



PORTERGROUP

ACCOUNT APPLICATION FORM

Note If you are seeking to open an account for Hire, Parts, Service or Sales please complete all of section 1 & all of section 3
 If you require finance from Porter Finance Australia Pty Limited please complete all sections.
ALL CUSTOMERS MUST COMPLETE SECTION 3.

SECTION 1 – ACCOUNT DETAILS AND TRADING REQUIREMENTS				
CUSTOMER DETAILS	ACN or ABN	YEARS IN BUSINESS	DATE	
	LEGAL ENTITY NAME			
	TRADING NAME			
	BUSINESS ADDRESS			
	POSTAL ADDRESS (for notices, statements etc)			
	BUSINESS STRUCTURE	<input type="checkbox"/> Pty Ltd Company	<input type="checkbox"/> Sole Trader	<input type="checkbox"/> Partnership
		<input type="checkbox"/> Trust	<input type="checkbox"/> Other	
	CONTACT NAME	TITLE	PHONE	EMAIL
	ACCOUNTANT		PHONE	EMAIL
	SOLICITOR		PHONE	EMAIL
WILL YOU BE ON-HIRING THE GOODS TO A THIRD PARTY (INCLUDING TO A RELATED ENTITY)?				
<input type="checkbox"/> No.				
<input type="checkbox"/> Yes (please provide full details)				
PLEASE OPEN A TRADING ACCOUNT WITH: <input type="checkbox"/> PORTER HIRE PTY LIMITED <input type="checkbox"/> PORTER EQUIPMENT AUSTRALIA PTY LIMITED				
OR I AM APPLYING FOR FINANCE WITH PORTER FINANCE AUSTRALIA PTY LIMITED <input type="checkbox"/>				
INSURANCE	INSURANCE (WHERE GOODS ARE HIRED)			
	<input type="checkbox"/> Limited Damage Waiver in accordance with clause 26.2 of the General Terms (Cost 10% of the hireage charges) (Porter Group reserves the right to decline Limited Damage Waiver as set out in the General Terms)			
<input type="checkbox"/> The Account Holder is to insure in accordance with clause 26.1 of the General Terms (Maximum excess \$5,000.00 unless otherwise agreed in writing by Porter Group, Certificate of Currency form attached)				
OWNERS/DIRECTORS/TRUSTEES DETAILS/TRADE REFERENCES	This section must be completed by all individuals associated with the Customer (including all directors and partners, as applicable). If more than 2, please attach a separate page.			
	NAME		DRIVERS LICENCE NUMBER	
	POSITION HELD	PHONE	DOB	
	ADDRESS	TIME AT RESIDENCE	OWNED/RENTED	
	PREVIOUS ADDRESS	TIME AT RESIDENCE	OWNED/RENTED	
	NAME		DRIVERS LICENCE NUMBER	
	POSITION HELD	PHONE	DOB	
	ADDRESS	TIME AT RESIDENCE	OWNED/RENTED	
	PREVIOUS ADDRESS	TIME AT RESIDENCE	OWNED/RENTED	
	TRUST DETAILS (if applicable)			
	ABN OF TRUST	NAME OF TRUST (As per trust deed – please attach a copy)		
	DETAILS OF TRUST (TYPE OR TRUST, NO. OF BENEFICIARIES, DETAILS OF BENEFICIARIES)			
	TRADE REFERENCES			
	NAME	PHONE	CONTACT PERSON	
	NAME	PHONE	CONTACT PERSON	
NAME	PHONE	CONTACT PERSON		

SECTION 2 – FINANCE (only required if you intend to apply for finance through Porter Finance Australia Pty Limited)

FINANCE	BUSINESS DESCRIPTION, HISTORY AND MAJOR PROJECTS COMPLETED OR ON HAND:							
	NAME OF MAIN BANK		BRANCH					
	BANK OVERDRAFT LIMIT		CURRENT BALANCE					
	EQUIPMENT FINANCE OBLIGATIONS (IF MORE THAN 5, PLEASE ADD DETAILS)							
	MACHINE	FINANCE	TERM REMAINING	MONTHLY PAYMENT	CURRENT BALANCE			
	STATEMENT OF ASSETS & LIABILITIES							
	Assets		Liabilities					
	Property Details (address) \$ Amount		Mortgage Details \$ Balance Owing					
<u>Other Assets</u> \$ Amount								
Equity in Businesses		Over Draft \$ Balance Owing						
Debtors		Other Loans \$ Balance Owing						
Public Company Shares								
Superannuation								
Private Vehicles		Hire Purchase/Lease \$ Balance Owing						
Cash in Bank		Creditors						
Term Deposits								
<u>Other Assets</u>		<u>Other Liabilities</u>						
A) TOTAL ASSETS \$		B) TOTAL LIABILITIES \$						
		NET WORTH (A-B) \$						
<table style="width: 100%; border: none;"> <tr> <td style="width: 20%; vertical-align: top;">SUPPORTING DOCUMENTS</td> <td style="width: 30%; vertical-align: top;"> <input type="checkbox"/> FINANCIAL STATEMENTS(LAST 2 YEARS) <input type="checkbox"/> CASH FORECASTS <input type="checkbox"/> OTHERS _____ </td> <td style="width: 30%; vertical-align: top;"> <input type="checkbox"/> TRUST DEED (IF APPLICABLE) <input type="checkbox"/> COPY OF DRIVERS LICENCE FOR EACH OWNER/DIRECTOR </td> <td style="width: 20%;"></td> </tr> </table>					SUPPORTING DOCUMENTS	<input type="checkbox"/> FINANCIAL STATEMENTS(LAST 2 YEARS) <input type="checkbox"/> CASH FORECASTS <input type="checkbox"/> OTHERS _____	<input type="checkbox"/> TRUST DEED (IF APPLICABLE) <input type="checkbox"/> COPY OF DRIVERS LICENCE FOR EACH OWNER/DIRECTOR	
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SECTION 3 - AUTHORITY																																			
AUTHORITY	<ol style="list-style-type: none"> 1. I/We hereby apply for credit, or wish to enter into such other agreement or arrangement with Porter Group, knowing that Porter Group is under no obligation to supply goods or services on credit or enter into such other agreements or arrangements. 2. I/We authorise Porter Group to obtain a credit report about me/us from a credit reporting body to assess my/our application or my/our offer to act as a guarantor. I/we further authorise Porter Group to obtain from credit providers named in this application, and any credit providers that may be named in a credit report issued by a credit reporting body, information about my/our credit arrangements. I/We understand this information can include any information about my/our credit worthiness, credit standing, credit history, or credit capacity that credit providers are allowed to give or receive from each other under the <i>Privacy Act 1988</i> (Cth). 3. If my/our application is accepted by Porter Group, I/we agree to be bound by the attached general terms and conditions ("General Terms") and acknowledge that the General Terms may be amended from time to time. 4. I/we declare that the information supplied in this form is true and correct and that I/we have disclosed all information that may be material to Porter Group in assessing my/our application. 5. Where the applicant is a company or other entity set out in Section 1 I am/we are authorised to make this application on behalf of the company or other entity and acknowledge that I/we sign this application on behalf of the Account Holder and in my/our own capacity as Guarantor (as set out in the General Terms). 6. I/we confirm that I/we have been given a copy of the General Terms and have read and understood their contents. <p style="margin-left: 20px;">SIGNED BY OR ON BEHALF OF THE ACCOUNT HOLDER</p> <p>Signature: Print name/s Position Date: / /</p> <p>Signature: Print name/s Position Date: / /</p> <p>SIGNED BY THE GUARANTOR/S</p> <p>Signature: Print name/s Date: / /</p> <p>Signature: Print name/s Date: / /</p> <p>Signature: Print name/s Date: / /</p>																																		
AUTHORITY	<p><u>DEED OF GUARANTEE AND INDEMNITY</u></p> <p>In consideration of Porter Group agreeing to provide credit to, sell goods to, or enter into a hire, lease or other agreement or arrangement with the Account Holder named in this Account Application Form at my/our request:</p> <ol style="list-style-type: none"> 1. I/we as the "Guarantor/s" unconditionally and irrevocably guarantee to Porter Group the due and punctual payment by the Account Holder of all moneys payable and the due and punctual performance by the Account Holder of all obligations owed to Porter Group from time to time as set out in the General Terms and any Other Agreement, notwithstanding that I/we may not be a party to or sign any such Other Agreement. I/we acknowledge that my/our liability extends to all arrangements between Porter Group and the Account Holder and does not require execution of any further documents by me/us. 2. I/we further covenant with Porter Group on the terms and conditions set out in the General Terms (to the extent applicable). Without limiting the foregoing, I/we expressly acknowledge the security granted by me/us under clause 25 of the General Terms. 3. I/we indemnify Porter Group against any loss or damage Porter Group might suffer as a result of the Account Holder's breach of the General Terms or any Other Agreement or by reason of the General Terms or any Other Agreement becoming void or unenforceable by Porter Group against the Account Holder for any reason whatsoever. 4. I/we agree that I/we am/are deemed a principal debtor in connection with all Porter Accounts held by the Account Holder with Porter Group. If the Account Holder does not pay any monies to Porter Group in accordance with the terms applying from time to time between Porter Group and the Account Holder with respect to those monies, then I/we agree to pay those monies on demand by Porter Group, whether or not demand has been made on the Account Holder. A demand may be made at any time and from time to time. 5. I/we agree that this guarantee and indemnity shall be a continuing guarantee and shall not be discharged by any settlement or payment of any account. 6. The undertakings given in this Deed of Guarantee and Indemnity are given in my/our personal capacity as well as in my/our capacity as trustee of any trust of which I/we have been appointed trustee, including any undisclosed trust. 7. If there is more than one of us, we agree that our liability is joint and several. 8. I/we agree that our liability under this Deed of Guarantee shall not be discharged, abrogated, prejudiced or affected by: <ol style="list-style-type: none"> a. the granting of time, credit or the indulgence or other concession by Porter Group; b. any alteration, modification, variation or addition to any agreement between the Account Holder and Porter Group; c. any other act, omission or event which but for this provision might operate to discharge, impair or otherwise affect, my/our obligations under this guarantee or any powers or remedies conferred upon Porter Group by this Deed of Guarantee or by law. 9. I/we acknowledge that Porter Group will assess the Account Holder's application to open a Porter Account on reliance on the undertakings given in this Deed of Guarantee and Indemnity. 10. I/we confirm that I/we have been advised by Porter Group that I/we should seek legal advice before signing this Deed of Guarantee and Indemnity and have either obtained that advice or have freely and voluntarily waived my/our right to obtain that advice. <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <tr> <th colspan="2" style="text-align: left; padding: 2px;">SIGNED, SEALED AND DELIVERED BY THE GUARANTOR/S AS A DEED</th> </tr> <tr> <td style="width: 50%; padding: 2px;">SIGNATURE</td> <td style="width: 50%; padding: 2px;">WITNESS SIGNATURE</td> </tr> <tr> <td style="padding: 2px;">FULL NAME</td> <td style="padding: 2px;">WITNESS NAME</td> </tr> <tr> <td style="padding: 2px;">DATE</td> <td style="padding: 2px;">WITNESS ADDRESS</td> </tr> <tr> <td style="padding: 2px;"></td> <td style="padding: 2px;">WITNESS OCCUPATION</td> </tr> <tr> <td style="padding: 2px;">SIGNATURE</td> <td style="padding: 2px;">WITNESS SIGNATURE</td> </tr> <tr> <td style="padding: 2px;">FULL NAME</td> <td style="padding: 2px;">WITNESS NAME</td> </tr> <tr> <td style="padding: 2px;">DATE</td> <td style="padding: 2px;">WITNESS ADDRESS</td> </tr> <tr> <td style="padding: 2px;"></td> <td style="padding: 2px;">WITNESS OCCUPATION</td> </tr> <tr> <td colspan="2" style="padding: 2px;">COMPANY NAME</td> </tr> <tr> <td style="padding: 2px;">(SOLE) DIRECTOR/SECRETARY</td> <td style="padding: 2px;">DIRECTOR</td> </tr> <tr> <td style="padding: 2px;">NAME</td> <td style="padding: 2px;">NAME</td> </tr> <tr> <td style="padding: 2px;">DATE</td> <td style="padding: 2px;"></td> </tr> <tr> <td colspan="2" style="padding: 2px;">COMPANY NAME</td> </tr> <tr> <td style="padding: 2px;">(SOLE) DIRECTOR/SECRETARY</td> <td style="padding: 2px;">DIRECTOR</td> </tr> <tr> <td style="padding: 2px;">NAME</td> <td style="padding: 2px;">NAME</td> </tr> <tr> <td style="padding: 2px;">DATE</td> <td style="padding: 2px;"></td> </tr> </table>	SIGNED, SEALED AND DELIVERED BY THE GUARANTOR/S AS A DEED		SIGNATURE	WITNESS SIGNATURE	FULL NAME	WITNESS NAME	DATE	WITNESS ADDRESS		WITNESS OCCUPATION	SIGNATURE	WITNESS SIGNATURE	FULL NAME	WITNESS NAME	DATE	WITNESS ADDRESS		WITNESS OCCUPATION	COMPANY NAME		(SOLE) DIRECTOR/SECRETARY	DIRECTOR	NAME	NAME	DATE		COMPANY NAME		(SOLE) DIRECTOR/SECRETARY	DIRECTOR	NAME	NAME	DATE	
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GENERAL TERMS

1. Porter Account

- 1.1 A Porter Account provides the Account Holder with a debit account against which the Account Holder can charge authorised Transactions.
- 1.2 Each Transaction will form a legal contract between the Account Holder and Porter Group on the general terms and conditions as set out in this Agreement (as varied from time to time in accordance with clause 2), and the commercial terms and conditions set out in any Other Agreement which applies to the relevant Transaction.

2. Amendment

- 2.1 Porter Group may amend these terms and conditions at any time either by written notice to the Account Holder or by publishing such changes on its website http://www.portergroup.com.au/pdfs/Forms/Porter_Group_Australia_Account_Application.pdf. Any such changes will take effect from the date of notification or publication on the website (as the case may be), and will apply to any Agreement entered into between the Account Holder and Porter Group after that date.

3. Definitions

- (a) **"Account Holder"** means the person or entity in whose name a Porter Account is opened and, where the context permits, is deemed to include each Guarantor and any agent, contractor, employee or representative of the Account Holder;
- (b) **"Agreement"** means this Account Application Form and/or, where these terms are deemed to form part of an agreement between the Account Holder and Porter Group, that agreement;
- (c) **"Credit Limit"** means the credit limit from time to time agreed to by Porter Group in its absolute discretion on a Porter Account;
- (d) **"Default Interest Rate"** means 12% above the Official Cash Rate (OCR) as set and published by the Reserve Bank of Australia per annum or such other default rate as may be set out in any Other Agreement as the default rate applicable in relation to that Other Agreement;
- (e) **"Due Date"** means the 20th day of the month following the closing date of each Statement;
- (f) **"Goods"** means all present and future acquired goods, plant, equipment, parts or other items purchased, leased, hired by, or financed to, the Account Holder by or from Porter Group, including any attachments or accessories to such goods, plant or equipment which are attached to the goods, plant or equipment or supplied to the Account Holder at any time (whether or not by Porter Group) and a reference to "Equipment" or a similar term shall be deemed a reference to "Goods";
- (g) **"Guarantor"** means each guarantor named in this Agreement as such (or deemed to be named as such under clause 6) and any other person or entity who gives a guarantee in respect of a Porter Account and, where the context permits, includes any agent, contractor, employee or representative of the Guarantor;
- (h) **"Hire Rate Booklet"** means the hire rate booklet published and updated by Porter Group from time to time and available at <http://www.portergroup.com.au/porter-hire.html> ;
- (i) **"Liability Event"** means any incident, breach or other event giving rise to a liability for Porter Group under or in connection with this Agreement;
- (j) **"Limited Damage Waiver"** means any arrangement made or deemed to be made pursuant to clause 26.2;
- (k) **"Other Agreement"** has the meaning given to it in clause 12;
- (l) **"Porter Account"** means any credit account created in accordance with this Agreement or otherwise that may be used by the Account Holder as a trading account with Porter Group;
- (m) **"Porter Group"** means any one or more or any or all of the following companies:
- (i) Porter Equipment Australia Pty Ltd ACN 150 961 934;
 - (ii) Porter Property Group Pty Ltd ACN 117 394 564;
 - (iii) Porter Hire Pty Ltd ACN 150 943 794;
 - (iv) Porter Group Pty Ltd ACN 111 658 112;
 - (v) Eagle Equipment Australia Pty Ltd ACN 103 595 115;
 - (vi) Construction Equipment Finance Pty Ltd ACN 139 800 392;
 - (vii) Porter Finance Australia Pty Ltd ACN 163 633 056;
 - (viii) Hyundai Construction Australia Pty Ltd ACN 106 440 662; and
 - (ix) any Related Body Corporate of any of the companies specified above, as that term is defined in the *Corporations Act 2001* (Cth);
- and, to the extent that the context requires, a reference to Porter Group in this Agreement shall be taken to refer to the relevant entity to which the relevant Porter Account and/or Transaction relates.
- (n) **"PPSA"** means the *Personal Property Securities Act 2009* (Cth);
- (o) **"Privacy Policy"** means Porter Group's privacy policy current from time to time which will be provided on request and freely available on Porter Group's website <http://www.portergroup.com.au/>;
- (p) **"Receiver"** has the meaning given under the *Corporations Act 2001* (Cth) and includes a "receiver and manager" and, where the context requires, refers to any receiver appointed by the Porter Group pursuant to this Agreement or any Other Agreement.
- (q) **"Services"** means any services, including machinery maintenance and repair, transportation and any other services, provided by Porter Group to the Account Holder;
- (r) **"Standard Mortgage Terms"** means the terms and conditions published by Porter Group on its website and available at www.portergroup.com.au .
- (s) **"Statement"** means the monthly transaction statement issued by Porter Group in respect of a relevant Porter Account; and
- (t) **"Transaction"** means any servicing, sale, lease, hire or other arrangement entered into between the Account Holder and Porter Group whereby Services are provided to the Account Holder, or Goods are supplied to the Account Holder.

4. Price and Payments

- 4.1 If Porter Group provides a quotation to the Account Holder, it is based on information available to Porter Group at that time and Porter Group may revise that quotation at any time if its costs (such as the cost of labour, materials, transport, tax, exchange rates or other costs) or the specifications change. Porter Group will advise the Account Holder of any increase in its costs where practicable.
- 4.2 A Statement will be issued in respect of any Services provided and Goods sold or hired. A single Statement will be issued in respect of such of the Account Holder's Porter Accounts on the last day of each month unless the Porter Account has a nil balance and has had no activity during the preceding month. The balance shown on the Statement is due on the Due Date in full and no set off, deduction or counter claim is permitted.
- 4.3 If the Account Holder makes payment of the full amount shown on the Statement by the Due Date no interest will be charged on Transactions listed in the Statement EXCEPT where a balance is carried forward from an earlier Statement (in which case interest will accrue on that balance as set out in clause 4.4).
- 4.4 If the full amount of the Statement is not paid on or before the Due Date then interest shall accrue on the daily outstanding balance of the Porter Account so unpaid at the Default Interest Rate from the Due Date of the Transactions to which such outstanding balance relates to the date the amount is paid in full. Interest accruing on a Porter Account shall be charged to that Porter Account on the 20th day of each month

and shall compound monthly on the 20th day of each month until full payment has been made.

- 4.5 Subject to clause 4.6, any payments made by the Account Holder will be applied against the Porter Account in the following order (unless otherwise agreed between Porter Group and the Account Holder):
- (a) all interest accrued to the date of payment;
 - (b) all fees or charges and any government duties shown on the current Statement and any previous Statement(s);
 - (c) all costs incurred by Porter Group and recoverable from the Account Holder under this Agreement;
 - (d) all outstanding balances carried forward from any previous Statement(s);
 - (e) all amounts owing in respect of Transactions on the current Statement;
 - (f) amounts owing in respect of Transactions made since the date of the current Statement;
 - (g) any other outstanding balances remaining unpaid.
- 4.6 In addition to any rights which Porter Group may have by law any member of the Porter Group may at any time without notice to or the consent of the Account Holder:
- (a) deduct from or set-off against any debts or liabilities of the Account Holder any debts or liabilities of Porter Group to the Account Holder;
 - (b) apply any payments against the matters set out in clause 4.5 to amounts owing in respect of any Other Agreement at Porter Group's discretion and without need for the Account Holder's consent.
- 4.7 Payments may be made by direct credit to Porter Group's bank account by prior agreement with Porter Group, or in such other manner as notified by Porter Group to the Account Holder.
- 4.8 Payments other than cash will be provisionally credited to a Porter Account but will not be treated as payment until cleared.
- 4.9 Statements may be subject to alteration by reversal of unpaid debits or credits processed on or about the date of the Statement.

5. Credit Limit

- 5.1 The outstanding balance of a Porter Account shall not exceed the Credit Limit without Porter Group's written approval. If at any time, a Porter Account balance exceeds the Credit Limit the amount in excess of the Credit Limit will be immediately due and payable. Any such excess does not constitute approval from Porter Group as to an increase in the Credit Limit.
- 5.2 Porter Group may cancel any unused balance of the Credit Limit from time to time in its absolute discretion.

6. Personal Liability

- 6.1 Where the Account Holder is a company, all persons signing this Agreement on behalf of the Account Holder shall be personally liable for all of the obligations of the Account Holder in connection with this Agreement as if those persons signed as a Guarantor.

7. Trustee's Liability

- 7.1 Where the Account Holder or a Guarantor is a trustee of a trust, the Account Holder or the Guarantor (as the case may be) enters into this Agreement in its own capacity and in its capacity as trustee of that trust. For the avoidance of doubt, where the trustee is a company, clause 6 applies to the persons signing on behalf of that trustee.

8. Joint Accounts

- 8.1 Where there is more than one person named as the Account Holder ("joint account"), the liability of those persons is joint and several.
- 8.2 Porter Group will accept instructions relating to a joint account from any of the named persons (or representative of such person). To cancel a joint account, the consent or request of only one named person is necessary. Cancellation does not affect the Account Holder's liability until all obligations have been met.

9. Inspection and Right of Access for Goods subject to credit, hire, lease or finance arrangements

- 9.1 The Goods must be situated at the Account Holder's address set out in this Agreement, or at such other location as may be agreed from time to time by the Account Holder and Porter Group.
- 9.2 Porter Group or anyone authorised by Porter Group may inspect the Goods at any reasonable time and on giving reasonable notice to the Account Holder.
- 9.3 The Account Holder will provide Porter Group or anyone authorised by Porter Group access to any place where the Goods are kept or believed to be kept for any purpose in connection with this Agreement. The Account Holder will make the Goods available for such purposes and will provide all necessary assistance to obtain the consent of the registered proprietor, landlord, and/or any mortgagee of any land upon which the Goods are kept or believed to be kept to allow such entry.

10. Representations, Warranties and Covenants

- 10.1 The Account Holder and each Guarantor represents and warrants to Porter Group that:
- (a) the information provided by the Account Holder in connection with this Agreement is true and correct and remains true to the date of this Agreement and there are no facts or circumstances that have not been disclosed to Porter Group which would make any information untrue, inaccurate or misleading;
 - (b) all matters and things have been done and performed so as to authorise and make the execution and delivery of this Agreement legal, valid and binding and enforceable against it;
 - (c) it is unaware of any facts or circumstances which would or might, if disclosed, affect the decision of the Porter Group or any other lender considering whether or not to provide finance to the Account Holder for a like amount and on like terms as this Agreement;
 - (d) if it is a company, it is duly incorporated and validly existing;
 - (e) the latest accounts provided to Porter Group, if required by Porter Group, have been prepared in accordance with the Australian accounting standards consistently applied and present a true and fair view of its financial condition;
 - (f) it is not in default of any agreement relating to indebtedness, or any other agreement with Porter Group or any financial institution;
 - (g) no 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 effect on it; and
 - (h) each of the representations, warranties and undertakings made or given by it in this Agreement is true and accurate and has been complied with in all respects on the date it is made, given or deemed repeated.
- 10.2 The Account Holder shall:
- (a) notify Porter Group of the occurrence of any event of default pursuant to clause 13 immediately upon becoming aware of it, giving full details of it and of any action taken (or to be taken) in respect of it;
 - (b) not dispose of, create a security interest (as that term is defined in the PPSA) in, encumber, charge, sell, or part with possession of the Goods nor allow a lien to be created over the Goods by any person;
 - (c) duly and promptly comply with all laws;

- (d) obtain, give effect to, exercise, keep current, renew and comply with all material consents necessary or desirable in respect of its continuing business or in respect of the all land, buildings or other property owned, occupied or otherwise used by it;
- (e) file all tax returns as required by law, and 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;
- (f) permit 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;
- (g) do all things necessary to maintain its corporate existence (if applicable) and will maintain any and all necessary franchise agreements, leases, patents and/or licences required to operate its business;
- (h) conduct its business properly and efficiently in accordance with best current commercial practice;
- (i) if required and requested by Porter Group, obtain a written acknowledgment from the registered proprietor or landlord and the mortgagee (if applicable) of any land on which the Goods may be located acknowledging Porter Group's interest in the Goods and that the registered proprietor or landlord and the mortgagee of the land has no right to detain the Goods and has no other rights in respect of the Goods; and
- (j) deliver to Porter Group (in each case in form and substance satisfactory to Porter Group) promptly upon request from time to time such financial information related to its business, affairs, financial condition or other as Porter Group may request from time to time, including but not limited to financial statements.

10.3 The covenants, representations and warranties (as applicable) contained in this clause 10 shall be deemed to be repeated on each day that a payment of any moneys is made under this Agreement by the Account Holder to Porter Group.

11. National Credit Code

11.1 The Account Holder declares for the benefit of Porter Group that this Agreement is entered into wholly or predominantly for business purposes and accordingly acknowledges that the provisions of the *National Credit Code* do not apply.

12. Cross Default and Collateralisation

- 12.1** Each deed or agreement between Porter Group and the Account Holder that may be entered into at any time on, before, or after the date of this Agreement (each an "Other Agreement") is interdependent and collateral to the end and intent that:
- (a) a default by the Account Holder under this Agreement shall constitute a default by the Account Holder under each Other Agreement;
- (b) a default by the Account Holder under any Other Agreement shall constitute a default by the Account Holder under this Agreement;
- (c) any security interest granted by the Account Holder and/or the Guarantor in favour of Porter Group under this Agreement shall also secure the Account Holder's obligations and any monies owing to Porter Group under any other Agreement;
- (d) Any security interest granted by the Account Holder and/or the Guarantor in favour of Porter Group under any Other Agreement shall also secure the Account Holder's obligations and any monies owing to Porter Group under this Agreement;
- (e) all rights and powers of Porter Group under this Agreement 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 Account Holder under this Agreement and each Other Agreement.

12.2 The Account Holder agrees and warrants that the Account Holder will fully comply with the provisions of this Agreement and each Other Agreement.

13. Default

13.1 The Account Holder will be in default if:

- (a) the Account Holder fails to pay any amounts due to Porter Group on the due date;
- (b) the Account Holder is in breach of, or fails to comply with, any terms of this Agreement or of any security granted in favour of Porter Group;
- (c) the Account Holder is deemed to be in default under clause 12;
- (d) the Account Holder goes into liquidation or receivership or a resolution to place it in liquidation is passed or proposed, or an administrator, other controller or trustee in bankruptcy is appointed to the Account Holder or any of its assets;
- (e) the Account Holder fails to pay its debts when and as they fall due;
- (f) the Account Holder dies;
- (g) execution or distress against the Account Holder or the assets of the Account Holder is levied;
- (h) any insurance claim made by the Account Holder in respect of the Goods is declined or an insurance policy is cancelled;
- (i) the Account Holder does or omits to do anything which might endanger the safety or condition of the Goods or Porter Group believes the Goods have been or will be destroyed, damaged, endangered, disassembled, removed, concealed, sold, or otherwise disposed of contrary to the provisions of this Agreement;
- (j) the Account Holder enters into a scheme of arrangement with its creditors; or
- (k) an event or a series of events (whether related or not) occurs which, in Porter Group's opinion, may cause an adverse change in the Account Holder's ability to meet its obligations to Porter Group.

13.2 If the Account Holder is in default, Porter Group may, at its discretion and without prejudice to its other rights and remedies at law or in equity against the Account Holder or the Guarantor, do any one or more of the following:

- (a) charge interest at the Default Interest Rate on any late payments calculated on a daily basis from the date the payment fell due until the date payment is received;
- (b) require the Account Holder to remedy the default in the manner and within a period notified by Porter Group;
- (c) remedy the Account Holder's default and charge the Account Holder any costs incurred by Porter Group in so doing;
- (d) require the Account Holder and/or the Guarantor to pay to Porter Group all amounts the Account Holder owes immediately;
- (e) suspend or terminate the Account Holder's Porter Account(s);
- (f) enter any place where the Goods are kept or believed to be kept without prior notice and retake possession of the Goods; and/or
- (g) exercise any other rights under this Agreement or any Other Agreement.

13.3 If this Agreement is terminated then all monies payable under this Agreement, if they are not already due for payment, shall become due for payment at the time of termination.

13.4 Nothing in this clause will release the Account Holder from any past, present or future liability under this Agreement

13.5 Interest and other costs payable by the Account Holder under this clause are not an extension of credit to the Account Holder but are a genuine pre-estimate of Porter Group's loss caused by the Account Holder's failure to comply with this Agreement.

14. GST

14.1 In this clause "GST" means the goods and services tax under the *A New Tax System (Goods and Services) Tax Act 1999* (Cth) ("GST Act"). Any reference in this clause 14 to a

term defined or used in the GST Act is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.

14.2 Unless otherwise stated, all prices or other sums payable or consideration to be provided under or in connection with a Porter Account is exclusive of GST.

14.3 To the extent that any supply made under or in connection with this Agreement is a taxable supply, the consideration to be provided for that supply is increased by an amount equal to the amount of that consideration multiplied by the rate at which GST is imposed in respect of that supply.

14.4 The supplier of a taxable supply must provide the other party with a tax invoice in applicable form.

14.5 Costs or expenses to be reimbursed or indemnified by a party exclude any amount in respect of GST included in the costs or expenses for which an entitlement arises to claim an input tax credit.

15. Indemnity and Liability

15.1 To the extent permitted by law, the Account Holder indemnifies Porter Group and its directors, employees, contractors and agents against all damages, costs, losses (including loss of revenue, business, goodwill, anticipated savings, and any other indirect or consequential loss arising from the loss of, or the damage to, the Goods) or liabilities which may arise directly or indirectly in respect of the Goods or their use or operation by the Account Holder or any other party, and against any liability for any direct, indirect or consequential injury, loss or damage arising directly or indirectly out of any act or default or omission (negligent or otherwise) of the Account Holder or of Porter Group, or any representations made by the Account Holder or by any servant, agent, employee, representative or contractor, of the Account Holder.

15.2 To the extent permitted by law, all warranties, conditions or obligations imposed on Porter Group at law, in equity, or otherwise are expressly excluded. This clause 15.2 will not be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application of all or any of the provisions of the *Competition and Consumer Act 2010* (Cth) or the Australian Consumer Law or the provisions of any other statute, act or law of any state or territory of the Commonwealth of Australia which by law cannot be excluded, restricted or modified. In the event that Porter Group incurs a liability to the Account Holder under any law referred to in this clause 15.2, the liability of Porter Group is, in relation to Goods, limited to the replacement of those Goods or the cost of replacing them and, in relation to Services, limited to the re-supply of those Services or the cost of that re-supplying them (in each case at the sole discretion of Porter Group).

15.3 To the extent permitted by law, Porter Group and its directors, employees, contractors and agents shall not be liable for any loss, damage or liability of any kind whatsoever (including loss of profit, business, revenue, or goodwill, and any other indirect or consequential loss), or for any delays, accidents or damages of any kind whether direct or indirect which arise through defect or breakdowns of the Goods, or any other way whether suffered or incurred by the Account Holder or another person, including without limitation where such loss, damage or liability was caused or contributed to by the negligent act or omission of Porter Group or a breach of this Agreement by Porter Group.

15.4 Notwithstanding clauses 15.1, 15.2 or 15.3, if for any reason Porter Group is liable to the Account Holder, then to the maximum extent permitted by law, such liability will be limited to the greater of:

- (a) any amount recoverable and paid to Porter Group under a policy of insurance in the name of Porter Group, in relation to the circumstances giving rise to the claim; or
- (b) an amount equal to \$50,000.00 per Liability Event, and limited to four (4) Liability Events and \$200,000.00 in any 12 month period.

16. Notices

16.1 Notices, communications, documents or demands required to be made or served in relation to this Agreement shall be in writing 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 delivered;
- (b) (if sent by post) on the third business day following posting;
- (c) (if sent by email) at the time it is sent, unless the sender's computer or device reports that the email has not been delivered.

16.2 Notices, communications, documents or demands shall be given to the parties at their address set out in this Agreement. Any party may change its addresses for notices by giving a notice in writing to the other party.

17. Privacy Act

17.1 Any information (including personal information as that term is used in the *Privacy Act 1988* (Cth) ("Privacy Act")) received about the Account Holder or the Guarantor by Porter Group will be held by Porter Group in accordance with its Privacy Policy. Without limiting the purposes for which Porter Group may use such information, personal information may be used by Porter Group to:

- (a) offer or provide the Account Holder and/or the Guarantor with information about Porter Group's products and services and those of selected third parties;
- (b) consider the Account Holder's application for a Porter Account; and
- (c) operate and manage of each of the Account Holder's Porter Accounts.

17.2 In addition, Porter Group is authorised by the Account Holder and the Guarantor to:

- (a) make any enquiries to any person or company concerning the credit record, residence, employment or financial status of the Account Holder and/or the Guarantor, or any information provided by the Account Holder or the Guarantor in its application for a Porter Account, and the Account Holder and the Guarantor authorise any person or company so approached to provide such information to Porter Group; and
- (b) disclose any information about the Account Holder:
- (i) to any person who guarantees, or who provides insurance, or who provides other credit support, in relation to the Account Holder's obligations to Porter Group;
- (ii) to such persons as may be necessary or desirable to enable Porter Group to exercise any power or enforce or attempt to enforce any of Porter Group's rights, remedies and powers under this Agreement.

17.3 In the event of any default by the Account Holder under this Agreement, Porter Group may:

- (a) report that default to a credit reporting body (where permitted to do so under the Privacy Act);
- (b) use the services of enquiry agents; and/or
- (c) place the debt with a collection agent.

17.4 Porter Group does not need to inform the Account Holder or the Guarantor of any of the above matters in any future dealing Porter Group may have with the Account Holder or the Guarantor.

18. Guarantee and Indemnity

18.1 In consideration of Porter Group entering into this Agreement at the Guarantors' request, (which request is testified by the Guarantors execution of this Agreement), the Guarantors jointly and severally, unconditionally and irrevocably guarantee to and indemnify Porter Group as set out in the Deed of Guarantee and Indemnity contained in the

Account Application Form (notwithstanding that the Guarantors may not have executed that Deed of Guarantee and Indemnity).

19. Retention of Title and Ownership

19.1 Where Goods are leased, hired or sold on credit, Porter Group retains full title to the Goods notwithstanding:

- the delivery of the Goods to the Account Holder;
- the possession and use of the Good by the Account Holder; and/or
- any temporary attachment of the Goods to any land or premises to facilitate the use of the Goods.

20. No Alterations

20.1 The Account Holder will not make any alterations to, modify or add accessories to the Goods without the prior written consent of Porter Group and will not remove any identification features on the Goods or any part of the Goods.

21. Account Holder Obligations and Acknowledgements

21.1 The Account Holder will immediately notify Porter Group in writing of any loss or damage to the Goods, including but not limited to mechanical breakdown.

21.2 The Account Holder agrees and acknowledges that:

- Porter Group has not made any representation that the Goods are of an acceptable quality, durability or fitness nor that the Goods are new or equal to new;
- it does not rely on Porter Group's skill or judgment as to the quality, durability or fitness of the Goods for any particular purpose and the risk in these respects is worn by the Account Holder; and
- that it has inspected the Goods prior to delivery and that the Goods were supplied by Porter Group on a fully operational basis, in a proper working order and condition.

21.3 Before using the Goods, the Account Holder must:

- ensure that all safety checks appropriate for the use of the Goods are carried out; and
- conduct and be satisfied as to a risk assessment of all work sites at which the Goods will be operated, including identifying possible hazards for its employees and other persons operating, or in the vicinity of, the Goods;
- carry out prestart daily inspections and complete an inspection report in accordance with Porter Group's directions from time to time. These inspection reports must be made available on request by Porter Group.

22. Health and Safety

22.1 The Account Holder acknowledges that it is aware of its statutory obligations and duties with respect to the Goods under any applicable workplace health and safety legislation (and any regulations made under such legislation) ("WHS Legislation") and warrants to Porter Group that:

- It will comply with all WHS Legislation;
- It has written rules and procedures relating to health and safety which Account Holder will follow to ensure the safety of its employees and all persons operating, or in the vicinity of, the Goods; and
- It will ensure that all persons who use the Goods are competent (and, where required, licenced) to do so and will use the Goods in the manner they were designed to be used and in accordance with:
 - any directions from Porter Group or local or other authorities;
 - industry codes of practice; and
 - the manufacturer's guidelines relating to the use and safety of the Goods.

22.2 The Account Holder acknowledges and agrees that:

- it is responsible for all health and safety obligations in respect of the Goods and it will take all practicable steps to eliminate, isolate, and minimise any hazards or risks for its employees or other persons operating, or in the vicinity of, the Goods and ensure the safety of any person operating the Goods or other persons in the vicinity of the Goods; and
- it will maintain a register of accidents and conform with any code of practice and laws or regulations which relate to the particular work being undertaken by the Goods.

23. Third Party Hire Arrangements

23.1 The Account Holder will not on-hire or lease the Goods or in any other way part with possession of the Goods to a third party without the prior consent of Porter Group.

23.2 If Porter Group consents to the Account Holder on-hiring or leasing the Goods to a third party ("Third Party Hire"), then:

- The Third Party Hire must be documented in a form approved by the Company in writing;
- The Account Holder must take all steps including registration under the PPSA as may be required to:
 - ensure that any security interest arising under or in respect of the Third Party Hire is enforceable, perfected by registration and otherwise effective under the PPSA; and
 - ensure that any security interest of the Account Holder is perfected at all times subject only to any rights of the third party as the end user and Porter Group;
 - the Account Holder must provide such information and records reasonably requested by Porter Group relating to the Third Party Hire from time to time within a reasonable time of such request; and
 - upon default of this Agreement:
 - all right, title and interest of the Account Holder in the Third Party Hire are deemed to be assigned to Porter Group;
 - Porter Group may enforce any Third Party Hire arrangements as if it was the hirer named in the Third Party Hire arrangements; and
 - the Account Holder will pay and indemnify Porter Group's reasonable legal and other costs of and incidental to the assignment and enforcement of the Third Party Hire.

24. Personal Property Securities Act

24.1 Words in this clause shall, if the context permits, have the meanings given to them under or by virtue of the PPSA.

24.2 Any and all of the Porter Group companies can be, at the discretion of the Porter Group, defined as a "secured party" for the purposes of the PPSA (whether together or individually).

24.3 Except in relation to leases or hireage for a term of less than 12 months that are not deemed to be a "PPS Lease" under the PPSA, the Account Holder acknowledges that Porter Group holds a purchase money security interest in the following:

- the Goods;
- if the Goods have been manufactured, processed, assembled or commingled such that their original identity is lost, the manufactured, processed, assembled or commingled goods;
- all proceeds in relation to the Goods referred to in (a) and (b) including money, accounts receivable and insurance proceeds; and
- any goods for which any of the Goods referred to in (a) and (b) have been exchanged or traded or that have been acquired in lieu of those Goods, as security for any and all amounts payable by the Account Holder to Porter Group in respect of the Goods.

24.4 The Account Holder must immediately notify Porter Group in writing of any change in the Account Holder's name or other details and shall provide all information required by

Porter Group in order to ensure that any security interest granted to Porter Group by the Account Holder is and remains perfected.

24.5 The Account Holder shall not enter into any security agreement with any other party that permits that party to register a security interest in respect of the Goods or any proceeds of those Goods.

24.6 The Account Holder 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 any security interest granted by the Account Holder in favour of Porter Group.

24.7 The Account Holder shall be responsible for all costs, expenses and other charges incurred, expended or payable by Porter Group in relation to the filing of any financing statement or a financing change statement.

24.8 For the purposes of the PPSA only and without derogating from Porter Group's rights under this Agreement:

- where Porter Group takes possession of the Goods upon default of the Account Holder, Porter Group may, should it choose to do so:
 - sell the Goods by any means and at any time;
 - deduct from any proceeds of sale, all costs incurred in relation to the sale;
 - retain for its own use and benefit any monies payable by the Account Holder for those Goods that remain outstanding; and
 - apply any balance to monies owed by the Account Holder on any other Porter Account (even if not due and payable) to the extent to which Porter Group has priority over other security interests;
- where there is a shortfall on any sale or attempted sale of the Goods, Porter Group continues to hold its security interest in the Goods and may recover the shortfall from the Account Holder.

24.9 For the purposes of the PPSA only and without derogating from Porter Group's rights under this Agreement:

- where Porter Group takes possession of the Goods upon default of the Account Holder, Porter Group may, should it choose to do so:
 - lease the Goods by any means and at any time;
 - deduct from any lease charges, all costs incurred in relation to the lease;
 - retain for its own use and benefit any monies payable by the Account Holder for those Goods that remain outstanding; and
 - apply any balance to monies owed by the Account Holder on any other Porter Account (even if not due and payable) to the extent to which Porter Group has priority over other security interests;
- where there is a shortfall on any lease or attempted lease of the Goods, Porter Group continues to hold its security interest in the Goods and may recover the shortfall from the Account Holder.

24.10 The Account Holder waives its rights 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 the parties agree that those provisions do not apply to this Agreement or any security interest created pursuant to this Agreement.

24.11 Each party agrees that it will not disclose information of the kind referred to section 275(1) of the PPSA and that this clause constitutes a confidentiality agreement for the purposes of section 275 of the PPSA and other provisions of the PPSA. The Account Holder agrees to waive any right it may have, or but for this clause 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.

25. Security

25.1 The Account Holder and the Guarantors charge all of their present and after acquired property and any property leased, controlled or in the Account Holder's or the Guarantor's possession or in which they otherwise have rights under the PPSA that allow them to grant a security interest in that property (other than property that is used predominantly for personal, domestic or household purposes and which would not be subject to section 115 of the PPSA) in favour of Porter Group ("General Security Interest") as security for any monies owing or which may become owing to Porter Group from time to time under this Agreement and any Other Agreement. The provisions of clause 24 apply to this General Security Interest (to the extent relevant) including for clarity any acknowledgments by the Account Holder which are binding upon the Guarantors as if they were the Account Holder.

25.2 Without limiting the provisions of clause 25.1, Porter Group may from time to time require the Account Holder and/or the Guarantors to provide additional security for the Account Holder's Porter Accounts. The provisions of clause 24 will apply to such additional security in all respects including again for clarity any acknowledgments by the Account Holder which are binding upon the Guarantors as if they were the Account Holder. For the avoidance of doubt, execution of securities of any nature between the Account Holder and/or the Guarantors and Porter Group under this clause shall not in any way affect or prejudice Porter Group's rights whether under this Agreement or otherwise.

25.3 Without limiting the security set out in this clause, the Account Holder and the Guarantors each agree that:

- the Account Holder and the Guarantors charge all of their right, title and interest in any land in which they (whether individually, together or jointly with others) have an interest ("Land"), whether now or at any time in the future, to Porter Group as security for the due performance of all of their obligations under this Agreement;
- the Account Holder and the Guarantors consent to the lodgement of a caveat or such other document as Porter Group consider necessary to protect its interest over all or any part of such Land; and

- if so requested by Porter Group, the Account Holder and/or the Guarantors will at their cost execute, and take all steps in their power to procure the registration of, a mortgage over all or any part of such Land in a form that Porter Group may reasonably direct and which incorporates the Standard Mortgage Terms. The Account Holder and the Guarantors acknowledge that Porter Group (or any of their directors) may execute such a mortgage in accordance with clause 28 if the Account Holder or a Guarantor (as the case may be) neglects or refuses to comply with their obligations under this clause.
- 25.4 Despite any other provision of this Agreement, the provisions of clause 25.3(b) and (c) above will be of no effect unless and until an event of default has occurred under clause 13 of this Agreement, or the party concerned consents to them becoming effective.

26. Insurance

26.1 In respect of any hire of Goods if it has been indicated on this Agreement that the Account Holder will insure the Goods, and in respect of all other Transactions:

- The Account Holder must at its cost arrange for all insurances that a prudent owner would take out in respect of the Goods and their use on terms and with an Australian insurance company approved by Porter Group, including but not limited to insurance against fire, theft, accident and damage while in the Account Holder's possession. Such insurance policies must show Porter Group as an insured 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 Account Holder. The Account Holder must ensure that at least 14 days prior written notice is given to Porter Group of the expiry or proposed termination of such insurance policies.

- (b) In addition to the insurance requirements set out in clause 26.1(a) and any other requirement specified in writing by Porter Group from time to time, the Account Holder must:
- (i) keep the Goods insured for their full replacement value under an insurance policy that provides for a maximum excess of \$5,000 (which is payable by the Account Holder) and coverage for hire charges, transit costs and public liability for a minimum of \$10,000,000;
- (ii) (where the Goods are hired) ensure that the insurance policy includes, at a minimum, coverage for Porter Group's loss of revenue while the Goods are being repaired or replaced for up to 3 months, calculated for the purposes of this clause by multiplying the hourly rate specified in the Hire Rate Booklet by 8 hours per day, 5 days per week, for 3 calendar months;
- (iii) immediately notify Porter Group of any circumstances giving rise to a claim for loss, damage or destruction of the Goods;
- (iv) make a claim at any time the Goods are destroyed or damaged or at any other time directed as by Porter Group; and
- (v) agree to Porter Group, in the place of the Account Holder, making a claim or continuing any claim already made by the Account Holder, and agree to transfer to Porter Group, at Porter Group's request, all of its rights and entitlements in this regard.
- (c) If any money is paid to the Account Holder by the insurance company pursuant to any claim or otherwise, the Account Holder shall be deemed to hold that money in trust for Porter Group and shall immediately pay such money to Porter Group.
- (d) If, for any reason whatsoever, the Account Holder is in breach of this clause, and does not hold the required insurance (or any insurance at all), or the Account Holder's insurer does not pay out on the relevant policy, the Account Holder agrees that it will personally be responsible for and liable to Porter Group for all monies owing to it as set out in this Agreement.
- (e) The Account Holder must, on the date of signing of this Agreement and at any other time requested by Porter Group, provide to Porter Group evidence of insurances taken out. If the Account Holder does not provide such evidence, or does not provide evidence to the satisfaction of Porter Group, Porter Group may (at its discretion):
- (i) insure the Goods on terms determined by Porter Group, in which case the Account Holder will be liable for all costs and fees incurred by Porter Group; or
- (ii) where the Goods are hired, provide Limited Damage Waiver for the Goods with effect from the commencement date of this Agreement or such other date as is specified by Porter Group on the terms set out in clause 26.2 in which case the Account Holder will be liable for the surcharge set out in that clause together with all other costs and fees incurred by Porter Group.
- (f) Porter Group may in its sole discretion elect to utilise any insurance proceeds towards the repair of the Goods or alternatively terminate this Agreement and apply the moneys received towards satisfying the obligations of the Account Holder. Termination will not affect any rights, remedies, obligations or liabilities of either party for any act, omission, or other matter whatsoever arising prior to the termination of this Agreement, including without limitation Porter Group's right to claim from the Account Holder for all monies owing under this Agreement, any interest owing, and any other obligations of the Account Holder under any Other Agreement.
- (g) The Account Holder will remain liable for any shortfall between the insurance proceeds and the amount payable to Porter Group under this Agreement.
- 26.2** Subject to clause 26.2(e), in respect of any hire of Goods if it has been indicated in this Agreement that Limited Damage Waiver will apply for those Goods (or if no selection has been made), then:
- (a) A surcharge of 10% of the hire charges will be added to the hire charges, such surcharge to be divided into equal amounts and spread across the term of the hire, and the Account Holder will make such payments to Porter Group at the same time and in the same manner as the hire charges.
- (b) Subject to clause 26.2(d), where the Goods suffer loss or damage (regardless of whether the Account Holder, persons under the control of the Account Holder or any other party has caused or contributed to that loss or damage), the Account Holder's liability to Porter Group in relation to such loss or damage is limited to the total of the following:
- (i) Porter Group's loss of revenue, calculated for the purposes of this clause by multiplying the hourly rate specified in the Hire Rate Booklet, by 8 hours per day, 5 days per week, for a maximum of 3 calendar months;
- (ii) any fines, penalties, infringement fees or other similar costs imposed by any authority having jurisdiction to do so (irrespective of whether the Account Holder has used the Goods for an authorised or unauthorised purpose); 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; or
- (B) where Porter Group is not so insured with a third party, \$5,000.
- (c) The provisions of clause 26.2(b) will not apply if, before, on or after the date the Goods suffer the loss or damage, any one or more of the following apply:
- (i) the Account Holder is in breach of this Agreement including, without limitation, payment of the Limited Damage Waiver surcharge pursuant to clause 26.2(a);
- (ii) the Account Holder is in breach of any Other Agreement;
- (iii) the Account Holder is in breach of any applicable laws or regulations;
- (iv) the loss or damage is caused or contributed to by the Account Holder's or any other person's (whether permitted or otherwise by the Account Holder) intentional, malicious, reckless, dishonest, fraudulent or deliberate act or omission, or an act or omission of gross negligence;
- (v) the loss or damage is caused or contributed to by the Account Holder, or any other person (whether permitted or otherwise by the Account Holder), operating the Goods under the influence of drugs, alcohol or other prohibited substance; using the Goods for other than their intended purpose, or subjecting the Goods to pollution or contamination;
- (vi) the loss or damaged is caused or contributed to by the Account Holder, or any other person (whether permitted or otherwise by the Account Holder), operating the Goods without being licensed to do so, or failing to comply with any licence conditions;
- (vii) the loss or damage is caused or contributed to by the Account Holder, or any other person (whether permitted or otherwise by the Account Holder), operating the Goods while having been directed by a medical or other professional person not to operate the Goods or any similar goods or equipment due to any condition, illness, medical treatment, or medication;
- (viii) the Goods are seized by any authority having jurisdiction to do so;
- (ix) the loss or damage to the Goods is caused or contributed to by an event which the Account Holder could have prevented or mitigated by taking reasonable steps to prevent the loss or damage occurring;
- (x) the loss or damage is caused or contributed to by the Account Holder, or any other person (whether permitted or otherwise by the Account Holder), operating the Goods in connection with hazardous stock, merchandise, chemicals or in other hazardous situations;
- (xi) the loss or damage is caused or contributed to by the Account Holder, or any other person (whether permitted or otherwise by the Account Holder), operating the Goods for the purposes of a protest, civil disruption, unlawful purpose, or criminal activity;
- (xii) the loss or damage is caused or contributed to by the Account Holder, or any other person (whether permitted or otherwise by the Account Holder), operating the Goods for the purpose of carrying passengers; or

- (xiii) the Account Holder, or any other person operating the Goods (whether permitted or otherwise by the Account Holder), does not provide Porter Group or the police with all assistance and information required to fully investigate and determine the circumstances surrounding the loss or damage, or does not do anything reasonably required by Porter Group to mitigate any loss by Porter Group, or fails to report to Porter Group or the police if required by Porter Group (including failing to take any required breath or blood test for drug or alcohol use).
- (d) The Account Holder acknowledges that the Limited Damage Waiver applies only to loss or damage to the Goods and does not limit, prejudice, or affect any other obligation the Account Holder has or may have to Porter Group. The Account Holder must effect and maintain any other insurance reasonably required by Porter Group, including without limitation public liability insurance for a minimum of \$10,000,000.
- (e) Notwithstanding any indication on this Agreement or otherwise, Porter Group reserves the right at time before or during the hire to decline or cancel Limited Damage Waiver, in which case the Account Holder must insure the Goods to Porter Group's satisfaction in accordance with clause 26.1.
- (f) The Account Holder acknowledges that Limited Damage Waiver is not a contract of insurance.

27. Appointment of Receivers

27.1 Following the occurrence of a default by the Account Holder under this Agreement (including by virtue of clause 12), Porter Group may appoint 1 or more persons to be jointly, severally or jointly and severally a Receiver of:

- (a) any Goods;
- (b) any Land or other property subject to the General Security Interest granted under clause 25; and/or
- (c) any property the subject of any additional security granted by the Account Holder or a Guarantor from time to time, (collectively, the "**Secured Property**").

27.2 Unless otherwise prevented by law, a Receiver will be the agent of the Account Holder in respect of Security Property owned by it or in which it has rights and the agent of the Guarantor in respect of Secured Property owned by it or in which it has rights. The Account Holder or the Guarantor (as the case may be and referred to in the rest of this clause as the "**Security Provider**") agrees to be responsible for each of the Receiver's acts and omissions.

27.3 Porter Group may appoint a Receiver under this Agreement notwithstanding the bankruptcy or insolvency of the Security Provider, may by giving notice to a Receiver remove the Receiver absolutely or in relation to any part of the Secured Property, and may appoint any person to replace any Receiver who has been removed or who has retired or died.

27.4 Porter Group may fix the remuneration of a Receiver and at any time by agreement with the Receiver vary his remuneration. A Receiver may also (if permitted by Porter Group) in addition to any fee or other charge, charge a commission in connection with the management of and collection of income from the Secured Property.

27.5 The Security Provider:

- (a) must pay and the Receiver may retain out of money received by him his remuneration and any permitted commission and (except where they arise because of the willful misconduct or gross negligence of the Receiver) the costs, charges and expenses incurred by him as Receiver and money on account of other liabilities incurred actually or contingently by him as Receiver; and
- (b) must on demand reimburse Porter Group any payment made to the Receiver on account of his fees, commission or any cost or expense incurred by him.
- 27.6** Subject to any express limitation in his appointment a Receiver may in his discretion exercise the same powers and rights as those of Porter Group under this Agreement and at general law (including any equitable or statutory powers and rights). In addition, a Receiver has the right in respect of the Secured Property and the Security Provider's business to do anything (whether alone or with any other person) that the Security Provider could do as if the Receiver had full legal and beneficial ownership of the Secured Property and carried on the Security Provider's business for the Receiver's own benefit. Without limiting the foregoing, a Receiver may:
- (a) enter any premises where all or part of the Secured Property is located, or where Porter Group believes it is located, and seize all or any part of the Secured Property;
- (b) enter into possession and control of, manage and use the Secured Property;
- (c) receive rents, profits and other payments in relation to the Secured Property;
- (d) carry on, contract out, lease or licence any business in relation to the Secured Property;
- (e) take any action it considers necessary or desirable to preserve, maintain or enhance the Secured Property and the Security Provider's business;
- (f) effect and maintain any insurance of or in relation to the Secured Property or the Security Provider's business;
- (g) exercise the rights of the Security Provider in connection with the Secured Property or the Security Provider's business;
- (h) perform obligations of the Security Provider in connection with the Secured Property and the Security Provider's Business under this Agreement or otherwise;
- (i) sell, surrender, dispose of, realise or convert into money the Secured Property on any terms and in any manner;
- (j) grant upon any terms and in any manner an option to purchase, lease or acquire an interest in the Secured Property;
- (k) in the name and on behalf of the Security Provider otherwise, borrow or obtain any form of financial accommodation upon any terms in connection with the exercise of any power under this Agreement or at general law;
- (l) delegate in any manner any of its powers and rights under this Agreement or at general law;
- (m) upon any terms and in any manner employ and terminate the employment of persons and engage and terminate the engagement of agents, contractors, consultants, advisers, auctioneers and other persons in connection with its powers under this Agreement or at general law;
- (n) expend money, assume obligations and incur liabilities in connection with any power under this Agreement or at general law; and
- (o) do anything else in Australia and elsewhere that Porter Group considers necessary, desirable or convenient to be done in connection with the recovery of Secured Property and anything incidental or conducive to the exercise of any other power under this Agreement or general law.
- 27.7** The Security Provider indemnifies a Receiver against any claim or loss arising other than because of fraud or gross negligence, and acknowledges that neither Porter Group nor a Receiver will be liable for any loss which may arise because of any omission or delay in the exercise of any of their respective powers under this Agreement or at law.

28. Power of Attorney

28.1 The Account Holder and each Guarantor (each a "**Principal**") severally appoint:

- (a) each member of the Porter Group;
- (b) each of the directors of each member of the Porter Group from time to time; and
- (c) each person holding any office within the Porter Group that has in its title the word "manager".

jointly and severally as their respective attorneys, (each an "Attorney") for so long as there are monies owing (whether actually or contingently) or the Account Holder or a Guarantor has unperformed obligations under this Agreement or any Other Agreement ("Period").

28.2 This power of attorney is given for valuable consideration and is irrevocable in respect of each Attorney for the duration of the Period. This power of attorney is "a power of attorney for security" for the purposes of Division 6 of Part 2 of the *Powers of Attorney Act 2014* (Vic) and section 10 of the *Powers of Attorney Act 1998* (Qld) and "a power of attorney given to secure a proprietary interest" for the purposes of section 9 of the *Powers of Attorney Act 1980* (NT).

28.3 Any person including the Registrar of Titles of Western Australia or any other registration authority in Australia or elsewhere, dealing with the Attorney or a person purporting to be an attorney under this power, is:

- (a) entitled to rely on execution of any document by that person as conclusive evidence that:
- (i) the person holds the office or category of office set out in this power of attorney;
 - (ii) this power of attorney has come into effect;
 - (iii) this power of attorney has not been revoked;
 - (iv) the right or power being exercised or being purported to be exercised is properly exercised and that the circumstances have arisen to authorise the exercise of that right and power; and
- (b) not required to make any inquiries in respect of any of the above matters.

28.4 The Principal appoints the Attorney at any time after a default occurs under clause 13:

- (a) to do anything which the Attorney thinks necessary or desirable to give effect to this Agreement, including the signing of any documents and entering any premises where the Goods are, or are reasonably assumed by Porter Group, to be;
- (b) to mortgage all or any part of the Land, and authorises the Attorney to execute in its name and on its behalf any instrument of mortgage incorporating the Standard Mortgage Terms over such Land and any document which is ancillary or related to such a mortgage; and
- (c) to do any other thing which, in the Attorney's absolute discretion, is necessary or expedient to give effect to the powers granted under this power of attorney.

28.5 The Principal:

- (a) declares that any act of an Attorney in the exercise of its powers granted under this power of attorney is as valid as if it had been done by the Principal; and
- (b) undertakes to ratify, confirm and be bound by any act of the Attorney in the exercise of its powers granted under this power of attorney.

28.6 The Principal indemnifies each 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.

29. Miscellaneous

29.1 Force Majeure: Porter Group will not be in breach of this Agreement and will not be liable to the Account Holder or any Guarantor for costs or delay attributable in whole or in part to action by any government or governmental agency or other external agency or event, including, without limitation, natural disaster or emergency, industrial action, civil disorder, equipment failure, banking or computer system disruption or interruption of power supplies or any other event beyond Porter Group's control.

29.2 Certificates: A certificate by Porter Group as to any amounts owing or payable under this Agreement will (in the absence of manifest error) be conclusive evidence for all purposes including legal proceedings.

29.3 Time of Essence: Unless otherwise stated in this Agreement, time will be of the essence for the performance of any obligations of the Account Holder or any Guarantor.

29.4 Severance: If any provision of this Agreement is 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 will not in any way be affected or impaired.

29.5 Survivorship: Termination of this Agreement for any reason will not affect the rights and obligations of the parties as are intended (expressly or impliedly) to survive such termination.

29.6 Waiver: No delay, neglect or forbearance by either party in enforcing against the other party any provision of this Agreement will be a waiver, or in any way prejudice any right, of that party. None of the provisions of this Agreement will be considered to be waived by a party except when such waiver is given in writing and signed by 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 that party.

29.7 No Reliance: The Account Holder acknowledges that it has not been induced to enter this Agreement by any representation made by or on behalf of Porter Group and relies solely on its own judgement in accepting any Goods under this Agreement.

29.8 Entire Agreement:

- (a) Subject to clauses 1.2 and 12, this Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior discussions and agreements covering the subject matter of this Agreement.
- (b) The provisions of this Agreement apply notwithstanding any provision to the contrary expressed or implied in any of the Account Holder's terms of trade or other documents.

29.9 Assignment

(a) The Account Holder shall not transfer, assign or otherwise deal with its rights, powers or obligations under this Agreement without Porter Group's prior written consent. A change in the effective management or control of the Account Holder will be deemed an assignment for the purposes of this clause.

(b) Porter Group and its successors or assigns may in its absolute discretion without the consent of or notice to the Account Holder, transfer, assign, novate or otherwise deal with its rights, powers or obligations under this Agreement to any other person.

27.10 Additional Information: Porter Group may at any time, whether before on or after this Agreement forms a binding agreement between the parties, request such additional information as it considers necessary from the Account Holder. The Account Holder agrees to provide any such information promptly following a request.

27.11 Other Rights: Nothing in this clause affects any other rights Porter Group may have at law or in equity as against the Account Holder. Rights and remedies specified in this Agreement are without prejudice to any other rights or remedies available to Porter Group.

27.12 Transport: The Account Holder acknowledges that it is liable for any haulage or transport costs in relation to any delivery of the Goods by Porter Group.

27.13 Taxes and Duties: The Account Holder will be responsible for all taxes and duties imposed on or in connection with this Agreement.

27.14 Acceptance of Terms: If the Account Holder does not sign this Agreement, the Account Holder is deemed to have accepted these terms and conditions upon the earlier of its use of the Porter Account or acceptance of the Goods.

27.15 Governing Law and Jurisdiction: This Agreement shall be governed by the laws of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland.

27.16 Costs and Expenses:

- (c) The Account Holder must pay Porter Group's costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of Porter Group's rights, remedies and powers under this Agreement, as well as the costs of and

incidental to, the negotiation, preparation, execution and enforcement of any additional security between the parties.

(d) The Account Holder must pay to Porter Group on demand any expenses incurred by it in connection with this Agreement, including without limitation any moneys which Porter Group may see fit to expend to make good any failure by Account Holder to comply with any obligation under this Agreement and any other expense Porter Group may incur in the enforcement or protection of its rights under this Agreement or in the Goods including:

- (i) insurance premiums paid by Porter Group;
 - (ii) moneys paid by Porter Group releasing any lien claimed (whether justifiable or not) over the Goods;
 - (iii) costs of dismantling or removing the Goods from any premises; and
 - (iv) Porter Group's expenses of retaking or attempting to retake possession of the Goods.
- All moneys so expended shall bear interest at the Default Interest Rate, such interest to accrue on a daily basis.