it will notify the Account Holder of the new Credit Limit within 5 Working Days.

- (c) The balance of a Porter Account shall not exceed the Credit Limit at any time. If at any time, the balance of a Porter Account balance exceeds the Credit Limit (including without limitation where the Credit Limit has been decreased), the Account Holder shall immediately make payment to Porter Group to reduce the balance of the Porter Account so it is less than or equal to the Credit Limit. The Porter Group may refuse to debit any further Charges to the Porter Account, and require the Account Holder to pay cash for any further Charges. Any amount debited to the Porter Account in excess of the Credit Limit does not constitute approval from Porter Group to an increase of the Credit Limit.

6.7 **Liability:** The Account Holder is liable for all Charges debited to their Porter Accounts.

6.8 **Joint and several:** Where one or more Porter Accounts are in the names of two or more people and/or entities, those people and/or entities will be jointly and severally liable for the Porter Accounts.

6.9 **Instructions:** The Porter Group is entitled to accept instructions from any one of the joint Account Holders relating to the joint Porter Accounts, or other person purporting to have authority to apply any Charges to the Porter Accounts. The Porter Group has no obligation to ensure that a person applying any Charge to the Porter Accounts are authorised to do so.

6.10 **Account Holder Cancellation:** To cancel one or more Porter Accounts, the Account Holder must notify the Porter Group in writing. Where Porter Accounts are jointly held, notice is only required from one of the joint Account Holders.

6.11 **Suspension and Cancellation:** Porter Accounts may be suspended, made inactive or placed on hold (**Suspended** or **Suspension**) by the Porter Group at any time, without any requirement to notify the Account Holder(s) in writing. Porter Accounts may be cancelled by the Porter Group at any time by notifying the Account Holder(s) in writing (**Cancellation**).

6.12 **Effect of Cancellation:** Suspension or Cancellation of a Porter Account does not affect the liability of the Account Holder(s) in respect of the then current balance of the Porter Account or any additional Charges that may become payable by the Account Holder(s). Upon Suspension or Cancellation:

- (a) the Account Holder will not be permitted to debit or incur any new Charges to the Suspended or Cancelled Porter Account;
- (b) the Porter Group may apply any additional Charges to the Suspended or Cancelled Porter Account;
- (c) the Porter Group will issue a final Statement in respect of the Suspended or Cancelled Porter Account; and
- (d) the Account Holder(s) must immediately pay the total amount outstanding (including Interest) shown on any final or other outstanding Statement.

## 7. **INTEREST**

7.1 **Interest for late payment:** Interest shall accrue at the Default Interest Rate on all amounts that are due and payable by the Customer to the Porter Group, from the date that such amount became due and payable, until the date that the amount is paid in full (**Interest**). Interest is calculated on a daily basis. Any unpaid Interest will compound with the principal amount due and payable by the Customer on the 20<sup>th</sup> day of each month.

7.2 **Application:** For the avoidance of doubt, if the Account Holder makes payment of the total amount set out in a Statement by the Due Date no Interest will be charged except in respect of any unpaid balance carried forward from an earlier Statement.

7.3 **Clarification:** For the avoidance of doubt, Interest accrues before as well as after judgment.

## 8. **SECURITY**

8.1 **Security interest grant:** To secure Porter Group's ownership rights in Goods and Hired/Leased Goods supplied to the Customer and the Customer's performance of its payment and other obligations set out in these Master Terms and Conditions owed to Porter Group at any time:

- (a) the Customer grants a Security Interest in all Porter Owned Goods, and all Proceeds thereof; and
- (b) if the Customer is an Account Holder, the Account Holder (or where there is more than one Account Holder, each joint Account Holder):
  - (i) grants to the Porter Group a Security Interest in all of the Account Holder's present and after acquired property, and all Proceeds thereof; and
  - (ii) charges all of its right, title and interest in in any land in which it (whether individually, together or jointly with others) has an interest ("**Land**"), whether now or at any time in the future, to Porter Group as security for the due performance of all of its obligations under these Master Terms and Conditions.
- (c) The Porter Group agrees not lodge to lodge a caveat or any other document as it considers necessary to protect its interests in the Land unless or until the Customer is in default under the relevant default provisions of the relevant Agreement or the Customer otherwise consents to the lodgement of that caveat.

**[Deemed security interests:** The Customer and Porter Group acknowledge and agree that Hired/Leased Goods that have been hired or leased to the Customer for:

- (d) a term of more than two years;
- (e) a term of up to 2 years that is automatically renewable, or that is renewable at the option of one of the parties, for one or more terms if the total of all the terms might exceed 2 years; or
- (f) a term of up to 2 years, or leased for an indefinite term, in a case in which the Customer, with the consent of the Porter Group, retains uninterrupted (or substantially uninterrupted) possession of the Hired/Leased Goods for a period of more than 2 years after the day the Customer first acquired possession of the Hired/Leased Goods (but not until the Customer's possession extends for more than 2 years),

are subject to the PPSA and subject to a deemed Security Interest in favour of Porter Group pursuant to the PPSA.

8.2 **Additional security:** Porter Group may from time to time require the Customer to provide additional security to secure the Customer's obligations set out in these Master Terms and Conditions (**Additional Security**). The Customer shall provide such Additional Security promptly on request as follows:

- (a) where the Additional Security is Personal Property, the Customer must grant to the Porter Group a specific Security Interest in that Personal Property; and
- (b) where the Additional Security is land, the Customer must grant to the Porter Group, and provide, in a form acceptable to the Porter Group in all respects, a mortgage (with such mortgage to incorporate the Standard Mortgage Terms).

8.3 **Perfection, information and assistance:** The Customer must, at any time requested by the Porter Group, promptly execute any documents, provide any necessary information, and do anything else required by Porter Group to ensure that [each Security Interest granted pursuant to these Master Terms and Conditions or deemed to be granted pursuant to the PPSA are perfected and first ranking. The Customer shall provide all information and assistance that Porter Group requires to register a Financing Statement, Financing Change Statement and/or to have a deed of priority signed, in respect of any Security Interest granted in these Master Terms and Conditions or deemed to be granted pursuant to the PPSA.



- 8.4 **[No competing security]:** The Customer shall not grant to any other person a Security Interest or lien in any Collateral, nor consent to any other person creating a Security Interest, registering a Financing Statement or creating a lien, in respect of the Collateral (other than where the Collateral is inventory or accounts receivable and such dealing is done in the ordinary course of its business and on reasonable commercial arm's length terms for full value).
- 8.5 **Costs:** All costs of and incidental to the registration, amendment or discharge of the Security Interest, Financing Statement or Financing Change Statement must be paid by the Customer.
- 8.6 **Notice of changes:** The Customer will promptly notify Porter Group:
- (a) of any changes to the Customer's details, including without limitation any name change, amalgamation or change of contact information; or
  - (b) if any ABN, ARBN or ARSN allocated to the Customer (or if the Customer is a trust or partnership, the trust or the partnership) changes, is cancelled or otherwise ceases to apply to it (or if it does not have an ABN, ARBN or ARSN, one is allocated, or otherwise starts to apply, to it).
- 8.7 **PPSA matters:**
- (a) The Customer:
    - (i) acknowledges that where Porter Group has rights in addition to, or existing separately from, those in Chapter 4 of the PPSA, those rights will continue to apply; -
    - (ii) waives any rights it may have under sections 95 (notice of removal of accession), 118 (enforcing security interests in accordance with land law decisions), 121(4) (enforcement of liquid assets), 125 (obligation to dispose of or retain collateral), 128 (secured party may dispose of collateral), 129 (disposal by purchase), 130 (notice of disposal), 132(3)(d) (contents of statement of account after disposal), 132(4) (statement of account if no disposal), 135 (notice of retention), 142 (redemption of collateral) and 143 (reinstatement of security interest) of the PPSA and agrees that those provisions do not apply to the Agreements or any Other Agreement or any Security Interest created pursuant to these Master Terms and Conditions, the Agreements or any Other Agreement;
    - (iii) waives its right to receive a copy of the Verification Statement confirming registration of a Financing Statement or a Financing Change Statement in relation to Porter Group's Security Interests;
    - (iv) acknowledge and agree that, pursuant to section 116 of the PPSA, if a receiver has been appointed pursuant to these Master Terms and Conditions, and if the Customer is a corporation, and if the receiver has been appointed as a "receiver" or a "receiver and manager" (as those terms are defined in the Corporations Act), the provisions of Chapter 4 of the PPSA (which relate to the enforcement of Security Interests) do not apply to these Master Terms and Conditions; and
    - (v) waives any other sections of the PPSA that the Customer is able to waive its rights pursuant to.
  - (b) Each party:
    - (i) agrees that it will not disclose information of the kind referred to in section 275(1) of the PPSA (except in the circumstances required by sections 275(7)(a) to (e) of the PPSA, or if disclosure is required by law or to Porter Group's assignees or funders) and that this clause 8.7(b) constitutes a confidentiality agreement for the purposes of section 275 of the PPSA and other provisions of the PPSA. The Customer agrees to waive any right it may have, or but for this clause 8.7(b) may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of information of the kind referred to section 275(1) of the PPSA.

- 8.8 **Accessions etc:** If any Collateral is processed, included or dealt with in any way causing them to become Accessions, processed or Commingled goods, Porter Group's Security Interests will continue in the Accessions, processed or Commingled goods in which they are included. The Customer shall not grant any Security Interest or any lien in the Accessions, processed or Commingled goods.
- 8.9 **Land:** If required by Porter Group, the Customer will obtain a written acknowledgement from the registered proprietor, landlord and mortgagee (as applicable), of any land on which Porter Owned Goods are or may be located acknowledging that Porter Group owns the Porter Owned Goods and that the registered proprietor or landlord, and the mortgagee of the land, has no rights in respect of the Porter Owned Goods.
- 8.10 **Continuing security:** Each Security Interest granted by the Customer pursuant to these Master Terms and Conditions shall operate as a continuing security interest between the Customer and Porter Group, irrespective of any amounts which may be paid to the Porter Account(s) of the Customer. Notwithstanding the appointment at any time of a receiver or the retirement or removal of any receiver pursuant to these Master Terms and Conditions or the exercise by Porter Group or a receiver appointed pursuant to these Master Terms and Conditions of any right, power or authority conferred by these Master Terms and Conditions or by law and notwithstanding any settlement of account or any other matter or thing whatsoever, each Security Interest granted pursuant to these Master Terms and Conditions shall remain in full force in respect of all amounts and obligations owed to Porter Group by the Customer and shall extend to cover any sum of money which may hereafter become owing from the Customer to the Porter Group until a final release has been executed by the Porter Group.
- 8.11 **Proceeds:** Nothing in these Master Terms and Conditions authorises any sale, disposal or other dealings with any Collateral which gives rise to Proceeds unless Porter Group has expressly agreed in writing to any such dealing. Porter Group's Security Interest in the Collateral will continue in the Proceeds of any such dealing whether or not authorised by Porter Group and the Customer agrees to do all things reasonably requested by Porter Group to ensure that Porter Group has a perfected Security Interest in any such Proceeds. If the Customer sells, disposes of or otherwise deals with any Collateral (whether or not authorised by Porter Group) in which it has granted a Security Interest in favour of Porter Group, the Customer will hold all of the Proceeds of that dealing on trust for Porter Group and must keep any such Proceeds in a separate account and not mix them with any other funds.
9. **ACCESS AND INSPECTION**
- 9.1 **Location:** The Customer shall immediately advise the Porter Group in writing of the specific location of any Collateral on request.
- 9.2 **Access and inspection:** The Customer irrevocably grants Porter Group and anyone authorised by the Porter Group the right, at any reasonable time, to access and enter any place owned or occupied by the Customer or any other place where the Collateral is located (whether land, buildings or otherwise) to locate, inspect and identify the Collateral.
- 9.3 **Access and repossession:** If at any time the Customer is in default of its obligations pursuant to these Master Terms and Conditions, or the Porter Group reasonably determines that the Collateral is At Risk, the Customer irrevocably grants Porter Group and anyone authorised by the Porter Group the right at any time to access and enter any place owned or occupied or any other place where the Collateral is located (whether land, buildings or otherwise) to locate, inspect, identify, exercise its rights or perform its obligations, take possession of and remove the Collateral.
- 9.4 **Third party consents to access:** The Customer will provide access to the Collateral and any place owned or occupied by the Customer (whether land, buildings or otherwise) to give effect to clause 9.2 and 9.3, and obtain all consents from any third party (including without limitation any land owner, landlord, occupier and/or any mortgagee) necessary to give effect to clause 9.2 and 9.3.
- 9.5 **No liability for damage:** Porter Group shall not be liable for any damage reasonably caused in the process of accessing, entering, inspecting, identifying, exercising rights or performing obligations, taking possession of and/or removing the Goods and the Customer indemnifies Porter Group against any and all liability arising from

the Porter Group exercising its rights set out in this clause 9, except where such liability is the direct result of the gross negligence, wilful misconduct or fraud of the Porter Group.

## 10. **POWER OF ATTORNEY**

10.1 For the purpose of enabling the Porter Group to obtain the full benefit of these Master Terms and Conditions, any Agreements, any Transaction and any Other Agreement, the Customer, for valuable consideration, irrevocably appoints the Porter Group and its directors, officers and agents and any receiver appointed in accordance with these Master Terms and Conditions jointly and severally as their attorney.

10.2 As attorney, the Porter Group and its directors, officers and agents and any receiver appointed in accordance with these Master Terms and Conditions may:

- (a) in the Customer's name, at the Customer's act and deed, and at the Customer's expense do anything which the attorney thinks necessary, expedient or desirable to give effect to these Master Terms and Conditions, any Agreement, any Transaction and any Other Agreement and any right, power or remedy conferred on the Porter Group by these Master Terms and Conditions, any Agreement, any Transaction and any Other Agreement, by law or otherwise (including executing deeds and instituting, conducting and defending legal proceedings) or any act which ought to be done by the Customer or which the Porter Group consider necessary to protect any Security Interest or ownership of Porter Owned Goods; and
- (b) delegate the Customer's powers (including this power of delegation) to any person for any period, and revoke a delegation.

10.3 The Customer hereby ratifies anything done by the Porter Group and its directors, officers and agents and any receiver appointed in accordance with these Master Terms and Conditions as its attorney appointed pursuant to this clause 10 or any delegate in accordance with this clause 10.

10.4 In the event that the powers conferred by this clause 10 are to be exercised at any time prior to the occurrence of a default (however described in these Master Terms and Conditions, any Agreements, any Transaction or any Other Agreement) by the Customer, the Porter Group shall use all reasonable endeavours to notify the Customer of any exercise by it as the Customer's attorney of the Customer's rights under this clause 10 before such rights are exercised, and shall, as soon as practicable after such exercise, use all reasonable endeavours to notify the Customer of the action taken by the Porter Group and its directors, officers and agents as Attorney in exercising such rights.

10.5 The Customer indemnifies the Porter Group and its directors, officers and agents and any receiver appointed in accordance with these Master Terms and Conditions (acting as its attorney) against all liabilities, losses, costs, charges or expenses incurred by the attorney arising from the exercise of powers granted under this power of attorney, except to the extent that such liability, loss, cost, charge or expense was caused by the attorney's gross negligence, wilful misconduct or fraud.

10.6 This power of attorney shall in any event remain in full force and effect until all moneys owed by the Customer to the Porter Group have been paid in full or the Customer has no unperformed obligations in respect of any Transaction or any Other Agreement, and will not merge or be cancelled by termination of any Transaction or any Other Agreement.

## 11. **WARRANTIES**

11.1 **Customer warranties:** The Customer represents and warrants to Porter Group at all times while the Customer is bound by these Master Terms and Conditions, that:

- (a) all information provided by the Customer to the Porter Group is true, correct and complete, as at the date of being provided to the Porter Group;
- (b) there are no facts or circumstances that have not been disclosed to Porter Group which would make any information untrue, inaccurate or misleading;

- (c) it is unaware of any facts or circumstances which would or might, if disclosed, affect the decision of prudent business operator in the same industries as the Porter Group, whether or not to enter into a business relationship with the Customer and/or whether to provide credit or finance to the Customer (as applicable), for a like amount and on like terms the same as or similar to these Master Terms and Conditions;
- (d) where financial information and/or accounts have been provided to Porter Group, the financial information and/or accounts have been prepared in accordance with the current accounting standards consistently applied and present a true and fair view of the financial position and condition of the Customer;
- (e) no events of default (described in clause 15.1) have occurred or are likely to occur;
- (f) except as previously advised to the Porter Group in writing, the Customer is not subject to any litigation, arbitration, action or administrative proceeding of, or before any court or governmental agency has been started, is pending or threatened which, if adversely determined, is likely to have an adverse effect on the Customer;
- (g) that the Customer will notify the Porter Group of the occurrence of any actual or likely breach of these Master Terms and Conditions or event of default pursuant to clause 15, immediately upon becoming aware of it, giving full details of it and of any action taken (or to be taken) in respect of it;
- (h) its obligations under these Master Terms and Conditions are legal, valid and binding against the Customer;
- (i) the Customer, where it is an entity (rather than an individual):
  - (i) is validly existing under the laws of Australia;
  - (ii) has been duly authorised in accordance with the terms and conditions of its governing document to enter into, be bound by and perform its obligations set out in these Master Terms and Conditions, and being bound by and complying with these Master Terms and Conditions do not and will not breach such governing document, applicable law, any document or other agreement it is a party to, or cause any limit on its powers to be exceeded;
  - (iii) will do all things necessary to maintain its corporate existence and will maintain all necessary franchise agreements, leases, patents and licences required to operate its business;
  - (iv) which is a company, it is duly incorporated and, or where it is any other entity, it is capable of suing and being sued and has the power and authority to own its assets and to carry on its business;
  - (v) no Insolvency Event has occurred and their assets are greater than their liabilities and they can pay their debts as they fall due; and
  - (vi) will conduct its business properly and efficiently in accordance with best then current commercial practice; and
- (j) it has sufficient rights in the Collateral to grant a Security Interest in that property in favour of Porter Group.

**11.2 Reliance:** The Customer acknowledges that the Porter Group has relied on the warranties set out in clause 11.1 in agreeing to enter into any Transaction with the Customer.

**11.3 Porter Group Warranties:** Porter Group warrant that Goods and Hired/Leased Goods supplied by Porter Group will match the specifications set out in the applicable Agreement, and Services will be performed in accordance with Porter Group's standard operating procedures. If the Customer considers that the Porter Group have breached any warranty set out in these Master Terms and Conditions, whether in respect of any errors, omissions, or short delivery of Goods, Hired/Leased Goods and/or Services, the Customer must provide notice

in writing to Porter Group, quoting relevant invoice numbers, within seven days of Delivery of the Goods, Hired/Leased Goods or completion of the Services (as applicable).

## 12. LIMITATION OF LIABILITY

12.1 **Limitation of Liability:** To the maximum extent permitted by law and except as expressly provided in these Master Terms and Conditions, the Porter Group excludes all warranties, guarantees and representations. Where the Porter Group is unable to exclude its liability due to operation of law, and the Goods or Hired/Leased Goods or Services are not of the kind ordinarily acquired for personal, domestic or household use or consumption then the Porter Group's liability is limited to the following:

- (a) in respect of defective Goods or defective Hired/Leased Goods, the Porter Group may in its discretion either:
  - (i) replace the defective Goods or defective Hired/Leased Goods or the supply of equivalent Goods or Hired/Leased Goods; or
  - (ii) repair the defective Goods or defective Hired/Leased Goods; or
  - (iii) pay the cost of replacing the defective Goods or defective Hired/Leased Goods or acquiring equivalent Goods or Hired/Leased Goods or the payment of the cost of having the defective Goods or defective Hired/Leased Goods repaired;
- (b) in respect of Services, the Porter Group may in its discretion either:
  - (i) resupply the Services; or
  - (ii) pay the cost of having the Services resupplied.

12.2 In all cases other than those cases where the Porter Group is unable to exclude its liability due to the operation of law, if Goods or Hired/Leased Goods are defective and are returned to the Porter Group by the Customer, the Porter Group's liability is limited to:

- (a) using reasonable endeavours to enforce any warranty given by a third party manufacturer or supplier of the Goods or Hired/Leased Goods the subject of the claim. Porter Group is not required to do anything under this clause 12.2 which would, if done, cause Porter Group to incur any cost or expense or other liability or which would involve commencing legal proceedings; and
- (b) to the extent reasonably possible, Porter Group assigning to the Customer the benefit of any warranty or contractual right operating in favour of Porter Group against the third party manufacturer or supplier of the Goods or Hired/Leased Goods the subject of the claim.

12.3 **New Goods:** With respect to the sale of Goods that are new, and are manufactured by a third party and resold by the Porter Group to the Customer, Porter Group will use its reasonable endeavours to pass on the benefit of any associated manufacturer warranty to the Customer. For the avoidance of doubt, Porter Group does not to the extent permitted by law, give any warranties in addition to those provided by the original manufacturer (if any).

## 13. COMPLIANCE

13.1 **General:** The Customer will at all times comply with:

- (a) any and all applicable laws;
- (b) without limiting clause 13.1(a):
  - (i) all of its obligations under the *Work Health and Safety Act 2011* (Cth) (**WHSA**); and
  - (ii) all of its obligations to file tax returns, pay or discharge all taxes prior to the date upon which the tax becomes payable, except only to the extent that those taxes are being contested in

good faith by appropriate proceedings and adequate reserves are set aside for the payment of such taxes; and

- (c) the Porter Group's reasonable instructions, directions, standard operating procedures and policies issued to the Customer from time to time.

**13.2 Health and safety:** The Customer:

- (a) will before using any Goods and Hired/Leased Goods:
  - (i) ensure that all safety checks appropriate for the use of the Goods and Hired/Leased Goods are carried out, including as specified by any manufacturer of the Goods and Hired/Leased Goods; and
  - (ii) conduct and be satisfied with a risk assessment of all sites at which the Goods and Hired/Leased Goods will operate, including identifying possible hazards for its workers, or in the vicinity of, the Goods and Hired/Leased Goods;
- (b) acknowledges that it is aware of its obligations and duties under the WHSA and warrants that it:
  - (i) has written rules and procedures relating to health and safety which the Customer will follow to ensure the safety of its workers operating, or in the vicinity of, the Goods and Hired/Leased Goods;
  - (ii) will ensure that all persons who use the Goods and Hired/Leased Goods are competent to do so and will use the Goods and Hired/Leased Goods in the manner they were designed to be used, comply with any directions from Porter Group, applicable laws, requirements of local authorities, codes of practice or directions and instructions issued by the manufacturer of the Goods and Hired/Leased Goods, relating to the use and safety of the Goods and Hired/Leased Goods;
  - (iii) will ensure all persons who use the Goods and Hired/Leased Goods have all necessary permits, licences, consents and approvals required for the Goods and Hired/Leased Goods to be used in accordance with all applicable laws;
  - (iv) will comply with all obligations in relation to the use and control of the Goods and Hired/Leased Goods;
  - (v) ensure persons using the Goods and Hired/Leased Goods comply with the WHSA and all other applicable laws;
  - (vi) is responsible for all health and safety obligations in respect of the Goods and Hired/Leased Goods, and will take all practicable steps to eliminate, isolate, and minimise any hazards or risks for its workers operating, or in the vicinity of, the Goods and Hired/Leased Goods, and ensure the safety of any person operating the Goods and Hired/Leased Goods, or other persons in the vicinity of the Goods and Hired/Leased Goods; and
  - (vii) will maintain a register of accidents and near misses, and conform with any applicable laws and code of practice which relate to the particular work being undertaken using the Goods and Hired/Leased Goods.

**13.3 Inspection:** The Customer will:

- (a) cause proper business records to be kept and provide copies of accounts or any other information relating to its business or undertaking which the Porter Group requests from time to time;
- (b) permit the Porter Group or any person authorised by the Porter Group, upon reasonable notice and at reasonable times, to inspect its premises, books, documents and records; and

- (c) promptly notify the Porter Group of any change in the information contained in any Agreement or other document supplied to Porter Group in particular its address or business including any change of name or address of the Customer.

#### 14. **CROSS DEFAULT**

14.1 **Collateral:** These Master Terms and Conditions and Transactions are interdependent and collateral to any Other Agreement, to the extent that:

- (a) a breach or default by the Customer under these Master Terms and Conditions or a Transaction shall, where that breach or default has a Material Adverse Effect and is capable of being remedied and has not been remedied (to Porter Group's satisfaction) by the Customer within 5 days, constitute a breach or default by the Customer under each Other Agreement; and
- (b) a breach or default by the Customer under any Other Agreement shall, where that breach or default has a Material Adverse Effect and is capable of being remedied and has not been remedied (to Porter Group's satisfaction) by the Customer within 5 days, constitute a breach or default by the Customer under these Master Terms and Conditions.

14.2 **Remedies:** All rights, remedies and powers of Porter Group pursuant to these Master Terms and Conditions, Transactions or any Other Agreement (including, without limitation, the right to enforce any security) shall be available to Porter Group in respect of any such default by the Customer under these Master Terms and Conditions, Transactions or any Other Agreement.

14.3 **Warranty:** The Customer agrees and warrants that the Customer will fully comply with the provisions of each Other Agreement.

#### 15. **DEFAULT**

15.1 **Events of default:** The Customer will be in default if:

- (a) **(Payment Default)** the Customer fails to pay any amounts due to Porter Group on or prior to the due date and fails to remedy the Payment Default within 5 days (or any longer period required by law);
- (b) **(Breach of Obligations)** the Customer breaches any of its obligations in these Master Terms and Conditions, a Transaction or the terms of any Other Agreement and, if the breach is capable of being remedied, fails to remedy (to Porter Group's satisfaction) those breaches within 5 days;
- (c) **(Insolvency Event)** the Customer:
  - (i) is subject to an Insolvency Event; or
  - (ii) suffers any execution or distress, or any analogous arrangement or procedure in any jurisdiction;
- (d) **(Individual)** where the Customer is an individual, the Customer dies, or suffers illness or total permanent disablement to the extent that they cannot perform their obligations set out in these Master Terms and Conditions or a Transaction;
- (e) **(Corporate Entity)** where the Customer is not an individual, a key person of the Customer (being a shareholder, director, trustee, partner or other officer) dies or suffers illness or total permanent disablement to the extent that the Customer is unable to perform their obligations set out in these Master Terms and Conditions or a Transaction;
- (f) **(Porter Owned Goods)** in respect of any Porter Owned Goods:
  - (i) any insurance policy held by the Customer, required to be held by the Customer or any insurance proposal or application made by the Customer in respect of the Porter Owned

Goods, is declined, refused, rejected or cancelled and the Customer fails to remedy such matter within 5 days; or

(ii) the Customer does, or omits to do, anything which might endanger the safety or condition of the Porter Owned Goods and the Customer fails to remedy such action or omission to Porter Group's satisfaction (acting reasonably) within 5 days; or

(iii) the Customer sells, parts with possession or disposes of, subleases, encumbers, creates a Security Interest in or otherwise deals with any Porter Owned Goods or does anything inconsistent with Porter Group's ownership of the Porter Owned Goods prior to making payment in full to Porter Group; or

(iv) Porter Group believes the Porter Owned Goods are At Risk; or

(g) **(Disrepute)** it does anything, or encourages any third party, to bring Porter Group into disrepute (in Porter Group's sole discretion) and, if capable of remedy, the Customer fails to remedy (to Porter Group's satisfaction) the events or circumstances that the Porter Group consider have brought it into disrepute within 5 days of notice from Porter Group.

15.2 **Remedies on default:** If the Customer is in default of these Master Terms and Conditions pursuant to clause 15.1, the Porter Group may, in its sole discretion and without prejudice to its other rights and remedies, do any one or more of the following:

(a) in respect of any amounts unpaid, charge Interest pursuant to clause 7;

(b) charge the Customer for all Porter Group Costs;

(c) repossess any Porter Owned Goods pursuant to clause 9;

(d) reject any pending requests for Goods and/or Services;

(e) suspend or terminate a Transaction;

(f) suspend or terminate these Master Terms and Conditions, any Transaction and/or any Other Agreements;

(g) require the Customer to cease use of, and to secure, all Porter Owned Goods;

(h) remedy the Customer's default, and charge the Customer for reasonable Porter Group Costs incurred by Porter Group in so doing;

(i) require the Customer to pay to Porter Group all amounts that the Customer owes to Porter Group immediately;

(j) suspend or cancel one or more of the Customer's Porter Accounts;

(k) enforce any security held for the benefit of Porter Group, including without limitation any guarantee or Security Interest(s);

(l) enter into possession and control of, manage and use the Collateral and Guarantor Collateral;

(m) appoint 1 or more persons to be jointly, severally or jointly and severally a receiver in respect of all or part of the Collateral and/or Guarantor Collateral (notwithstanding the bankruptcy or insolvency of the Customer or any Guarantor), with such receiver having all of the Receiver Powers to recover any monies owed by the Customer and any Guarantors to Porter Group; and/or

(n) exercise any rights that Porter Group has under these Master Terms and Conditions, Agreement, Other Agreement or that are otherwise available at law.



15.3 **Appointment of receiver:** If the Porter Group appoints a receiver in respect of the Collateral in accordance with clause 15.2(m), then:

- (a) Porter Group may by written notice to the receiver remove them absolutely or in relation to any part of the Collateral;
- (b) Porter Group may appoint any person to replace any receiver who has been removed or who has retired or died;
- (c) Porter Group may fix the remuneration of the receiver and at any time by agreement with the receiver vary their remuneration;
- (d) the Customer must pay and the receiver may retain out of money received by the receiver, the receiver's remuneration and (except where they arise because of the wilful misconduct, fraud or gross negligence of the receiver) the costs, charges and expenses incurred by them as receiver and money on account of other liabilities incurred actually or contingently by them as receiver;
- (e) the Customer must reimburse the Porter Group any payment made to the receiver on account of their fees or any cost or expense incurred by the receiver; and
- (f) unless otherwise prevented by law, the receiver will be the agent of the Customer and the Customer agrees to be responsible for each of the receiver's acts and omissions.

15.4 **Consequences of Termination of Master Terms and Conditions:** If these Master Terms and Conditions are terminated, then:

- (a) Porter Group will cease the supply of all Goods and/or Services under all Transactions, unless Porter Group otherwise notifies the Customer in writing (**Post Termination Supply**). The Customer shall continue to be bound by these Master Terms and Conditions in respect of any Post Termination Supply, provided that Porter Group may terminate any Post Termination Supply arrangement at any time with 2 Working Days' notice to the Customer;
- (b) except to the extent that Post Termination Supply applies, the Customer shall:
  - (i) immediately cease use of and return all Porter Owned Goods to Porter Group's nominated return location;
  - (ii) if the Porter Owned Goods are not returned within 3 days of termination, the Customer must notify Porter Group of their location, and make them available for collection by Porter Group, which will be at the Customer's cost;
  - (iii) not move any Porter Owned Goods, unless (and only to the extent necessary) to prevent damage, theft, destruction, or to return them to Porter Group;
- (c) if the Customer is an Account Holder, all of their Porter Accounts will be cancelled and a final Statement issued;
- (d) all monies payable by the Customer under these Master Terms and Conditions, if they are not already due for payment, shall become accelerated so they are immediately due for payment; and
- (e) the Customer shall immediately pay all amounts due and payable by the Customer to Porter Group pursuant to these Master Terms and Conditions, including without limitation as set out in any final Statements.

15.5 **Consequences of Termination of specific Goods and/or Services:** If a specific Transaction is terminated, then:

- (a) the Porter Group will immediately cease the supply of the terminated Goods and/or Services;
- (b) the Customer shall immediately cease use of and return the applicable Porter Owned Goods to Porter Group's nominated return location (**Terminated Goods**);

- (c) if the Terminated Goods are not returned within 3 days of termination of the Agreement, the Customer must notify Porter Group of their location, and make them available for collection by Porter Group, which will be at the Customer's cost;
- (d) the Customer shall not move any Terminated Goods, unless (and only to the extent necessary) to prevent damage, theft, destruction, or to return them to Porter Group;
- (e) if the Customer is an Account Holder, Porter Group may debit all Charges and Porter Group Costs associated with the termination of the Goods and/or Services to the Customer's applicable Porter Account, or if required by the Porter Group, the Customer must immediately pay all such Charges and Porter Group Costs in cash; and
- (f) if the Customer is not an Account Holder, the Customer must immediately pay all Charges and Porter Group Costs associated with the termination of the Goods and/or Services.

15.6 **Costs:** If the Customer is in default of these Master Terms and Conditions or a Transaction, the Customer shall pay all Porter Group Costs arising from or related to such default on the Porter Group's written request, including without limitation those Porter Group Costs incurred in exercising any of its rights, remedies or powers set out in clause 15.2.

15.7 **No release:** Nothing in this clause 15 will release the Customer from any past, present or future liability under these Master Terms and Conditions.

15.8 **Without prejudice:** The rights and remedies set out in this clause 15 are without prejudice to any other rights and remedies available to Porter Group against the Customer or Guarantor whether pursuant to these Master Terms and Conditions, at law or otherwise.

## 16. INDEMNITY AND LIABILITY

16.1 **Indemnity:** To the maximum extent permitted by law, the Customer indemnifies Porter Group and its employees, agents and contractors against all damages, costs, losses (including without limitation Porter Group Costs, indirect loss, consequential loss, Fines, loss of profit, loss of bargain, loss of revenue, loss of goodwill, loss of business opportunity or exemplary damages) or liabilities which may arise directly or indirectly in respect of:

- (a) the Porter Owned Goods while the Customer bears the risk of the Porter Owned Goods pursuant to clause 4, including without limitation:
  - (i) their use or operation, or the effects of their use or operation, whether by the Customer, those for whom the Customer is responsible or any other third party;
  - (ii) any damage, theft, destruction or loss of or to the Porter Owned Goods;
  - (iii) any damage, destruction or loss of third party property caused by the Customer, or those for whom the Customer is responsible or caused by Porter Owned Goods;
  - (iv) any Fines relating to the Porter Owned Goods; or
  - (v) any third party claims in relation to the Porter Owned Goods or the Customer's use of the Porter Owned Goods;
- (b) any act, omission or default, of the Customer or those for whom the Customer is responsible, in relation to these Master Terms and Conditions and/or any Transaction; and
- (c) any breach of these Master Terms and Conditions and/or any Transaction, by the Customer or those for whom the Customer is responsible,

except where such liabilities, damages, costs, claims and demands are the direct result of the gross negligence, wilful misconduct or fraud of the Porter Group, its employee's, agents or contractors.

- 16.2 **Exclusion of liability:** To the maximum extent permitted by law, the Porter Group and its employees, agents and contractors will not be liable to the Customer, its employees, agents and contractors and/or any third party, for any:
- (a) delays, accidents, or loss or damage of any kind arising through defect or breakdowns of the Goods or Hired/Leased Goods;
  - (b) indirect loss, consequential loss, Fines, loss of profit, loss of bargain, loss of revenue, loss of goodwill, loss of business opportunity or exemplary damages suffered by the Customer or any other person, whether arising out of or flowing from these Master Terms and Conditions and/or any Transaction, the Goods and/or Services supplied pursuant to these Master Terms and Conditions and/or any Transaction or otherwise, whether contemplated by these Master Terms and Conditions and/or any Transaction or not, and whether actionable in contract, tort (including negligence), equity, statute or otherwise; or
  - (c) loss or damage suffered by the Customer or any third party to the extent that such loss or damage was caused or contributed to by the negligence, recklessness, deliberate act, omission or default of the Customer, its employees, agents and contractors, or a third party,
- except where the matters specified in clauses 16.2(a)-16.2(c) are the direct result of the gross negligence, wilful misconduct or fraud of the Porter Group, its employees, agents or contractors.
- 16.3 **Limit of liability:** If, notwithstanding clause 16.2, Porter Group is found liable to the Customer for any loss, then, to the maximum extent permitted by law, such liability will be limited to \$10,000 per event, or series of related or connected events.
17. **PRIVACY ACT**
- 17.1 **Privacy policy:** Any personal information (as defined in the *Privacy Act 1988* (Cth) ) received by the Porter Group relating to the Customer, or those for whom the Customer is responsible, will be held, used and shared by the Porter Group in accordance with the *Privacy Act 1988* (Cth) and the Porter Group Privacy Policy that is located on the Porter Group Website, which may be updated by the Porter Group from time to time. The Customer may be entitled under the *Privacy Act 1988* (Cth) to have access to and, if necessary, to request the correction of any personal information about the Customer held by the Porter Group.
- 17.2 **Electronic messages:** The Customer authorises the Porter Group to provide the Customer, and those for whom the Customer is responsible, with information about Porter Group's products and services, including commercial electronic messages. Any person may opt out of receiving commercial electronic messages by notifying the Porter Group at the email address set out in clause 17.4 below or using an unsubscribe facility included in any such commercial electronic message.
- 17.3 **Access and correction:** The Porter Group acknowledges that the person that any personal information is held in respect of has the right to access and correction of such personal information. An access or correction request can be made by contacting the Porter Group at the address set out in clause 17.4 below.
- 17.4 **Privacy questions:** If the Customer, or those for whom the Customer is responsible, have any questions regarding privacy at the Porter Group, they may contact the Porter Group Privacy Officer at [privacy@porterce.com](mailto:privacy@porterce.com).
18. **MISCELLANEOUS**
- 18.1 **Dispute resolution:** In the event of any dispute between the parties in relation to these Master Terms and Conditions or any Transaction, the parties shall first seek to resolve such dispute by promptly giving notice of such dispute to the other party (**Dispute Notice**) and cooperatively endeavouring to resolve such dispute. If the dispute remains unresolved 14 days after the date that the last party was provided with a Dispute Notice, either party may then seek a resolution through the courts of New South Wales and the Commonwealth of Australia.
- 18.2 **Force Majeure:** Porter Group or the Customer will not be in breach of these Master Terms and Conditions and will not be liable to the other party (and in respect of the Porter Group, any Guarantor) for costs, failure to

perform, or delay in performing, its obligations pursuant to these Master Terms and Conditions and/or any Transaction, attributable in whole or in part to a Force Majeure Event. The Porter Group or the Customer may terminate any Transaction or these Master Terms and Conditions, by providing notice in writing to the other party if a Force Majeure Event subsists for a period of 30 days or more.

- 18.3 **Confidentiality:** All intellectual property and other information belonging to the Porter Group which by designation or by its nature is intended to be treated as confidential will be confidential information for the purposes of these Master Terms and Conditions. Except as otherwise specified in these Master Terms and Conditions, or as otherwise required under law, the Customer will not without prior written consent of the Porter Group (acting reasonably) disclose any confidential information to any third party. To avoid doubt, confidential information includes but is not limited to the Charges, and the identity of the Porter Group's suppliers. The confidentiality obligations under this provision survive the termination or expiry of these Master Terms and Conditions.
- 18.4 **IP and Data:** The Customer shall not remove, alter or obscure any branding on any Porter Owned Goods, or use any Porter Group branding without the prior written consent of the Porter Group (acting reasonably). Porter Group may collect, use and disclose data in respect of the use of any Porter Owned Goods. Porter Group may collect data relating to the hours that any Porter Owned Goods are in use, whether by physical inspection or electronic means. The Customer agrees to read and report to Porter Group any hour meter installed on any Porter Owned Goods on the Porter Group's request.
- 18.5 **Certificates:** A certificate by Porter Group as to any amounts owing or payable under these Master Terms and Conditions, any Transaction and/or any other agreement, will (in the absence of manifest error) be conclusive evidence for all purposes including legal proceedings.
- 18.6 **Time of Essence:** Unless otherwise stated in these Master Terms and Conditions, time will be of the essence for the performance of any obligations of the Customer.
- 18.7 **Severance:** If any provision of these Master Terms and Conditions are found to be illegal, invalid or unenforceable, that provision shall be read down to the extent necessary and reasonable in all circumstances to give it a valid operation or partial character. If any provision cannot be so read down, that provision will be void and severable and the remaining provisions of these Master Terms and Conditions will not in any way be affected or impaired.
- 18.8 **Survivorship:** Termination of these Master Terms and Conditions for any reason (including in the event of misrepresentation) will not affect the rights and obligations of the parties as are intended (expressly or impliedly) to survive the termination.
- 18.9 **Waiver:** No delay, neglect or forbearance by either party in enforcing against the other party any provision of these Master Terms and Conditions will be a waiver, or in any way prejudice any right, of that party. None of the provisions of these Master Terms and Conditions will be considered to be waived by a party except when such waiver is given in writing and signed by a suitably authorised person for that party. No waiver by a party of any breach shall be deemed a waiver of any continuing or recurring breach unless it is expressly agreed to be so in writing by the parties.
- 18.10 **Customer Assignment:** The Customer shall not transfer, assign, novate or otherwise deal with its rights, powers or obligations under these Master Terms and Conditions or any Transaction without Porter Group's prior written consent, which will not be unreasonably withheld. A change in the effective management, ownership or control (including any director) of the Customer will be deemed an assignment for the purposes of this clause 18.10.
- 18.11 **Porter Group Assignment:**
- (a) Subject to clause 18.11(b), the Porter Group and its successors or assigns may in its sole discretion without the consent of or notice to the Customer, transfer, assign, novate or otherwise deal with its rights, powers or obligations under these Master Terms and Conditions or any part thereof, to any other entity or person;

- (b) If such transfer, assignment, novation or dealing of its rights, powers or obligations under these Master Terms and Conditions or any part thereof is or may be detrimental to the Customer, the Porter Group must obtain the prior written consent of the Customer prior to such transfer, assignment, novation or dealing of its rights, powers or obligations.
- 18.12 **Subcontracting:** Porter Group may subcontract the performance of all or any part of its obligations pursuant to these Master Terms and Conditions. The Customer shall not subcontract all or any part of its obligations pursuant to these Master Terms and Conditions.
- 18.13 **Without prejudice:** Nothing in these Master Terms and Conditions affects any other rights or remedies Porter Group may have at law or in equity as against the Customer. Rights and remedies specified in these Master Terms and Conditions are without prejudice to any other rights or remedies available to Porter Group.
- 18.14 **Governing Law:** These Master Terms and Conditions shall be governed and interpreted in accordance with the law of New South Wales and the Commonwealth of Australia, and the courts of New South Wales and the Commonwealth of Australia shall have the non-exclusive jurisdiction to determine any dispute arising in relation to these Master Terms and Conditions.
- 18.15 **Notice method:** Notices, communications, documents or demands required to be made or served pursuant to these Master Terms and Conditions shall be in writing and signed by the party giving the notice or by any officer or solicitor of that party. Any notice or document shall be deemed to be duly given or made:
  - (a) if delivered by hand, when so delivered;
  - (b) if sent by post, on the fifth business day following posting;
  - (c) in the case of a communication by email, when sent (provided there is no indication of incomplete transmission) to the recipient's last known email address. Porter Group's email address for service is [notices@porterce.com](mailto:notices@porterce.com).
- 18.16 **Legal Advice:** The Customer acknowledges that they have been advised by Porter Group that they should seek legal advice before agreeing to be bound by these Master Terms and Conditions or any Transaction, and have either obtained that advice or have freely and voluntarily waived their right to obtain that advice.
- 18.17 **Counterparts:** These Master Terms and Conditions may be executed in counterparts (which may be electronic copies) and all of which, when taken together constitute the one document.
- 18.18 **Electronic signatures:** A party may sign these Master Terms and Conditions or other document contemplated by these Master Terms and Conditions by way of the application of that party's electronic signature in accordance with the *Electronic Transactions Act 1999* (Cth) and the Uniform Electronic Transactions Legislation.

## PART TWO

### HIRE TERMS AND CONDITIONS

This Part of the Master Terms and Conditions applies to all Customers hiring Hired Goods from the Porter Group.

#### 1. DEFINITIONS

- 1.1 In addition to the definitions set out in Part One, the following definitions apply to this Part of the Master Terms and Conditions:
- (a) **“Early Return Fee”** has the meaning set out in clause 4.7.
  - (b) **“Hire Term”** means the hire term described in the Hire Agreement, or where there is no Hire Agreement, as may be agreed in writing by Porter Group and the Customer. The Hire Term includes all renewals and extensions having effect pursuant to clause 3.2, and estimated Hire Terms are subject to clause 3.4.
  - (c) **“Hire Fees”** means the hire Charges described in the Hire Agreement, or if there is no Hire Agreement, as agreed in writing by the Customer, but are subject to variation as set out in clause 4.6. If there is no Hire Agreement or other agreement in writing as to the Hire Fees, then the Hire Fee is calculated in accordance with Porter Group’s Standard Charges. All Hire Fees are expressed as hourly rates. The amount of the monthly Hire Fee for each Hired Good is calculated as the greater of:
    - (i) the applicable hourly rate multiplied by the number of hours the Hired Goods are operated by the Customer, or those for whom the Customer is responsible, during the applicable month (or part thereof), as determined by Porter Group (calculated with reference to hour meters installed on the Hired Goods, whether checked via automatic reporting devices, self-reporting by the Customer or inspection by the Porter Group); or
    - (ii) the applicable hourly rate multiplied by 7 multiplied by the number of Working Days in the applicable month (or part thereof), as determined by Porter Group.
  - (d) **“Limited Damage Waiver”** means any arrangement made or deemed to be made pursuant to clause 13.

#### 2. HIRE AND THE MASTER TERMS AND CONDITIONS

- 2.1 **Application:** Unless otherwise agreed in writing, each hire of Hired Goods by the Porter Group to the Customer, whether under a Hire Agreement or otherwise, is subject to the Master Terms and Conditions including this Part Two.
- 2.2 **Hire Agreement acceptance:** Without limiting clause 3.7 of Part One of these Master Terms and Conditions, a Customer may accept a Hire Agreement by notifying the Porter Group in writing.

#### 3. HIRE TERM

- 3.1 **Initial term:** The initial term of hire of the Hired Goods is the Hire Term.
- 3.2 **Renewal:** The Customer has no right of renewal or extension in respect of any Hire Term or Hire Agreement. The Porter Group and the Customer may from time to time agree to extend or renew any Hire Term, on terms and conditions mutually agreed.
- 3.3 **Holding over:** If the Customer remains in possession of the Hired Goods with the consent of the Porter Group (acting reasonably) after expiry of the Hire Term, the Hire Term shall be deemed to have renewed on a periodic 7 day basis, and is terminable by either party providing 7 days’ notice in writing to the other party or such other date mutually agreed in writing. For the avoidance of doubt, these Master Terms and Conditions will apply to such holding over period.

3.4 **Estimated term:** Where the Hire Term is described in the Hire Agreement as being estimated, unless otherwise agreed by the Porter Group and the Customer, the initial Hire Term will be for the period specified in the Hire Agreement (ignoring the effect of any estimation), but the Early Return Fee will not apply where the Customer returns the Hired Goods within 30 days' prior to the expiry of the estimated Hire Term. If the Customer requires the Hired Goods beyond the end date of the estimated Hire Term, the Customer may request a renewal or extension under clause 3.2.

#### 4. **HIRE FEES**

4.1 **Fees:** Unless otherwise requested by Porter Group, the Customer agrees to pay the Hire Fees on a monthly in arrears basis. For Hire Terms of more than one month, the first payment of the Hire Fees is due at the end of the first calendar month of the Lease Term and at the end of each calendar month during the Hire Term thereafter, with a final payment due on the last day of the Hire Term. Where the Customer has a Porter Account with the Porter Group Party hiring the Hired Goods, the Hire Fees will be debited to that Porter Account.

4.2 **Fee calculation:** To enable Porter Group to calculate the Hire Fees in respect of the Hired Goods, the Customer shall provide all information reasonably requested by the Porter Group in relation to the use of the Hired Goods from time to time, including without limitation any supporting evidence requested. In addition, Porter Group may fit technology devices to the Hired Goods to track and monitor their use.

4.3 **No downtime adjustment:** The Hire Fee will be charged, and no adjustment will be made to the Hire Fee, and Porter Group are not liable, for any losses, costs or damage suffered by the Customer during any time which the Hired Goods are not in use (for any reason, including without limitation down time during servicing, maintenance or repair).

4.4 **Levies:** In addition to the Hire Fee, the Customer will pay any Levy charged by Porter Group to the Customer.

4.5 **Fines:** In addition to the Hire Fee, the Customer will pay any Fines incurred in relation to the Hired Goods at all times that the Customer bears the risk for such Hired Goods (pursuant to clause 4.2 of Part One of the Master Terms and Conditions).

4.6 **Hire Fee Variation:** The hourly rate component of the Hire Fees set out in a Hire Agreement or as otherwise agreed with the Customer, may be varied as follows:

- (a) by agreement of the Porter Group and the Customer; or
- (b) by Porter Group providing the Customer with 10 Working Days' notice in writing, provided that the Porter Group shall not give such notice within the first 6 months of the Hire Term. If the Customer does not accept the varied hourly rate component of the Hire Fees, then the Customer may terminate the Hire Agreement by providing notice in writing to the Porter Group and returning the Hired Equipment to Porter Group (at the Customer's cost) in accordance with clause 14, prior to the variation taking effect. No Early Return Fee shall be payable by the Customer if the Hire Agreement is terminated by the Customer pursuant to this clause 4.6(b).

4.7 **Early Return Fee:** If for any reason the Hire Agreement is terminated or expires prior to the end of the Hire Term, or the Customer returns the Hired Goods, terminates or purports to terminate the hire of the Hired Goods before the end of the Hire Term (with or without the consent of Porter Group) (**Early Return**) the Customer agrees to pay to Porter Group all Hire Fees for the remaining part of the Hire Term (**Early Return Fee**). Such Early Return Fee is payable in one sum, on the Porter Group's request. Where the Customer has a Porter Account with the Porter Group Party hiring the Hired Goods, the Early Return Fee may be debited to that Porter Account. In addition, the Customer indemnifies Porter Group in respect of any resulting Porter Group Costs suffered or incurred by the Porter Group as a result of such Early Return except where such Porter Group Costs are the direct result of the gross negligence, wilful misconduct or fraud of the Porter Group.

#### 5. **BOND**

5.1 **Payment:** If specified in the Hire Agreement, or at any other time on request by the Porter Group, the Customer will provide to the Porter Group a bond in cash or other cleared funds, of an amount requested by Porter Group (**Bond**).

5.2 **Use of bond:** On return of the Hired Goods by the Customer at the end of the Hire Term, or at any other time, Porter Group may use the whole or any part of the Bond against any costs incurred by the Porter Group in connection with the hire of the Hired Goods, or any other amounts outstanding by the Customer to Porter Group, and to the extent that there is any balance remaining, will pay that balance to the Customer. If the Bond is applied in this manner, Porter Group may request that the Customer reinstates the Bond, and the Customer shall pay the amount so requested.

## 6. PORTER GROUP OBLIGATIONS

6.1 **Obligations:** Porter Group undertakes with the Customer as follows:

- (a) to make the Hired Goods available to the Customer at the commencement of the Hire Term;
- (b) to use reasonable endeavours to ensure the Hired Goods are in good working order (Fair Wear and Tear excepted), with all fuel and fluids topped up, and where applicable, with a current registration, certificate of fitness and road user charges (as applicable), at the start of the Hire Term; and
- (c) unless otherwise agreed with the Customer, to use reasonable endeavours to undertake routine servicing and maintenance in respect of the Hired Goods during the Hire Term, and to maintain all road user charges, registrations and certificates of fitness (as applicable) in respect of the Hired Goods.

6.2 **Accessories with Porter Group Consent:** Where accessories are fitted to the Hired Goods with the Porter Group's consent, the Porter Group's liability to service or maintain, or for any claims for performance, manufacturing or material defect of, any such accessory is limited to the terms and conditions of any warranty, or service or maintenance obligation that the Porter Group is able to obtain from any supplier or manufacturer of such accessory without charge.

6.3 **Accessories without Porter Group Consent:** Where accessories are fitted to the Hired Goods without the Porter Group's consent, the Customer will be solely liable for all repairs, maintenance and servicing of such accessories and the Hired Goods affected by the accessories, and will be liable for and indemnifies the Porter Group against all Porter Group Costs which may arise directly or indirectly as a result of such accessories being fitted to the Hired Goods, except where such Porter Group Costs are the direct result of the gross negligence, wilful misconduct or fraud of the Porter Group.

6.4 **Travel Charges:** The Customer shall be responsible for all travel charges associated with servicing and maintenance unless the Hired Goods are made available to a Porter Group facility, or such other facility notified by the Porter Group to the Customer, for the work to be undertaken.

6.5 **Servicing Communications:** The Customer undertakes to regularly advise the Porter Group or such other party advised by the Porter Group to the Customer of actual Hired Goods hours to ensure all servicing is undertaken in a timely fashion. The Customer further undertakes to ensure the Hired Goods are made available for all servicing.

## 7. CUSTOMER OBLIGATIONS

7.1 The Customer undertakes with Porter Group as follows:

- (a) unless otherwise set out in the Hire Agreement or where Porter Group has otherwise agreed in writing, the Customer is responsible for arranging and paying for the collection and delivery of the Hired Goods from the Porter Group's nominated point of collection to the Customer's nominated delivery location at the start of the Hire Term, and delivery from the Customer's nominated collection location to the Porter Group's nominated return location at the end of the Hire Term;
- (b) the Customer will inspect the Hired Goods on or prior to collection of the Hired Goods and will report any failure of the Hired Goods to comply with clause 6.1(b) to the Porter Group within 1 Working Day of collection. Where no report is made within such timeframe, the Hired Goods are deemed to comply with clause 6.1(b);



- (c) during the Hire Term, and at all times that the Customer bears the risk for the Hired Goods, the Customer shall at its own expense:
- (i) keep the Hired Goods free of all loss, damage, destruction and theft, whether caused by the Customer or third party (known or unknown), Fair Wear and Tear excepted;
  - (ii) keep the Hired Goods safe and secure, whether in use or not;
  - (iii) keep the Hired Goods in good working order, to the same level of repair, condition, and appearance that the Hired Goods were in at the start of the Hire Term, Fair Wear and Tear excepted;
  - (iv) supply and top up all consumables (as approved by Porter Group), including without limitation, fuel, oil, lubricating oil, hydraulic oil, cleaning and other consumables, necessary for the operation of the Hired Goods;
  - (v) regularly check the Hired Goods' consumable levels;
  - (vi) carry out prestart daily inspection reports in accordance with Porter Group's specifications from time to time before using the Hired Goods. These inspection reports must be made available to Porter Group on request;
  - (vii) supply a suitably qualified, licensed, and competent operator to operate the Hired Goods;
  - (viii) only use or permit the Hired Goods to be used for the type of work for which they are intended by the manufacturer, unless otherwise agreed in writing by Porter Group; and
  - (ix) immediately advise Porter Group if the Hired Goods require or are likely to require repair, replacement, service, maintenance, or other similar work to ensure the Hired Goods are kept in good working order;
- (d) the Customer will not at any time, without the prior written consent of Porter Group (acting reasonably):
- (i) make any alterations to or modify the Hired Goods, or undertake any repairs, servicing or maintenance in relation to the Hired Goods;
  - (ii) remove any identification features or marks on the Hired Goods or any other part of the Hired Goods;
  - (iii) dispose of, sell, sublet, hire or part with possession of the Hired Goods;
  - (iv) permit the Hired Goods to be seized, immobilised or detained by any authority having jurisdiction to do so, any creditor of the Customer or any other third party; or
  - (v) move the Hired Goods from any Site specified in the Hire Agreement;
- (e) the Customer will not at any time operate the Hired Goods, and shall not permit any other person to operate the Hired Goods (whether or not permitted by the Customer):
- (i) in any way that is malicious, reckless, dishonest or fraudulent, or intentionally, deliberately undertake any act or omission likely to cause loss, destruction, theft or damage to the Hired Goods;
  - (ii) while under the influence of drugs (whether legal or illegal), alcohol or other prohibited substance;
  - (iii) while having been directed by a medical or other professional person not to operate the Hired Goods or any similar equipment due to any health condition, illness, medical treatment or medication;

- (iv) for the purpose of carrying passengers;
- (v) for any purpose that is not permitted by the manufacturer of the Hired Goods or that would void the warranty provided by the manufacturer of the Hired Goods;
- (vi) in any way that subjects the Hired Goods to pollution, corrosive substance or contamination;
- (vii) in connection with hazardous stock, merchandise, chemicals or in any other hazardous situation or substance;
- (viii) where the Hired Goods are deliberately, knowingly or recklessly exposed to a material risk of damage or loss;
- (ix) where damage or loss of the Hired Goods is reasonably foreseeable, obvious or imminent;
- (x) in breach of any applicable laws, including in relation to overloading; or
- (xi) for the purposes of a protest, civil disruption, unlawful purpose, or illegal/criminal activity;
- (f) to immediately report any theft, damage or loss of the Hired Goods to the Police and Porter Group;
- (g) to provide Porter Group and the police or other regulatory authority with all assistance and information required to fully investigate and determine the circumstances surrounding any theft, loss or damage to the Hired Goods;
- (h) do all things reasonably necessary to mitigate any loss or damage to the Hired Goods; or
- (i) to not do anything that will or may bring the Porter Group into disrepute.

## 8. **HEAVY VEHICLE NATIONAL LAW**

- 8.1 In addition to the parties' obligations and undertakings set out elsewhere in these Master Terms and Conditions, the parties undertake to comply with the provisions of the HVNL (to the extent that such provisions apply to each party).
- 8.2 Without limiting its obligations under the HVNL, the Customer must at all times during the Hire Term:
- (i) ensure, so far as reasonably practicable, the safety of its Transport Activities and its subcontractors' Transport Activities, within the meaning of the CoR Laws;
  - (ii) not do or require, and must refrain from doing or requiring, anything which would directly or indirectly cause or encourage any person to breach any CoR Law;
  - (iii) develop and implement suitable policies and working procedures (including training/education, compliance performance monitoring and reporting) to, so far as reasonably practicable, eliminate or, where not possible, minimise, risks to the public arising from the conduct of its Transport Activities;
  - (iv) comply with any compliance policy, working practices and policies, instructions or reasonable direction of Porter Group in relation to compliance with the CoR Laws, which form part of this Part of the Master Terms and Conditions as if they were set out in full within it;
  - (v) manage and retain copies of all Transport and Journey Documentation as required under the CoR Laws;
  - (vi) promptly advise the Porter Group of any facts or circumstances which come to its attention which may give rise to any breach or allegation of breach of the CoR Laws, including without limitation any warning or caution, request for information or documents, infringement notice, fine or the commencement of prosecution proceedings by any regulatory authority;

- (vii) promptly make available all information or documentation reasonably requested by the Porter Group for the purpose of monitoring or auditing compliance with the provisions of this clause 8, including Transport and Journey Documentation, vehicles and loads;
- (viii) conduct an investigation into the cause of any breach or allegation of breach of the CoR Laws and formulate any actions to be implemented in order to avoid or reduce the risk of a similar incident arising again, within 10 Working Days of becoming aware of the facts or circumstances giving rise to the breach or allegation of breach;
- (ix) provide the Porter Group with a copy of any investigation report and any actions to be implemented in order to avoid or reduce the risk of a similar incident arising again, upon demand;
- (x) not engage, instruct or cause any employee, contractor or subcontractor to perform any aspect of any Transport Activities unless it has first satisfied itself that any such employee, contractor or subcontractor:
  - (A) has in place its own policies and working procedures to ensure compliance by it with the provisions of this clause 8; and
  - (B) has been and will be provided with sufficient information, instruction, training and supervision to ensure compliance by it with the provisions of this clause 8; and
  - (C) has been provided with a copy of any compliance policy, working practices and policies, instructions or reasonable direction of the Porter Group in relation to compliance with the CoR Laws;
- (b) indemnifies and agrees to keep indemnified upon demand Porter Group, its employees, agents and contractors from any damage, expense, loss, claim or liability arising from the Customers:
  - (i) non-compliance with the CoR Laws or HVNL; or
  - (ii) non-observance of any of the documents mentioned in sub-clause 8.2(x)(C) above;

except where such damage, expense, loss, claim or liability are the direct result of the gross negligence, wilful misconduct or fraud of the Porter Group, its employees, agents or contractors.

8.3 In the event of any breach or suspected breach of any provision of clauses 8.1 or 8.2, the Porter Group will be entitled, in its sole and absolute discretion to:

- (a) report any breach or suspected breach of the CoR Laws to any relevant authority, including disclosing any or all information and documentation in relation to the facts or circumstances of any such breach or suspected breach,
- (b) issue the Customer with a 'show cause' notice requiring the Customer to explain to the reasonable satisfaction of the Porter Group within 10 Working Days of the notice:
  - (i) the facts and circumstances of the breach or suspected breach;
  - (ii) any steps taken to respond to the breach or suspected breach;
  - (iii) any steps taken to prevent any other breach similar to the breach or suspected breach from occurring.

8.4 In addition to any other rights of the Porter Group under and despite anything to the contrary contained in any other provision of this Part of these Master Terms and Conditions, in the event of any breach or suspected breach of a provision of clause 8.1 or 8.2 by the Customer or any failure of the Customer to respond to the reasonable satisfaction of the Porter Group to any 'show cause' notice issued in accordance with clause 8.3(b), the Porter Group will be entitled, in its sole and absolute discretion:

- (i) to require that any person responsible for any breach is not used or engaged to perform any aspect of the Customers Transport Activities relating to the performance of any Hire Agreement or any Other Agreement in the future;
- (ii) order that the Customer immediately cease the use and operation of any Hired Goods until such time as the breach, suspected breach or failure to respond to any 'show cause' notice is remedied (to the reasonable satisfaction of the Porter Group) by the Customer;
- (iii) immediately suspend the performance of any Hire Agreement or Other Agreement (or any part of such agreements) until such time as the breach, suspected breach or failure to respond to any 'show cause' notice is remedied (to the reasonable satisfaction of the Porter Group) by the Customer; and
- (iv) terminate any Hire Agreement or Other Agreement with immediate effect by giving notice in writing to the Customer.

8.5 In the event that the Porter Group takes the action specified in clauses 8.4(ii) and 8.4(iii), the Customer acknowledges that Hire Fee will be charged, and no adjustment will be made to the Hire Fee, and the Porter Group are not liable, for any losses, costs or damage suffered by the Customer.

## 9. INSPECTION OF HIRED GOODS

9.1 **Inspection:** In addition to any access, inspection and repossession rights set out in Part One of these Master Terms and Conditions, Porter Group or anyone authorised by Porter Group may access and enter any place (whether land, buildings or otherwise) where the Hired Goods are located and inspect the Hired Goods at any reasonable time for any reasonable purpose, including without limitation inspecting and testing the condition of the Hired Goods, checking the state of maintenance and/or repair of the Hired Goods, and to repair, service and maintain the Hired Goods, or otherwise deal with the Hired Goods in Porter Group's sole discretion.

9.2 **Assistance:** The Customer will provide access to the Hired Goods and any place to give effect to clause 9.1, and provide all necessary assistance to obtain the consent of any third party (including without limitation any land owner, landlord, occupier and/or any mortgagee) that is necessary to give effect to clause 9.1.

## 10. REPLACEMENT OF HIRED GOODS

10.1 At all times, Porter Group may substitute, exchange or replace any Hired Goods for any other Hired Goods of a similar specification, by giving the Customer at least 3 Working Days' notice.

## 11. DAMAGE AND LOSS TO HIRED GOODS

11.1 **Notice:** If all or part of the Hired Goods suffer damage, loss, theft or destruction during the Hire Term, and/or and at any time that the Customer bears the risk for the Hired Goods, then the Customer must immediately notify Porter Group in writing.

11.2 **Repairs:** If the Hired Goods suffer damage during the Hire Term and/or and at any time that the Customer bears the risk for the Hired Goods, Porter Group may either undertake repairs itself or arrange for a third party to undertake those repairs at the Customer's cost. The repairs shall reinstate the Hired Goods to the condition that the Customer was required to keep them in as described in clause 7.1. The Customer shall not undertake any repairs to the Hired Goods itself, without the Porter Group's prior written consent.

11.3 **Replacement:** If the Hired Goods are lost, stolen, destroyed or damaged during the Hire Term or at any time that the Customer bears the risk for the Hired Goods, to the extent that repair is uneconomic, not prudent or unable to be completed within a reasonable time, Porter Group will use reasonable endeavours to source a replacement item in the same condition and with at least the same specification as the Hired Goods at the start of the Hire Term, at the Customer's cost. The Customer shall not be entitled to replace the Hired Goods.

11.4 **Customer liability:** Subject to clause 13 and without limiting any other right or remedy under these Master Terms and Conditions, the Customer indemnifies the Porter Group for all Porter Group Costs incurred in relation

to the repair or replacement of the Hired Goods described in clause 11.2 and 11.3 except where such Porter Group Costs are the direct result of the gross negligence, wilful misconduct or fraud of the Porter Group.

11.5 **Interim estimates:** Where the Customer's liability under clause 11.2, 11.3 or 11.4 is unknown, it may be estimated by Porter Group on an interim basis.

## 12. **INSURANCE**

12.1 **Customer insurance:** If it has been agreed that the Customer will insure the Hired Goods (whether in respect of a specific Hire Agreement or otherwise), then the Customer:

(a) will at its cost arrange for the following insurances to be put in place from the start of the Hire Term, and maintain them during the Hire Term, and at all times that the Customer bears the risk for the Hired Goods:

(i) fire, theft, accident, damage, transit costs and public liability, for the full replacement value of the Hired Goods; and

(ii) at a minimum, coverage for Porter Group's loss of revenue while the Hired Goods are being repaired or replaced, calculated for the purposes of this clause 12.1(a)(ii) as three months' Hire Fees,

(these insurances being referred to as the **Hire Insurances**);

(b) will ensure the Hire Insurances are on terms and conditions, and with an Australian insurance company, that are approved by Porter Group;

(c) authorises Porter Group to contact the insurer to discuss, and obtain any information in relation to, the Hire Insurances or related claims;

(d) ensure that the Hire Insurances include a maximum excess of \$5,000 plus GST (payable by the Customer);

(e) ensure the Hire Insurances show Porter Group as the insured or interested party and must provide for duplicate renewal notices to be sent to Porter Group which has the right at any time to inspect the policy and to pay any outstanding premiums not paid by the Customer and charge them to the Customer, and such outstanding premiums will become immediately due and payable by the Customer to Porter Group. The Customer must ensure that at least 14 days prior written notice is given to Porter Group of the expiry or proposed termination of the Hire Insurances;

(f) ensure all proceeds under the Hire Insurances are payable to the Porter Group;

(g) ensure that any other requirements specified in writing by Porter Group from time to time regarding the Hire Insurances are complied with; and

(h) on or prior to the start of the Hire Term, and at any other time requested by Porter Group, provide to Porter Group evidence of the Hire Insurances, satisfactory to Porter Group in all respects.

12.2 **Failure to provide evidence:** If the Customer does not provide evidence of insurance to the Porter Group as required by clause 12.1(h) or does not otherwise comply with any other requirements of clause 12.1, the Limited Damage Waiver may, at Porter Group's election, apply, and the Porter Group may invoice the Customer for the Limited Damage Waiver surcharge set out in clause 13.1(a) in respect of the applicable Hired Goods.

12.3 **No limit of liability:** The Customer acknowledges that the insurance requirements set out in clause 12.1 do not limit the Customer's liability, and that they may be liable to Porter Group (under clause 11 or otherwise) to an extent greater than any proceeds which Porter Group may receive under the Hire Insurances. Except where clause 12.2 applies, the Customer acknowledges that the limitations set out in clause 13 relating to the Limited Damage Waiver do not apply where the Customer has agreed to insure the Hired Goods under this clause 12.

- 12.4 **Claims process:** If the Hired Goods suffer any damage, loss, theft or destruction or at any other time directed by Porter Group, and the Customer has agreed to take out and maintain the Hire Insurances pursuant to this clause 12, the Customer agrees:
- (a) to immediately make a claim under such Hire Insurances, or where required, the Porter Group, in the place of the Customer, making a claim or continuing any claim already made by the Customer, under the Hire Insurances, and agree to transfer to Porter Group, at Porter Group's request, all of its rights and entitlements pursuant to the Hire Insurances;
  - (b) to direct any payments to be made by the insurer under the Hire Insurances to Porter Group on the Porter Group's request;
  - (c) to immediately pay all moneys received by the Customer from the insurer, whether pursuant to any insurance claim or otherwise, to Porter Group, and prior to such payment the Customer shall be deemed to hold all such moneys in trust for Porter Group;
  - (d) that Porter Group may determine whether to apply the insurance proceeds received from the Customer or insurer to the:
    - (i) satisfaction of the Customer's liability pursuant to clause 11 (whether in full or in part); and/or
    - (ii) payment of any other amount payable by the Customer to the Porter Group pursuant to these Master Terms and Conditions.
  - (e) that if in the opinion of Porter Group (acting reasonably), any insurance money received is not sufficient to meet the Customer's liability pursuant to clause 11, or if any insurance claim under the Hire Insurance is declined, then Porter Group will notify the Customer, and Porter Group may:
    - (i) demand, and the Customer shall pay to Porter Group within 5 days, any shortfall between the insurance proceeds received by the Porter Group (if any) and the Customer's liability pursuant to clause 11; and
    - (ii) in the event that Porter Group makes a demand on the Customer pursuant to clause 12.4(e)(i) and the Customer fails pay all monies the subject of that demand to the Porter Group within 5 days, terminate the applicable Hire Agreement and any or all other Hire Agreements or Other Agreement;
  - (f) that if in the opinion of the Porter Group, any insurance money received is sufficient to meet the Customer's liability pursuant to clause 12.4(d), then any surplus will be returned to the Customer; and
  - (g) if, for any reason whatsoever, the Customer is in breach of this clause 12.4 by not holding the required Hire Insurances (or any insurance at all), or the Customer's insurer does not pay out under the Hire Insurances, the Customer warrants to Porter Group that it will remain liable as set out in clause 11, and will make payment of such amounts within 7 days of Porter Group's written request.

### 13. LIMITED DAMAGE WAIVER

- 13.1 **Operation:** If it has been agreed by the Customer and Porter Group that the Limited Damage Waiver will apply in relation to the Hired Goods, whether pursuant to a Hire Agreement or otherwise, or if the Porter Group requires the Customer to enter into a Limited Damage Waiver pursuant to clause 12.2, then the Limited Damage Waiver will apply (subject to and in accordance with the following requirements) in respect of those Hired Goods as follows:

- (a) a surcharge of 12.5% (plus GST) of the Hire Fees (or such other amount set out in the Hire Agreement) for the full Hire Term will be added to the Hire Fee and must be paid by the Customer. Where the Customer has a Porter Account with the Porter Group Party hiring the Hired Goods, the surcharge will be debited to that Porter Account, or if not the surcharge is payable by the Customer on receipt of an invoice from the Porter Group;

- (b) subject to clauses 13.2, 13.5 and 13.6, the Customer's liability to Porter Group in relation to damage, loss, destruction or theft under clause 11 is limited to the aggregate total of the following:
  - (i) Porter Group's loss of revenue for one month, calculated for the purposes of this clause as one months' Hire Fees immediately prior to the damage, loss, destruction or theft occurring; and
  - (ii) any Fines incurred in relation to the event giving rise to such loss, damage, theft or destruction; and
  - (iii) either:
    - (A) where Porter Group is insured with a third party, the excess payable pursuant to that insurance policy to a maximum of \$5,000 plus GST; or
    - (B) where Porter Group is not so insured with a third party, \$5,000 plus GST.

13.2 **Exclusions:** The limitation of the Customer's liability contained in clause 13.1 will not apply and the Customer will be liable to the full extent set out in clause 11.4 if, before, on or after the date the Hired Goods suffer the loss, damage, theft or destruction, any one or more of the following apply:

- (a) the Customer has breached or is currently in breach of (whether remedied or not) these Master Terms and Conditions including where the Customer has not paid the Limited Damage Waiver surcharge pursuant to clause 13.1(a); or
- (b) the Customer has breached or is currently in breach of (whether remedied or not) any Other Agreement with any Porter Group Party; or
- (c) the loss, damage, theft or destruction to the Hired Goods is caused or contributed to by:
  - (i) an event which the Customer could have prevented or mitigated by taking reasonable steps to prevent the loss or damage occurring, or its cause; or
  - (ii) the Customer's recklessness, negligence or wilful misconduct.

13.3 **Acknowledgement:** The Customer acknowledges that the Limited Damage Waiver applies only to liability owed by the Customer to the Porter Group that relates to or flows from the loss or damage of the Hired Goods, and does not limit, prejudice, affect or otherwise exclude any liability, loss, damage or obligation that the Customer owes to:

- (a) any third party; or
- (b) the Porter Group that does not relate to or flow from the loss, damage, theft or destruction of the Hired Goods.

13.4 **Not insurance:** The Customer agrees that the Limited Damage Waiver is not a contract of insurance.

13.5 **Cancellation of limited damage waiver:** Notwithstanding clause 13.1, Porter Group reserves the right at any time before, during or after the Hire Term, and whether the Customer is in breach of these Master Terms and Conditions or not, to decline or cancel the Limited Damage Waiver, in which case the Limited Damage Waiver and limitation of liability set out in this clause 13 will no longer apply and:

- (a) the Customer must, within 5 working days, insure the Hired Goods in accordance with clause 12 and provide to Porter Group evidence of insurance, satisfactory to Porter Group in all respects; and
- (b) in the event that the Customer fails to comply with clause 13.5(a), Porter Group may terminate the Hire Agreement and the Customer will have no claim, right or remedy against Porter Group for such termination, in relation to the Hire Agreement or in any other way.

- 13.6 **Conversion:** The Customer may, in respect of specific Hired Goods, convert from the Limited Damage Waiver to insuring the Hired Goods pursuant to clause 12, if the Porter Group agree in writing. In the event that Porter Group so agrees, the Porter Group will provide a partial credit of the Limited Damage Waiver surcharge as follows:
- (a) there will be no credit for any completed or expired months during the Hire Term; and
  - (b) once the Customer has satisfied all requirements of clause 12 (to Porter Group's satisfaction), including the provision of evidence under clause 12.1(h), the Porter Group will provide a credit to the Customer for the Limited Damage Waiver surcharge to the extent that it has been paid in advance for the month that the conversion date occurs in, and all later uncompleted or unexpired full months during the Hire Term that have been paid in advance.
14. **RETURN OF HIRED GOODS**
- 14.1 **Return:** Unless otherwise agreed in writing by Porter Group, the Customer must return the Hired Goods to Porter Group's nominated return location on the earlier of the following:
- (a) immediately on termination of the applicable Hire Agreement; or
  - (b) on the last day of the Hire Term, provided that Porter Group will allow a grace period, without charge until 9.00am on the day following the last day of the Hire Term.
- 14.2 **Return requirements:** The Hired Goods will not be deemed to be returned to Porter Group until they have arrived at the nominated return location and Porter Group have signed a written acknowledgement of the return of the Hired Goods. The Hired Goods must be returned:
- (a) with all consumables and fuel topped up; and
  - (b) otherwise in a condition that complies with the Customer's obligations set out in clause 7.1.
- 14.3 **Condition report:** On return of the Hired Goods, Porter Group may prepare a condition report or record for the purpose of assessing any damage to the Hired Goods and any failure to comply with clause 14.2.
- 14.4 **Failure to return:** Where the Customer does not return the Hired Goods in accordance with clause 14.1 then, the Customer will continue to be bound by the Customer's obligations under these Master Terms and Conditions in relation to the Hired Goods including in relation to any damage, destruction, theft or loss, and be liable for the Hired Goods and additional Hire Fees (as determined by the Porter Group), until such time as the Hired Goods are returned to Porter Group in accordance with clause 14.1. For the avoidance of doubt, this clause 14.4 does not create any extension to the Hire Term, nor permit the Customer to remain in possession of the Hired Goods beyond the expiry of the Hire Term.
- 14.5 **Failure to return in proper condition:** If the Customer fails to return the Hired Goods in a condition that complies with clause 14.2, the Porter Group will:
- (a) undertake all necessary repairs, servicing and maintenance so they comply with clause 14.2, and charge the Customer for Porter Group Costs incurred; and
  - (b) charge the Customer for lost revenue for the period from the date of return of the Hired Goods to the Porter Group until the date that the condition of the Hired Goods complies with the requirements of clause 14.2, with such lost revenue being calculated in accordance with the Hire Fee applicable immediately prior to the date of return (**Maintenance Period Fee**). The parties agree that Porter Group is not entitled to any double recovery where the Maintenance Period Fee and the Early Return Fee both apply. The Maintenance Period Fee may be charged by Porter Group without prejudice to any other rights or remedies available to Porter Group pursuant to these Master Terms and Conditions or at law. In addition, the Customer indemnifies Porter Group in respect of any resulting Porter Group Costs suffered or incurred by Porter Group as a result of such maintenance period except where such Porter Group Costs are the direct result of the gross negligence, wilful misconduct or fraud of the Porter Group.



- 14.6 **Payment:** The amounts payable pursuant to clause 14.5 are payable in one sum, on the Porter Group's request. Where the Customer has a Porter Account with the Porter Group Party hiring the Hired Goods, the Maintenance Period Fee may be debited to that Porter Account.

## PART THREE

### OPERATING LEASE TERMS AND CONDITIONS

This Part of the Master Lease Terms and Conditions applies to all Customers leasing Leased Goods from the Porter Group, whether on a maintained or non-maintained basis.

#### 1. DEFINITIONS

1.1 In addition to the definitions set out in Part One, the following definitions apply to this Part of the Master Lease Terms and Conditions:

- (a) **“Early Return Fee”** has the meaning set out in clause 3.12.
- (b) **“Lease Fees”** means the lease Charges described in the Lease Agreement.
- (c) **“Lease Term”** means the term described in the Lease Agreement, or such extended or renewed term agreed by the Customer and Porter Group in accordance with clause 3.2.
- (d) **“Maintained Lease”** means Leased Goods which are leased by Porter Group to the Customer in circumstances where Porter Group undertakes scheduled servicing and maintenance in accordance with clause 6 of this Part Three.
- (e) **“Maximum Hours”** means the maximum hours that the Customer is permitted to use the Leased Goods for, as described in the Lease Agreement.
- (f) **“Non-Maintained Leased”** means Leased Goods which are leased by Porter Group to the Customer in circumstances where Porter Group does not undertake scheduled servicing and maintenance.

#### 2. LEASE AND THE MASTER TERMS AND CONDITIONS

2.1 Unless otherwise agreed in writing, each lease of Leased Goods by the Porter Group to the Customer under a Lease Agreement, is subject to the Master Terms and Conditions including this Part Three.

#### 3. LEASE TERM

3.1 **Initial term:** The initial term of lease of the Leased Goods is the Lease Term.

3.2 **Renewal:** The Customer has no right of renewal or extension in respect of any Lease Term or Lease Agreement. The Porter Group and the Customer may from time to time mutually agree to extend or renew any Lease Term, on terms and conditions mutually agreed.

3.3 **Holding over:** If the Customer remains in possession of the Leased Goods with the consent of the Porter Group (acting reasonably) after expiry of the Lease Term, the Lease Term shall be deemed to have renewed on a periodic 7 day basis, and is terminable by either party providing 7 days' notice in writing to the other party or such other date mutually agreed in writing. For the avoidance of doubt, these Master Terms and Conditions will apply to such holding over period.

3.4 **Early termination:** The Porter Group may terminate the lease of Leased Goods before the end of the Lease Term by providing at least 60 days' notice in writing to the Customer. No Early Return Fee shall be payable by the Customer if the Lease Agreement is terminated by Porter Group pursuant to this clause 3.4. **Fees:** The Customer agrees to pay the Lease Fees in respect of the Leased Goods, on a monthly in advance basis (unless otherwise specified in the Lease Agreement). The first payment of Lease Fees is due at the start of the Lease Term and on the same day of each month thereafter during the Lease Term. Where the Customer has a Porter Account with the Porter Group Party leasing the Leased Goods, the Lease Fees will be debited to that Porter Account.

3.5 **Fee calculation:** To enable Porter Group to calculate the Lease Fees in respect of the Leased Goods, the Customer shall provide all information reasonably requested by the Porter Group in relation to the use of the

Leased Goods, from time to time, including without limitation any supporting evidence requested. In addition, Porter Group may fit technology devices to the Leased Goods to track and monitor their use.

- 3.6 **No downtime adjustment:** The Lease Fee will be charged, and no adjustment will be made to the Lease Fee, and Porter Group are not liable, for any losses, costs or damage suffered by the Customer during any time which the Leased Goods are not in use (for any reason, including without limitation down time during serving, maintenance or repair).
- 3.7 **Levies:** In addition to the Lease Fees, the Customer will pay any Levy charged by Porter Group to the Customer.
- 3.8 **Fines:** In addition to the Lease Fees, the Customer will pay any Fines incurred in relation to the Leased Goods at all times that the Customer bears the risk for such Leased Goods (pursuant to clause 4.2 of Part One of the Master Terms and Conditions).
- 3.9 **Maximum Hour Basis:** The Lease Fees are calculated on the basis of the Maximum Hours.
- 3.10 **Actual Hours Operated:** The Porter Group and the Customer agree that:
- (a) If either during the Lease Term or at the end of the Lease Term, the Maximum Hours have been exceeded, the Customer shall pay an additional fee to the Porter Group being such fee as the Porter Group notifies to the Customer.
  - (b) If at any time during the Lease Term, the Porter Group determines that the Customer's actual hours are such that the Maximum Hours are likely to be exceeded, the Porter Group may increase the monthly Lease Fees by such additional fee as the Porter Group notifies to the Customer.
  - (c) If at the end of the Lease Term, the Customer has used the Leased Goods for less than the Maximum Hours permitted, the Customer acknowledges and agrees that the Porter Group will not be liable to the Customer for any refund, payment or in any other manner as a result of the Customer using the Leased Goods for fewer than the Maximum Hours.
  - (d) If at any time the hours meter fails to function then the hours reading shall be calculated on the basis of the daily average of hours operated by the Leased Goods in respect of the period between the two previous services of the Leased Goods.
- 3.11 **Lease Fee Variation:** The Lease Fees set out in a Lease Agreement may be varied as follows:
- (a) by written agreement of the Porter Group and the Customer; or
  - (b) by Porter Group providing the Customer with 10 Working Days' notice in writing, provided that the Porter Group shall not give such notice within the first 6 months of the Lease Term. If the Customer does not accept the varied Lease Fees, then the Customer may terminate the Lease Agreement by providing notice in writing to the Porter Group and returning the Leased Equipment to Porter Group (at the Customer's cost) in accordance with clause 13, prior to the variation taking effect. No Early Return Fee shall be payable by the Customer if the Lease Agreement is terminated by the Customer pursuant to this clause 3.11(b).
- 3.12 **Early Return Fee:** If for any reason the Lease Agreement is terminated or expires prior to the end of the Lease Term, or the Customer returns the Leased Goods, terminates or purports to terminate the lease of the Leased Goods before the end of the Lease Term (with or without the consent of Porter Group) (**Early Return**) the Customer agrees to pay to Porter Group all Lease Fees for the remaining part of the Lease Term (**Early Return Fee**). Such Early Return Fee is payable in one sum, on the Porter Group's request. Where the Customer has a Porter Account with the Porter Group Party leasing the Leased Goods, the Early Return Fee will be debited to that Porter Account. In addition, the Customer indemnifies Porter Group in respect of any resulting Porter Group Costs suffered or incurred by Porter Group as a result of such Early Return, except where such Porter Group Costs are the direct result of the gross negligence, wilful misconduct or fraud of the Porter Group.

#### 4. **BOND**

- 4.1 **Payment:** If specified in the Lease Agreement, or at any other time on request by Porter Group, the Customer will provide to Porter Group a bond in cash or other cleared funds, of an amount requested by Porter Group (**Bond**).
- 4.2 **Use of bond:** On return of the Leased Goods by the Customer at the end of the Lease Term, or at any other time, Porter Group may use the whole or any part of the Bond against any costs incurred by Porter Group in connection with the lease of the Leased Goods, or any other amounts outstanding by the Customer to Porter Group, and to the extent that there is any balance remaining, will pay that balance to the Customer. If the Bond is applied in this manner, Porter Group may request that the Customer reinstates the Bond, and the Customer shall pay the amount so requested.
- 4.3 **Effect:** The use of the Bond by Porter Group is without prejudice to any other rights or remedies available to Porter Group.

#### 5. **PORTER GROUP OBLIGATIONS**

- 5.1 Porter Group undertakes with the Customer as follows:

- (a) to make the Leased Goods available to the Customer at the commencement of the Lease Term; and
- (b) to use reasonable endeavours to ensure the Leased Goods are in good working order (Fair Wear and Tear excepted), free of material damage, clean and tidy, with all fuel and fluids topped up, and with a current registration, certificate of fitness and road user charges (as applicable), at the start of the Lease Term.

#### 6. **SERVICING AND MAINTENANCE FOR MAINTAINED LEASES**

- 6.1 **Maintained Leases:** This clause 6 applies to Maintained Leases only.

- 6.2 **Porter Group Responsibilities:** The Porter Group will be responsible for:

- (a) all routine and scheduled servicing of the Leased Goods; and
- (b) routine maintenance as required per the terms and conditions of the applicable manufacturer's warranty,

provided that any such servicing or maintenance is in respect of Fair Wear and Tear only. For the avoidance of doubt the Porter Group's obligations pursuant to this clause 6.2 do not include any repair or replacement of or to the Leased Goods that the Customer is responsible for pursuant to clause 7.

- 6.3 **Customer Responsibilities:** The Customer shall be liable for all repairs and maintenance to all ground engaging Leased Goods including buckets and undercarriage (including sprockets, links, idlers, bogies, carrier and track rollers, pins and bushings, track shoes/pads) provided that should there be a failure of any of these components as a result of manufacturer or material defects and that are not the result of Fair Wear and Tear, the Porter Group (or manufacturer) shall be responsible.
- 6.4 **Accessories with Porter Group Consent:** Where accessories are fitted to the Leased Goods with the Porter Group's consent, the Porter Group's liability to service or maintain, or for any claims for performance, manufacturing or material defect of, any such accessory is limited to the terms and conditions of any warranty, or service or maintenance obligation that the Porter Group is able to obtain from any supplier or manufacturer of such accessory.
- 6.5 **Accessories without Porter Group Consent:** Where accessories are fitted to the Leased Goods without Porter Group's consent, the Customer will be solely liable for all repairs, maintenance and servicing of such accessories and the Leased Goods affected by the accessories, and will be liable for and indemnifies the Porter Group against all Porter Group Costs which may arise directly or indirectly as a result of such accessories being fitted to the

Leased Goods, except where such Porter Group Costs are the direct result of the gross negligence, wilful misconduct or fraud of the Porter Group.

6.6 **Travel Charges:** The Customer shall be responsible for all travel charges associated with servicing and maintenance unless the Leased Goods are made available to a Porter Group facility, or such other facility notified by the Porter Group to the Customer, for the work to be undertaken.

6.7 **Servicing Communications:** The Customer undertakes to regularly advise the Porter Group or such other party advised by the Porter Group to the Customer of actual Leased Goods hours to ensure all servicing is undertaken in a timely fashion. The Customer further undertakes to ensure the Leased Goods are made available for all servicing.

## 7. CUSTOMER OBLIGATIONS

7.1 **Obligations for all Leased Goods:** The Customer undertakes with the Porter Group as follows:

- (a) unless otherwise set out in the Lease Agreement or where Porter Group has otherwise agreed in writing, the Customer is responsible for arranging and paying for the collection and delivery of the Leased Goods from the Porter Group's nominated point of collection to the Customer's nominated delivery location at the start of the Lease Term, and delivery from the Customer's nominated collection location to the Porter Group's nominated return location at the end of the Lease Term;
- (b) the Customer will inspect the Leased Goods on or prior to collection or delivery of the Leased Goods and will report any failure of the Leased Goods to comply with clause 5.1(b) to the Porter Group within 1 Working Day of collection or delivery. Where no report is made within such timeframe, the Leased Goods are deemed to comply with clause 5.1(b);
- (c) during the Lease Term, and at all times that the Customer bears the risk for the Leased Goods, the Customer shall at its own expense:
  - (i) keep the Leased Goods free of all loss, damage, destruction and theft, whether caused by the Customer or third party (known or unknown), Fair Wear and Tear excepted;
  - (ii) keep the Leased Goods safe and secure, whether in use or not;
  - (iii) keep the Leased Goods in good working order, to the same level of repair, condition, and appearance that the Leased Goods were in at the start of the Leased Term, Fair Wear and Tear excepted;
  - (iv) supply and top up all consumables (as approved by Porter Group), including without limitation, fuel, oil, lubricating oil, hydraulic oil, cleaning and other consumables, necessary for the operation of the Leased Goods;
  - (v) regularly check the Leased Goods' consumable levels;
  - (vi) carry out prestart daily inspection reports in accordance with Porter Group's specifications from time to time before using the Leased Goods. These inspection reports must be made available to Porter Group on request;
  - (vii) maintain all road user charges, registrations and certificates of fitness (as applicable) in respect of the Leased Goods;
  - (viii) supply a suitably qualified, licensed, and competent operator to operate the Leased Goods;
  - (ix) only use or permit the Leased Goods to be used for the type of work for which is described in the Lease Agreement, or where no type of work is listed then the used intended by the manufacturer, unless otherwise agreed in writing by Porter Group; and

- (x) immediately advise Porter Group if the Leased Goods require or are likely to require repair, replacement, service, maintenance, or other similar work to ensure the Leased Goods are kept in good working order;
- (d) the Customer will not at any time, without the prior written consent of Porter Group (acting reasonably):
- (i) make any alterations to or modify the Leased Goods, or undertake any repairs, servicing or maintenance in relation to the Leased Goods;
  - (ii) remove any identification features or marks on the Leased Goods or any other part of the Leased Goods;
  - (iii) dispose of, sell, sublet, hire or part with possession of the Leased Goods; or
  - (iv) permit the Leased Goods to be seized, immobilised or detained by any authority having jurisdiction to do so, any creditor of the Customer or any other third party;
- (e) the Customer will not at any time operate the Leased Goods, and shall not permit any other person to operate the Leased Goods (whether or not permitted by the Customer):
- (i) in any way that is malicious, reckless, dishonest or fraudulent, or intentionally, deliberately undertake any act or omission likely to cause loss, destruction, theft or damage to the Leased Goods;
  - (ii) while under the influence of drugs (whether legal or illegal), alcohol or other prohibited substance;
  - (iii) while having been directed by a medical or other professional person not to operate the Leased Goods or any similar equipment due to any health condition, illness, medical treatment or medication;
  - (iv) for the purpose of carrying passengers;
  - (v) for any purpose that is not permitted by the manufacturer of the Leased Goods or that would void the warranty provided by the manufacturer of the Leased Goods;
  - (vi) in any way that subjects the Leased Goods to pollution, corrosive substance or contamination;
  - (vii) in connection with hazardous stock, merchandise, chemicals or in any other hazardous situation or substance;
  - (viii) where the Leased Goods are deliberately, knowingly or recklessly exposed to a material risk of damage or loss;
  - (ix) where damage or loss of the Leased Goods is reasonably foreseeable, obvious or imminent;
  - (x) in breach of any applicable laws, including in relation to overloading; or
  - (xi) for the purposes of a protest, civil disruption, unlawful purpose, or illegal/criminal activity;
- (f) to immediately report any theft, damage or loss of the Leased Goods to the Police and Porter Group;
- (g) to provide Porter Group and the police or other regulatory authority with all assistance and information required to fully investigate and determine the circumstances surrounding any theft, loss or damage to the Leased Goods;
- (h) do all things reasonably necessary to mitigate any loss or damage to the Leased Goods; or

- (i) to not do anything that will or may bring the Porter Group into disrepute.

7.2 **Obligations for Non-Maintained Leases:** In addition to the undertakings in clause 7.1, for any Non-Maintained Leased Goods, the Customer will:

- (a) service the Leased Goods in accordance with normal servicing procedures for the Leased Goods and in accordance with the manufacturer's instructions, which the Porter Group will provide to the Customer upon request; and
- (b) at all times keep the Leased Goods fully maintained and in good working order and repair and will comply with all the manufacturer's warranty standards, instructions and recommendations regarding maintenance of the Leased Goods, which the Porter Group will provide to the Customer upon request; and
- (c) ensure the schedule in respect of all servicing and maintenance is agreed with Porter Group in advance; and
- (d) ensure that all servicing and maintenance is undertaken by a third party approved by Porter Group.

## 8. **HEAVY VEHICLE NATIONAL LAW**

8.1 In addition to the parties' obligations and undertakings set out elsewhere in these Master Terms and Conditions, the parties undertake to comply with the provisions of the HVNL (to the extent that such provisions apply to each party).

8.2 Without limiting its obligations under the HVNL, the Customer must at all times during the Lease Term:

- (i) ensure, so far as reasonably practicable, the safety of its Transport Activities and its subcontractors' Transport Activities, within the meaning of the CoR Laws;
- (ii) not do or require, and must refrain from doing or requiring, anything which would directly or indirectly cause or encourage any person to breach any CoR Law;
- (iii) develop and implement suitable policies and working procedures (including training/education, compliance performance monitoring and reporting) to, so far as reasonably practicable, eliminate or, where not possible, minimise, risks to the public arising from the conduct of its Transport Activities;
- (iv) comply with any compliance policy, working practices and policies, instructions or reasonable direction of Porter Group in relation to compliance with the CoR Laws, which form part of this Part of the Master Terms and Conditions as if they were set out in full within it;
- (v) manage and retain copies of all Transport and Journey Documentation as required under the CoR Laws;
- (vi) promptly advise the Porter Group of any facts or circumstances which come to its attention which may give rise to any breach or allegation of breach of the CoR Laws, including without limitation any warning or caution, request for information or documents, infringement notice, fine or the commencement of prosecution proceedings by any regulatory authority;
- (vii) promptly make available all information or documentation reasonably requested by the Porter Group for the purpose of monitoring or auditing compliance with the provisions of this clause 8, including Transport and Journey Documentation, vehicles and loads;
- (viii) conduct an investigation into the cause of any breach or allegation of breach of the CoR Laws and formulate any actions to be implemented in order to avoid or reduce the risk of a similar incident arising again, within 10 Working Days of becoming aware of the facts or circumstances giving rise to the breach or allegation of breach;

- (ix) provide the Porter Group with a copy of any investigation report and any actions to be implemented in order to avoid or reduce the risk of a similar incident arising again, upon demand;
- (x) not engage, instruct or cause any employee, contractor or subcontractor to perform any aspect of any Transport Activities unless it has first satisfied itself that any such employee, contractor or subcontractor:
  - (D) has in place its own policies and working procedures to ensure compliance by it with the provisions of this clause 8; and
  - (E) has been and will be provided with sufficient information, instruction, training and supervision to ensure compliance by it with the provisions of this clause 9; and
  - (F) has been provided with a copy of any compliance policy, working practices and policies, instructions or reasonable direction of the Porter Group in relation to compliance with the CoR Laws;
- (b) indemnifies and agrees to keep indemnified upon demand Porter Group, its employees, agents and contractors from any damage, expense, loss, claim or liability arising from the Customers:
  - (i) non-compliance with the CoR Laws or HVNL; or
  - (ii) non-observance of any of the documents mentioned in sub-clause 8.2(x)(C) above;

except where such damage, expense, loss, claim or liability are the direct result of the gross negligence, wilful misconduct or fraud of the Porter Group, its employees, agents or contractors.

8.3 In the event of any breach or suspected breach of any provision of clauses 8.1 or 8.2, the Porter Group will be entitled, in its sole and absolute discretion to:

- (a) report any breach or suspected breach of the CoR Laws to any relevant authority, including disclosing any or all information and documentation in relation to the facts or circumstances of any such breach or suspected breach,
- (b) issue the Customer with a 'show cause' notice requiring the Customer to explain to the reasonable satisfaction of the Porter Group within 10 Working Days of the notice:
  - (i) the facts and circumstances of the breach or suspected breach;
  - (ii) any steps taken to respond to the breach or suspected breach;
  - (iii) any steps taken to prevent any other breach similar to the breach or suspected breach from occurring.

8.4 In addition to any other rights of the Porter Group under and despite anything to the contrary contained in any other provision of this Part of these Master Terms and Conditions, in the event of any breach or suspected breach of a provision of clause 8.1 or 8.2 by the Customer or any failure of the Customer to respond to the reasonable satisfaction of the Porter Group to any 'show cause' notice issued in accordance with clause 8.3(b), the Porter Group will be entitled, in its sole and absolute discretion:

- (a) to require that any person responsible for any breach is not used or engaged to perform any aspect of the Customers Transport Activities relating to the performance of any Lease Agreement or any Other Agreement in the future;
- (b) order that the Customer immediately cease the use and operation of any Leased Goods until such time as the breach, suspected breach or failure to respond to any 'show cause' notice is remedied (to the reasonable satisfaction of the Porter Group) by the Customer;



- (c) immediately suspend the performance of any Lease Agreement or Other Agreement (or any part of such agreements) until such time as the breach, suspected breach or failure to respond to any 'show cause' notice is remedied (to the reasonable satisfaction of the Porter Group) by the Customer; and
- (d) terminate any Lease Agreement or Other Agreement with immediate effect by giving notice in writing to the Customer.

8.5 In the event that the Porter Group takes the action specified in clauses 8.4(b) and 8.4(c), the Customer acknowledges that Lease Fee will be charged, and no adjustment will be made to the Lease Fee, and the Porter Group are not liable, for any losses, costs or damage suffered by the Customer.

## 9. INSPECTION OF LEASED GOODS

9.1 **Inspection:** In addition to any access, inspection and repossession rights set out in Part One of these Master Terms and Conditions, Porter Group or anyone authorised by Porter Group may access and enter any place (whether land, buildings or otherwise) where the Leased Goods are located and inspect the Leased Goods at any reasonable time for any reasonable purpose, including without limitation inspecting and testing the condition of the Leased Goods, checking the state of maintenance and/or repair of the Leased Goods, and to repair, service and maintain the Leased Goods, or otherwise deal with the Leased Goods in Porter Group's sole discretion.

9.2 **Assistance:** The Customer will provide access to the Leased Goods and any place to give effect to clause 9.1, and provide all necessary assistance to obtain the consent of any third party (including without limitation any land owner, landlord, occupier and/or any mortgagee) that is necessary to give effect to clause 9.1.

## 10. REPLACEMENT OF LEASED GOODS

10.1 At all times, Porter Group may substitute, exchange or replace any Leased Goods for any other Leased Goods of a similar specification, by giving the Customer at least 3 Working Days' notice.

## 11. DAMAGE AND LOSS TO LEASED GOODS

11.1 **Notice:** If all or part of the Leased Goods suffer damage, loss, theft or destruction during the Lease Term, then the Customer must immediately notify Porter Group in writing.

11.2 **Repairs:** If the Leased Goods suffer damage during the Lease Term and/or at any time that the Customer bears the risk for the Leased Goods, Porter Group may either undertake repairs itself or arrange for a third party to undertake those repairs, at the Customer's cost. The repairs shall reinstate the Leased Goods to the condition that the Customer was required to keep them in as described in clause 7. The Customer shall not undertake any repairs to the Leased Goods, without the Porter Group's prior written consent.

11.3 **Replacement:** If the Leased Goods are lost, stolen, destroyed or damaged during the Lease Term and/or at any time that the Customer bears the risk for the Leased Goods, to the extent that repair is uneconomic, not prudent, or unable to be completed within a reasonable time, Porter Group will use reasonable endeavours to source a replacement item in the same condition and with at least the same specification as the Leased Goods at the start of the Lease Term, at the Customer's cost. The Customer shall not be entitled to replace the Leased Goods.

11.4 **Customer liability:** Without limiting any other right or remedy under these Master Terms and Conditions, the Customer indemnifies the Porter Group for all Porter Group Costs incurred in relation to the repair or replacement of the Leased Goods described in clause 11.2 and 11.3 except where such Porter Group Costs are the direct result of the gross negligence, wilful misconduct or fraud of the Porter Group.

11.5 **Interim estimates:** Where the Customer's liability under clause 11.2, 11.3 or 11.4 is unknown, it may be estimated by Porter Group on an interim basis.

## 12. INSURANCE

12.1 **Customer insurance:** If it has been agreed that the Customer will insure the Leased Goods (whether in respect of a specific Lease Agreement or otherwise), then the Customer:

- (a) will at its cost arrange for the following insurances to be put in place from the start of the Lease Term, and maintain them during the Lease Term, and at all times that the Customer bears the risk for the Leased Goods:
  - (i) fire, theft, accident, damage, transit costs and public liability, for the full replacement value of the Leased Goods; and
  - (ii) at a minimum, coverage for Porter Group's loss of revenue while the Leased Goods are being repaired or replaced, calculated for the purposes of this clause 12.1(a)(ii) as three months' Lease Fees,
 (these insurances being referred to as the **Lease Insurances**);
- (b) will ensure the Lease Insurances are on terms and conditions, and with an Australian insurance company, that are approved by Porter Group;
- (c) authorises Porter Group to contact the insurer to discuss, and obtain any information in relation to, the Lease Insurances or related claims;
- (d) ensure that the Lease Insurances include a maximum excess of \$5,000 plus GST (payable by the Customer);
- (e) ensure the Lease Insurances show Porter Group as the insured or interested party and must provide for duplicate renewal notices to be sent to Porter Group which has the right at any time to inspect the policy and to pay any outstanding premiums not paid by the Customer and charge them to the Customer, and such outstanding premiums will become immediately due and payable by the Customer to Porter Group. The Customer must ensure that at least 14 days prior written notice is given to Porter Group of the expiry or proposed termination of the Lease Insurances;
- (f) ensure all proceeds under the Lease Insurances are payable to the Porter Group;
- (g) ensure that any other requirements specified in writing by Porter Group from time to time regarding the Lease Insurances are complied with; and
- (h) on or prior to the start of the Lease Term, and at any other time requested by Porter Group, provide to Porter Group evidence of the Lease Insurances, satisfactory to Porter Group in all respects.

**12.2 Failure to provide evidence:** If the Customer does not provide evidence of insurance to the Porter Group as required by clause 12.1 or does not otherwise comply with any other requirements of clause 12.1, and where that breach is capable of being remedied and has not been remedied (to Porter Group's satisfaction) by the Customer within 5 days, then Porter Group may immediately terminate the Lease Agreement by notifying the Customer in writing.

**12.3 No limit of liability:** The Customer acknowledges that the insurance requirements set out in clause 12.1 do not limit the Customer's liability, and that they may be liable to Porter Group (under clause 11 or otherwise) to an extent greater than any proceeds which Porter Group may receive under the Lease Insurances.

**12.4 Claims process:** If the Leased Goods suffer any damage, loss, theft or destruction or at any other time directed by Porter Group, the Customer agrees:

- (a) to immediately make a claim under the Lease Insurances, or where required, the Porter Group, in the place of the Customer, making a claim or continuing any claim already made by the Customer, under the Lease Insurances, and agree to transfer to Porter Group, at Porter Group's request, all of its rights and entitlements pursuant to the Lease Insurances;
- (b) to direct any payments to be made by the insurer under the Lease Insurances to Porter Group on the Porter Group's request;

- (c) to immediately pay all moneys received by the Customer from the insurer, whether pursuant to any insurance claim or otherwise, to Porter Group, and prior to such payment the Customer shall be deemed to hold all such moneys in trust for Porter Group;
- (d) that Porter Group may determine whether to apply the insurance proceeds received from the Customer or insurer to the:
  - (i) satisfaction of the Customer's liability pursuant to clause 11 (whether in full or in part); and/or
  - (ii) payment of any other amount payable by the Customer to the Porter Group pursuant to these Master Terms and Conditions.
- (e) that if in the opinion of Porter Group (acting reasonably), any insurance money received is not sufficient to meet the Customer's liability pursuant to clause 11, or if any insurance claim under the Lease Insurance is declined, then Porter Group will notify the Customer, and Porter Group may:
  - (i) demand, and the Customer shall pay to Porter Group within 5 days, any shortfall between the insurance proceeds received by the Porter Group (if any) and the Customer's liability pursuant to clause 11; and
  - (ii) in the event that Porter Group makes a demand on the Customer pursuant to clause 12.4(e)(i) and the Customer fails pay all monies the subject of that demand to the Porter Group within 5 days, terminate the applicable Lease Agreement and any or all other Lease Agreements or Other Agreement;
- (f) that if in the opinion of the Porter Group, any insurance money received is sufficient to meet the Customer's liability pursuant to clause 12.4(d), then any surplus will be returned to the Customer; and
- (g) if, for any reason whatsoever, the Customer is in breach of this clause 12.4 by not holding the required Lease Insurances (or any insurance at all), or the Customer's insurer does not pay out under the Lease Insurances, the Customer warrants to Porter Group that it will remain liable as set out in clause 11, and will make payment of such amounts within 7 days of Porter Group's written request.

### 13. RETURN OF LEASED GOODS

- 13.1 **Return:** Unless otherwise agreed in writing by Porter Group, the Customer must return the Leased Goods to the Porter Group's nominated return location on the earlier of the following:
- (a) immediately on termination of the applicable Lease Agreement; or
  - (b) on the last day of the Lease Term, provided that Porter Group will allow a grace period, without charge until 9.00am on the day following the last day of the Lease Term.
- 13.2 **Return requirements:** The Leased Goods will not be deemed to be returned to Porter Group until they have arrived at the nominated return location and Porter Group have signed a written acknowledgement of the return of the Lease Goods.
- 13.3 **Return condition:** The Leased Goods must be returned in the condition required in clause 7 and as set out below (where there is any conflict, this clause 13.3 shall prevail to the extent of the conflict):
- (a) No glass shall be broken, chipped or cracked, no upholstery shall have any cut, tear or burn, there shall be no un-repaired damage to exterior or interior materials the repair cost of which would exceed \$500 and all decals, numbers, customer identification, glue and adhesives shall have been removed from the Leased Goods without damage to paint or the Leased Goods. Frame and structural members including but not limited to loader arms, stick, booms, buckets, frame rails, all ground engaging tools and all attachments will be structurally sound, without breaks, bends, cracks or missing teeth. Cooling, heating and lubrication systems shall not be contaminated and there shall be no leaking between systems. No battery shall have any dead cells, cracked case, or be inoperative.

- (b) All material (including dirt, refuse, asphalt, gravel, cement and fertiliser) must be properly removed from the Leased Goods and disposed of in accordance with all applicable laws. All internal fluids such as lube oil and hydraulic fluids are to be filled at operating levels and all filler caps are to be secured.
- (c) All tyres are to be of the same original size, type and manufacturer (or similar quality manufacturer if the original manufacturer no longer produces tyres of that type) as at the commencement of the Lease Term. The tyres shall have no missing or damaged parts or gouges and a minimum of sixty percent (60%) remaining wear.
- (d) If so equipped, the transmission/hydrostatic drive systems including but not limited to differentials and final drives, will be in good condition and operate quietly without vibrations or leaks to the manufacturer's original specification.
- (e) If so equipped, the electric drive system including, but not limited to alternators, generators, control systems, motorised wheels, shall have at least fifty percent (50%) time/wear remaining before the next due overhaul or replacement as recommended by the manufacturer and published in standard maintenance manuals.
- (f) If so equipped the undercarriage (including sprockets, links, idlers, bogies, carrier and track rollers, pins and bushings, track shoes/pads) shall have at least thirty five percent (35%) time/wear remaining before the next due overhaul or replacement as recommended by the manufacturer and published in standard maintenance manuals.
- (g) The engine must have been maintained in accordance with manufacturer's recommendations, including overhauling the engine as required. At the time of return, the engine must have at least fifty percent (50%) time remaining before the next due overhaul or component replacement as recommended by the manufacturer and/or published in standard maintenance manuals. Determination of satisfaction of these specifications shall be made by subjecting the engine to standard industry testing to include (but not limited to) testing of the crankcase, manifold pressure, oil analysis and blowby tests.
- (h) The brakes shall have at least fifty percent (50%) time remaining before the next due overhaul or replacement as recommended by the manufacturer and/or published in standard maintenance manuals. No drums or other braking components shall be damaged or cracked.
- (i) If so equipped, all blades shall be straight and true as originally specified by the manufacturer. This also covers all standard pins, trunnions, push arms, equalising beams and rams.
- (j) All hydraulic pumps, cylinders and hoses must be fully operational at the manufacturer's originally specified rated capacity.
- (k) The Leased Goods shall meet and conform to all applicable health and safety laws and requirements, and if applicable, have appropriate inspection certificates, permits and other certification necessary to operate the Leased Goods. Without limiting the foregoing, the Customer shall maintain and provide to the Porter Group written records of preventative maintenance and repairs, indicating date, and hour meter readings to show when such maintenance or repair work was performed and all corresponding operations manuals in their entirety.

13.4 **Condition Report:** On return of the Leased Goods, Porter Group may prepare a condition report or record for the purpose of assessing any damage to the Leased Goods and any failure to comply with clause 13.3.

13.5 **Failure to return:** Where the Customer does not return the Leased Goods in accordance with clause 13.1 then, the Customer will continue to be bound by the Customer's obligations under these Master Terms and Conditions in relation to the Leased Goods including in relation to damage, destruction, theft and loss, and be liable for the Leased Goods until such time as the Leased Goods are returned to Porter Group in accordance with clause 13.1. For the avoidance of doubt, this clause 13.5 does not create any extension to the Lease Term, nor permit the Customer to remain in possession of the Leased Goods beyond the expiry of the Lease Term.

13.6 **Failure to return in proper condition:** If the Customer fails to return the Leased Goods in a condition that complies with clause 13.3, the Porter Group will:

- (a) undertake all necessary repairs, servicing and maintenance so they comply with clause 13.3, and charge the Customer for Porter Group Costs incurred; and

charge the Customer for lost revenue for the period from the date of return of the Leased Goods to the Porter Group until the date that the condition of the Leased Goods complies with the requirements of clause 13.3, with such lost revenue being calculated in accordance with the Lease Fee applicable immediately prior to the date of return (**Maintenance Period Fee**). The parties agree that Porter Group is not entitled to any double recovery where the Maintenance Period Fee and the Early Return Fee both apply. The Maintenance Period Fee may be charged by Porter Group without prejudice to any other rights or remedies available to Porter Group pursuant to these Master Terms and Conditions or at law. In addition, the Customer indemnifies Porter Group in respect of any resulting Porter Group Costs suffered or incurred by Porter Group as a result of such maintenance period, except where such Porter Group Costs are the direct result of the gross negligence, wilful misconduct or fraud of the Porter Group.

The amounts payable pursuant to this clause 13.6 are payable in one sum, on the Porter Group's request. Where the Customer has a Porter Account with the Porter Group Party leasing the Leased Goods, the Maintenance Period Fee will be debited to that Porter Account.

## PART FOUR

### EQUIPMENT AND ACCESSORY PURCHASE TERMS AND CONDITIONS

This Part of the Master Terms and Conditions applies to all Customers purchasing Equipment and/or Accessories from the Porter Group.

#### 1. DEFINITIONS

1.1 In addition to the definitions set out in Part One, the following definitions apply to this Part of the Master Terms and Conditions:

- (a) **“Accessories”** means accessories of or to an item of Equipment but excludes parts.
- (b) **“Conditions”** means any conditions set out in the Equipment and Accessory Purchase Agreement (if any).
- (c) **“Deposit”** means the amount agreed to be paid by the Customer to the Porter Group as a deposit, or as otherwise requested by Porter Group from time to time.
- (d) **“Equipment”** means machinery, plant, equipment, vehicles or similar being purchased by the Customer from Porter Group but excludes parts.
- (e) **“Extras”** means any Goods and/or Services that the Porter Group agree in writing to provide in addition to the Equipment and/or Accessories.
- (f) **“Purchased Goods”** means the Equipment, Accessories and Extras that the Customer agrees to purchase from Porter Group.
- (g) **“Purchase Price”** means the Charges agreed in writing to be paid by the Customer to the Porter Group for Equipment, Accessories and Extras.
- (h) **“Equipment and Accessory Purchase Agreement”** means an Agreement in respect of Purchased Goods.
- (i) **“Trade In”** means any specific machinery, plant, equipment, vehicles or similar that the Customer and Porter Group agree in writing may be provided to the Porter Group as a trade-in.

#### 2. EQUIPMENT PURCHASE AND THE MASTER TERMS AND CONDITIONS

2.1 Unless otherwise agreed in writing, each purchase of Purchased Goods by the Customer from the Porter Group, whether pursuant to an Equipment and Accessory Purchase Agreement or otherwise, is subject to the Master Terms and Conditions including this Part Four.

#### 3. PURCHASE AGREEMENT

3.1 **Transaction:** The Porter Group agrees to sell and the Customer agrees to buy the Purchased Goods for the Purchase Price.

3.2 **Conditions:** If the Customer and Porter Group have signed an Equipment and Accessory Purchase Agreement, and the Equipment and Accessory Purchase Agreement is subject to Conditions, the Customer’s purchase of the Purchased Goods described in the Equipment and Accessory Purchase Agreement is conditional on the satisfaction of such Conditions by the conditions satisfaction date, or if no such date is specified in the Equipment and Accessory Purchase Agreement, then 14 days after the date that the Porter Group signs the Equipment and Accessory Purchase Agreement. If a Condition is not satisfied or waived by the applicable conditions satisfaction date, then the Customer or Porter Group may at any time after such date, terminate the Equipment and Accessory Purchase Agreement by notice in writing to the other party. If any Condition is for the benefit of the Porter Group, and any such Condition is not satisfied or waived, the Porter Group will not be required to give the Customer any reason for the Condition not being satisfied or waived.

- 3.3 **Extras:** If it is agreed that Extras are to be supplied with the Purchased Goods, then the Porter Group will use reasonable endeavours to supply those Extras together with the Equipment and/or Accessories. The provision of Extras by the Porter Group are subject to additional Charges.
- 3.4 **Collection or Delivery:** The Customer shall collect the Purchased Goods from the collection location nominated by the Porter Group.
4. **PAYMENT**
- 4.1 **Deposit:** Where a Deposit is specified in the Equipment and Accessory Purchase Agreement, the Customer shall pay the Deposit to the Porter Group on signing the Equipment and Accessory Purchase Agreement. Where there is no Equipment and Accessory Purchase Agreement, the Customer shall pay the Deposit when the Customer agrees to proceed with the purchase of Purchased Goods or at any other time requested by Porter Group. Porter Group may terminate the Equipment and Accessory Purchase Agreement or any agreement with the Customer to purchase Purchased Goods, if the Customer does not pay the Deposit within three days after the due date for payment. The Deposit is in part payment of the Purchase Price and is non-refundable (including where a purchase of Purchased Goods is terminated due to the non-satisfaction of Conditions), unless otherwise agreed in writing by Porter Group.
- 4.2 **Balance of Purchase Price:** Unless otherwise agreed in writing by the Porter Group, the balance of the Purchase Price (being the Purchase Price less the Deposit to the extent actually paid) must be paid as follows:
- (a) to the Porter Group on or prior to the Customer's collection of the Purchased Goods; and
  - (b) the Purchase Price shall not be debited to any Porter Account, but shall be paid in accordance with clause 5.8 of Part One of these Master Terms and Conditions.
- 4.3 **Time is of the essence:** Time for payment of the Purchase Price is of the essence.
5. **TRADE IN**
- 5.1 **Trade In items:** If Porter Group have agreed in writing with the Customer that the Customer may provide a Trade In, then the Customer shall deliver (at its cost) such Trade In to the Porter Group in accordance with the timing agreed with the Porter Group, but in any event no later than the date that the Customer collects or Porter Group delivers the Purchased Goods. The Customer shall provide the Trade In together with all ownership documentation, any signed transfer forms necessary to transfer ownership of the Trade In to the Porter Group, and satisfactory written evidence that there are no charges, encumbrances or Security Interests over the Trade In.
- 5.2 **Credit and transfer:** Provided the Customer complies with the provisions of this clause 5:
- (a) a credit equal to the amount specified in the Equipment and Accessory Purchase Agreement for the Trade In, or as otherwise agreed in writing between the Customer and Porter Group, will be applied as a part payment of the Purchase Price; and
  - (b) title in and to the Trade In will pass to the Porter Group on the date the Trade In is delivered to the Porter Group in accordance with clause 5.1.
- 5.3 **Warranties on trade in:** The Customer warrants to the Porter Group that at the time of offering to provide a Trade In to the Porter Group, and again on title in that Trade In passing to the Porter Group:
- (a) the Customer has the right to sell the Trade In;
  - (b) all information supplied by the Customer in relation to the Trade In is true and correct, and no material information in relation to the Trade In has been withheld or omitted to be supplied;
  - (c) the Porter Group shall have and enjoy quiet possession of the Trade In;
  - (d) the Trade In is free from any charge, lien, encumbrance or Security Interest; and

- (e) the Trade In and all accessories are in the same condition as they were in when they were inspected by the Porter Group, and at a minimum are in good working order, in clean and tidy condition, free of damage, Fines and with all road user charges, certificates of fitness, registrations, certificates and licenses paid up to date.

5.4 **Remedies:** The Customer agrees that if the Customer has not complied with the requirements of clause 5.1, has breached any warranty set out in clause 5.3 or breached any other obligation set out in these Master Terms and Conditions and where that failure or breach is capable of being remedied and has not been remedied (to Porter Group's satisfaction) by the Customer within 5 days, then the Porter Group may do any one or more of the following:

- (a) reject the Trade In by notifying the Customer in writing, and in such case, title to the Trade In shall transfer back to the Customer;
- (b) terminate the Equipment and Accessory Purchase Agreement or agreement for the purchase of the Purchased Goods, by notifying the Customer in writing, and require the Customer to return the Purchased Goods to the Porter Group (if the Customer already has possession of the Purchased Goods); or
- (c) require the Customer to pay the full Purchase Price without a credit for the Trade In; and/or
- (d) claim compensation from the Customer for all Porter Group Costs (including the difference between the Porter Group's allowance for the Trade In and the actual market value of the Trade In).

5.5 **Insurance:** The Customer shall be responsible to insure the Trade In for any loss or damage until title in and to the Trade In has passed to the Porter Group pursuant to clause 5.2(b).

5.6 **No obligation:** The Customer acknowledges that the Trade In has been made freely and has not been demanded of the Customer as a condition of the sale of the Purchased Goods.

## 6. **INSURANCE**

6.1 **Insurance requirements:** From the point that risk in the Purchased Goods transfers from the Porter Group to the Customer, and until title of and to the Purchased Goods has passed to the Customer, the Customer must at all times keep the Purchased Goods insured for full replacement value with an insurer and under a formal policy approved by the Porter Group.

## 7. **PORTER GROUP UNDERTAKINGS**

7.1 The Porter Group undertakes that at the time of the passing of title in the Purchased Goods:

- (a) the Porter Group has the right to sell the Purchased Goods;
- (b) the Customer shall have and enjoy quiet possession of the Purchased Goods; and
- (c) the Purchased Goods are free from any charge, encumbrance or Security Interest in favour of any third party not disclosed to the Customer or known by the Customer at the time of the passing of ownership.

## 8. **MANUFACTURER'S WARRANTY**

8.1 If the Purchased Goods are new, the Customer is entitled to the manufacturer's written warranty (if any) on taking title to the Purchased Goods, and Porter Group will use reasonable endeavours to provide a copy of such warranty (if any) to the Customer upon the Customer's collection of the Purchased Goods. Where the manufacturer's written warranty for Purchased Goods is provided to Porter Group, Porter Group will use reasonable endeavours to assign that warranty to the Customer.



## PART FIVE

### FINANCE TERMS AND CONDITIONS

This Part of the Master Terms and Conditions applies to all Customers purchasing Financed Goods on finance from the Porter Group.

#### 1. DEFINITIONS

1.1 In addition to the definitions set out in Part One, the following definitions apply to this Part of the Master Terms and Conditions:

- (a) **"Annual Interest Rate"** has the meaning set out in the Finance Agreement, but is subject to variation pursuant to clause 6.2 of this Part Five of the Master Terms and Conditions.
- (b) **"Application Fee"** means the standard Porter Group Charge payable by the Customer on making an application for finance to the Porter Group, as may be updated from time to time. As at the Effective Date, the Application Fee is calculated as 0.75% of the Total Amount Financed or \$750, whichever the greater.
- (c) **"Conditions Precedent"** means the conditions listed in clause 3 of this Part Five of the Master Terms and Conditions.
- (d) **"Financed Goods"** means the machinery, plant, equipment and vehicles, all applicable accessories and other items, including replacements supplied by Porter Group from time to time, that are supplied to the Customer by the Vendor, and that are described in a Finance Agreement.
- (e) **"Finance Agreement"** means an Agreement in respect of Financed Goods.
- (f) **"Finance Insurances"** means fire, theft, accident, damage, destruction, loss, transit costs and public liability insurances for the full replacement value of the Financed Goods.
- (g) **"Finance Term"** means the total duration that finance is provided by the Porter Group pursuant to the Finance Agreement.
- (h) **"Instalments"** means the instalments to be paid by the Customer on the repayment dates set out in the Finance Agreement.
- (i) **"Registration Fee"** means the standard Porter Group Charge payable by the Customer in relation to the registration of each financing statement on the PPSR in respect of the Customer and/or Financed Goods, as may be updated from time to time. As at the Effective Date, the Registration Fee is \$60.
- (j) **"Rule of 78"** means the mathematical methodology of calculating interest generally known by that name.
- (k) **"Total Amount Financed"** means the total amount to be advanced by the Porter Group to the Customer or Vendor (as applicable) for the purposes of purchasing the Financed Goods and paying the Application Fee and Registration Fee, but is subject to variation pursuant to this Part Five of the Master Terms. The Total Amount Financed excludes interest as set out in the Finance Agreement.
- (l) **"Total You Will Pay"** means the total amount payable by the Customer to the Porter Group as set out in the Finance Agreement, but is subject to variation pursuant to this Part Five of the Master Terms.
- (m) **"Vendor"** means the relevant Porter Group Party, or other third party which the Customer has contracted with or will contract with to supply the Financed Goods to the Customer, as specified in the Finance Agreement.

#### 2. FINANCE AND THE MASTER TERMS AND CONDITIONS

2.1 Unless otherwise agreed in writing, each purchase of Financed Goods by the Customer from the Porter Group under a Finance Agreement is subject to the Master Terms and Conditions including this Part Five.

### 3. **CONDITIONS PRECEDENT**

3.1 **Conditions:** Each Finance Agreement is subject to the Porter Group confirming in writing to the Customer that each of the following conditions have been satisfied or waived in full:

- (a) the Customer providing the following information and/or documents to the Porter Group, and that information and/or documents being satisfactory to the Porter Group in all respects:
  - (i) insurance information required under clause 9 of this Part Five of these Master Terms and Conditions;
  - (ii) a copy of the written invoice from the Vendor for the full purchase price of the Financed Goods, and where applicable, written confirmation from the Vendor of its receipt of the cash deposit, trade-in items (if any) and satisfaction of any other conditions relating to the purchase of the Financed Goods;
  - (iii) an up to date statement of position of each Guarantor signed by each Guarantor;
  - (iv) if not included within the Total Amount Financed, receipt of the payment of the Application Fee, Registration Fee and any other amount payable to the Porter Group as set out in the Finance Agreement;
  - (v) all necessary certificates, approvals, documents, evidence or other matters from the Customer as required from time to time by the Porter Group; and
  - (vi) written confirmation from the Customer that there has being no adverse change in relation to the Customer or any of the Guarantors; and
- (b) the Porter Group being satisfied in all respects with any additional security required to be provided by the Customer to the Porter Group as set out in the Finance Agreement and as provided for by clause 10.2 of this Part 5 of these Master Terms and Conditions.

3.2 **Benefit and waiver:** The Conditions Precedent are solely for the benefit of the Porter Group and the Porter Group may waive any or all of the Conditions Precedent by notifying the Customer in writing.

3.3 **Conditions Date:** The last date for fulfilment of the Conditions Precedent shall be two Working Days after the date that the last party signs the Finance Agreement. Each of the Conditions Precedent shall not be fulfilled until notice of fulfilment is provided by the Porter Group to the Customer.

3.4 **Termination:** If the Conditions Precedent are not all fulfilled or waived on or prior to their due date for satisfaction and remain unfulfilled by the date that is 5 Days after their due date, the Porter Group may terminate the Finance Agreement by giving notice in writing to the Customer. If the Porter Group has advanced any money to the Customer or Vendor pursuant to a Finance Agreement either prior to or after termination of the Finance Agreement, the Customer shall immediately:

- (a) repay any such amount to the Porter Group; and/or
- (b) procure the Vendor to make repayment of such amount to the Porter Group.

If the Vendor does not repay any such amount, the Customer shall continue to be liable for the repayment of that amount and all Porter Group Costs related to the recovery of such amounts.

3.5 **Payment not waiver:** If the Porter Group makes any payment to the Customer or Vendor pursuant to clause 4.1 prior to satisfaction or waiver of any or all of the Conditions Precedent, such payment does not constitute waiver of any of the Conditions Precedent and Porter Group may continue to require satisfaction of the relevant Condition Precedent.

#### 4. **DRAWDOWN AND REPAYMENT**

- 4.1 **Drawdown:** On satisfaction or waiver of all Conditions Precedent, Porter Group shall make payment of the Total Amount Financed less the Application Fee, Registration Fee and other amount intended to be retained by Porter Group (as determined by Porter Group) to the Customer's or Vendor's nominated bank account on or about the date agreed by the Porter Group and the Customer (which shall not be earlier than the date that the last Condition Precedent is satisfied or waived). Where such payment is made directly to the Customer, the Customer agrees to only use the money received for the purchase of the Financed Goods. Where such payment is made directly to a Vendor, such money shall only be applied for the Customer's purchase of the Financed Goods. If for any reason the purchase of the Financed Goods does not proceed, the Customer shall immediately repay the full amount received from the Porter Group, and procure the return to the Porter Group of all amounts paid to the Vendor (whether paid by the Porter Group directly to the Vendor, or by the Porter Group to the Customer to the Vendor).
- 4.2 **Instalments:** The Customer shall repay to the Porter Group the Total You Will Pay, in Instalments. Where in respect of any Instalment there is no time for payment specified in the Finance Agreement or in these Master Terms and Conditions the Customer will make payment of the Instalments as instructed by the Porter Group. Instalments are payable in accordance with clause 5.7 of Part One of the Master Terms and Conditions. Instalments are not debited to any Porter Account.
- 4.3 **Instalment calculation:** Each Instalment includes payments of principal and interest. The amount of principal and interest included in each Instalment varies, and is allocated in accordance with the methodology determined by the Porter Group from time to time. As at the Effective Date, the Porter Group's allocation method is in accordance with the general methodology of the Rule of 78.
- 4.4 **Direct debit authority:** The Customer will, if required by the Porter Group, execute a direct debit authority or provide evidence of a recurring automatic payment to further assure the Porter Group in respect of the Customer's payment obligations.

#### 5. **APPLICATION AND REGISTRATION FEES**

- 5.1 **Application Fee:** On submitting an application for finance to the Porter Group, the Customer shall pay the Application Fee to Porter Group. The Application Fee is payable whether the application for finance is successful or not.
- 5.2 **Registration Fee:** On acceptance of the application for finance by the Porter Group, the Customer shall pay the Registration Fee to Porter Group. The Registration Fee is only payable when the application for finance is successful.
- 5.3 **Payment by deduction:** Where such finance application is successful, the Application Fee and Registration Fee may be included within the Total Amount Financed, and the Porter Group may deduct the Application Fee and Registration Fee from the Total Amount Financed prior to its advance. Where the Application Fee and Registration Fee is not included within the Total Amount Financed, the Customer must pay the Application Fee and Registration Fee to Porter Group on request.

#### 6. **INTEREST**

- 6.1 **Interest payment:** Interest will be charged to the Customer on the Total Amount Financed at the Annual Interest Rate for the Finance Term (**Standard Interest**). Standard Interest is payable by the Customer in addition to the Total Amount Financed, and comprises part of the Total You Will Pay.
- 6.2 **Variation to Annual Interest Rate:** The Porter Group may review and adjust the Annual Interest Rate at any time, but no earlier than 36 months after the commencement of the Finance Term, by providing written notice to the Customer specifying the new Annual Interest Rate and the date from which it will take effect. Adjustments to the Annual Interest Rate may not exceed changes to the target cash rate published by the Reserve Bank of Australia over the relevant period. In the event of a variation to the Annual Interest Rate, the Porter Group will recalculate (and the Customer will pay) the Standard Interest, Total You Will Pay and the remaining Instalments to reflect such change, in accordance with the terms and conditions of these Master Terms and Conditions.

6.3 **Default interest:** If the Customer does not make payment of any Instalment on or prior to its due date, or any other amount required to be paid by the Customer pursuant to this Part Five of the Master Terms and Conditions, and fails to remedy its failure to make such payment within 5 days, the Customer agrees as follows:

- (a) to (in addition to any interest component included within the Instalment) pay interest on the unpaid Instalment at the Default Interest Rate in accordance with clause 7.1 of Part One of these Master Terms and Conditions;
- (b) to pay all Porter Group Costs associated with failure to pay the unpaid Instalment(s); and
- (c) the Annual Interest Rate applicable to the balance remaining to be paid of the Total Amount Financed will automatically and without notice increase to the Default Interest Rate which shall remain applicable until such time as the Customer is up to date in respect of all Instalments and other amounts owing pursuant to this clause 6.3, the remaining Instalments shall be recalculated as set out in clause 6.2.

## 7. **EARLY REPAYMENT**

7.1 **Right to repay early:** The Customer may make early repayment of the remaining balance of the Total You Will Pay in full but not in part, provided it gives Porter Group no less than 5 Working Days' notice (**Early Repayment**).

7.2 **Early repayment fee:** In the event of such Early Repayment, provided that the Customer has remained in compliance with these Master Terms and Conditions for the duration of the Master Terms and Conditions (as determined by Porter Group):

- (a) the Porter Group will calculate the amount of Standard Interest remaining to be paid (**Unpaid Interest**);
- (b) the Customer will be released from the liability to pay 60% of the Unpaid Interest; and
- (c) the Customer will continue to be liable to pay the remaining 40% of the Unpaid Interest, as an Early Repayment fee, in addition to any Default Interest and other amounts payable by the Customer under clause 6.3 (if applicable), and all Porter Group Costs suffered or incurred by the Porter Group as a result of such Early Repayment.

7.3 **Statement:** The Customer may request a statement setting out the then current balance of the Total Financed Amount, Total You Will Pay and the Unpaid Interest at any time, by contacting [finance@porterce.com](mailto:finance@porterce.com). The Customer agrees to pay all Porter Group Costs associated with the provision of such statement.

7.4 **Early termination:** The Customer agrees that it has no right to terminate a Finance Agreement, other than by making an Early Repayment as set out in clause 7.1 and 7.2 or in the circumstances set out in clause 6.2. The Porter Group may terminate a Finance Agreement before the end of the Finance Term by providing at least 60 days' notice in writing to the Customer. On such termination, the Customer shall be liable to repay the then current balance of the Total You Will Pay, together with any Standard Interest in Instalments payable up to the date of termination and any accrued but unpaid Default Interest in respect of any unpaid Instalments. For the avoidance of doubt, there is no early repayment fee where Porter Group terminates the Finance Agreement in accordance with this clause 7.4. The Customer may request, and Porter Group shall consider, any reasonable request to vary a Finance Agreement presented to the Porter Group, to a maximum of one per annum. Where the Porter Group agrees (in its sole discretion) to vary a Finance Agreement, whether in full or in part, the Porter Group shall prepare the documentation to give effect to that agreed variation and the Customer shall sign and return it within 14 days. The Porter Group may charge the Customer (and the Customer shall pay) all Porter Group Costs it incurs in relation to considering, negotiating, documenting and giving effect to such proposed variation.

## 8. **CUSTOMER OBLIGATIONS**

8.1 **General:** The Customer must at the Customer's cost:

- (a) inspect the Financed Goods prior to execution of the Finance Agreement and satisfy itself that the Financed Goods are in proper working order and condition, include all items specified in the Finance Agreement;
- (b) subject to any Porter Group retention of title or Security Interest granted to the Porter Group pursuant to these Master Terms and Conditions or consented to in writing by the Porter Group, lawfully own, possess and have rights in the Financed Goods, free from all Security Interests, and any other charges, encumbrances, liens and claims;
- (c) keep the Financed Goods in the same good order and condition (but allowing for Fair Wear and Tear) as at the date of the Finance Agreement, including keeping the Financed Goods free of damage, carrying out all repairs and maintenance necessary to maintain the Financed Goods in good operating condition;
- (d) operate the Financed Goods and take the same care of the Financed Goods as a prudent owner would, including keeping the Financed Goods safe and secure, whether in use or not;
- (e) keep all licences, registrations, certificates of fitness, road user charges, and all other certificates, permits and other authorisations in respect of the Financed Goods, and their operation and use, current, at the Customer's cost, and ensure any and all fines and penalties in relation to the Financed Goods are promptly paid;
- (f) not make any alterations to or modify the Financed Goods;
- (g) not remove any identification features on any of the Financed Goods or any part of them;
- (h) notify the Porter Group in writing immediately if:
  - (i) the Financed Goods suffer any damage, loss, destruction or theft, however caused; and
  - (ii) the Customer becomes aware that the Financed Goods are likely to suffer any damage, loss, destruction or theft;
- (i) allow only properly qualified (and, if necessary, licensed) persons to operate the Financed Goods;
- (j) not at any time operate the Financed Goods, and shall not permit any other person to operate the Financed Goods (whether or not permitted by the Customer):
  - (i) in any way that is malicious, reckless, dishonest or fraudulent, or intentionally, deliberately undertake any act or omission likely to cause loss, destruction, theft or damage to the Financed Goods;
  - (ii) while under the influence of drugs (whether legal or illegal), alcohol or other prohibited substance;
  - (iii) while having been directed by a medical or other professional person not to operate the Financed Goods or any similar equipment due to any health condition, illness, medical treatment or medication;
  - (iv) for the purpose of carrying passengers;
  - (v) for any purpose that is not permitted by the manufacturer of the Financed Goods or that would void the warranty provided by the manufacturer of the Financed Goods;
  - (vi) in any way that subjects the Financed Goods to pollution, corrosive substance or contamination;
  - (vii) in connection with hazardous stock, merchandise, chemicals or in any other hazardous situation or substance,

- (viii) where the Financed Goods are deliberately, knowingly or recklessly exposed to a material risk of damage or loss;
- (ix) where damage or loss of the Financed Goods is reasonably foreseeable, obvious or imminent; or
- (x) for the purposes of a protest, civil disruption, unlawful purpose, or criminal activity;
- (k) use the Financed Goods only for the purpose for which they are intended by the manufacturer;
- (l) not sell, hire, lease or otherwise dispose of the Financed Goods, or permit the Financed Goods to be seized, immobilised or detained by any authority having jurisdiction to do so, any creditor of the Customer or any other third party;
- (m) not do or omit to do anything which invalidates or otherwise reduces the benefit of any warranty provided by the Vendor, manufacturer or any other third party in respect of the Financed Goods;
- (n) not make any claim against the Porter Group in respect of or arising out of the Financed Goods including as a result of any breakdown or defect in the Financed Goods and shall indemnify the Porter Group in respect of all liabilities, costs and expenses (including full costs between solicitor and client), claims or demands incurred by the Porter Group or any third party or any member of the Porter Group, arising out of, or in respect of, the Financed Goods including in respect of damage, theft, loss and/or destruction, except where such liabilities, costs and expenses, claims and demands are the direct result of the gross negligence, wilful misconduct or fraud of the Porter Group; and
- (o) pay all Porter Group Costs incurred in connection with the ongoing administration of a Finance Agreement or of Financed Goods purchased pursuant to the Master Terms and Conditions.

8.2 **National Credit Code:** Where the Customer is an individual, the Customer has made a separate declaration that these Master Terms and Conditions have been entered into primarily for their business or investment purposes and accordingly the provisions of the National Credit Code do not apply.

## 9. **INSURANCE**

9.1 **Customer insurance:** The Customer must:

- (a) at its cost, arrange for Finance Insurances to be put in place from the start of the Finance Term, and maintain such Insurances until such time as the Customer has paid the Total You Will Pay in full to the Porter Group;
- (b) ensure the Finance Insurances are on terms and conditions, and with an Australian insurance company, that are approved by Porter Group;
- (c) ensure that the Finance Insurances include a maximum excess of \$5,000 plus GST (payable by the Customer);
- (d) ensure the Finance Insurances show Porter Group as the insured or interested party and must provide for duplicate renewal notices to be sent to Porter Group which has the right at any time to inspect the policy and to pay any outstanding premiums not paid by the Customer and charge them to the Customer, and such outstanding premiums will become immediately due and payable by the Customer to Porter Group. The Customer must ensure that at least 14 days prior written notice is given to Porter Group of the expiry or proposed termination of the Finance Insurances;
- (e) ensure all proceeds under the Finance Insurances are payable to the Porter Group;
- (f) ensure that any other requirements specified in writing by Porter Group from time to time regarding the Finance Insurances are complied with; and
- (g) on or prior to the start of the Finance Term, and at any other time requested by Porter Group, provide to Porter Group evidence of the Finance Insurances, satisfactory to Porter Group in all respects.

- 9.2 **Failure to provide evidence:** If the Customer does not comply with any requirement of clause 9.1, Porter Group may in its sole discretion insure the Financed Goods and the Customer shall pay for all Porter Group Costs associated with Porter Group taking out and maintaining such insurance.
- 9.3 **No limit of liability:** The Customer acknowledges that the insurance requirements set out in this clause 9 do not limit the Customer's liability, and that they may be liable to Porter Group (under clause 9.4(c) or otherwise) to an extent greater than any proceeds which Porter Group may receive under the Finance Insurances.
- 9.4 **Claims process:** If the Financed Goods suffer any damage, loss, theft or destruction or at any other time directed by Porter Group:
- (a) the Customer agrees to:
    - (i) immediately make a claim under the Finance Insurances in respect of such damage, loss, theft or destruction. Porter Group may, in the place of the Customer, make a claim or take over and continue the Customer's claim, under the Finance Insurances, and in such case, the Customer agrees to transfer to Porter Group, at Porter Group's request, all of its rights and entitlements pursuant to the Finance Insurances;
    - (ii) direct any payments to be made by the insurer under the Finance Insurances to Porter Group on the Porter Group's request; and
    - (iii) immediately pay all moneys received by the Customer from the insurer, whether pursuant to any insurance claim or otherwise, to Porter Group, and prior to such payment the Customer shall be deemed to hold all such moneys received in trust for Porter Group;
  - (b) Porter Group may determine whether to apply the insurance proceeds received from the Customer or insurer to the:
    - (i) repair or replacement of the Financed Goods (whether in full or in part);
    - (ii) repayment of the Total Amount You Will Pay (whether in full or in part), and on such repayment in full, the Finance Agreement shall terminate; or
    - (iii) payment of any other amount payable by the Customer to the Porter Group pursuant to these Master Terms and Conditions;
  - (c) if in the opinion of Porter Group (acting reasonably), any insurance money received is not sufficient to satisfy the requirements of clause 9.4(b), or if any insurance claim under the Finance Insurances is declined, then Porter Group will notify the Customer, and Porter Group may:
    - (i) demand, and the Customer shall pay to Porter Group within 5 days, any shortfall between the insurance proceeds received by the Porter Group (if any) and the Customer's liability in respect of the amounts payable set out in clause 9.4(b); and
    - (ii) in the event that Porter Group makes a demand on the Customer pursuant to clause 9.4(c)(i) and the Customer fails pay all monies the subject of that demand to the Porter Group within 5 days, terminate the applicable Finance Agreement and any or all other Agreements or Other Agreements;
  - (d) that if in the opinion of the Porter Group, any insurance money received is sufficient to meet the Customer's liability in respect of the amounts payable set out in clause 9.4(b), then any surplus held by the Porter Group will be returned to the Customer; and
  - (e) if, for any reason whatsoever, the Customer is in breach of this clause 9.4 by not holding the required Finance Insurances (or any insurance at all), or the Customer's insurer does not pay out under the Finance Insurances, the Customer undertakes to Porter Group that it will remain liable to pay the then current balance of the Total You Will Pay, and will make payment of such amount immediately on the Porter Group's written request.

## 10. SECURITY

10.1 **Finance security:** In addition to the security set out in any other Part of these Master Terms and Conditions, to secure the Customer's payment and other obligations set out in these Master Terms and Conditions, the Customer:

- (a) grants to the Porter Group a Security Interest in:
  - (i) the Financed Goods, and all proceeds of the Financed Goods. The Customer acknowledges that the Security Interest will be a Purchase Money Security Interest, as defined in the PPSA; and
  - (ii) all of the Account Holder's present and after acquired property, and all Proceeds thereof; and
- (b) charges all of its right, title and interest in in any land in which it (whether individually, together or jointly with others) has an interest ("**Land**"), whether now or at any time in the future, to Porter Group as security for the due performance of all of its obligations under these Master Terms and Conditions.
- (c) The Porter Group agrees not lodge to lodge a caveat or any other document as it considers necessary to protect its interests in the Land unless or until the Customer is in default under the relevant default provisions of the Agreements or the Customer otherwise consents to the lodgement of that caveat.

10.2 **Additional security:** In addition to the security set out in any other Part of these Master Terms and Conditions, where the Finance Agreement includes a section describing additional security that the Customer is providing to Porter Group (**Additional Security**), to secure the Customer's payment and other obligations set out in these Master Terms and Conditions:

- (a) where the Additional Security is Personal Property, the Customer grants to the Porter Group a specific Security Interest in that Personal Property;
- (b) where the Additional Security is land, the Customer must grant to the Porter Group, and provide, in a form acceptable to the Porter Group in all respects, a mortgage (with such mortgage to incorporate the Standard Mortgage Terms); and
- (c) where the Additional Security is owned by a third party, the Customer agrees to procure the third party owner to provide, in a form acceptable to the Porter Group in all respects:
  - (i) a guarantee to the Porter Group in favour of the Customer's payment and other obligations set out in these Master Terms and Conditions, on the terms and conditions set out in Part Six of these Master Terms and Conditions;
  - (ii) a specific Security Interest in the Additional Security that is Personal Property and which is owned by that third party; and
  - (iii) a mortgage (which incorporates the Standard Mortgage Terms) in the Additional Security that is land and which is owned by that third party.

## 11. INSPECTION OF FINANCED GOODS

11.1 **Inspection:** In addition to any access, inspection and repossession rights set out in Part One of these Master Terms and Conditions, Porter Group or anyone authorised by Porter Group may access and enter any place (whether land, buildings or otherwise) where the Financed Goods are located and inspect the Financed Goods at any reasonable time for any reasonable purpose, including without limitation inspecting and testing the condition of the Financed Goods, checking the state of maintenance and/or repair of the Financed Goods, and to repair, service and maintain the Financed Goods, or otherwise deal with the Financed Goods in Porter Group's sole discretion.



- 11.2 **Assistance:** The Customer will provide access to the Financed Goods and any place to give effect to clause 11.1, and provide all necessary assistance to obtain the consent of any third party (including without limitation any land owner, landlord, occupier and/or any mortgagee) that is necessary to give effect to clause 11.1.

## PART SIX

### GUARANTEE AND INDEMNITY

This Part of the Master Terms and Conditions applies to people or entities giving guarantees to the Porter Group, in favour of a Customer, after the Effective Date.

#### 1. GUARANTEE AND INDEMNITY

- 1.1 **Application:** Unless otherwise agreed in writing, each guarantee provided by a person or entity to the Porter Group in favour of a Customer after the Effective Date, is subject to this Part Six of the Master Terms and Conditions.
- 1.2 **Definitions:** The definitions and interpretation set out in clause 1 of Part One of the Master Terms and Conditions apply to this Part Six of the Master Terms and Conditions.
- 1.3 **Guarantee:** In consideration of Porter Group entering into, or agreeing to provide Goods and/or Services to the Customer pursuant to, these Master Terms and Conditions (including under any Transaction) at the Guarantors' request, the Guarantor (and if more than one, then the Guarantors jointly and severally) unconditionally and irrevocably guarantees the due and punctual payment by the Customer of all moneys due and payable, and the punctual performance by the Customer of all obligations owed, whether in accordance with these Master Terms and Conditions, Transaction, Other Agreements or otherwise, to Porter Group.
- 1.4 **Indemnity:** The Guarantor indemnifies Porter Group against any loss, liability, damages, costs (including legal costs on a solicitor client basis) and expenses Porter Group suffer as a result of the Customer's breach of the Master Terms and Conditions, Transaction or Other Agreements except where such losses, liabilities, damages, costs and expenses are the direct result of the gross negligence, wilful misconduct or fraud of the Porter Group. This is a principal obligation of the Guarantor. It is independent of the Customer's obligations to the Porter Group.
- 1.5 **Limit:** Irrespective of anything contained in this Guarantee and Indemnity, the maximum amount that the Guarantor, or if more than one, then each Guarantor, is required to pay under this Guarantee and Indemnity is:
- (a) an amount equal to the Guaranteed Limit; plus 25%
  - (b) Interest on any amount demanded by Porter Group from the Guarantor pursuant to this Guarantee and Indemnity, which is calculated at the Default Interest Rate from the date of demand and compounded on the last day of each calendar month; and
  - (c) any indemnified amounts.
- 1.6 **Acknowledgements:** The Guarantor agrees as follows:
- (a) that they are deemed a principal debtor for all amounts owed by the Customer to the Porter Group from time to time, including without limitation under all Transactions and Porter Accounts held by the Customer.
  - (b) that this Guarantee and Indemnity shall be a continuing guarantee and indemnity, and shall not be discharged by any settlement or payment of any specific amount, expiry or completion of any Transaction, or any one or more of the Customer's Porter Accounts being closed.
  - (c) that the Guarantor's liability under this guarantee and indemnity shall not be discharged, abrogated, prejudiced or affected by:
    - (i) the granting of time, credit or the indulgence or other concession by Porter Group;

- (ii) any alteration, modification, variation or addition to any agreement between the Customer and Porter Group, including these Master Terms and Conditions, any Prior Agreement, any Other Agreement or any Transaction;
  - (iii) any other act, omission or event which but for this provision might operate to discharge, impair or otherwise affect, the Guarantor's obligations under this guarantee and indemnity, or any powers or remedies conferred upon Porter Group by this guarantee and indemnity or by law; or
  - (iv) these Master Terms and Conditions, or any Other Agreement, being terminated (for any reason), lawfully disclaimed or abandoned by any liquidator, receiver or other person, or by reason of these Master Terms and Conditions or any Other Agreement becoming void or unenforceable by Porter Group.
- (d) that this guarantee and indemnity shall only be discharged by Porter Group issuing a formal deed of discharge which has been signed by the Porter Group. Discharge of this guarantee and indemnity may affect the ability of the Customer to purchase Goods and/or Services from the Porter Group.

## 2. SECURITY

2.1 **Security interest:** To secure the Guarantor's obligations set out in this Part Six of the Master Terms and Conditions, each Guarantor grants to Porter Group a Security Interest in all of the Guarantor's present and after acquired property, and all Proceeds thereof (**Guarantor Collateral**). To the extent permitted under the PPSA, the Guarantor to the fullest extent possible waives its right to receive any Verification Statement or notices under the PPSA and waives any rights it may have under sections 95 (notice of removal of accession), 118 (enforcing security interests in accordance with land law decisions), 121(4) (enforcement of liquid assets), 125 (obligation to dispose of or retain collateral), 128 (secured party may dispose of collateral), 129 (disposal by purchase), 130 (notice of disposal), 132(3)(d) (contents of statement of account after disposal), 132(4) (statement of account if no disposal), 135 (notice of retention), 142 (redemption of collateral) and 143 (reinstatement of security interest) of the PPSA. Each of Porter Group and the Guarantor agrees that it will not disclose information of the kind referred to in section 275(1) of the PPSA (except in the circumstances required by sections 275(7)(a) to (e) of the PPSA, or if disclosure is required by law or to Porter Group's assignees or funders) and that this clause 2.1 constitutes a confidentiality agreement for the purposes of section 275 of the PPSA and other provisions of the PPSA. The Guarantor agrees to waive any right it may have, or but for this clause 2.1 may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of information of the kind referred to section 275(1) of the PPSA

2.2 **Security over Land:** To secure the Guarantors obligations set out in this Part Six of the Master Terms and Conditions, the Guarantor charges all of its right, title and interest in in any land in which it (whether individually, together or jointly with others) has an interest ("**Land**"), whether now or at any time in the future, to Porter Group. The Porter Group agrees not lodge to lodge a caveat or any other document as it considers necessary to protect its interests in the Land unless or until the Customer is in default under the relevant default provisions of the Agreements or the Guarantor otherwise consents to the lodgement of that caveat.

2.3 **Additional security:** Without limiting the provisions of this clause 2, Porter Group may from time to time require the Guarantors to provide additional security to secure the Guarantor's guarantee and indemnity obligations set out in this Part Six of the Master Terms and Conditions (**Additional Security**). The Guarantor shall provide such Additional Security promptly on request as follows:

- (a) where the Additional Security is Personal Property, the Guarantor must grant to the Porter Group a specific Security Interest in that Personal Property; and
- (b) where the Additional Security is land, the Guarantor must grant to the Porter Group, and provide, in a form acceptable to the Porter Group in all respects, a mortgage (with such mortgage to incorporate the Standard Mortgage Terms).

## 3. APPOINTMENT OF RECEIVER

- 3.1 **Appointment of receiver:** If the Porter Group appoints a receiver in respect of the Guarantor Collateral in accordance with clause 15.2(m) of Part One of these Master Terms and Conditions, then:
- (a) Porter Group may by written notice to the receiver remove them absolutely or in relation to any part of the Guarantor Collateral;
  - (b) Porter Group may appoint any person to replace any receiver who has been removed or who has retired or died;
  - (c) Porter Group may fix the remuneration of the receiver and at any time by agreement with the receiver vary their remuneration;
  - (d) the Guarantor must pay and the receiver may retain out of money received by the receiver, the receiver's remuneration and (except where they arise because of the wilful misconduct, fraud or gross negligence of the receiver) the costs, charges and expenses incurred by them as receiver and money on account of other liabilities incurred actually or contingently by them as receiver;
  - (e) the Guarantor must reimburse the Porter Group any payment made to the receiver on account of their fees or any cost or expense incurred by the receiver; and
  - (f) unless otherwise prevented by law, the receiver will be the agent of the Guarantor and the Guarantor agrees to be responsible for each of the receiver's acts and omissions.

#### 4. **APPOINTMENT AS ATTORNEY**

- 4.1 For the purpose of enabling the Porter Group to obtain the full benefit of this Guarantee and Indemnity, the Guarantor, for valuable consideration, irrevocably appoints Porter Group and its directors jointly and severally as their attorney.
- 4.2 As attorney, the Porter Group and its directors, officers and agents may:
- (a) in the Guarantor's name, at the Guarantor's act and deed, and at the Guarantor's expense anything which the attorney thinks necessary, expedient or desirable to give effect to this Guarantee and Indemnity and any right, power or remedy conferred on the Porter Group by this Guarantee and Indemnity, by law or otherwise (including executing deeds and instituting, conducting and defending legal proceedings) or any act which ought to be done by the Guarantor or which the Porter Group consider necessary to protect any Security Interest or ownership of Porter Owned Goods; and
  - (b) delegate the Guarantor's powers (including this power of delegation) to any person for any period, and revoke a delegation.
- 4.3 The Guarantor hereby ratifies anything done by the Porter Group and its directors, officers and agents as its attorney appointed pursuant to this clause 4 or any delegate in accordance with this clause 4.
- 4.4 In the event that the powers conferred by this clause 4 are to be exercised at any time prior to the occurrence of a default (however described in these Master Terms and Conditions, any Transaction or any Other Agreement) by the Customer, the Porter Group shall use all reasonable endeavours to notify the Guarantor of any exercise by it as the Guarantor's attorney of the Guarantor's rights under this clause 4 before such rights are exercised, and shall, as soon as practicable after such exercise, use all reasonable endeavours to notify the Guarantor of the action taken by the Porter Group and its directors, officers and agents as Attorney in exercising such rights.
- 4.5 The Guarantor indemnifies the Porter Group and its directors, officers and agents (acting as its attorney) against all liabilities, losses, costs, charges or expenses incurred by the attorney arising from the exercise of powers granted under this power of attorney, except to the extent that such liability, loss, cost, charge or expense was caused by the Porter Group's (and its directors, officers and agents) gross negligence, wilful misconduct or fraud.
- 4.6 This power of attorney shall in any event remain in full force and effect until all moneys owed by the Customer (in respect of which this Guarantee has been provided to the Porter Group in favour of the Customer) to the Porter Group have been paid in full or the Customer has no unperformed obligations in respect of any

Transaction or any Other Agreement, and will not merge or be cancelled by termination of any Transaction or any Other Agreement.

**5. CIRCUMSTANCES WHERE NOTICE IS TO BE GIVEN TO THE GUARANTOR**

5.1 The Porter Group will give 5 Working Days' notice to the Guarantor if:

- (a) the Customer is 30 days behind on any payments which have become due and payable to the Porter Group; or
- (b) the Porter Group proposes to commence legal proceedings against the Customer; or
- (c) Porter Group proposes to appoint a receiver in accordance with clause 15.2 of these Master Terms and Conditions.

**6. CIRCUMSTANCES WHERE THE GUARANTOR MUST GIVE CONSENT**

6.1 The Porter Group must obtain the prior written consent of a Guarantor prior to:

- (a) discharging or releasing any security which has been granted to the Porter Group by the Customer or a Guarantor pursuant to these Master Terms and Conditions, a Transaction or an Other Agreement; or
- (b) if there is more than one Guarantor, releasing any other Guarantor.

**7. MISCELLANEOUS**

8. **Governing Law:** This Guarantee and Indemnity shall be governed and interpreted in accordance with the law of New South Wales and the Commonwealth of Australia, and the courts of New South Wales and the Commonwealth of Australia shall have the non-exclusive jurisdiction to determine any dispute arising.

8.1 **Notice method:** Notices, communications, documents or demands required to be made or served pursuant to this Guarantee and Indemnity shall be in writing and signed by the party giving the notice or by any officer or solicitor of that party. Any notice or document shall be deemed to be duly given or made:

- (a) if delivered by hand, when so delivered;
- (b) if sent by post, on the fifth business day following posting;
- (c) in the case of a communication by email, when sent (provided there is no indication of incomplete transmission) to the recipient's last known email address. Porter Group's email address for service is [notices@porterce.com](mailto:notices@porterce.com).

**9. LEGAL ADVICE**

9.1 The Guarantor(s) acknowledge that they have been advised by Porter Group that they should obtain independent legal advice as to the nature, substance, detail and effect of this guarantee before it is executed and have either obtained that advice or have freely and voluntarily waived their right to obtain that advice.

**10. DILIGENCE AND PRIVACY**

10.1 The Guarantor authorises Porter Group to do the following, either at the time that the Customer applies for a Porter Account, or at any later date:

- (a) to conduct all checks, make enquiries, collect all and any information from and disclose such information to third parties, and undertake any searches in relation to the Guarantor's credit, financial, legal, criminal and business affairs and history as is reasonably required to assess the Guarantor's credit position and as otherwise deemed necessary by Porter Group from time to time, including but not limited to verifying the Guarantor's identity through third-party credit reporting agencies and disclosing the Guarantor's personal information as provided in the Customer's Account Application Form to a credit reporting body for the purposes of obtaining a credit report about the Guarantor; and

- (b) contact third parties to provide Porter Group with such information as Porter Group may reasonably require from time to time in respect of the above authorisations.

10.2 The Guarantor may be entitled under the *Privacy Act 1988* (Cth) to have access to and, if necessary, to request the correction of any personal information about the Guarantor held by the Porter Group.

## 11. **TRUSTEES**

11.1 If the Guarantor is a trustee and they enter this Guarantee and Indemnity as a trustee of a trust, the Guarantor acknowledges and agrees that this Guarantee and Indemnity binds the Guarantor in his, her or its personal capacity as well as in his, her or its capacity as trustee of any trust of which the Guarantor has been appointed trustee including any undisclosed trust.