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C.O.D/ONE OFF APPLICATION

Trading Name of Business/Company: _____

Address: _____ **State:** _____ **Postcode:** _____

Telephone: _____ **Fax:** _____ **Mobile:** _____

Nature of Business: _____

A. B. N: _____

Email: _____

Detail of Sole Traders or Directors:

Name: _____ **Address:** _____

D.O.B: _____ **Drivers Lic No:** _____ (Sole Trader Only)

Name: _____ **Address:** _____

Name: _____ **Address:** _____

Credit Card Details:

☐ **Master Card**

☐ **Visa Card**

Expiry date _____ **Card #** _____ **3 Digit security code** _____

I/We hereby apply for a COD transaction, and I/We authorize NXTGEN HIRE PTY LTD to charge to my/our Credit Card as nominated, for all charges due for payment. I/We acknowledge and accept the terms and conditions in the attached NXTGEN HIRE PTY LTD Master Hire Agreement. I/We also agree to pay for any legal costs or expenses paid by NXTGEN HIRE PTY LTD to its Collection Agents and/or Lawyers in relation to the collection of any moneys owed to NXTGEN HIRE PTY LTD that are not paid for this hire.

Signatures: _____

Full Names (Please Print): _____

Position: _____

Date: _____

MASTER AGREEMENT FOR THE HIRE OF EQUIPMENT (ELEVATING WORK PLATFORMS)

1. DEFINITIONS

"Equipment" means a machine or device that is intended to displace persons, tool and materials to working positions and consists of at least a work platform with controls, an extending structure and a chassis. These are also known as Elevated Work Platforms and also include all tools and accessories that support the Equipment.

"Expected Off Hire Date" means the date the Hirer expects the Hire Period to end. This date is set out in the Hire Schedule.

"Hire Agreement" means this Master Agreement, the NXTGEN HIRE PTY LTD Application for Credit Terms, the NXTGEN HIRE PTY LTD Hire Charges Reference sheet supplied to each Hirer, each Hire Schedule provided to the Hirer, whether signed or not. This master agreement, together with the Hire Schedule, whether signed or not, and any of the above, sets out the terms of the "Hire Agreement" between the Hirer and the Owner.

"Hire Schedule" means any document headed 'Hire Schedule', delivery docket, order or other similar document which the Owner may require the Hirer to sign (or accept in a way the Owner requires) which includes details of the Equipment hired, the Hire Charge, the Hire Period, the Expected Off Hire Date and such other information as the Owner may decide to require.

"Hire Period" means the period described in Clause 2.

"The Owner" means NXTGEN HIRE PTY LTD Equipment shall be deemed to be owned by NXTGEN HIRE PTY LTD whether owned by NXTGEN HIRE PTY LTD or not.

"The Hirer" means the person or business which the Equipment is supplied to. "The Hirer" includes an agent of the Hirer and agrees to hire the Equipment from the Owner upon the terms and conditions in this agreement.

"PPSA" means the Personal Properties Security Act 2009 (Cth) (as amended).

HIRE

The Owner agrees to hire Equipment to the Hirer. The Owner and the Hirer are entering into this master agreement to provide for the hiring of Equipment requested by the Hirer from time to time.

If the Hirer wishes to hire Equipment, the Hirer must complete and sign (or otherwise accept in the manner required by the Owner) a Hire Schedule, delivery docket, order or similar document (the Hire Schedule) or any other form required by the owner from time to time.

Each Hire Schedule shall not constitute a separate hire agreement but shall be read together with and form part of this master agreement, together with any facility applications or other contractual documents.

The Owner may in its absolute discretion terminate this document and/or decline to hire Equipment to the Hirer at any time.

2. HIRE PERIOD

- 2.1. The Hirer is entitled to use the Equipment for the period time agreed to or specified in the Hire Schedule.
- 2.2. The hire period commences when the Hirer takes possession of the Equipment or when the Owner delivers the Equipment in accordance with the Hirer's instructions. If the Hirer requires the Owner to deliver the Equipment, the Owner will undertake that it will use its best endeavors to have the Equipment delivered by the said time but the Owner will not be liable to the Hirer for late delivery, non-delivery or any loss or damage.
- 2.3. The hire period ends when the Hirer returns the Equipment to the Owner or when the Owner issues the Hirer with an off-hire number. If access is not granted to the Owner to collect the Equipment, Hire Charges will continue until the Owner is able to collect the Equipment.
- 2.4. Extensions of the Hire Period shall otherwise be by consent of the Owner.

3. HIRE RATES & OTHER CHARGES

- 3.1. Hire Charges are provided to the Hirer in the Hire Schedule or via a NXTGEN HIRE PTY LTD Hire Charges Reference Sheet and the Owner reserves the right at any time and without notice to revise the Hire Rates.
- 3.2. Hire Charges are based on the following period of hire and hours of usage.
 - (a) A day of 8 hours use over a continuous 24 hour period. The Minimum period of hire is 1 Day.
 - (b) A week of 38 hours use over a continuous 1 week period.
 - (c) A month of 152 hours use over a continuous 4 week period.
- 3.3. At the discretion of the Owner, the Hirer will be liable to pay the Owner for the excess on a pro-rata basis when using the Equipment outside the periods of hours shown above. The Hire Period includes weekends and public holidays.
- 3.4. In addition to the Hire Charge, the Hirer agrees to pay for
 - (a) Diesel Fuel, Harness Hire Fees or any other consumable supplied with the Equipment
 - (b) Delivery or Collection Charges if required by the Hirer
 - (c) Cleaning and Repair of the Equipment, if not returned in clean or good working condition.
 - (d) If applicable, the Damage Waiver Fee of 10% of the Hire Charges
 - (e) Any Stamp Duties or GST arising out of this Hire Agreement
- (d) and ensure oil, water, battery levels are maintained and checked daily.
- (e) Upon completion of the hire, the Hirer shall ensure the Equipment is clean and not damaged from paint overspray. A cleaning fee and repainting fee will be charged by the Owner should this occur.
- (f) Accept full responsibility for and indemnify the Owner against all claims in respect of any injury to persons or damage to property however caused arising of the use of the Equipment during the hire period.
- (g) Pay all hire charges and other charges as stated on the invoice on a strictly net cash basis within the terms allowed by the Owner. These include Diesel Fuel Charges, Cleaning Charges, Equipment Delivery & Collection Charges, Failed Pickup Charges, Replacement Harnesses Charges and Damage Waiver Excess Charges.
- (h) The Hirer shall not in any way part with possession of the Equipment, nor assign this hire contract, nor remove the Equipment from the State without prior consent of the Owner.
- (i) Notify the Owner immediately if the Equipment breaks down, malfunctions or is damaged.
- (j) The Hirer must ensure that during the Hire Period (and until the Equipment is returned by the Hirer or collected by the Owner) the Equipment is stored safely and securely and is protected from theft or seizure.

4. HIRER OBLIGATIONS

- 4.1. The Hirer at all times shall;
 - (a) Ensure persons using the Equipment having the appropriate qualifications, training and licences to operate the Equipment.
 - (b) Ensure the Equipment is used in a skillful and proper manner and only for the purpose and within the capacity for which it was designed.
 - (c) Maintain the Equipment in a safe and clean condition allowing for reasonable wear and tear, supply fuel

5. TITLE TO EQUIPMENT

- 5.1. The Hirer acknowledges that in all circumstances the company retains title to the Equipment and the rights of the Hirer to use the Equipment are as bailee only. In no circumstances will the Equipment be deemed to be a fixture.
- 5.2. The Hirer will not be entitled to offer, sell, assign, sublet, mortgage, pledge, charge or create any form of security interest over, or otherwise deal with the Equipment in any way.

6. EQUIPMENT BREAKDOWN

6.1. In the event that the Equipment breaks down or becomes unsafe to use, the Hirer shall:

- (a) Immediately stop using the Equipment and shall notify the Owner
- (b) Take all steps necessary to prevent any further damage to the Equipment
- (c) Not repair or attempt to repair the Equipment without the Owner's Written Consent.

6.2. In the event that the Equipment breaks down or becomes unsafe to use through no fault, negligence, recklessness or misuse by the Hirer, the Owner:

- (a) Will take all steps necessary to repair the Equipment or provide suitable substitute Equipment as soon as reasonably possible after being notified by the Hirer and
- (b) Will not impose a Hire Charge for that portion of the hire period for which the Equipment was broken down or unsafe.

7. DAMAGE WAIVER FEE - LOSS & DAMAGE COVER FOR HIRED EQUIPMENT

7.1. The Hirer is responsible for theft, loss and damage to Equipment and/or its attached tools and accessories whilst on hire and the costs and the costs of replacement or repairs to such will be charged to the Hirer. Where a "Damage Waiver Fee" has been charged to the Hirer, the Owner agrees upon prompt submission of a written Police Report, to waive its right to claim for loss and damage to the Equipment caused by fire, storm, collision, accident, theft or burglary, providing adequate precautions have been taken to safeguard the Equipment and the loss and damage was not incurred due to negligence by the Hirer.

7.2. Expressly excluded from the above LOSS AND DAMAGE COVER FOR HIRED EQUIPMENT are loss & damage defined below:

- (a) Damage due to misuse, abuse or over loading the Equipment
- (b) Loss or damage through failure of the Equipment in contravention of these conditions of hire.
- (c) Loss or damage through failure by the Hirer to take reasonable care of the Equipment or through the Hirer's negligence.

- (d) Loss or damage to the Equipment from use in violation of any statutory laws or regulations.
- (e) Loss of tools, accessories and similar to the Equipment
- (f) Damage caused to tyres and tubes.
- (g) Loss or damage resulting from lack of lubrication or other normal servicing of the Equipment.
- (h) Glass Breakage.
- (i) Loss or Damage to Equipment whilst located, used, loaded, unloaded, Transported on or over, wharves, bridges or vessels of any kind.
- (j) Loss or Damages to motors or other electrical devices caused by overloading or artificial electrical current.
- (k) Damage caused by exposure to any corrosive substance.
- (l) Theft of Equipment unless reasonably locked and secure.
- (m) Loss or Damage during Transport, except where transported by Owner.
- (n) Loss or Damage to items on which the Damage Waiver Fee was not charged.

8. PPS LAW

8.1. This clause applies to the extent that this Agreement provides for a 'security interest' for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPS Law"). References to PPS Law in this Agreement include references to amended, replacement and successor provisions.

8.2. The Owner may register its security interest as a PMSI. The Hirer must do anything (such as obtaining consents and signing documents) which the Owner requires for the purposes of:

- (a) ensuring that the Owner's security interest is enforceable, perfected and otherwise effective under the PPS Law;
- (b) enabling the Owner to gain first priority (or any other priority agreed to by the Owner in writing) for its security interest; and
- (c) enabling the Owner to exercise rights in connection with the security interest.

8.3. The Owner may recover from the Hirer the cost of doing anything under this clause, including but not limited to registration fees.

8.4. The rights of the Owner under this document are in addition to and not in substitution for the Owner's rights under other law (including PPS Law) and the Owner may

choose whether to exercise rights under this document, and/or under other law, as it sees fit.

- 8.5. To the extent that Chapter 4 of the PPS applies to the security interest under this agreement, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPS Law are “contracted out” of this Agreement in respect of all goods to which that section can be applied: section 95 (notice of removal of accession to the extent it requires the Owner to give notice to the Hirer); section 96 (retention of accession); section 121(4) (notice to grantor); section 125 (obligations to dispose of or retain collateral); section 130 (notice of disposal to the extent it requires the Owner to give notice to the Hirer); section 129(2) and 129(3); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (re-instatement of security agreement).
- 8.6. The following provisions of the PPS Law confer rights on the Owner: section 123 (seizing collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 129 (disposal by purchase); and section 134(1) (retention of collateral). The Hirer agrees that in addition to those rights, the Owner shall, if there is default by the Hirer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document and the Hirer agrees that the Owner may do so in any manner it sees fit, including (in respect of dealing and disposal) by private or public sale, lease or licence.
- 8.7. The Hirer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.
- 8.8. The Owner and the Hirer agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. The Hirer must do everything necessary on its part to ensure that section 275(6)(a) of the PPS Law continues to apply. The Agreement in this sub-clause is made solely for the purposes of allowing the Owner the benefit of section 275(6)(a) and the Owner shall not be liable to pay damages or any other compensation or be subject to injunction if the Owner breaches this sub-clause.

9. SECURITY INTERESTS & SUB-HIRE

- 9.1. The Hirer must not create, purport to create or permit to be created any ‘security interest’ (as defined in PPS Law) in the Equipment other than with the express written consent of the Owner.
- 9.2. The Hirer must not lease, hire, bail or give possession (‘sub-hire’) of the Equipment to anyone else unless the Owner (in its absolute discretion) first consents in writing. Any such sub-hire must be in writing in a form acceptable to the Owner and must be expressed to be subject to the rights of the Owner under this Agreement.
- 9.3. The Hirer may not vary a sub-hire without the prior written consent of the Owner (in its absolute discretion).
- 9.4. The Hirer must ensure that the Owner is provided at all times with up-to-date information about the sub-hire including the identity of the sub-hirer, the terms of and state of accounts and payment under the sub-hire and the location and condition of the Equipment.
- 9.5. The Hirer must take all steps including registration under PPS Law as may be required to:
- (a) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
 - (b) enabling the Hirer to gain (subject always to the rights of the Owner) first priority (or any other priority agreed to by the Owner in writing) for the security interest; and
 - (c) enabling the Owner and Hirer to exercise their respective rights in connection with the security interest.
- 9.6. The Owner may recover from the Hirer the cost of doing anything under this clause, including registration fees.

10. INABILITY TO SUPPLY

If the Owner is unable to hire the Equipment to the Hirer, the Owner may in its discretion supply or hire alternative suitable equipment to the Hirer. If the alternative Equipment is not suitable, the Owner will not be liable for any claims arising out of its inability to supply the Equipment or alternative suitable equipment to the Hirer. This is in addition to the Owner’s rights to decline to hire.

11. DEFAULT & TERMINATION

11.1. The Owner may terminate this Agreement immediately by notice to the Hirer if:

- (a) The Hirer breaches or failures to comply any term of the Hire Agreement between the Owner and the Hirer or;
- (b) The Hirer becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business.

11.2. The Owner may also terminate the Hire Agreement at any time for convenience by giving the Hirer at least 24 hour notice.

12. RECOVERY OF EQUIPMENT

12.1. If the Hirer is in breach of the Hire Agreement or if the Customer has terminated the Hire Agreement, the company may take all steps necessary (including legal action) to recover the Equipment, including entering onto any land or premises owned by or under the control of the Hirer upon the Equipment is situated.

12.2. The Hirer will pay to the Owner all losses, damages, costs and other expenses whatever suffered by the Owner as a result of the default and recovering possession of the Equipment.

13. INDEMNITIES AND EXCLUSION OF LIABILITIES

The Owner shall not be responsible or liable to the Hirer; whether on the ground of breach of contract, contractual duty or on the ground of negligence, for any loss or defects in or malfunction, break-down or failure of performance of the Equipment, and the Hirer exonerates and releases the Owner from all claims and demands in respect thereof.

14. NON MERGER

The covenants, agreements and obligations contained in this agreement will not merge or terminate upon the termination of this agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.

15. SEVERANCE

If any provision of this agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, this agreement must be construed as if that provision or part of a provision had been severed from this agreement and the parties remain bound by all of the provisions and part provisions remaining after severance.

16. GOVERNING LAW

This agreement is governed by the laws of the State or Territory where the agreement is made and each party submits to the exclusive jurisdiction of the Court of that State or Territory.

17. PRIVACY POLICY

The Owner will comply with the National Privacy Principles in all dealings with hirers. Information on our privacy policy is available on request.

18. DISPUTES

Both the Owner and the Hirer agree that any disputes arising from the hire and use of the Equipment (except in regard to payment of fees or charges) shall be negotiated with a view to settlement with the assistance of the Hire and Rental Industry Association Limited (Tel 02 9998 2255) before litigation is pursued.

19. EXECUTED AS AN AGREEMENT

Owner

For and on behalf of: NXTGEN HIRE PTY LTD (company)

Authorised Person _____ (printed name)

Signature _____ Date _____

Hirer

I have read and accept the above terms and conditions of hire. In particular I am aware that the Hirer is responsible for the safekeeping of the Equipment against damage or theft and that the Owners insurance will not cover the Hirer, subject to any damage waiver agreement.

I acknowledge all equipment has been received in good order and condition and I understand the safety procedures that are to be followed including the restrictions on other persons using the Equipment.

For and on behalf of _____ (business)

Authorised Person _____ (printed name)

Signature _____ Date _____