

**1. Definitions**

- 1.1 **“Charges”** means the price payable (plus any GST where applicable) for the Goods, Equipment, Labour or Services as agreed between the Supplier and the Client in accordance with clause 6 below.
- 1.2 **“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.
- 1.3 **“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.
- 1.4 **“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.
- 1.5 **“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 using the Supplier’s 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 making enquiries via the website.**
- 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 supplied either by sale or by hire to the Client by the Supplier at the Client’s request from time to time, and:  
(a) includes any erection and/or dismantle of the Goods (**“Services”**), any parts, accessories and/or consumables supplied by the Supplier to the Client, either separately or deposited incidentally by the Supplier in the course of it conducting, or supplying to the Client, the Goods; and  
(b) where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other.
- 1.8 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
- 1.9 **“Labour”** means any individual provided to the Client (for employment by the Client on a temporary, casual, or part-time basis) incidentally by the Supplier in the course of it conducting, or supplying to the Client, any Services.
- 1.10 **“Minimum Hire Period”** means the Goods, Equipment shall be hired for a term of not less than two (2) weeks (or unless specified otherwise on the quotation, authority to hire, or any other forms as provided by the Supplier to the Client). and/or Labour shall be hired for a term of not less than four (4) hours (or unless specified otherwise on the invoices, quotation, authority to hire, or any other forms as provided by the Supplier to the Client).
- 1.11 **“Services”** means any Services supplied by the Supplier to the Client (either independently or in conjunction with Goods and/or any Labour), at the Client’s request from time to time.
- 1.12 **“Supplier”** means Paragon Scaffolding Services Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Paragon Scaffolding Services Pty Ltd.

**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 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 and accepts that:  
(a) the supply of 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; and  
(b) in the event that the supply of Equipment request exceeds the Client’s credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse delivery; and  
(c) the product supply of shrink-wrap offers a manufacturer’s guarantee of UV protection and can withstand up to the manufacturers specified tolerance and/or Bureau of Meteorology definition regarding gale force winds, being winds of up to 63-75kph; and  
(d) that following the handover of the certified Equipment to the Client, it shall be the Client’s responsibility to check the Equipment before each use. If the Equipment is deemed to be damaged, altered or appears unsafe it should not be used, and the Supplier is to be notified; and  
(e) the Supplier reserves the right to remove the Equipment without prejudice should the Equipment be considered to be unsafe due to washout and/or erosion, upon such action this shall not be deemed to be a breach of Contract. The Supplier will not accept any claim for in respect of any consequential loss to the Client that may result from such an event.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 10 of the Electronic Transactions Act 2011 or any other applicable provisions of that Act or any Regulations referred to in that Act.

**3. Authorised Representatives**

- 3.1 Unless otherwise limited as per clause 3.2, 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 Equipment, Goods or Service,

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- and/or to request any variation thereto, on the Client's behalf (such authority to continue until all requested Equipment has been returned to the Supplier, or the Client otherwise notifies the Supplier in writing that said person is no longer the Client's duly authorised representative).
- 3.2 In the event that the Client's duly authorised representative as per clause 3.1 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.
- 3.3 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 Equipment, Goods or Services, or variation/s thereto, requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).
- 4. Errors and Omissions**
- 4.1 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.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, 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.
- 4.3 In circumstances where the Client is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Goods (whether they are made to order Goods or not). ("**Client Error**"). The Client must pay for all Goods it orders from the Supplier notwithstanding that such Goods suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take Delivery of such Goods. The Supplier is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.
- 5. Change in Control**
- 5.1 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.
- 6. Charges and Payment**
- 6.1 At the Supplier's sole discretion, the Charges shall be either:
- (a) as indicated on any invoice provided by the Supplier to the Client; or
  - (b) the Supplier's quoted Charges (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. The Supplier's quotation is based on current rates for normal working hours (i.e., 8:00am to 5:00pm, Monday to Friday).
- 6.2 The Supplier reserves the right to change the Charges:
- (a) if a variation to the Equipment which is to be supplied is requested (including, but not limited to, if the returned quantities is less than the quantities originally supplied, etc.); or
  - (b) if a variation to the Services originally scheduled (including any applicable plans, erection and dismantle charges, site requirements or specifications) is requested; or
  - (c) if variations which are beyond the Supplier's control occur (such as the cost of materials, Labour, taxes, levies, duties, fluctuations in currency exchange rates, insurance and/or freight or any Government or regulatory body imposing or increasing fees etc.); or
  - (d) where additional Equipment or Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather or environmental conditions, limitations to accessing the site, any subsidence of ground conditions, availability of machinery, protruding or dismantled formwork, repositioning or adjusting the Equipment due to sub contractor's moving planks, any relocation and/or alteration to working platforms and/or hop up brackets (or the Goods/ Equipment entirely), additional site visits required, safety considerations (e.g. overhead hazards, etc.), prerequisite work by any third party not being completed, etc.) which are only discovered on commencement of the Services.
- 6.3 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 Charges. Payment for all variations must be made in full at the time of their completion.
- 6.4 At the Supplier's sole discretion, a non-refundable deposit may be required.
- 6.5 Time for payment for the Goods/Equipment being of the essence, the Charges will be payable by the Client on the date/s determined by the Supplier, which may be:
- (a) on or before delivery of the Goods/Equipment; or
  - (b) by way of instalments/progress payments in accordance with the Supplier's payment schedule;
  - (c) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) 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.
- 6.6 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and the Supplier.
- 6.7 The Supplier may in its discretion allocate any payment received from the Client towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Equipment.
- 6.8 The Client shall not be entitled to set off against, or deduct from the Charges, 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. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify the Supplier in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Supplier investigates the dispute claim, no credit shall be passed for refund until the review

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is completed. Failure to make payment may result in the Supplier placing the Client's account into default and subject to default interest in accordance with clause 15.1.

- 6.9 Unless otherwise stated the Charges does not include GST. In addition to the Charges, 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. 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 Charges. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.

### 7. Delivery

- 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 Charges or is in addition to the Charges.
- 7.3 The Client must take Delivery, by receipt or collection of the Goods, Equipment and/or Labour, whenever they are tendered for Delivery. In the event that the Client is unable to take Delivery as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7.4 Any time specified by the Supplier for Delivery is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods, Equipment and/or Services to be supplied at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Goods, Equipment and/or Services (including any installation and/or removal thereof) as agreed solely due to any action or inaction of the Client then the Supplier shall be entitled to charge a reasonable fee (to cover mileage and lost time hours) for re-supplying the Goods, Equipment and/or Services at a later time and date.
- 7.5 The Client shall ensure that the Supplier always has clear and free access to the nominated address to enable them to make Delivery. The Supplier shall not be liable for any loss or damage to the property (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas), unless due to the negligence of the Supplier.
- 7.6 Both parties agree that any scaffolding (either purchased or hired by the Client) will be installed, altered, and dismantled in accordance with the scaffold drawings provided, which will comply with AS1576, and AS 4567:2020 – Guidelines for Scaffolding.

### 8. Risk

- 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 Both parties agree (that where applicable) as per AS 4576:2020, a monthly inspection of any hired scaffolding will be undertaken, and if completed by the Supplier, will be charged additionally to the Client at the Supplier's current day labour rates. Notwithstanding this clause, and where applicable, the Supplier retains the right at all times during the Hire Period to inspect the scaffolding wherever it may be.

### 9. Compliance with Laws

- 9.1 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 Goods, Equipment and/or Services, including any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 9.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Goods, Equipment and/or Services.
- Modern Slavery*
- 9.3 For the purposes of clauses 9.3 to 9.8:
- (a) "**Act**" means the *Modern Slavery Act 2018 (cth)*
  - (b) "**Modern Slavery**", "**Modern Slavery Statement**" and "**Reporting Entity**" have the meanings given by the Act.
- 9.4 If the Client is a Reporting Entity, it shall comply with all of its obligations under the Act.
- 9.5 Whether the Client is a Reporting Entity or not, the Client shall:
- (a) use reasonable endeavours to identify, assess and address risks of Modern Slavery practices in its operations and supply chains;
  - (b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery;
  - (c) use its reasonable endeavours to ensure that if at any time the Client becomes aware of Modern Slavery practices in its operations and supply chains, the Client must as soon as reasonably practicable take all reasonable steps to address or remove these practices;
  - (d) provide to the Supplier a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and
  - (e) within seven (7) days of the Supplier's request (or such longer period as the Supplier agrees), provide to the Supplier any information or assistance reasonable requested by the Supplier;
    - (i) concerning the Client's compliance with the Act;
    - (ii) concerning the Client's operations and supply chains;
    - (iii) to enable the Supplier to prepare a Modern Slavery Statement or otherwise comply with the Act; or
    - (iv) to enable the Supplier to assess and address risks of Modern Slavery practices in its operations and supply chains.
- 9.6 The parties agree that in the circumstances a breach arises pursuant to this clause or the terms of the Act, the parties will try and resolve the breach by way of remediation and the Supplier will be able to terminate the Contract for any breach by the Client.
- 9.7 The Client warrants that any information supplied to the Supplier is true and accurate and may be relied upon for the purposes of the Act.
- 9.8 The Client shall indemnify the Supplier against any loss or liability suffered by the Supplier as a result of the Client's breach of this clause 9.

**10. Title**

**10.1** *Where this is a hire contract:*

- (a) the Goods are, and will at all times remain, the absolute property of the Supplier, however the Client accepts full responsibility for:
  - (i) the safekeeping of the Goods and indemnifies the Supplier for all loss, theft, or damage to the Goods 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; and
  - (ii) 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 Goods during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons.
- (b) the Client will insure, or self-insure, the Supplier's interest in the Goods 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 Goods. Further the Client will not use the Goods nor permit them to be used in such a manner as would permit an insurer to decline any claim; and
- (c) the Client is not authorised to pledge the Supplier's credit for repairs to the Goods or to create a lien over the Goods in respect of any repairs.

**10.2** *Where is this a contract for the purchase of the Goods:*

- (a) the Supplier and the Client agree that ownership of the Goods shall not pass until:
  - (i) the Client has paid the Supplier all amounts owing to the Supplier; and
  - (ii) the Client has met all of its other obligations to the Supplier.

**10.3** 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.

**10.4** It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 10.2(a):

- (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 Charges of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

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

**11.2** 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.

**11.3** 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 11.3(a)(i) or 11.3(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.

**11.4** 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.

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

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

**11.7** 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.

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- 11.8 The Client must unconditionally ratify any actions taken by the Supplier under clauses 11.3 to 11.5.
- 11.9 Subject to any express provisions to the contrary (including those contained in this clause 11), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 11.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 11 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 11 will apply generally for the purposes of the PPSA.

### 12. Security and Charge

- 12.1 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).
- 12.2 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.
- 12.3 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 12 including, but not limited to, signing any document on the Client's behalf.

### 13. Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")

- 13.1 The Client must inspect the Goods/Equipment on Delivery (or Services on completion) and must within twenty-four (24) hours 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 or Services 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 or Services.
- 13.2 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**).
- 13.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 13.4 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.
- 13.5 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.
- 13.6 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.
- 13.7 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.
- 13.8 Subject to this clause 13, 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 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.
- 13.9 Notwithstanding clauses 13.1 to 13.8 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.
- 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. Under no circumstances may such designs, drawings and documents be used without the express written approval 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 which the Supplier has created for the Client.

### 15. Default and Consequences of Default

- 15.1 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.

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- 15.2 If the Client owes the Supplier any money, the Client shall indemnify the Supplier from and against all costs and disbursements:
- (a) incurred; and/or
  - (b) which would be incurred and/or
  - (c) for which by the Client would be liable;
- in regard to legal costs on a solicitor and own client basis, internal administration fees, the Supplier's Contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 15.3 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 15 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.
- 15.4 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.
- 16. Cancellation**
- 16.1 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.
- 16.2 The Supplier may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods/Equipment or the supply of Labour at any time before the Goods/Equipment or the supply of Labour are due to be provided 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 either the Goods/Equipment or the supply of Labour. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.3 In the event that the Client cancels Delivery of the Goods/Equipment or the supply of Labour 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).
- 16.4 Cancellation of orders for Goods/Equipment made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 17. Privacy Policy**
- 17.1 All emails, documents, images or other recorded information held or used by the Supplier is Personal Information, as defined and referred to in clause 17.3, 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 IIIC 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.
- 17.2 Notwithstanding clause 17.1, privacy limitations will extend to the Supplier in respect of Cookies where the Client utilises the Supplier's website to make enquiries. 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")
- If the Client consents to the Supplier's use of Cookies on the Supplier's website and later wishes to withdraw that consent, the Client may manage and control the Supplier's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 17.3 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.
- 17.4 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 years.
- 17.5 The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.
- 17.6 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):

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- (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.
- 17.7 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.
- 17.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 17.3 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 (provided the Supplier is a member of an approved OAIC External Disputes Resolution Scheme), 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).
- 17.9 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.
- 17.10 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.
- 17.11 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).

### 18. Confidentiality

- 18.1 The Supplier and the Client agree to keep confidential any information in relation to the other party which is not in the public domain (including, but not limited to, trade secrets, processes, formulae, accounts, marketing, designs, databases, and all other information held in any form).

### 19. Building and Construction Industry (Security of Payment) Act 2021

- 19.1 At the Supplier's sole discretion, if there are any disputes or claims for unpaid Goods, Equipment and/or Services then the provisions of the Building and Construction Industry (Security of Payment) Act 2021 may apply.
- 19.2 Nothing in this Contract is intended to have the effect of contracting out of any provisions of the Building and Construction Industry (Security of Payment) Act 2021 of Western Australia, except to the extent permitted by the Act where applicable.

### 20. Service of Notices

- 20.1 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.
- 20.2 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.

### 21. Trusts

- 21.1 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.

**22. General**

- 22.1 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.
- 22.2 These terms and conditions and any Contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the courts in Perth, Western Australia. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).
- 22.3 Subject to clause 13, 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 Charges of the Goods/Equipment/Labour).
- 22.4 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.
- 22.5 The Client cannot licence or assign without the written approval of the Supplier.
- 22.6 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.
- 22.7 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.
- 22.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party.
- 22.9 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.
- 22.10 This Contract and any subsequent hire agreement between the Supplier and the Client, shall constitute as the entire agreement between the Supplier and the Client, and the Client hereby acknowledges that no reliance is placed on any representation made by the Supplier that is not embodied in this Contract.
- 22.11 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and Delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.

**23. Additional Terms & Conditions Applicable to Equipment and Labour Hire Only**

**23.1 Hire Period:**

- (a) the Hire Period shall commence from the time the Equipment and/or Labour departs from the Supplier's premises, and will continue until the return of the Equipment and/or Labour to the Supplier's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs. Additional charges will apply in the event that the Client requests an extension of the Hire Period;
- (b) the date upon which the Client advises of termination shall in all cases be treated as a full day's hire;
- (c) no allowance whatever can be made for time during which the Equipment and/or Labour are not in use for any reason, unless the Supplier confirms special prior arrangements in writing. In the event of breakdown of the Equipment, provided the Client notifies the Supplier immediately, hire charges will not be payable during the time the Equipment are not functional, unless the condition is due to negligence or misuse on the part of or attributable to the Client.

**23.2 Client's Obligations:**

- (a) the Client shall:
  - (i) satisfy itself on Delivery that the Equipment and/or Labour are suitable for its purposes;
- (b) for the hire of Equipment:
  - (i) maintain the Equipment as is required by the Supplier;
  - (ii) notify the Supplier immediately by telephone of the full circumstances of any mechanical malfunction, damage, loss, destruction or accident in connection with the Equipment. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
  - (iii) use the Equipment safely, strictly in accordance with the law (in full compliance with all health and safety regulations relating to their use and any other relevant laws and regulations), only for their intended use, and in accordance with any manufacturer's instruction, whether supplied by the Supplier or posted on the Equipment;
  - (iv) keep the Equipment in their own possession and control and shall not assign the benefit of this hire contract nor be entitled to take a lien, or grant any encumbrance over the Equipment. This does not prevent the employees of the Client using the Equipment;
  - (v) 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 the Equipment), or in any other manner interfere with the Equipment, as doing so may undermine the structure and safety of the Equipment. The Supplier will photograph, in detail, the Equipment once erected as proof of this;
  - (vi) employ the Equipment solely in their own work and not permit the Equipment (or any part thereof) to be used by any other party for any other work;
  - (vii) not exceed the recommended or legal load and capacity limits of the Equipment;
  - (viii) not use or place any illegal, prohibited or dangerous substance on the Equipment;
  - (ix) not fix the Equipment (or any part thereof) in such a manner as to make them legal fixtures forming part of any freehold;
  - (x) on termination of the hire, deliver up the Equipment, complete with all parts and accessories, clean and in good order, as delivered, fair wear and tear accepted, to the Supplier.
- (c) for the hire of labour:



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- (i) shall supply to the Supplier (on the day specified by the Supplier) a duly authorised timesheet to enable the Supplier to pay the Labour when due;
- (ii) provide supervision of the Labour to ensure that work is carried out to a satisfactory standard;
- (iii) provide the Labour with appropriate information, supervision and training to enable them to work safely;
- (iv) provide the Labour with workplace specific and job specific induction if necessary. This induction is to be completed before the Labour commences work with the Client;
- (v) familiarise the Labour with the Client's operations, facilities, policies and procedures, and properly inform the Supplier of any specific requirements of the job which the Labour will be required to undertake;
- (vi) provide safe working conditions and to comply with all statutory and other obligations that are applicable pursuant to Australian law (including but not limited to, Work Health and Safety legislation) applicable to employers and otherwise to treat the Labour as if they were employed by the Client;
- (vii) effect and maintain insurance cover in respect of any claims which may be made against the Client by the Labour that arises as a result of the Client's occupation of premises, and otherwise in respect of any act or omission in respect of machinery, equipment or vehicle(s) used by the Labour, and to indemnify the Supplier against any such claims;
- (viii) properly maintain plant and Equipment;
- (ix) provide, where the Labour may be required to 'stand down' because of adverse weather conditions, a minimum 'stand down' payment of not less than four (4) hours per Labour, unless an alternative minimum payment has been agreed between the Supplier and the Client in writing;
- (x) not request the Labour to engage in any work, or use any equipment, that the Labour is unfamiliar with, or unqualified to use or perform, or have not received adequate training for;
- (xi) immediately notify the Supplier of any variation of duties given to the Labour that may affect the remuneration payable to the Labour or may involve additional risk to the Labour;
- (xii) will immediately notify the Supplier of any injury sustained by the Labour;
- (xiii) remain responsible for controlling the manner, time and place in which the Labour shall carry out their duties as assigned by the Client and that in doing so the Client shall be liable for all acts and omissions of the Labour the same as they would be for any of their own employees;

### 23.3 Hire of Equipment:

(a) immediately on request by the Supplier the Client will pay:

- (i) the new list price of any Equipment (or any part thereof) that are, for whatever reason, destroyed, irrecoverable, or not returned to the Supplier;
- (ii) all costs incurred in cleaning the Equipment (including removing plaster, mortar, cement and/or concrete from the Equipment) if the Equipment are deemed by the Supplier (at their sole discretion) to be excessively dirty;
- (iii) all costs of repairing any damage to the Equipment caused by:
  - A. the ordinary use of the Equipment;
  - B. caused by the negligence of the Client or the Client's agent;
  - C. 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;
  - D. any lost hire charges the Supplier would have otherwise been entitled to for the Equipment, under this, or any other contract;
  - E. the cost of fuels and consumables provided by the Supplier and used by the Client.

### 23.4 Hire of Labour:

- (a) the Supplier undertakes to use its best endeavours to provide suitably qualified Labour to undertake the Services in compliance with the Client's requirements;
- (b) the Client agrees that they shall not alter the location where the Labour is to undertake the Services without the prior consent of the Supplier;
- (c) the Supplier must be advised by the Client of any specific site or project allowances which may be applicable. All such allowances (including, but not limited to, meal, travel, or tool allowances) shall be on-charged to the Client accordingly;
- (d) the Client acknowledges that only lunch breaks shall be deducted from total hours charged by the Supplier to the Client;
- (e) in no circumstances shall the Supplier be liable for any personal injury resulting in injury or death, loss and/or damage or expense arising out of, or caused by, any act or omission of the Labour whether or not any such act or omission is negligent, and the Client acknowledges and agrees to indemnify the Supplier against all such liability whether alleged or proved. The Client is to include the Labour in the Client's own public liability insurance cover;
- (f) the Client agrees that any working environment in which the Labour is placed during the period of the engagement will comply with all applicable equal opportunity legislation or regulations. The Client agrees to immediately notify the Supplier if the Labour is involved in a sexual harassment or discrimination claim during the performance of the Services.

## 24. Terms Specifically Applicable to the Sale of Goods Only

### 24.1 Risk:

- (a) 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;
- (b) 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.

### 24.2 Warranty:

- (a) 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 Goods prior to Delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the

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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 Goods, and calculated the Charges thereof, in reliance of this sub-clause (a).

24.3 *Returns:*

- (a) 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 fifteen percent (15%) of the value of the returned Goods plus any freight costs.