



ABN: 76 062 990 518

ACN: 133 528 266

PH: 02 49661234 - 12 HARTLEY DRIVE, THORNTON NSW 2322 FAX: 02 49668101

CREDIT APPLICATION

Company Name: _____ Trading Name: _____
 ABN: _____ ACN: _____
 Postal Address: _____ State: _____ Postcode _____
 Delivery Address: _____ State: _____ Postcode _____
 Telephone No: _____ Facsimile No: _____ Mobile No: _____
 Accounts Contact: _____ Ph No: _____
 Purchasing Officer: _____ Ph No: _____
 Email Address accounts: _____ Number of Years Trading: _____
 Est'd Mthly spend : _____ Credit Req'd: _____
 Bank: _____ Branch: _____

Trade References (Please provide 3)

<u>Company Name</u>	<u>Phone:-</u>	<u>Fax:-</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

TERMS AND CONDITIONS OF SALE

- Payment Terms:- Are strictly 30 Days from **date of invoice** of purchase and or hire.
- All Items, Goods and or Services are subjected to our Sales and Hire terms and conditions
 - It responsibility of the applicant to read and understand provisions of the terms and Conditions.
 - In Signing this document you agree in full to Sales and or Hire Terms and Conditions.
 - a. It responsibility of the applicant to ensure they have received the terms and conditions
 - If require a further copy please email accounts@hvwh.com.au and one will be sent
- Prices & Discounts:- All prices and discounts are subject to change without notice.
 - Discounts may be removed if payment is not received by due date
- Ownership Of All Goods supplied by Hunter Valley Welding Hire Pty Ltd ABN: **76 062 990 518** ("Company") will not pass to the Applicant, Purchaser or Intended END user until such time as the:
 - Goods, and or any item, and or service that is subject of a contract supplied by the Company will not pass to the Applicant, Purchaser or Intended END user Until all debts owing by the Applicant to the Company from any other cause, contract or service provided have been paid in full.
 - Goods Supplied by the Company to the Applicant will be forwarded at the Purchasers Risk.
- No Claims recognized unless made within 7 Days from the date of invoice.
- Minimum Account credit limit of \$250.00 per month.
- Trustee:
 - Trusts you and your successors as trustee of that trust will be liable under these Terms in your own right and as trustee of the trust
 - Nothing releases you from any liability in your personal capacity

PLEASE COMPLETE SECOND PAGE



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GUARANTEE AND INDEMNITY BY DIRECTORS

Directors Name: _____

Directors Address: _____

Directors Name: _____

Directors Address: _____

Applicants Name: _____ **Signed:** _____ **Date:** / /

(Person filling in application) ***ARE you authorised as a copy officer to fill in this application YES NO

Applicants Address: _____

To: **Hunter Valley Welding Hire Pty Ltd ABN: 76 062 990 518** (the "Company") of 12 Hartley Drive, Thornton, NSW 2322

1. I/We confirm that the Companies current terms and conditions of sale have been provided to us and that I/We Have read and understand them. In consideration of the company agreeing to supply, and to continue to supply, goods, and services on credit to the Applicant, I /We (jointly and severally) agree:
 - a. To immediately pay to the company all money due and payable by the Applicant to the Company,
 - b. If the Applicant fails to pay any money due to the Company, or fails to perform or observe any of the Terms and Conditions of Sale. No demand by the Company for Payment shall be necessary.
 - c. You understand that an interest rate will be applied to all outstanding invoices in line with the provisions outline in the terms and conditions
 - d. You understand that the Company in not a financial institution. Therefore, if you are require credit or longer terms you must contact a bank or credit provider.
 - e. To indemnify the Company and keep it indemnified against any loss by the Company arising out of or relating to any sale or credit granted by the Company to the Applicant, including any expenses and legal costs associated with the collection of outstanding monies and any loss suffered by the Company as a result of the Applicants failure to perform or observe any of the Terms and Conditions of Sale.
 - f. That this Guarantee and indemnity is a continuing Guarantee and Indemnity and will not be invalidated, released or discharged by any event that which would or might invalidate, release or discharge this Guarantee and indemnity (but not limited to) the giving of time, the alteration of the composition of the Applicant or the release of the Applicant or any co -Guarantor.

DIRECTORS NAME: _____ **SIGNATURE:** _____ **DATED:** / /

WITNESS NAME: _____ **SIGNATURE:** _____ **DATED:** / /

DIRECTORS NAME: _____ **SIGNATURE:** _____ **DATED:** / /

WITNESS NAME: _____ **SIGNATURE:** _____ **DATED:** / /

Hunter Valley Welding Hire P/L

TERMS AND CONDITIONS OF HIRE

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1. Title to Plant

- The Customer acknowledges that in all circumstances Hunter Valley Welding Hire P/L retains title to the Plant (even if the Customer goes into liquidation or becomes bankrupt during the Hire Period) and in no circumstances will it be deemed to be a fixture. The rights of the Customer to use the Plant are as a bailee only.
- The Customer will not be entitled to offer, sell, assign, sub-let, mortgage, pledge or otherwise deal with the Plant in any way which is inconsistent with the rights of Hunter Valley Welding Hire P/L as owner of the Plant.

2. Hire Period

- The period of hire commences when the Customer takes possession of the Plant or when Hunter Valley Welding Hire P/L delivers the Plant in accordance with the Customer's instructions and the period of hire ends when the Plant is back in the possession of Hunter Valley Welding Hire P/L (in total, the "Hire Period").
- The Hire Period includes weekends and public holidays and is irrespective of the time the Plant is being used. Engine driven equipment may also be subject to extra costs associated with use in accordance with clause 4 for the hire period.
- The Customer is to be charged for the Hire Period and the Customer is entitled to use the Plant for the Hire Period. Any variation to the Hire Period must be agreed by Hunter Valley Welding Hire P/L.
- Should Hunter Valley Welding Hire P/L agree with the Customer that Hunter Valley Welding Hire P/L will deliver and collect the Plant, hire charges will commence from the time the Plant leaves Hunter Valley Welding Hire P/L's premises and continue until Hunter Valley Welding Hire P/L is notified by the Customer of the date that the Plant is available for collection (Off-Hire Date), at which time:
- Hunter Valley Welding Hire P/L will give the Customer a number as verification that such notification has been received ("**Off-Hire Number**")
- The notification will be given by the Customer in time for the Plant to be picked up and returned to Hunter Valley Welding Hire P/L's premises within Hunter Valley Welding Hire P/L's normal business hours by the **Off-Hire Date**.
- In the event of insufficient notice being given, the Customer will be charged a minimum of an extra half day hire at Hunter Valley Welding Hire P/L's absolute discretion.
- The Hire Period on the Hire Document will not be deemed notice to Hunter Valley Welding Hire P/L that the Plant is available for collection.
- Where Hunter Valley Welding Hire P/L agrees to collect the Plant the Customer remains responsible for theft, loss or damage to the Plant until the Plant is collected by Hunter Valley Welding Hire P/L.
- The Hire Document will specify the type of rate which will apply (e.g. 'daily', 'weekly' 'monthly'). Plant hired for at least 5 days in a seven day continuous period, will be charged at the 'weekly rate'.
- Hunter Valley Welding Hire P/L reserves the right to charge a minimum period of hire for certain types of Plant.

3. Off Hire

- It is solely the Customers responsibility to ensure they are in receipt of an **Off-Hire Number** at the completion of the agreed hire period in accordance with the hire document.
- All plant may be still considered to be on hire if the customer is unable to provide evidence of an off-hire number corresponding to the respective plant hire
- Therefore will be subject to the continuing costs associated with the hired Plant until correctly off-hired in accordance with Clause 2

4. Hire Charges and Other Charges

- The Customer will pay Hunter Valley Welding Hire P/L the hire charges set out in the Hire Document.
- The Customer is not entitled to any discount or rebate if the Plant is not used by the Customer for the entire Hire Period.
- It is the Customers responsibility to ensure that motorised (diesel/ petrol fuelled) equipment is not used in excess of 10 hours per day. Additional hire charges will apply as per the excess hours pricing table in our standard price list for hire equipment if the Plant is used for more than 10 hours per day.
- The Customer must notify Hunter Valley Welding Hire P/L prior to hiring, if they intend to use the motorised (diesel/ petrol fuelled) equipment for more than 10 hours per day.
- On receipt of this information Hunter Valley Welding Hire P/L will apply the 24hr hire rates (pricing) for the intended hire equipment to the hire document. To ensure that no excess usage charges will be applied at the completion of the hire period
- The Customer will pay Hunter Valley Welding Hire P/L for all preparation of documentation that is deemed Site specific and or Customer specific. This includes however may not be limited to the following:
 - Any non-generic document not required by Australian Standard, National and or State Acts and Regulation
 - Any document not a requirement in an Australian Standard, National and or State Acts and Regulation
 - Any document not a requirement in an Australian, National and or State Mining Regulation.
 - Any variation to existing Hunter Valley Welding Hire P/L documentation to suit customers' needs
 - Any transfer of information from Hunter Valley Welding Hire P/L documentation to customers own documentation

5. Other Services

- Personnel:** Hunter Valley Welding Hire P/L will, if requested by the Customer, and only if personnel are available, attend the site and instruct the Customer in the operation of the Plant. The Customer will, in addition to the hire charges pay Hunter Valley Welding Hire P/L for such services. Any other additional services provided to the Customer, will be paid for by the Customer at @\$95.00/hr. to Hunter Valley Welding Hire P/L.
- Consumables and Trade Materials:** The Customer will be liable for charges, for consumables and trade materials provided by Hunter Valley Welding Hire P/L.
- Tax and Government Charges:** The Customer will be liable for stamp/hire duty, GST and all other applicable taxes, duties, levies, penalties and any other government charges imposed on the Hire Document or in respect of the Hire Period. Where the Customer claims exemption from duty or tax the Customer must furnish appropriate exemption certificates to Hunter Valley Welding Hire P/L.
- Environmental Levy:** The Customer will pay the amount specified by Hunter Valley Welding Hire P/L in the Hire Document in consideration of any oil, grease or other environmental contaminants used, applied or discarded in connection with the Plant.
- Credit Card Payments:** The Customer acknowledges that Hunter Valley Welding Hire P/L may impose a charge for accepting payments by credit card
- Delivery:** if the Customer requires Hunter Valley Welding Hire P/L to deliver, collect or install the Plant, the Customer will be liable for the cost of delivery, collection or installation. Hunter Valley Welding Hire P/L will not be responsible for any delays in delivery or installation or failure to deliver due to causes beyond its control including but not limited to:
 - Acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations or governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.
- Damage Waiver:** The Customer will pay an amount for damage waiver in accordance with clause 9 ("Damage Waiver") Contained within this document Damage Waiver will be automatically charged in addition to Hunter Valley Welding Hire P/L's hire charge. The Customer is not required to pay Damage Waiver if it produces to Hunter Valley Welding Hire P/L a Certificate of Currency for an appropriate policy of insurance that covers loss or damage to the Plant arising from the hire for an amount not less than the full new replacement cost of the Plant
- Late Return of Equipment:** If the Customer returns the Plant to Hunter Valley Welding Hire P/L's premises after the end of the Hire Period, the Customer will be charged a minimum of an additional half day hire or an additional full day hire, depending upon the time of return. The Customer will remain liable to be charged for the Plant until it is returned to Hunter Valley Welding Hire P/L.
- Early Return of Equipment:** If the Customer wants to return the Plant before the end of the Hire Period, the Customer will remain liable for all hire and other charges payable to Hunter Valley Welding Hire P/L for the entire Hire Period. Hunter Valley Welding Hire P/L may, at its absolute discretion, accept return of the Plant, and if it does so, may: Attempt to re-hire the Plant, in which case the Customer will be liable for those hire and other charges payable up until the date of the commencement of the re-hire or until the end of the Hire Period, whichever is earlier, and revise the hire charges payable by the Customer from the start of the Hire Period to account for the reduction to the Hire Period.
- Payment Due Date:** The Customer is required to pay all fees, charges and costs that may become due and payable under the Hire Document within 7 days of the invoice date. Hunter Valley Welding Hire P/L may allow repetitive customers an extension up to a maximum of 30 days for all fees, charges and costs that may become due and payable under the Hire Document. However, the offer must be given in writing. Prior to the commencement of the hire period.
- Late Payment:** If a Customer does not pay the amount of the Hire Document invoice by the payment due date, a late payment fee of 5% per week, compounding weekly, will be imposed. In addition, without limiting clause 10, the Customer will be liable to indemnify Hunter Valley Welding Hire P/L for all expenses incurred by Hunter Valley Welding Hire P/L in recovering any amounts which the Customer fails to pay by the payment due date (including any commission payable to any commercial or mercantile agents and legal costs).
- Offset:** Hunter Valley Welding Hire P/L may set-off against any credit owed to the Customer any amount owing by the Customer to Hunter Valley Welding Hire P/L.

6. Customer's Hire Obligations

- Possession and Use by Customer:** The Hire Document is personal to the Customer and the Customer will not allow nor authorise any other person or entity to use, re-hire or have possession of the Plant at any time during the Hire Period.
- Suitability:** The Customer agrees that before accepting the Plant it has satisfied itself as to the suitability, condition and fitness for purpose of the Plant. Subject to clause 10, Hunter Valley Welding Hire P/L gives no warranty that the plant is suitable for the Customer's purpose.
- Operation of Equipment:** The Customer warrants that at all times it will:
 - operate the Plant safely, strictly in accordance with all laws, only for its intended use and in accordance with the manufacturer's instructions;
 - ensure persons operating or installing the Plant are suitably instructed / trained in its safe and proper use and where necessary hold a current Certificate of Competency and be licensed to use it or install it
 - Ensure all persons operating the Plant wear suitable clothing and protective equipment as required or recommended by the Manufacturer, Work cover, Government regulations and or by Hunter Valley Welding Hire P/L;
 - ensure that **no** persons operating the Plant are under the influence of drugs or alcohol
 - ensure that **no** persons carry illegal, prohibited or dangerous substances in or on the Plant
 - conduct a job safety analysis prior to using the Plant at a site
 - accept responsibility for the safe-keeping of and insuring the Plant
 - display, maintain all safety signs and instructions (as required by law), and ensure that all instructions and signs are observed by operators of the Plant;
- During the Hire Period;** Customer complies with all Environmental Laws from time to time and immediately rectifies any breach of an Environmental Law caused by the use of the Plant.
- Cleaning and Maintenance:** The Customer must clean, fuel, lubricate and maintain the Plant in good condition and in accordance with the manufacturer's and Hunter Valley Welding Hire P/L's instructions at the Customer's cost, and The Customer must Not in any way alter, modify, tamper with, damage or repair the Plant without Hunter Valley Welding Hire P/L's written consent.
- Safekeeping:** The Customer must ensure that during the Hire Period the Plant is stored safely and securely and is protected from theft, seizure or damage.
- Alteration and Identifying Marks:** The Customer must not alter, deface, remove or erase any notices, safety information, identifying mark, plate or number on the Plant.
- Inspections:** The Customer consents to Hunter Valley Welding Hire P/L inspecting the Plant from time to time during the Hire Period. In addition, the Customer may arrange a joint inspection with Hunter Valley Welding Hire P/L at the end of the Hire Period.
- Safe Loading and Transport:** The Customer will ensure the safe loading, securing and transporting of all Plant in accordance with all laws and manufacturer's guidelines. Customer and any transporting contractor will observe any safety directions advised by Hunter Valley Welding Hire P/L in accordance with all laws and manufacturer's guidelines for its loading and safe handling.
- Location:** the Customer must not remove the Plant from the State in which it was hired without Hunter Valley Welding Hire P/L's written consent. The Plant will be returned to the location it which the Plant was collected by the Customer or delivered by Hunter Valley Welding Hire P/L.
- Electrical Equipment re-testing and re-tagging:** Customer is responsible for arranging at the Customer's cost the re-testing and re-tagging of the electrical equipment by the manufacturer's agent in accordance with the manufacturer's instructions and the applicable Australian Standard(s) and Regulatory Authority requirements. Hunter Valley Welding Hire P/L is able to arrange, at the Customer's cost, for such re-testing and re-tagging of the electrical equipment. Any damage caused to the Plant resulting from incorrect testing will be at the Customer's cost.
- Return the Plant** Return the Plant to Hunter Valley Welding Hire P/L in the same good and clean condition it was in when the Customer received it, ordinary fair wear and tear excluded. If the Customer fails to clean the Plant, Hunter Valley Welding Hire P/L will charge the cleaning cost to the Customer.

7. Equipment Breakdown :

- Obligations of Customer: In the event that the Plant breaks down or becomes unsafe to use during the Hire Period the Customer will:
 - immediately stop using the Plant and notify Hunter Valley Welding Hire P/L;
 - take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Plant;
 - take all steps necessary to prevent any further damage to the Plant, and
 - Not repair or attempt to repair the Plant without Hunter Valley Welding Hire P/L's written consent.
- Obligations of Hunter Valley Welding Hire P/L: In the event that the Plant breaks down or becomes unsafe to use through no fault, negligence, recklessness or misuse by the Customer, Hunter Valley Welding Hire P/L will:
 - take all steps necessary to repair the Plant or provide suitable substitute Plant as soon as reasonably possible after being notified by the Customer;
 - not impose a hire charge for that portion of the Hire Period for which the Plant was broken down or unsafe, nor the costs associated with any repair or replacement of the Plant, and
 - Not be liable for any expenditure, damages, loss or inconvenience incurred by the Customer arising from a breakdown of Plant, however so caused.

8. Lost, Stolen or Damaged Equipment :

- The Customer is responsible for the Plant and its attached tools and accessories whilst on hire until the Plant is collected by Hunter Valley Welding Hire P/L, or returned to Hunter Valley Welding Hire P/L by the Customer. If the Plant is lost, stolen or damaged during the Hire Period the Customer will be liable for:
 - any costs incurred by Hunter Valley Welding Hire P/L in repairing or the new replacement cost of the Plant, and
 - any other costs what so ever incurred by Hunter Valley Welding Hire P/L as a result of the loss, theft or damage to the Plant, including the continuation of hire charges when the damages were caused by the negligence or act or omission of the Customer, except where the Customer pays the Damage Waiver fee, in which case its liability is subject to the Damage Waiver clause below.

Hunter Valley Welding Hire P/L
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EFFECTIVE 1ST July 2011

9. Damage Waiver

a. Subject to the exclusions in clause 10, where Damage Waiver has been charged to the Customer, Hunter Valley Welding Hire P/L agrees, upon prompt submission of a written Police Report from the Customer and any other written or photographic evidence requested by Hunter Valley Welding Hire P/L, to waive its right to claim for loss or damage to the Plant caused by fire, storm, collision, accident, theft or burglary. Such waiving of rights is subject to payment by the Customer of an excess for either the loss of the Plant or damage to the Plant, being the greater of \$500.00 per item or 15% of the cost of repairs or the new replacement cost of the Plant (as the case may be).

10. Expressly excluded from the above Damage Waiver

- a. Expressly excluded from the above Damage Waiver loss or damage as defined below:
- i. damage due to misuse, abuse or overloading of the Plant or any components thereof;
 - ii. wrongful conversion of the Plant or any components thereof;
 - iii. loss or damage in contravention of the conditions of this Hire Document;
 - iv. loss or damage from use in violation of any statutory laws & regulations;
 - v. damage caused to tyres & tube blowout, bruises, cuts or other causes inherent in the use of the Plant;
 - vi. glass breakage or graffiti;
 - vii. loss or damage relating to lack of lubrication or other normal servicing of Plant; (customer is responsible for making sure run hours between servicing are not exceed)
 - viii. loss or damage to the Plant whilst located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
 - ix. loss or damage to motors or other electrical appliances or devices caused by overloading or artificial electrical current, including use of under-rated or excessive length of extension leads on electrical powered tools and machines;
 - x. damage caused by exposure to any corrosive or caustic substance, such as cyanide, salt water, acid, etc.;
 - xi. theft of the Plant unless reasonably locked and secured;
 - xii. Loss or damage to Plant during transport, except where transported by Hunter Valley Welding Hire P/L.
 - xiii. Loss or damage to items which the Customer has elected not to pay Damage Waiver premium and thereby the Customer has accepted liability for the Plant, and loss or damage caused by the negligence of the Customer.
- b. Where Hunter Valley Welding Hire P/L determines that one of the exclusions in clause 9 applies, Damage Waiver will not apply unless the Customer is able to establish to the reasonable satisfaction of Hunter Valley Welding Hire P/L that the exclusion does not apply.
- c. The Customer will provide Hunter Valley Welding Hire P/L with all the information requested by Hunter Valley Welding Hire P/L for the purpose of establishing whether one of the exclusions in clause 9 applies.
- d. **Damage Waiver does not apply to Plant used off-shore, over water or down in under-ground mines.** The Customer must produce evidence that they have taken out suitable insurance cover for these items of Plant with such insurance cover to include Hunter Valley Welding Hire P/L as an insured and cover Hunter Valley Welding Hire P/L's liability as a principal in connection with the performance of the Hire Document and contain provisions whereby all rights of subrogation or action against any of the persons comprising the insured are waived; the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject to the overall sum insured not being increased as a result); and any non-disclosure or misrepresentation by one insured does not prejudice the right of the other insured to claim under any insurance.

11. Indemnities and Exclusion of Liabilities

- a. Subject to any clause including 10 that invokes governing laws and except as expressly provided to the contrary in the Hire Document all terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to Hunter Valley Welding Hire P/L obligations under the Hire Document are excluded.
- b. Where any Act of Parliament implies a term, condition or warranty in this Hire Document and that Act prohibits provisions in a contract excluding or modifying the application, exercise or liability under that term, condition or warranty, such term, condition or warranty will be deemed to be included in this Agreement provided that the liability of Hunter Valley Welding Hire P/L for breach of the term, condition or warranty is limited to (at Hunter Valley Welding Hire P/L's election) The repair or replacement of the Plant or the supplies of substitute Plant (or the cost of doing so) and in no event will any liability for damages be greater than the cost of the services being supplied under the Hire Document.
- c. Subject to clause 10, Hunter Valley Welding Hire P/L will not be under any liability to the Customer for consequential loss or damage (including loss of actual or anticipated profits or revenue, economic loss of any kind or any loss suffered as a result of any claim or claims by third parties) in contract, tort (including negligence) under statute or otherwise from or in relation to the Plant or this Hire Document.
- d. Subject to clause 10 The Customer is liable for and indemnifies Hunter Valley Welding Hire P/L against all liability, claims, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor/client basis, determined without taxation, assessment or similar process and whether incurred or awarded against Hunter Valley Welding Hire P/L and any environmental loss, cost, damage or expense) arising from or incurred in connection with Customer's hire and use of the Plant or its breach of the Hire Document.
- e. Each indemnity in this Hire Document is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this Hire Document. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Hire Document. The Customer must pay on demand any amount it must pay under an indemnity in this Hire Document.
- f. For the purposes of clauses 10, use of Plant operated by a person supplied by Hunter Valley Welding Hire P/L will be use of the Plant by the Customer.

12. Termination

- a. Hunter Valley Welding Hire P/L may terminate the Hire Document immediately by notice to the Customer, if:
- b. The Customer breaches any term of the Hire Document, or
 - c. The Customer becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, administration, receivership or ceases to carry on business.
 - d. Hunter Valley Welding Hire P/L may terminate the Hire Document for any other reason by 24 hours' notice.
 - e. The right of termination is in addition to any other rights under the Hire Document and does not exclude any right or remedy under law or equity or the survival of other terms under the Hire Document.

13. Recovery of Equipment

- a. If the Customer is in breach of the Hire Document or if Hunter Valley Welding Hire P/L has terminated the Hire Document with the Customer pursuant to clause 10, Hunter Valley Welding Hire P/L may take all steps necessary (including legal action) to recover the Plant, including entering the Customer's premises to do so.

14. Preventative Maintenance

- a. Preventive maintenance programme "PMP" is an in house managed preventive maintenance programme operated by Hunter Valley Welding Hire P/L (or its agent) for all Plant.
- b. The PMP involves regular attendance on site by Hunter Valley Welding Hire P/L's service personnel to conduct routine (250 hourly and 500 hourly) Plant servicing and general maintenance requirements.
- c. The Customer remains responsible for daily maintenance and care of all Plant in their possession, including but not limited to, daily checking of all fluids (fuel, oil, water, battery levels etc.), general tightening of any loose nuts, bolts, belts or fittings and lubrication of all grease points
- d. The Customer remains responsible for allowing access to the equipment to enable servicing and maintenance at the correct time intervals (in relation plant run hours) by Hunter Valley Welding Hire P/L personnel (or its agents) The Customer remains responsible for ensuring that all documents, inductions, inspections and or other site specific OH&S requirements / rules to enable plant servicing are provided free of charge and in full and in a timely manner as not to effect servicing and maintenance of hired plant.
- e. If a personnel from Hunter Valley Welding Hire P/L (or its agents) attend site to conduct Preventive maintenance programme "PMP" on hired plant equipment are then not allowed to do so because of Customer administration policies, Site specific regulations, Site specific OH&S policy or any other previously not disclosed issue and or requirement. Then the customer will be liable for all travelling costs, labour costs Charged @ penalty rates of \$125 / Hour and may also cause a breach in relation to other clauses contain within this document which also may invoke further penalty. If the Customer is unable or unwilling to ensure access to plant to enable servicing/ maintenance. Then the customer must either return the plant equipment to Hunter Valley Welding Hire P/L personnel (or its agents) for servicing.

15. Remote Area Hire Conditions

- a. Definitions: "Remote Area" is a location in excess of 75km from nearest Hunter Valley Welding Hire P/L's branch.
- i. The PMP for all Plant operating in a Remote Area will be subject to a per km charge both to and from the site nominated by the Customer, as specified by Hunter Valley Welding Hire P/L. No charge will apply for time on site and there will be no charge for the first 50 km either way.
 - ii. Multiple items of Plant hired by the same Customer on the one site will only be charged as one call out.
 - iii. If the Plant breaks down in a Remote Area the Customer will also pay Hunter Valley Welding Hire P/L the costs associated with any attendance to the site.

16. Miscellaneous

- a. **Severability:** If any part of this agreement becomes void or unenforceable for any reason. Then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.
- b. **Governing Law and Default Recovery:** The Hire Document is governed by the laws of the State or Territory of Australia where the Hire Document is entered into by the parties and each party submits to the exclusive jurisdiction of the courts of that State or Territory. The Customer will not object to Hunter Valley Welding Hire P/L using the jurisdiction of New South Wales for the recovery of any outstanding amount.
- c. **Security of Obligations:** As security for the obligations and liabilities of the Customer under the Hire Document, the Customer hereby charges for the due and punctual payment and performance of those obligations and liabilities, all of its legal and equitable interest (both present and future) of whatsoever nature held in any and all Real property. Without limiting the generality of the charge in this clause, the Customer agrees, on request by Hunter Valley Welding Hire P/L, to execute any documents and do all things necessary required by Hunter Valley Welding Hire P/L to register a mortgage security over any Real property. The Customer will indemnify Hunter Valley Welding Hire P/L on an indemnity basis against all costs and expenses incurred by Hunter Valley Welding Hire P/L in connection with the preparation and registration of any such mortgage documents. The Customer also consents unconditionally to Hunter Valley Welding Hire P/L lodging a caveat or caveats noting its interest in any Real property.
- d. **Entire Agreement:** The Hire Document issued to the Customer, including these Standard Conditions of Hire, comprises the entire agreement between the parties. No additional terms and conditions proposed by the Customer (including any terms contained in any purchase order provided by the Customer) apply to the hire of the Plant unless agreed in writing by Hunter Valley Welding Hire P/L.
- e. **No Reliance:** The Customer acknowledges that the neither Hunter Valley Welding Hire P/L or any person acting on Hunter Valley Welding Hire P/L's behalf has made any representation or other inducement to it to enter into the Hire Document and that it has not entered into the Hire Document in reliance on any representations or inducements (including in relation to the use of the Plant) except for those representations or inducements contained herein.
- f. **Variation:** Hunter Valley Welding Hire P/L may at any time vary the Hire Document by giving the Customer 30 day's written notice of its intention to do so. Any other variation of these terms and conditions must be agreed in writing by Hunter Valley Welding Hire P/L and the Customer.
- g. **Privacy:** Hunter Valley Welding Hire P/L may collect personal information about the Customer. Hunter Valley Welding Hire P/L's Privacy Officer can be contacted on (02) 49567851. Hunter Valley Welding Hire P/L may use the Customer's personal information to:
- i. provide services to the Customer,
 - ii. Used to fulfil administrative functions associated with these services (for example assessment of credit worthiness),
 - iii. Used to enter into contracts with the Customer or third parties, and for
 - iv. Used for Marketing and client relationship purposes.
 - v. If the Customer does not provide all information required by Hunter Valley Welding Hire P/L, Hunter Valley Welding Hire P/L will not be able to hire the Equipment or provide the associated services to the Customer. Hunter Valley Welding Hire P/L may also disclose the Customer's information to Hunter Valley Welding Hire P/L's service providers and contractors from time to time to help provide and market Hunter Valley Welding Hire P/L's services to the Customer. Generally the Customer has a right to access personal information Hunter Valley Welding Hire P/L holds about the Customer.
- h. **Notice to Customer:** All documents given by Hunter Valley Welding Hire P/L may be served or rendered by leaving it at or posting it to the address of the Customer as stated in the Hire Document or last notified by the Customer in writing to Hunter Valley Welding Hire P/L Therefore the above referred to documents will be deemed to have been served or rendered at the time of leaving or, if posted, on the business day following the day of postage.
- i. **No Waiver:** No delay or omission to exercise any right, power or remedy accruing to Hunter Valley Welding Hire P/L upon any continuing breach or default under the Hire Document will impair any such right, power or remedy, nor will it be construed to be a waiver of any right of Hunter Valley Welding Hire P/L to take action or make a claim in respect of a continuing breach or default or to be acquiescence to it.
- j. **Withdrawal of Credit Accommodation:** Any credit accommodation granted by Hunter Valley Welding Hire P/L to the Customer may be reviewed at any time without notice. Credit may also be withdrawn for Customers failing to make payments or use the Plant in accordance with these Standard Conditions of Hire and a statement may be issued at that time requiring payment within 7 days of any amount due and owing.
- k. **Authority of Customer:** The person signing the Hire Document for and on behalf of the Customer hereby covenants with Hunter Valley Welding Hire P/L that he or she has the authority of the Customer to make the Agreement on the Customer's behalf and is empowered by the Customer to bind the Customer to the Agreement and hereby indemnifies Hunter Valley Welding Hire P/L against all losses, costs and claims incurred by Hunter Valley Welding Hire P/L arising out of the person so signing the Agreement not in fact having such power and/or authority.
- l. **Previous Editions:** This edition of the Standard Conditions of Hire replaces and supersedes all previously issued Conditions of Sale and Hire by Hunter Valley Welding Hire P/L.
- m. **Time of the Essence:** Time is to be of the essence of all obligations of the Customer in the Hire Document.
- n. **Right of Refusal to Hire:** Hunter Valley Welding Hire P/L is in no way obliged to hire any Plant to the Customer and may refuse to hire Plant to a Customer at its absolute discretion, including but not limited to:
- o. If the Customer fails to provide adequate identification or if in the opinion of Hunter Valley Welding Hire P/L, the Customer's safety is put at risk by providing them with such Plant.
 - p. If the customer has demonstrated through previous history of not strictly adhering to credit terms in accordance with this document

TERMS AND CONDITIONS OF QUOTATION AND SALE

2011 – 2012

(PAGE 1)

These are the terms and conditions upon which the Seller HUNTER VALLEY WELDING HIRE PTY LTD sell and quote for the sale of goods.

EFFECTIVE 1ST July 2011

1 INTERPRETATION

- a. **Definitions** - In these terms and conditions, unless the context otherwise requires:
- b. **"Application"** in relation to a Buyer means the Thirty Day Commercial Credit Account Application signed by the Buyer which refers to these terms and conditions
- c. **"Buyer"** means the Person named in the relevant Sales Invoice or Quotation
- d. **"Business Day"** means a day other than a weekend or public holiday in the place which the goods are delivered.
- e. **"Excluded Loss"** means: in the case of loss or damage resulting from a breach of contract (including any contractual duty of care) loss of revenue; loss of profit; loss or denial of opportunity; loss of access to markets; loss of goodwill; loss of business reputation; loss arising from late delivery or failure to deliver goods; loss arising from any business interruption; increased overhead costs and any indirect, remote or unforeseeable loss occasioned by that breach, whether or not in the reasonable contemplation of the Buyer and the Seller at the time of the Quotation, Sales Invoice or any delivery of goods as being a probable result of the relevant breach; and in the case of loss or damage arising from any tort (including negligence) which does not also constitute a breach of contract - indirect, remote or unforeseeable loss and, in the case of pure economic loss, loss not flowing directly from the commission of the tort.
- f. **"Exclusive Goods"** means any goods which are, at the Buyer's request, embellished, embroidered, printed, machined, cut-to-size or specifically ordered for the Buyer.
- g. **"GST"** means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charge.
- h. **"GST Amount"** means any Payment (or the relevant part of that Payment) multiplied by the appropriate rate of GST.
- i. **"GST Law"** has the meaning given to that term in A New Tax System (Goods and Services) Act 1999, or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.
- j. **"Payment"** means any amount payable under or in connection with a Quotation or Sales Invoice including any amount payable by way of indemnity, reimbursement or otherwise (other than a GST Amount) and includes the provision of any non-monetary consideration.
- k. **"Person"** includes an individual, the estate of an individual, a body politic, a corporation, an association (incorporated or unincorporated) and a statutory or other authority.
- l. **"Purchase Price"** means the price for the goods set out in the relevant Quotation or Sales Invoice.
- m. **"Quotation"** means the form of quotation submitted by a Seller to the Buyer in which these terms and conditions are deemed to be incorporated.
- n. **"Sales Invoice"** means the sales invoice issued by a Seller to the Buyer in which these terms and conditions are or are deemed to be incorporated.
- o. **"Seller"** in relation to any Quotation or Sales Invoice means:
 - p. except as set out in (i) below, HUNTER VALLEY WELDING HIRE P/L (also trading as Hunter Valley Welding Hire P/L);
 - if in a Quotation or Sales Invoice a company referred to in
- q. Above is expressed to be acting as agent for a Person named in the Sales Invoice or Quotation then the Seller is that Person and the Buyer acknowledges that the Seller as named above acts only as the agent of that Person.
- r. **"Tax Invoice"** has the meaning given to that term by the GST Law
- s. **"Taxable Supply"** has the meaning given to that term by the GST Law.
- t. **Interpretation** - Any special conditions specified on a Quotation or Sales Invoice shall, to the extent they are inconsistent with these terms and conditions, take precedence over these terms and conditions.
Words importing the singular shall include the plural (and vice versa).
If any provision of these terms and conditions is invalid and does not go to the essence of this agreement, these terms and conditions should be read as if that provision has been severed.

2 GOVERNING TERMS AND CONDITIONS

- a. These are the only terms and conditions which are binding upon a Seller with the exception of those otherwise agreed in writing by the Seller which is imposed by a statute such as the Competition and Consumer Act 2010 and which cannot be excluded. Any direction by the Buyer either verbal or written to procure goods or services from the Seller will be deemed as acceptance by the Buyer of these terms and conditions, despite any provisions to the contrary in the direction or any purchase order issued by the Buyer.

3 TERMS OF PAYMENT

- a. Payment to the Seller for goods delivered and accepted is due within 30 calendar days of the Buyer being invoiced for the goods. If the Buyer fails to make payment in accordance with this clause, all amounts owing by the Buyer to the Seller named in the Sales Invoice or any other Seller on any account shall immediately become due and payable. Each outstanding amount shall bear interest of the rate of 25% per annum calculated on a daily basis from the day it falls due until the day it is paid.

4 INSPECTION AND ACCEPTANCE

- a. The Buyer shall inspect all goods upon delivery and shall within two (2) Business Days of delivery give notice to the Seller named in the relevant Sales Invoice or of any matter or thing by which the Buyer alleges that the goods are not in accordance with the Buyer's order. Failing such notice, subject to any non-excludable condition implied by law, such as those in the Competition and Consumer Act 2010 the goods shall be deemed to have been delivered to and accepted by the Buyer.

5 RETURNS

- a. Returns will be accepted for faulty or defective goods or where goods do not comply with any other non-excludable obligations of the Seller set out in the Competition and Consumer Act 2010
- b. Returns other than those referred to in (1) above, must be approved by the Seller named in the relevant Sales Invoice. These authorised returns must be freight prepaid and will only be accepted if they are in a saleable condition and (unless otherwise agreed with the Seller) the goods are returned within 14 days of supply.
- c. The Seller reserves the right to charge a handling fee of \$10 or 10% of the price of the goods returned (whichever is greater) under this provision.
- d. Products specifically purchased, manufactured, machined or cut to size or to the Buyer's specification are not returnable unless they are of the kind referred to in (a) above.

6 QUOTATIONS

- a. Unless previously withdrawn, a quotation is valid for 30 days or such other period as stated in it. A quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise from it until the Buyer's order has been accepted in writing by the Seller which provided the Quotation
- b. No Seller shall be bound by any conditions attaching to the Buyer's order or acceptance of a Quotation and, unless such conditions are expressly accepted by the relevant Seller in writing, the Buyer acknowledges that such conditions are expressly negated.
- c. Every Quotation is subject to and conditional upon obtaining any necessary import, export or other licence.

7 GST

- a. The parties agree that:
 - b. the Purchase Price is inclusive of GST;
 - c. all other Payments have been calculated without regard to GST;
 - d. each party will comply with its obligations under the Competition and Consumer Act 2010 when calculating the amount of any Payment and the amount of any relevant Payments will be adjusted accordingly;
 - e. if the whole or any part of any Payment is the consideration for a Taxable Supply (other than for payment of the Purchase Price) for which the payee is liable to GST, the payer must pay to the payee an additional amount equal to the GST Amount, either concurrently with that Payment or as otherwise agreed in writing.
 - f. Any reference to a cost or expense in this Agreement excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant party for which that party can claim an Input Tax Credit; and the payee will provide to the payer a Tax Invoice.

8 PASSING OF PROPERTY AND RISK

- a. Goods supplied by a Seller to the Buyer shall be at the Buyer's risk immediately upon deliver to the Buyer, into the Buyer's custody or at the Buyer's direction (whichever happens first).
- b. The Buyer shall insure the goods from the time of that delivery at its cost against such risks as it thinks appropriate, shall note the interest of the Seller named in the relevant Sales Invoice on the insurance policy and shall produce a certificate to this effect to that Seller upon request.
- c. Property in the goods supplied by a Seller to the Buyer under these terms and conditions shall not pass to the Buyer until those goods and other goods have been paid for in full.
Until the goods have been paid for in full:
 - d. the Buyer shall store the goods in a manner which shows clearly that they are the property of the Seller which supplied them; and
 - e. The Buyer may sell the goods, in the ordinary course of its business, as agent for the Seller and shall account to the Seller for the proceeds of sale (including any proceeds from insurance claims).
 - f. These proceeds must be kept in a separate bank account.
 - g. The Buyer irrevocably authorises each Seller at any time to enter onto any premises upon which:
 - h. the Seller's goods are stored to enable the Seller to:– inspect the goods; and/or – if the Buyer has breached these terms and conditions, reclaim the goods;
 - i. The Buyer's records pertaining to the goods are held to inspect and copy such records.
 - j. The Buyer and each Seller agree that the provisions of this clause apply notwithstanding any arrangement under which that Seller grants credit to the Buyer.

TERMS AND CONDITIONS OF QUOTATION AND SALE

2011 – 2012

(PAGE 2)

These are the terms and conditions upon which the Seller HUNTER VALLEY WELDING HIRE PTY LTD sell and quote for the sale of goods.

9 SUPPLY

- a. Each Seller reserves the right to suspend or discontinue the supply of goods to the Buyer on reasonable grounds without being obliged to give any reason for its action.

10 PART DELIVERIES

- a. Each Seller reserves the right to make part deliveries of any order, and each part delivery shall constitute a separate sale of goods upon these terms and conditions. A part delivery of an order shall not invalidate the balance of an order.

11 INSTALLATION

- a. A Seller's Quotation or Sale Invoice is made on a supply only basis. Installation and commissioning (if any) is at the expense of the Buyer unless otherwise specified in writing by the relevant Seller.

12 PERFORMANCE DATA AND SPECIFICATIONS

- a. Photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in a Quotation, descriptive literature or a catalogue approximate the goods offered but may be subject to alteration by the manufacturer or supplier without notice.
- b. To the extent permitted by statute, any performance data provided by the Seller, a supplier or a manufacturer is an estimate only and should be construed accordingly.
- c. Unless agreed to the contrary in writing, each Seller reserves the right to supply an alternative brand or substitute product that has characteristics that are materially consistent with the goods offered when necessary.

13 SHIPMENT AND DELIVERY

- a. Upon acceptance of an order by a Seller that Seller will seek confirmation of the period of shipment or delivery. If any variation has occurred in the quoted period, that Seller will notify the Buyer. Unless the Buyer objects in writing within 7 days of that notification to the Buyer, the period of shipment or delivery notified to the Buyer will be the contractual period for shipment or delivery.
- b. A delivery charge will apply to all deliveries with the exception of back order deliveries which are part of an original order that has been partly fulfilled.

14 MANUFACTURERS' CHANGES

- a. Where a Seller is acting as agent for a manufacturer or supplier, to the extent permitted by statute, the Seller shall not be liable for any alteration or variation in the goods made by this manufacturer or the supplier.

15 CURRENCY

- a. Where goods are imported into Australia, any adverse variation in the price arising from fluctuation in exchange rates between the date of the Buyer's order and the date of payment by the relevant Seller will be to the Buyer's account.

16 CONTINGENCIES

- a. Any charge, duty, impost, sales tax or other expenditure which is not applicable at the date of Quotation or Sales Invoice but which is subsequently levied upon a Seller in relation to a Quotation or Sales Invoice as a result of the introduction of any legislation, regulation or governmental policy, shall be to the Buyer's account.

17 CHARGES BEYOND THE POINT OF DELIVERY

- a. Unless otherwise agreed in writing, if a Seller prepays freight, insurance, custom and import duties (if any), landing and delivery charges and all other charges in connection with shipment and delivery of the goods, then any such charges shall be to the Buyer's account. Each Seller reserves the right to nominate the means of delivery.

18 FORCE MAJUERE

- a. If the performance or observance of any obligations of any Seller is prevented, restricted or affected by reason of a force majeure event including strike, lock out, industrial dispute, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond the reasonable control of the Seller, the Seller may, in its absolute discretion give prompt notice of that cause to the Buyer. On delivery of that notice the Seller is excused from such performance or observance to the extent of the relevant prevention, restriction or effect.

19 DEFAULT BUYERS

- a. If these terms and conditions are not strictly observed by the Buyer, the Seller may in its absolute discretion, refuse to supply to the Buyer and the Seller shall not be liable to the Buyer for any loss or damage the Buyer may sustain as a result of such refusal. The costs of collection of any moneys are due and payable by the Buyer, including the fees of any mercantile agent or lawyer engaged by the Seller.

20 Buyers Cancellation

- a. Unless otherwise agreed in writing, the Buyer shall have no right to cancel an order which has been accepted by a Seller.
- b. If a right of cancellation is expressly reserved to the Buyer, such right of cancellation must be exercised by notice in writing from the Buyer to the Seller with which the order has been placed not later than 7 days prior to the estimated date of shipment by the manufacturer or that Seller as the case may be.
- c. Unless otherwise agreed between the Buyer and Seller, upon cancellation prior to shipment any deposit paid by the Buyer shall be forfeited to the manufacturer or Seller (as the case may be).
- d. Despite the cancellation of any order for any reason, the Buyer must still purchase from the Seller any goods ordered by the Buyer which constitute Exclusive Goods (whether in store, in transit or being manufactured) which were procured or ordered by the Seller before such cancellation, unless otherwise agreed in writing by the Seller.

21 Warranty and Liability of Seller

- a. The Seller makes no express warranties under this Agreement. To the extent that the goods supplied are covered by the manufacturer's warranty, the Seller will pass on to the Buyer the benefit of the manufacturer's warranty.
- b. Upon discovery of any defect in the goods supplied by a Seller the Buyer shall immediately notify that Seller in writing.
- c. The Buyer shall not carry out any remedial work to allegedly defective goods without first obtaining the written consent of that Seller to do so.
- d. The Competition and Consumer Act 2010 (including the Australian Consumer Law) as well as State and Territory laws guarantee certain conditions, warranties and undertakings, and give you other legal rights, in relation to the quality and fitness for purpose of consumer goods sold in Australia. These guarantees cannot be modified nor excluded by any contract. Nothing in this contract purports to modify or exclude the conditions, warranties and undertakings, and other legal rights, under the Competition and Consumer Act 2010 (and other laws). Except as expressly set out in this Agreement and the Competition and Consumer Act 2010
- e. The Seller makes no warranties or other representations under this Agreement. The Seller's liability in respect of these warranties is limited to the fullest extent permitted by law.
- f. Our goods come with guarantees that cannot be excluded under the Australian Competition Law. You are entitled to a replacement or refund for a major failure and for compensation for any reasonably foreseeable loss or damage.
- g. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- h. To the extent permitted by statute, the liability, if any, of the Seller arising from the breach of any implied conditions or warranties in relation to the supply of goods other than goods of a kind ordinarily acquired for personal, domestic or household use or consumption, shall at the Seller's option be limited to:
 - i. the replacement of the goods or
 - j. resupply of the goods by the Seller, or
 - k. the cost of replacement or resupply of the goods; or
 - l. the repair of the goods, or
 - m. the cost of repair of the goods
- n. To the extent permitted by statute the Seller shall not in any circumstances be liable to the Buyer under or in connection with this Agreement, or in negligence or any other tort or otherwise howsoever, as a result of any act or omission in the course of or in connection with the performance of this Agreement, for or in respect of any Excluded Loss.
- o. The Seller makes no warranties in relation to the suitability for any purpose of goods or materials supplied by a Seller.
- p. To the extent permitted by statute, all warranties (whether express or implied, and whether given by the Seller, the manufacturer or a third party) and any obligation of the Seller to repair or replace any goods are void in respect of any goods which the Buyer tampers with or alters.

22 Alteration to Conditions

- a. A Seller may, at any time and from time to time, alter these terms and conditions. Any variation to these standard terms and conditions will not apply to any contract for a specified term that incorporates a version of these standard terms and conditions released prior to the variation.

b. Vienna Sales Convention

- c. To the fullest extent permitted by law, the United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) known as the Vienna Sales Convention does not apply to the contract comprised by these terms and conditions nor do any of the terms and conditions express or implied by the Vienna Sales Convention form part of the contract.

23 Governing Law

- a. These terms and conditions and any contract including them shall be governed by and construed in accordance with the laws of the State of New South Wales and the Seller and the Buyer submit to the non-exclusive jurisdiction of the Courts of New South Wales.

End

HUNTER VALLEY WELDING HIRE PTY LTD
SALES - Terms and Conditions