

# Terms and Conditions of Service

## 1. Definitions

1.1 “Contract” means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.

1.2 “Supplier” means Reactive Generators (Australia) Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Reactive Generators (Australia) Pty Ltd.

1.3 “Client” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Supplier to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:  
(a) if there is more than one Client, is a reference to each Client jointly and severally; and

(b) if the Client is a partnership, it shall bind each partner jointly and severally; and  
(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and  
(d) includes the Client’s executors, administrators, successors and permitted assigns.

1.4 “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).

1.5 “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.

1.6 “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.

1.7 “Minor Damage” in relation to the Equipment means, dints, scratches, chips or broken glass, blistered or discoloured paint or graffiti or other minor damage to the extent that the cost of rectifying such damage does not exceed the lesser of 10% of the replacement value of the Equipment or \$10,000.

1.8 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “Personal Information” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.

1.9 “Cookies” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to

enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.

1.10 "Price" means the Price payable (plus any GST where applicable) for the Goods and/or Equipment hire as agreed between the Supplier and the Client in accordance with clause 5 below.

1.11 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

## **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 Services/Delivery of the Goods/Equipment.

2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.

2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.

2.4 The Client acknowledges that the supply of Services/Goods/Equipment on credit shall not take effect until the Client has completed a credit application with the Supplier and it has been approved with a credit limit established for the account.

2.5 In the event that the supply of Services/Goods/Equipment request exceeds the Client's credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse Service/Delivery.

2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

## **3. Errors and Omissions**

3.1 The Client acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):

(a) resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of this Contract; and/or

(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Services.

3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Supplier; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

## **4. Change in Control**

4.1 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, change of trustees, or business practice).

The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.

## **5. Price and Payment**

5.1 At the Supplier's sole discretion the Price shall be:

- (a) as indicated on any invoice provided by the Supplier to the Client; or
- (b) the Price as at the date of delivery of the Services/Goods/Equipment according to the Supplier's current price list; or
- (c) the Supplier's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of seven (7) days.

5.2 The Supplier reserves the right to change the Price:

- (a) if a variation to the Goods/Equipment which are to be supplied is requested; or
- (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
- (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed etc) which are only discovered on commencement of the Services; or
- (d) in the event of increases to the Supplier in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond the Supplier's control.

5.3 Variations will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Client shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

5.4 At the Supplier's sole discretion a non-refundable deposit may be required.

5.5 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which may be:

- (a) on delivery of the Goods/Equipment;
- (b) before delivery of the Goods/Equipment;
- (c) by way of instalments/progress payments in accordance with the Supplier's payment schedule;
- (d) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
- (e) the date specified on any invoice or other form as being the date for payment; or
- (f) 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.

5.6 Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Supplier.

5.7 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.

5.8 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 contract for the sale of the Services/Goods/hire of the Equipment. 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. Delivery of Goods/Equipment**

6.1 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.

6.2 At the Supplier’s sole discretion the cost of delivery is either included in the Price or is in addition to the Price.

6.3 The Client must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Goods/Equipment as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or the storage of the Goods.

6.4 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.

6.5 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 the Supplier will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

## **7. Risk to Goods**

7.1 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.

7.2 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.

7.3 If the Client requests the Supplier to leave Goods outside the Supplier’s premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client’s sole risk.

7.4 Any advice, recommendation, information, assistance or service provided by the Supplier in relation to Goods/Equipment or Services supplied is given in good faith, is based on the Supplier’s own knowledge and experience and shall be accepted without liability on the part of the Supplier and it shall be the responsibility of the

Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods/Equipment or Services.

## **8. Access**

8.1 The Client shall ensure that the Supplier has clear and free access to the work site at all times to enable them to undertake 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 due to the negligence of the Supplier.

## **9. Title to Goods**

9.1 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.

9.2 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.

9.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 9.1:

- (a) 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) 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;
- (d) 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;
- (e) the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods;
- (f) the Supplier may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) 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;
- (h) 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.

## **10. Personal Property Securities Act 2009 ("PPSA")**

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

10.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods/Equipment and/or collateral (account) – being a monetary obligation of the Client to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Client.

10.3 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 10.3(a)(i) or 10.3(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 and/or collateral (account) 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.

10.4 The Supplier and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

10.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

10.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

10.7 Unless otherwise agreed to in writing by the Supplier, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

10.8 The Client must unconditionally ratify any actions taken by the Supplier under clauses 10.3 to 10.5.

10.9 Subject to any express provisions to the contrary (including those contained in this clause 10), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

10.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 10 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 10 will apply generally for the purposes of the PPSA.

## **11. Security and Charge**

11.1 In consideration of the Supplier agreeing to supply the Goods/Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

11.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.

11.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

## **12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**

12.1 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.

12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions ("Non- Excluded Guarantees").

12.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.

12.5 If the Client is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.

12.6 If the Supplier is required to replace the Goods under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Client has paid for the Goods.

12.7 If the Client is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Goods is:

- (a) limited to the value of any express warranty or warranty card provided to the Client by the Supplier at the Supplier's sole discretion;
- (b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Goods;
- (c) otherwise negated absolutely.

12.8 Subject to this clause 12 returns will only be accepted provided that:

- (a) the Client has complied with the provisions of clause 12.1; and
- (b) the Supplier has agreed that the Goods are defective; and
- (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
- (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, 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.

12.10 In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Supplier as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that the Supplier has agreed to provide the Client with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 12.10.

12.11 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 twenty percent (20%) of the value of the returned Goods plus any freight costs.

12.12 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.

## **13. Intellectual Property**

13.1 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. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.

13.2 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.

13.3 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.



## **14. Default and Consequences of Default**

14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

14.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and 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 contract default fee, and bank dishonour fees).

14.3 Further to any other rights or remedies the Supplier may have under this Contract, if a Client has made payment to the Supplier, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.

14.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to 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 has exceeded any applicable credit limit provided by the Supplier;
- (c) 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
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## **15. Cancellation**

15.1 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 the supply of Goods/Equipment to the Client. 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.

15.2 The Supplier may cancel any contract to which these terms and conditions apply 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.

15.3 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).

15.4 Cancellation of orders for Goods/Equipment made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.

## 16. Privacy Policy

16.1 All emails, documents, images or other recorded information held or used by the Supplier is Personal Information, as defined and referred to in clause 16.3, and therefore considered Confidential Information. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Supplier that may result in serious harm to the Client, the Supplier will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

16.2 Notwithstanding clause 16.1, privacy limitations will extend to the Supplier in respect of Cookies where transactions for purchases/orders transpire directly from the Supplier's website. The Supplier agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:

- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to the Supplier when the Supplier sends an email to the Client, so the Supplier may collect and review that information ("collectively Personal Information")

In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via the Supplier's website.

16.3 The Client agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by the Supplier.

16.4 The Client agrees that the Supplier may exchange information about the Client with those credit providers and with related body corporates for the following purposes:

- (a) to assess an application by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) 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

(d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.

16.5 The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.

16.6 The Client agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):

(a) the provision of Goods/Equipment; and/or

(b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or

(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or

(d) enabling the collection of amounts outstanding in relation to the Goods/Equipment.

16.7 The Supplier may give information about the Client to a CRB for the following purposes:

(a) to obtain a consumer credit report;

(b) allow the CRB to create or maintain a credit information file about the Client including credit history.

16.8 The information given to the CRB may include:

(a) Personal Information as outlined in 16.3 above;

(b) name of the credit provider and that the Supplier is a current credit provider to the Client;

(c) whether the credit provider is a licensee;

(d) type of consumer credit;

(e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);

(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty

(60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Supplier has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);

(g) information that, in the opinion of the Supplier, the Client has committed a serious credit infringement;

(h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

16.9 The Client shall have the right to request (by e-mail) from the Supplier:

(a) a copy of the Personal Information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect Personal Information; and

(b) that the Supplier does not disclose any Personal Information about the Client for the purpose of direct marketing.

16.10 The Supplier will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

16.11 The Client can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the

resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

## **17. Unpaid Seller's Rights**

17.1 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 monies owing to it by the Client, the Supplier shall have, until all monies owing to the Supplier are paid:

(a) a lien on the item (inclusive of all warranties); 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.

17.2 The lien of the Supplier shall continue despite the commencement of proceedings, or judgment for any monies owing to the Supplier having been obtained against the Client.

## **18. Service of Notices**

18.1 Any written notice given under this Contract shall be deemed to have been given and received:

- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.

18.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

## **19. Trusts**

19.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Client covenants with the Supplier as follows:

- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- (c) the Client will not without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;

- (i) the removal, replacement or retirement of the Client as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.

## **20. General**

20.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party'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 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which the Supplier has its principal place of business, and are subject to the jurisdiction of the courts in that state.

20.3 Subject to clause 12, the Supplier shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

20.4 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.

20.5 The Client cannot licence or assign without the written approval of the Supplier.

20.6 The Supplier may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing.

Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Supplier's sub- contractors without the authority of the Supplier.

20.7 The Client agrees that the Supplier may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Supplier to provide Goods/Equipment to the Client.

20.8 Neither party shall be liable for any default 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.

20.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.

# **Additional Terms & Conditions Applicable to Hire Only**

## **21. Hire Period**

21.1 For Equipment in which a timing device is installed the hire period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Client's possession.

21.2 Where the Equipment does not have a timing device installed 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.

21.3 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.

21.4 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.

21.5 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.

21.6 The Client shall be responsible for free access by the Supplier to the site on which the Equipment is located. If there are any delays due to free access not being available then the Client shall be responsible and shall reimburse the Supplier for all lost hire fees associated with the Equipment being unavailable. The Client shall also be responsible for all other expenses and costs incurred by the Supplier due to delays in access to the Equipment. The off-hire receipt will be issued when the Equipment is picked up by the Supplier or returned to the Supplier's premises.

21.7 Any alterations to the Equipment by others will be rectified on receipt of the site instructions and will be additional to the Price based on Supplier's current hourly rate.

21.8 In the event that inclement weather is forecast on the day previous to a weekend or public holiday, then the Supplier will only attend the site to erect the Equipment at the specific request of the Client and provided that the Client agrees that any costs incurred by inclement weather will be covered by the issue of chargeable day labour dockets.

## **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 affect 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. Warranty**

24.1 No Warranty is provided by the Supplier in respect of the condition of the Equipment or its fitness for any particular purpose. The Client shall indemnify and hold harmless the Supplier in respect of all claims arising out of use of the Equipment.

## **25. Insurance**

25.1 The Client hires the Equipment at the Client's own risk and indemnifies the Supplier against any and all loss in respect of or damage to the Equipment, including any consequential loss, subject to clause 26 regarding Minor Damage,

25.2 The Client agrees with the Supplier that the use of Equipment carries with it dangers and risks of injury, and the Client agrees to accept all dangers and risks and do acts and things necessary to minimise such dangers and risks.

25.3 The Client will maintain current insurance policies in respect of the Equipment to its full insurable value.

25.4 If the Equipment provided by the Supplier is the subject of an insurance claim made by the Supplier on the Supplier's insurance, as a result of any action or inaction of the Client, including the Client's own negligence, then the Client accepts full liability for the value of Equipment (or part thereof) that is lost, stolen or damaged

in any way any during the entire rental term, irrespective of whether the insurance claim is successful.

## 26. Minor Damage Waiver

26.1 If the Client elects, at the commencement of the Hire Term, to pay the “Minor Damage Waiver Fee”, then the Client’s liability for Minor Damage to the Equipment occurring during the Hire Term is reduced as set out in this clause 26 to an amount called the “Minor Damage Waiver Excess”. The amount of the Minor Damage Waiver Fee (if applicable) will be set out on the quote for the hire of the Equipment and is payable at the commencement of the Hire Term. The amount of the Minor Damage Waiver Excess will, if offered, be set out on the quote for the hire of the Equipment. If the damage is not Minor Damage, then clauses 22 and 25 apply without limitation and the Client must pay such amounts to cover loss, theft, or damage to the Equipment as and when required by clause 27.2.

26.2 Minor Damage Waiver is not insurance, but is an agreement (where applicable under a separate agreement) by the Supplier that the Client’s liability for Minor Damage, subject to the circumstances set out in clause 26.3, can be limited to the payment of the Minor Damage Waiver Excess. The Client is not entering into a contract of insurance with the Supplier by paying the Minor Damage Waiver Fee.

26.3 Clause 26.1:

- (a) in no way entitles the Client to, or implies the availability of, compensation from the Supplier for any liability incurred by the Client in relation to the use of the Equipment;
- (b) will not continue to operate after the expiration of this Contract, unless any extension thereof is granted by the Supplier in writing and additional hire charges are paid;
- (c) only applies to Minor Damage and will not apply to loss or damage which is not minor or relates to, or arises from:
  - (i) breach of any statutory laws or regulations in connection with the use of the Equipment by the Client;
  - (ii) misuse, abuse, wilful and/or malicious acts, negligent and/or reckless use and/or overloading of the Equipment;
  - (iii) theft, loss or damage (by whatever cause) to tools and/or accessories supplied with the Equipment (including, but not limited to, hoses, drills, bits, grease guns, electric leads, tyres and tubes, etc.);
  - (iv) lack of lubrication, or non-adherence to other normal maintenance requirements that could reasonably be expected of the Client under this contract;
  - (v) disregard for the instructions or directions given to the Client by the Supplier in respect of the proper use of the Equipment, or in contradiction of the manufacturer’s instructions, if supplied with the Equipment at commencement of hire;
  - (vi) unexplained disappearances of the Equipment;
  - (vii) theft of the Equipment in circumstances where site security is available (including, but not limited to, locked yards, buildings and sheds and/or where proper security is not used by the Client to secure the Equipment whilst it is left unattended, etc.);



(viii) loading or off-loading the Equipment from maritime vessels, transportation on maritime vessels or the use of the Equipment on any wharf, bridge or over any body of water.

## **27. Client's Responsibilities**

27.1 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 work 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 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 fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
- (m) cover all electrical wiring within a five-metre radius of the Equipment;
- (n) provide the Supplier with forty-eight (48) hours if the Supplier is required to dismantle the Equipment for return.

27.2 Immediately on request by the Supplier, the Client will pay:

- (a) the replacement value 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 or from vandalism, subject (if applicable) to the Minor Damage Waiver provisions in clause 26;
- (d) the cost of repairing any damage to the Equipment caused by the negligence of the Client or the Client's agent;
- (e) any lost hire fees the Supplier would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;

(f) the cost of fuels and consumables provided by the Supplier and used by the Client.

27.3 Where the Supplier is required to erect the Equipment, the Client shall ensure that the site on which the Equipment is to be erected is clear and suitable to accommodate the erected Equipment. The Client is liable to the Supplier for any costs, or damages which the Supplier may suffer or incur by reason of the Client's failure to carry out their obligations hereunder.

27.4 The Client shall keep the Equipment, complete with all parts and accessories, clean and in good order, and shall comply with any maintenance schedule as advised by the Supplier, and shall allow the Supplier (at its sole discretion) to inspect the Equipment at the worksite.