

## 1. Definitions

- 1.1 "ACL" means the Australian Consumer Law which is contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any other equivalent legislation (such as the Fair Trading Acts (or equivalent legislation) in each State and Territory);
- 1.2 "Client" means the person/s buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Consumer" has the meaning given to in the ACL;
- 1.4 "Consumer Guarantees" means any consumer or statutory guarantees applicable to the Consumers under the ACL;
- 1.5 "Contract" means the contract between the supplier and the client which consists of these terms and conditions, any Credit Application and all Order placed by the client which have been accepted by the Supplier under those terms and conditions
- 1.6 "Equipment" means all Equipment including any accessories supplied on hire by the Supplier to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Supplier to the Client.
- 1.7 "Goods" means all Goods or Services supplied by the Supplier to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other)."
- 1.8 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Supplier to the Client.
- 1.9 "Order" means any order for Goods, Services or Equipment placed by the Client.
- 1.10 "Price" means the Price payable for the Goods and/or Equipment hire as agreed between the Supplier and the Client in accordance with clause 6 below.
- 1.11 "Services" means any services supplied by the Supplier to the Client at the Client's request from time to time.
- 1.12 "Supplier" means Bradley Garrett Family Trust & Daniel Garrett Family Trust & R & P Garrett Family Trust T/A Sitecraft, its successors and assigns or any person acting on behalf of and with the authority of Bradley Garrett Family Trust & Daniel Garrett Family Trust & R & P Garrett Family Trust Trading as "Sitecraft".

## 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an Order for or accepts delivery of the Goods/Equipment.
- 2.2 These terms and conditions may only be amended with the Supplier's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Supplier.
- 2.3 The Supplier shall only be responsible for their performance to the party that contracts them to undertake the Services or to provide the Goods / Equipment and shall not be responsible to any third party irrespective of their relationship to the Client.
- 2.4 Where the Client requesting or organising the Supplier to provide Services, Goods or Equipment is acting with or on behalf of any third party and that third party is intended to be responsible for the payment (or any part thereof) of the Price then in the event that the third party does not pay for the Services, Goods or Equipment when due, the Client acknowledges that they shall be liable for the payment of the Price as if they had contracted the provision of the Services, Goods or Equipment on their own behalf.
- 2.5 Where the Supplier gives advice, recommendations, information, assistance or service to the Client or the Client's agent, regarding the Goods, Equipment or Services then it is given in good faith and the Supplier shall not be liable in any way whatsoever for any damages, losses or costs however arising resulting from the Client relying on the same.
- 2.6 The Client acknowledges and agrees that it is their responsibility to obtain any necessary approvals or permits from local council or government for the Services. The Supplier shall not be held liable for the Client's failure to comply with this clause.
- 2.7 These terms and conditions
- (a) supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods, Equipment or Services including, but not limited to, those relating to the performance of the Goods, Equipment or Services or the results that ought to be expected from using the Goods, Equipment or Services; and
- (b) override any quotes, invoices or other documentation exchanged between the parties whether or not such documents expressly provide that they override these terms and conditions.
- 2.8 Unless the Supplier otherwise agrees in writing, these terms and conditions are the only terms which shall apply to all Goods, Equipment or Services supplied by the Supplier.
- 2.9 The Client agrees that these terms and conditions will in all circumstances prevail over the Client's terms and conditions of purchase (if any).

## 3. Orders

- 3.1 The Supplier has sole discretion to accept or reject any Order, any part of an Order, or any variation or modification of an Order, requested by the Client.
- 3.2 The Supplier has sole discretion to accept or reject any Order cancellation request by the Client. If a cancellation request is accepted by Supplier, the Client will be liable for any loss or damage (whether indirect, direct or consequential) incurred by Supplier in respect of that Order (including, without limitation, payment for any Goods ordered by Supplier from its suppliers relating to that Order or any costs incurred by Supplier as at the date of cancellation in respect of the Services).

## 4. Change in Control

The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's breach of this clause.

**5. Authorised Representatives**

- 5.1 Unless otherwise limited as per clause 5.2 the Client agrees that should the Client introduce any third party to the Supplier as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Goods/Equipment or Services on the Client's behalf and/or to request any variation to the Services on the Client's behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies the Supplier in writing that said person is no longer the Client's duly authorised representative).
- 5.2 In the event that the Client's duly authorised representative as per clause 5.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise the Supplier in writing of the parameters of the limited authority granted to their representative.
- 5.3 The Client specifically acknowledges and accepts that they will be solely liable to the Supplier for all additional costs incurred by the Supplier (including the Supplier's profit margin) in providing any works, Goods, Equipment Services or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 5.2 (if any)).

**6. Price and Payment**

- 6.1 At the Supplier's sole discretion the Price shall be either:
- (a) the Suppliers current price at the date of the delivery of the Goods/Equipment or the provision of the Services according to the Supplier's current price list; or
  - (b) the Supplier's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 The Supplier reserves the right to change the Price if a variation to the Supplier's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to the Supplier in the cost of taxes, levies, materials and labour) will be charged for on the basis of the Supplier's quotation and will be shown as variations on the invoice.
- 6.3 At the Supplier's sole discretion the client may be required to pay a deposit, in which case the Client must pay the deposit in accordance with the requirements specified by the Supplier.
- 6.4 Time for payment of the Price for Goods, Services or Equipment being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which may be at the Supplier's option and at its sole discretion:
- (a) before delivery of the Goods/Equipment or performance of the Services;
  - (b) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Supplier.
- 6.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card or by any other method as agreed to between the Client and the Supplier.
- 6.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Goods/hire of the Equipment or the provision of Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6.7 Without prejudice to any other rights or remedies of the Supplier, if the Client fails to make (whether in full or in part) any payment required under this Contract on or before the due date for payment, then:
- (a) the Supplier may charge the Client interest on the unpaid amount at 2% per annum above the average of the most recent prime rate, indicator rate, or reference rate (however described) for business overdraft published by Commonwealth Bank of Australia; and
  - (b) such interest will accrue from the date payment was due to the date payment is made, will be calculated daily and capitalised monthly and must be paid by the Client upon demand by the Supplier.

**7. Delivery of Goods/Equipment**

- 7.1 Delivery ("**Delivery**") of the Goods/Equipment is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods/Equipment at the Supplier's address; or
  - (b) the Supplier (or the Supplier's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.
- 7.2 At the Supplier's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 7.3 The Supplier may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.4 Any time or date given by the Supplier to the Client is an estimate only. The Client must still accept delivery of the Goods/Equipment even if late and to the fullest extent permitted by law the Supplier will not be liable for any loss or damage incurred by the Client as a result of the delivery being late or not being made at all.

**8. Risk to Goods**

- 8.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
- 8.3 The Client acknowledges and accepts that the supply of Goods for accepted Orders may be subject to availability and if, for

any reason, Goods are not or cease to be available, the Supplier reserves the right to vary the Price with alternative Goods as per clause 6.2. The Supplier also reserves the right to halt all Services until such time as the Supplier and the Client agree to such changes.

**9. Accuracy of Clients Plans and Measurements for Orders**

9.1 The Supplier shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Supplier accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

9.2 In the event the Client gives information relating to measurements and quantities of the Goods required to complete the services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or Supplier places an order based on these measurements and quantities. The Supplier accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

**10. Access**

The Client shall ensure that the Supplier has clear and free access to the work site at all times to enable them to undertake delivery of the Goods/Equipment and the performance of the Services. The Supplier shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless and to the extent caused solely and directly by the negligence of the Supplier.

**11. Title to Goods**

11.1 The Supplier and the Client agree that ownership of the Goods shall not pass until:

- (a) the Client has paid the Supplier all amounts owing to the Supplier; and
- (b) the Client has met all of its other obligations to the Supplier.

11.2 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

11.3 It is further agreed that:

- (a) until ownership of the Goods passes to the Client in accordance with clause 11.1 that the Client is only a bailee of the Goods and must return the Goods to the Supplier on request;
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c)
- (d) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand;
- (e) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs;
- (f) the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods;
- (g) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred;
- (h) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier; and
- (i) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

**12. Personal Property Securities Act 2009 ("PPSA")**

12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

12.2 The Client acknowledges and agrees that the Contract constitutes a security agreement for the purposes of the PPSA and creates a security interest in all Goods/Equipment that has previously been supplied and that will be supplied in the future by the Supplier to the Client.

12.3 The Client undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to:
  - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (ii) register any other document required to be registered by the PPSA; or
  - (iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.312.3(a)(ii);
- (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods/Equipment charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment in favour of a third party without the prior written consent of the Supplier;
- (e) immediately advise the Supplier of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.

12.4 The Supplier and the Client agree that section 125 of the PPSA does not apply to the security agreement created by these terms and conditions.

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- 12.5 The Client waives their rights to receive notices under sections 95, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 The Supplier does not need to give the Client any notice required under the PPSA (including, without limitation, a notice of a verification statement under section 157 of the PPSA) unless the requirement for the notice cannot be excluded.
- 12.8 The Client must unconditionally ratify any actions taken by the Supplier under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 12.10 If at any time the Supplier determines that the Contract (or any of the transactions contemplated by or under it) creates a security interest in its favour over any personal property, the Supplier may apply for any registration, or give any notification, in connection with that security interest and the Client must promptly, upon the Supplier's request, do any thing (including, without limitation, signing and producing documents, getting documents completed or signed, obtaining consents and supplying information) to:
- (a) provide more effective security over the relevant personal property;
  - (b) ensure that any such security interest in favour of the Supplier:
    - (i) is at all times enforceable, perfected (including, where applicable, by control as well as by registration) and otherwise effective; and
    - (ii) ranks as a first priority security interest;
  - (c) enable the Supplier to prepare and register a financing statement or a financing change statement or give any notification in connection with that security interest; and
  - (d) enable the Supplier to exercise any of its rights or perform any of its obligations in connection with any such security interest or under the PPSA.
- 12.11 Neither party will disclose to a person or entity that is not a party to the Contract information of the kind mentioned in section 275(1) of the PPSA unless section 275(7) of the PPSA applies or that information is publicly available.
- 13. Defects, Warranties and Returns, ACL and Limitations of liability**
- 13.1 The Client must inspect the Goods/Equipment on delivery and must within seven (7) days of delivery notify the Supplier in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Supplier to inspect the Goods/Equipment.
- 13.2 Clause 13.313.6 and 13.4 shall not apply in respect of any Consumer Guarantee claims made by a Consumer, with the exception that these provisions will apply to such claims where the Goods/Equipment or Services are acquired by a Consumer at a price not exceeding \$40,000 and the Goods/Equipment or Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption.
- 13.3 To the extent permitted by law, the Supplier's liability for any breach of a Consumer Guarantee or for any other loss or damage suffered or incurred by the Client, howsoever caused, which arises out of or in connection with the supply of the Goods/Equipment or Services under these terms and conditions:
- (a) in the case of Goods / Equipment, is limited to:
    - (i) the replacement of the Goods / Equipment or the supply of equivalent Goods / Equipment;
    - (ii) the repair of the Goods / Equipment;
    - (iii) the payment of the cost of replacing the Goods / Equipment or of acquiring equivalent Goods / Equipment; or
    - (iv) the payment of the cost of having the Goods / Equipment repaired; or
  - (b) in the case of Services, is limited to:
    - (i) the resupply of the services; or
    - (ii) the payment of the cost of resupply of the services;
  - (c) in any other case, will be negated absolutely, such that the Supplier will have no liability to the Client.
- 13.4 To the extent permitted by law, the Client acknowledges and agrees that the Supplier excludes all liability whatsoever to the Supplier arising out of or in any way connected with the Contract for any loss of profits, loss of business revenue, failure to realise expected profits or savings, overhead costs, loss of goodwill, loss of reputation, loss of value in any intellectual property, damages or liquidated sums payable pursuant to other agreements, other economic losses, or any consequential or indirect losses of any kind howsoever arising and whether caused by breach of statute, breach of contract, negligence or other tort.
- 13.5 To the extent permitted by law, all warranties and terms implied by statute, the common law, equity, trade, custom or usage or otherwise, in relation to the supply of the Goods / Equipment, are expressly excluded.
- 13.6 The Client agrees and declares for the Supplier's benefit that the Client has relied on its own skill and judgment in entering into the Contract, and has not relied on any statement or representation given by any person on behalf of the Supplier.
- 13.7 Subject to this clause 13.1, and subject to the ACL, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 13.1; and
  - (b) the Supplier has agreed that the Goods/Equipment are defective; and
  - (c) the Goods/Equipment are returned within a reasonable time at the Client's cost (if that cost is not significant); and
  - (d) the Goods/Equipment are returned in as close a condition to that in which they were delivered as is possible.
- 13.8 Notwithstanding clauses 13.1 to 13.6 but subject to the ACL, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods/Equipment;
  - (b) the Client using the Goods/Equipment for any purpose other than that for which they were designed;
  - (c) the Client continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Client failing to follow any instructions or guidelines provided by the Supplier;
  - (e) fair wear and tear, any accident, or act of God.

- 13.9 The Supplier may in its absolute discretion accept non-defective Goods for return in which case the Supplier may require the Client to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.
- 13.10 Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.
- 14. Intellectual Property**
- 14.1 Where the Supplier has designed, drawn or developed Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Supplier.
- 14.2 The Client warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
- 14.3 The Client agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods/Equipment which the Supplier has created for the Client.
- 15. Default and Consequences of Default**
- 15.1 If the Client owes the Supplier any money the Client shall indemnify the Supplier on demand against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).
- 15.2 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate any Order for the supply of Goods/Equipment or Services to the Client or may terminate the Contract in its entirety. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.
- 15.3 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to terminate this Contract in its entirety or cancel all or any part of any Order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 16. Compliance with Laws**
- 16.1 The Client and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 16.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 16.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 17. Cancellation**
- 17.1 The Supplier may cancel any Order or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are delivered by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any money paid by the Client for the Goods/Equipment. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation and the Client hereby releases the Supplier from any liability whatsoever to for such loss or damage.
- 17.2 In the event that the Client cancels delivery of Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 17.3 Cancellation of Orders made to the Client's specifications, or for non-stocklist items, will not be not be accepted under any circumstances, regardless of whether production has commenced.
- 18. Privacy Act 1988**
- 18.1 The Client agrees for the Supplier to obtain from a credit reporting body, credit reporting information containing personal credit information about the Client in relation to credit provided by the Supplier.
- 18.2 The Client agrees that the Supplier may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting body for the following purposes:
- (a) to assess an application by the Client; and/or
  - (a) to notify other credit providers of a default by the Client; and/or
  - (b) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (c) to assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 18.3 The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.
- 18.4 The Client agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other purposes as shall be agreed between the Client and Supplier or required by law from time to time):
- (a) the provision of Goods/Equipment; and/or
  - (b) the marketing of Goods/Equipment by the Supplier, its agents or distributors; and/or
  - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or

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- (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 18.5 The Supplier may give information about the Client to a credit reporting body for the following purposes:
- (a) to obtain a consumer credit report about the Client;
  - (b) allow the credit reporting body to create or maintain a credit information file containing information about the Client.
- 18.6 The information given to the credit reporting body may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
  - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
  - (c) The Supplier acknowledges that, upon request by the Client, the Supplier must provide access to the credit eligibility information the Supplier holds about an individual. - Under the new Part III A of the Privacy Act, you must let individuals know that they are able to access their credit eligibility information
- 19. Unpaid Supplier's Rights**
- 19.1 Where the Client has left any item with the Supplier for repair, modification, exchange or for the Supplier to perform any other service in relation to the item and the Supplier has not received or been tendered the whole of any moneys owing to it by the Client, the Supplier shall have, until all moneys owing to the Supplier are paid:
- (a) a lien on the item; and
  - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 19.2 The lien of the Supplier shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Supplier having been obtained against the Client.
- 20. General**
- 20.1 The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 20.2 The Contract shall be governed by the laws of the state of Victoria in which the Supplier has its principal place of business, and is subject to the jurisdiction of the courts of Melbourne in that state.
- 20.3 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 20.4 The Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 20.5 The Client agrees that the Supplier may amend these terms and conditions at any time. If the Supplier makes a change to these terms and conditions, then that change will take effect from the date on which the Supplier notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Supplier to provide Goods/Equipment to the Client.
- 20.6 Neither party shall be liable for any default (other than a payment obligation) due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 20.7 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it. If the Client comprises of more than one person a promise, agreement, representation or warranty by the Client binds each them jointly and severally;

### Additional Terms & Conditions Applicable to Hire Only

**21. Hire Period**

- 21.1 Hire charges shall commence from the time the Equipment is collected by the Client from the Supplier's premises and will continue until the return of the Equipment to the Supplier's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 21.2 If the Supplier agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves the Supplier's premises and continue until the Client notifies the Supplier that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 21.3 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 21.4 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless the Supplier confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies the Supplier immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.

**22. Risk to Equipment**

- 22.1 The Supplier retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on delivery.
- 22.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies the Supplier for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
- 22.3 The Client will insure, or self insure, the Supplier's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 22.4 The Client accepts full responsibility for and shall keep the Supplier indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise

arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons.

**23. Title to Equipment**

23.1 The Equipment is and will at all times remain the absolute property of the Supplier.

23.2 If the Client fails to return the Equipment to the Supplier then the Supplier or the Supplier's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.

23.3 The Client is not authorised to pledge the Supplier's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

**24. Client's Responsibilities**

24.1 The Client shall:

- (a) maintain the Equipment as is required by the Supplier (including, but not limited to, maintaining water, oil and fluid levels and tyre pressures);
- (b) notify the Supplier immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
- (c) satisfy itself at commencement that the Equipment is suitable for its purposes;
- (d) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by the Supplier or posted on the Equipment;
- (e) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to the Supplier upon request;
- (f) comply with all occupational health and safety laws relating to the Equipment and its operation;
- (g) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to the Supplier;
- (h) keep the Equipment in their own possession and control and not purport to sell, dispose or otherwise part with possession or encumber the Equipment or any interest therein and shall not assign the benefit of the hire contract nor be entitled to lien over the Equipment;
- (i) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (j) employ the Equipment solely in its own work and shall not permit the Equipment or any part thereof to be used by any other party for any other work;
- (k) not exceed the recommended or legal load and capacity limits of the Equipment;
- (l) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
- (m) not affix any of the Equipment to any other real or personal property;
- (n) not expose the Equipment to the risk of loss, damage or destruction;
- (o) produce the Equipment for inspection, testing, maintenance or rectification as required by the Supplier from time to time;
- (p) must not move the Equipment from the Client's premises unless the Client obtains the Supplier's prior written consent;

24.2 Immediately on request by the Supplier the Client will pay:

- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to the Supplier;
- (b) all costs incurred in cleaning the Equipment;
- (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;
- (d) the cost of repairing any damage to the Equipment caused by the negligence of the Client or the Client's agent;
- (e) the cost of repairing any damage to the Equipment caused by vandalism, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
- (f) the cost of fuels and consumables provided by the Supplier and used by the Client.