

## PART A: GENERAL TERMS AND CONDITIONS

### 1. Structure of these terms and conditions

1.1 These terms and conditions consist of a number of parts as follows:

- (a) This **Part A "General Terms and Conditions"**: applies to all Goods and Services provided by us to you, including where we sell and purchase brand new and/or used Goods from us.
- (b) The following Special Terms:
  - (i) **Part B "Special Terms: Hire of Goods"**: only applies if and when we hire plant, equipment and/or vehicle(s) to you, including but not limited to goods to move earth, soil, rocks, or compact soil including, without limitation, excavators and mini excavators, backhoes, skid steer loaders, wheel loaders, motor graders, tractors, articulated trucks, attachments, smooth drum rollers, padfoot rollers, multi-tyre rollers and any other items offered for hire by us from time to time.
  - (ii) **Part C "Special Terms: Supply of Spare Goods and Services"**: only applies if and when we supply you with spares, service, repair, or replacement parts, accessories and/or consumables supplied with respect to goods to move earth, soil, rocks, compact soil, any other goods or items supplied by us from time to time and/or the supply of any labour services with respect to such goods.
  - (iii) **Part D "Special Terms: Carriage and Transportation Services"**: only applies if and when we are transporting, loading, unloading, packing, handling, unpacking Supplied Items, towing a trailer and the provision of any advice or recommendations relating the provision of such services to you.

Therefore if you do not use one of our classes of goods or services then the relevant Special Terms will not be applicable. If you, at any stage, use any one or more our classes of goods or services set out above, then the relevant Special Terms will automatically apply to the relevant goods or services provided by us.

1.2 In the event of any inconsistency between the provisions contained in this Part A and the provisions contained in the Special Terms, the provisions contained in the Special Terms will prevail.

1.3 The terms and conditions contained with any commercial credit application you sign with us are deemed to be incorporated in these terms and conditions.

1.4 These terms and conditions will not apply if we enter into a contract with you for a specific project for a specific site with respect to the provision of our Goods and Services (**Project Terms**). Therefore the Project Terms will apply with respect to that specific project and these terms and conditions will apply where our Goods and Services are used by you for works which do not come under the Project Terms.

### 2. Definitions and interpretation

For the purpose of these terms and conditions:

A reference to "**we**" or "**us**" or "**our**" is a reference to Gear Select Pty Ltd (ABN 99 166 821 389) its related parties, successors and assigns.

A reference to "**you**" or "**your**" is a reference to the person as described on any quotation, authorisation, or as identified in the cover page of a credit application or other form or document as provided by us to you, including any person acting on behalf of and with your authority.

**Authority** means any federal, state or local government, department of any federal, state or local government, any court or administrative tribunal or statutory corporation or regulatory body.

**Business Day** means a day other than a Saturday, Sunday or a public holiday in New South Wales.

**Consequential Loss** means any loss or damage arising from a breach of contract or agreement (including breach of these terms and conditions), tort, or any other basis in law or equity including, but without limitation to, loss of profits, loss of revenue, loss of production, loss or denial of opportunity, loss of access to markets, loss of goodwill, indirect or remote or unforeseeable loss, loss of business reputation, future reputation or publicity, or any similar loss whether or not contemplated by the parties at the time of entering into these terms and conditions.

**Delivery** has the meaning ascribed to that term in clause 5.1.

**Force Majeure Event** means any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, pandemic, epidemic, Government order or other event beyond our reasonable control.

**Goods** means all goods, plant, equipment and/or vehicle(s) supplied by us to you (and where the context so permits will include any supply of Services as hereinafter defined) and are as described on the invoices, quotations, authorisations or any other form or document as provided by us to you.

**GST** means the goods and services tax imposed under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**IP Rights** means patent, trademark, design, copyright or any other intellectual property right.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Price** means all monies payable by you to us in accordance with these terms and conditions (including with respect to the Goods and/or the Services).

**Services** means any services supplied by us to you, and includes any advice or recommendations relating the provision of such services.

**Special Terms** means Part B, Part C or Part D of these terms and conditions (as the case may be).

**Supplied Items** means any goods or materials provided by you to us in order to allow us to provide Services.

The following interpretational rules apply to these terms and conditions:

- (a) The word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
- (b) The words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
- (c) Time is a reference to the time in the State or Territory in which we provide you with our Goods and/or Services.
- (d) Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of these terms and conditions.
- (e) A rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these terms and conditions or any part of it.

### 3. Acceptance

3.1 Any instructions received by us for the supply of Goods and/or Services and:

- (a) your acceptance of Goods and/or Services supplied; or
- (b) you signing these terms and conditions,

(whichever occurs first) will constitute acceptance of the terms and conditions set out in these terms and conditions.

3.2 Where more than one (1) party has entered into these terms and conditions with us, all parties will be jointly and severally liable.

3.3 Upon acceptance of these terms and conditions, these terms and conditions will be legally binding and can only be amended with our written consent. You waive any right you may have to assert that the fact that you indicating your acceptance of these terms and conditions electronically does not constitute actual acceptance.

3.4 You must give us not less than fourteen (14) days prior written notice of any proposed change of your ownership (including any change in your name, any change to the majority ownership in shares, sale of business and/or any other change in your details (including but not limited to, changes in your address, other contact details, or business practice). You will be liable for any loss incurred by us as a result of your failure to comply with this clause.

3.5 Goods and Services are supplied by us only on the terms and conditions set out in these terms and conditions to the exclusion of anything to the contrary in the terms of your order notwithstanding that any such order is placed on terms that purport to override any provision of these terms and conditions.

3.6 It is your sole responsibility to:

- (a) obtain any approvals, licences or permits necessary for you to perform your obligations under these terms and conditions, comply with any laws and to use any Goods; and
- (b) at all times comply with any and all laws in connection with your use of the Goods and/or our Services.

#### 4. Price and payment

4.1 Subject to clause 4.2, the Price will be:

- (a) as indicated on invoices provided by us in respect of Goods and/or Services supplied;
- (b) our current price at the date of Delivery of the Goods or completion of the Services according to our current Price list (if any); or
- (c) our quoted Price as set out in any documents provided by us to you.

Where there is any discrepancy, the document as advised by us will prevail to the extent of any inconsistency.

4.2 We reserve the right to change the Price in the event of a variation which may arise due to, but is in no way limited to, the application of:

- (a) additional rates and charges that may apply to the supply of the Goods and/or Services and which are disclosed to you in writing prior to or at the time that you provide instructions for the supply of Goods and/or Services;
- (b) an increase as a consequence of variations in foreign currency rates of exchange and/or freight and insurance charges;
- (c) additional services required due to hidden or unidentifiable difficulties beyond our control;
- (d) new or amended laws;
- (e) increases in the cost of materials and/or labour; and
- (f) any other cause beyond our direct control,

and such variation will be shown as variations on an invoice. Payment for all variations must be made in full on the due date of the relevant invoice.

4.3 At our sole discretion and as notified by us to you, a non-refundable deposit may be required prior to us supplying any Goods and/or Services under these terms and conditions.

4.4 Time for payment of the Price will be of the essence and will be stated on the invoice issued by us. If no time is stated on an invoice issued by us, then payment will be due:

- (a) within the timeframe specified in the appropriate Special Terms; or
- (b) if not stated in the Special Terms, the credit application or the invoice then payment will be due on or prior to delivery (COD).

4.5 If you do not pay an invoice in full by the due date, we may charge the following:

- (a) interest, accrued and calculated monthly from the date when payment becomes due until the date of payment, on the total outstanding balance of the invoice at the 90-day Bank Bill Swap Rate published on the first business day of the relevant month plus two percent (2%); and
- (b) any costs and expenses incurred by us in recovering any unpaid amounts owed by you.

4.6 We will be under no obligation to provide or release any Goods or Supplied Items and/or provide any Services, unless all amounts owed by you are paid to us.

4.7 Payment must be made by cash, by cheque, or by credit, or by direct credit, or by any other method as agreed to between you and us. Some payment methods may be subject to administration fees, processing fees and surcharges and such fees and such charges will be disclosed to you as applicable and from time to time. In the event that your payment is dishonoured for any reason you will be liable for any dishonour fees incurred by us.

4.8 Unless otherwise expressly stated, GST, delivery costs and other taxes and duties that may be applicable will be added to the Price.

4.9 You are not entitled to deduct, counterclaim or set off against any sums owed by you to us at any time.

#### 5. Delivery of Goods

5.1 Delivery of Goods will be deemed to have taken place upon the earlier of:

- (a) you taking possession of the Goods at our premises;
- (b) if we are responsible for the delivery of the Goods, once those Goods are delivered to your nominated address; or

- (c) if a carrier is engaged and takes possession of the Goods from our premises for delivery to your nominated address, at the time the carrier takes possession of the Goods at our premises, in which event the carrier will be deemed to be your agent. This also applies where Goods are posted by us, that is, risk in the Goods passes to you once we have posted the Goods and delivery will be deemed to have occurred at the time we post the Goods.

5.2 The costs of Delivery are your responsibility and if we incur the costs of Delivery, those costs are in addition to the Price.

5.3 You are responsible for returning or re-delivering Goods to us at your cost for any reason under and in accordance with the terms of these terms and conditions, unless we otherwise agree in writing that it is not your responsibility (in which case we will incur the cost). If you require us to collect Goods from you for return, you will be liable for the costs we incur in that respect, unless we otherwise agree.

5.4 You must make all arrangements necessary to take Delivery of the Goods whenever they are tendered for Delivery, at your cost. This includes, but is not limited to:

- (a) ensuring that Delivery is taken safely and without risk to persons or property; and
- (b) you being solely responsible for the unloading the Goods.

5.5 In the event that you are unable to take Delivery of the Goods as arranged, then we will be entitled to recover from you reasonable fees and charges incurred by us at our discretion, including but not limited to, additional delivery and waiting fees, re-delivery fees and storage charges.

5.6 Delivery of the Goods to a third party nominated by you is deemed to be Delivery to you for the purposes of these terms and conditions.

5.7 We may deliver the Goods by separate instalments. Each separate instalment must be invoiced and paid in accordance with the provisions in these terms and conditions.

5.8 Our failure, or delay in delivering Goods will not constitute a breach of these terms and conditions by us and will not entitle either party to treat these terms and conditions as repudiated.

5.9 Any times or dates quoted for Delivery of Goods is an estimate only and we do not guarantee Delivery by quoted times and dates.

5.10 We will not be liable for any loss or damage whatsoever due to failure by us to deliver the Goods (or any of them) promptly or at all, including but not limited to, due to circumstances beyond our control or a Force Majeure Event.

#### 6. Risk and insurance

6.1 All risk in the Goods passes to you on Delivery.

6.2 All risk in the Supplied Items at all times remains with you, including when the Supplied Items are in our possession and control. We will not be liable for any damage, loss or claim in relation to the Supplied Items, unless that damage, loss or claim is directly due to our negligent act or omission.

6.3 It is your responsibility to effect carrier/freight insurance and insurance with respect to the Goods when they are collected from our premises either by you or a carrier.

6.4 Where the Goods are delivered to an unattended location at your direction, then such Goods will be left at your sole risk and it will be your responsibility to ensure the Goods are insured adequately or at all.

6.5 If any of the Goods are damaged or destroyed following collection from our premises, we are entitled to receive all insurance proceeds up to the amount of the monies payable by you for the Goods. The production of these terms and conditions by us is sufficient evidence of our rights to receive the insurance proceeds without the need for any person dealing with us to make further enquiries.

#### 7. Title

7.1 In the circumstance where you are purchasing Goods from us, ownership of Goods will not pass until:

- (a) you have paid us all amounts owing for the particular Goods (and, if applicable, any Services related to those Goods); and
- (b) you have met all other obligations due to us in respect of all contracts between us.

7.2 It is further agreed that:

- (a) where practicable the Goods must be kept separate and identifiable until we have received payment and all other of your obligations are met;
  - (b) until such time as ownership of the Goods passes from us to you in accordance with these terms and conditions, we may at any time prior give notice in writing to you to return the Goods or any of them to us as a result of the breach of these terms and conditions by you. Upon such notice your rights to obtain ownership or any other interest in the Goods will cease;
  - (c) we will have the right of stopping the Goods in transit whether or not Delivery has been made if you are in default under these terms and conditions;
  - (d) if you fail to return the Goods to us then we or our agent may (as your invitee) enter upon and onto land and premises owned, occupied or used by you, or any premises where the Goods are situated and take possession of the Goods and you grant irrevocable authority to do so;
  - (e) you are only a bailee of the Goods and until such time as we have received payment in full for the Goods then you hold any proceeds from the sale or disposal of the Goods, up to and including the amount you owe to us for the Goods, on trust for us. You must not deal with our money in any way which may be adverse to us;
  - (f) if the Goods are affixed to other materials, the totality thereof will be the sole and exclusive property of us until payment has been made in full, unless the other materials or part thereof are or is the property of a party or parties other than you in which case the totality thereof will be deemed to be owned as tenants in common with such other party or parties in shares corresponding to the respective amounts paid or payable by you in respect of such other party or parties;
  - (g) you must not charge, or grant a security interest over, the Goods in any way whilst they remain our property; and
  - (h) we may commence proceedings to recover the Price notwithstanding that ownership of the Goods may not have passed to you.
- 8. Personal Property Securities Act 2009 ("PPSA")**
- 8.1 In this clause:
- (a) the terms 'attachment', 'financing statement', 'financing change statement', 'purchase money security interest' and 'security interest' have the meaning given to it by the PPSA; and
  - (b) the term 'security agreement' means the security agreement under the PPSA created between you and us pursuant to these terms and conditions.
- 8.2 You acknowledge and agree that these terms and conditions:
- (a) constitutes a security agreement for the purposes of the PPSA; and
  - (b) creates a security interest in:
    - (i) all Goods previously supplied by us to you (if any); and
    - (ii) all Goods that will be supplied in the future by us to you, including, without limitation, a purchase money security interest over the Goods and that the attachment of the security interest over the Goods has in no way been deferred or postponed.
- 8.3 You undertake 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 we 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 8.3(a)(i) or 8.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, us 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 charged thereby;
  - (c) not register a financing change statement in respect of a security interest without our prior written consent;
  - (d) not to do anything that results in us having less than the security or priority granted by the PPSA that we assumed at the time of that perfection;
  - (e) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without our prior written consent; and
  - (f) immediately advise us of any material change in your business practices if you sell the Goods which would result in a change in the nature of proceeds derived from such sales.
- 8.4 The parties agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 8.5 You hereby waive your rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA. You waive your rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.6 Unless we otherwise agree in writing, you waive your right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.7 You must unconditionally ratify any action taken by us under this clause in relation to the enforcement of the security interest.
- 9. Lien and storage charges**
- 9.1 If you fail to collect Goods and/or Supplied Items (**Relevant Items**) within fourteen (14) days of us providing you with notice to do so, then the Relevant Items may be warehoused or otherwise held at any place or places at our sole discretion at your expense and which will be payable by you until you comply with all of our requirements and conditions.
- 9.2 If you fail to collect the Relevant Items by the time referred to in clause 9.1, then without limiting our right to charge reasonable storage fees, we (at our absolute discretion) may dispose of the Relevant Items, including by sale or otherwise without any further notice to you. You:
- (a) cannot make any claim against us if we elect to exercise our rights under the preceding sentence; and
  - (b) must reimburse and indemnify us for all costs or claims incurred by us in connection with us exercising our rights under this clause.
- 9.3 In addition to any right of lien to which we may by law be entitled, we are entitled to a general lien on all Relevant Items in our possession for the unpaid price of any Goods and/or Services under these terms and conditions.
- 10. Warranty, defects and returns**
- 10.1 To the fullest extent permitted by law, our liability for any breach of these terms and conditions arising as a result of our negligence or for breach of any conditions or warranty implied in these terms and conditions or by law is limited to one (1) of the following at our option:
- (a) In the case of Goods - the replacement of the Goods or the supply of equivalent Goods limited to the initial invoice value; the repair of the Goods; the payment of the costs of replacing the Goods or of acquiring equivalent Goods; or the payment of the cost of having the Goods repaired.
  - (b) In the case of Services - the supplying of the services again or the payment of the cost of having the services supplied again.
- 10.2 To the extent that the limitations of liability in these terms and conditions do not apply, and to the extent permitted by Law, our total aggregate liability in respect of any other claim by you or a third party in connection with this contact will be limited to damages which under no circumstances must exceed the Price of the relevant Goods and/or Services.
- 10.3 To the full extent permitted by Law, all other warranties or liabilities imposed or implied whether by law or by statute are expressly excluded.
- 10.4 You assume all risk and liability resulting from the use of the Goods and/or the Services either alone or in conjunction with other goods or materials even if we had or should have had prior knowledge of use to which the Goods and/or Services would be put.
- 10.5 You must inspect the Services on completion or Goods on Delivery and must within the time specified in the relevant Special Terms to these terms and conditions (and if not specified in the Special Terms, then within seven (7) days of Delivery) (time being of the essence) notify us in writing of any alleged defect, shortage in quantity,

damage or failure to comply with the description, specification or quote.

- 10.6 You must afford us an opportunity to inspect the Goods or Services (as the case may be) within a reasonable time following notification under clause 10.5 if you believe the Services or Goods (as the case may be) are defective in any way. If you fail to comply with these provisions the Services and/or the Goods will be deemed to be free from any defect or damage.
- 10.7 Within a reasonable time after inspection of the Goods and/or Services by us, we will make a written determination as to the outcome of the inspection and will inform you of the outcome.
- 10.8 Nothing in these terms and conditions excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any Law which cannot lawfully be excluded or limited.
- 10.9 We acknowledge that the Goods and Services may come with guarantees that cannot be excluded under the Australian Consumer Law. If so (and if the Australian Consumer Law applies to you as a consumer):
- with respect to Goods, you are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure. However, where Goods are defective due to your requirements or specifications, we will not be liable; and
  - with respect to Services, for major failures you are entitled to cancel your service contract with us and to a refund for the unused portion, or to compensation for its reduced value as well as for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, you are entitled to have problems with the Service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.
- 10.10 To the fullest extent permitted by law, we are under no obligation to accept any returns, including for change of mind or the Goods and/or the Services not being fit for the purpose or use as intended by you. In that respect, you acknowledge and agree that you have made your own enquiries and undertaken your own due diligence with respect to the Goods and/or Services provided by us and satisfied yourself in that regard.

## 11. Default and consequences of default

11.1 If you:

- default in payment of any invoice when due;
- default in the performance of any obligation imposed on you under these terms and conditions; and/or
- breach any warranty or representation contained in these terms and conditions,

you indemnify us from and against all liability, claims, losses, damages, costs and fines and disbursements incurred by us in connection with that default (including, without limitation, pursuing the debt including legal costs on a solicitor and own client basis and our collection agency costs). For the avoidance of doubt, we do not have to incur an expense or cost before claiming the benefit of the indemnity provided under this clause.

11.2 Without prejudice to any other remedies we may have, if at any time you are in breach of any obligation (including those relating to payment) we may:

- suspend or terminate the supply of Goods and/or the Services to you and any of our other obligations under these terms and conditions. We will not be liable to you for any loss or damage you suffer because we have exercised our rights under this clause;
- preclude you from participating in any special deals, discounts, bonus payments, redemptions, rebates and all other incentive programs (if any); and
- terminate your credit account and require the payment of cash prior to or upon Delivery for any further Goods and/or Services.

11.3 Without prejudice to our other remedies at law, we will be entitled to cancel all or any part of any order of yours which remains unfulfilled and all amounts owing to us will, whether or not due for payment, become immediately payable in the event that:

- any money payable to us becomes overdue, or in our opinion, you will be unable to meet your payments as they fall due; or
- you become insolvent, convene a meeting with your creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of your creditors; or
- a receiver, manager, administrator, liquidator (provisional or otherwise), trustee in bankruptcy or similar person is appointed in respect of you or any asset of yours.

## 12. Cancellation, variations and delays

12.1 We may terminate these terms and conditions or cancel Delivery of Goods and/or Services at any time before the Goods are completed or the Services are delivered by giving you written notice if:

- you are in default under clause 11, in which case all costs incurred by us in that respect will be immediately due and payable by you; or
- we are of the opinion that we cannot fulfil the relevant order, in which case we will provide a refund of the monies paid by you in connection with that order, and for the avoidance of doubt no further monies will be refunded on any account.

12.2 If you cancel or alter an order for Goods and/or Services, or any part of an order, then without prejudice to any other rights we have against you, we may charge you any costs incurred by us in fulfilling the order, including materials already acquired for the order together with the cost of any labour and tooling and losses incurred by us in reselling or otherwise disposing of the relevant items.

12.3 Whilst we will take all reasonable measures to ensure that orders are completed by the agreed time, you cannot make any claim (of any nature) as a result of:

- any delays in us completing the order whether within our control or otherwise; or
- the non-availability of any Goods and consequently our refusal or failure to provide those Goods to you.

## 13. Intellectual property

13.1 We are not liable to you for any infringement or unauthorised use of any IP Rights arising out of performance of these terms and conditions. If any dispute or claim arises with respect to any such matter then we may terminate these terms and conditions by notice to you without any liability on our part.

13.2 All IP Rights in connection with the provision of the Goods and/or the Services, always remains our sole property. You must not do anything which adversely affects our ownership of those IP Rights.

## 14. Privacy

14.1 You acknowledge and agree that your personal information may be used and handled in accordance with our Privacy Policy and that you have read and agreed to that policy located at <http://www.gearselect.com.au/wp-content/uploads/2021/12/Gear-Select-Privacy-Policy-2019.pdf>.

14.2 You agree and consent for us to obtain from a credit reporting agency a credit report containing personal credit information about you in relation to credit provided by us.

14.3 You agree that we may exchange information about you with those credit providers either named as trade referees by you or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- to assess an application by you;
- to notify other credit providers of a default by you;
- to exchange information with other credit providers as to the status of this credit account, where you are in default with other credit providers; and/or
- to assess your creditworthiness.

You understand that the information exchanged can include anything about your creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the *Privacy Act 1988* (Cth).

14.4 You consent to us being given a consumer credit report to collect overdue payment on commercial credit.

14.5 You agree that personal credit information provided may be used and retained by us for the following purposes (and for other purposes as agreed between you and us as required by law from time to time):



- (a) the provision of Goods and/or Services;
  - (b) the marketing of Goods and/or Services by us, our agents or distributors;
  - (c) analysing, verifying and/or checking your credit, payment and/or status in relation to the provision of Goods and/or Services;
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by you; and/or
  - (e) enabling the daily operation of your account and/or the collection of amounts outstanding in your account in relation to the Goods and/or Services.
- 14.6 We may give information about you to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about you; and/or
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about you.
- 14.7 The information given to the credit reporting agency may include:
- (a) personal particulars (your name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
  - (b) details concerning your application for credit or commercial credit and the amount requested;
  - (c) advice that we are a current credit provider to you;
  - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
  - (e) that your overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - (f) information that, in our opinion, you have committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with your credit obligations);
  - (g) advice that a cheque drawn by the have been dishonoured more than once; and/or
  - (h) that credit provided to you by us has been paid or otherwise discharged.
- 14.8 Without restriction, we may provide any personal information, credit reports and any other information relating to you to any insurer of ours and you irrevocably consent to the disclosure of such information.
- 15. Dispute resolution**
- 15.1 If a party believes there is a dispute in relation to or in connection with these terms and conditions (**Dispute**), the following will apply:
- (a) That party must give notice in writing to the other party stating that there is a Dispute and what the party believes the Dispute to be, what the party wants to achieve and what the party believes will settle the Dispute.
  - (b) Within fourteen (14) days of the issue of the notice referred to in paragraph (a) (or any such other period as agreed by the parties in writing), each party must nominate a representative and those representatives must meet in order to resolve the Dispute by negotiation in good faith.
  - (c) If the Dispute cannot be resolved by the representatives within fourteen (14) days of first meeting to resolve the Dispute (or any such other period as agreed by the parties in writing), the parties will be free to commence legal proceedings or to take any other means available to settle the Dispute.
- 15.2 A party does not need to comply with this clause 15 in the following circumstances:
- (a) A party can commence legal proceedings or other form of enforcement action when urgent interlocutory relief is required to restrain a breach or threatened breach of these terms and conditions.
  - (b) In addition to any other rights we have under these terms and conditions, we can commence legal proceedings or take other form of enforcement action against you for any monies owed by you to us under these terms and conditions.

**16. Force Majeure**

If a Force Majeure Event occurs:

- (a) we are not liable for any failure or delay in performing our obligations imposed on us under these terms and conditions; and
- (b) our obligations under these terms and conditions are suspended, to the extent to which they are affected by, and for the duration of, the Force Majeure Event.

**17. Trustee**

17.1 This clause applies if you are a trustee of a trust.

17.2 You agree that even though you enter into this contact with us as trustee of the trust, you will also be liable personally for the performance and observance of every covenant to be observed and performed by you expressed or implied in these terms and conditions.

17.3 You warrant your complete, valid and unfettered power to enter into these terms and conditions.

**18. General provisions**

18.1 Any notice or communication under these terms and conditions must be in writing and delivered to a party's last notified principal place of business or email address. A notice will be treated as having been given on:

- (a) if delivered to the principal place of business:
  - (i) the day of delivery if a Business Day, otherwise on the next Business Day; or
  - (ii) if sent via pre-paid mail, on the third Business Day after posting; and
- (b) if transmitted by email, on the day of transmission if a Business Day, otherwise on the next Business Day.

18.2 Each order that you place is, a representation by you made at the time that you are, and will remain in the future, solvent and able to pay all of your debts as and when they fall due.

18.3 If any provision of these terms and conditions is held to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.

18.4 These terms and conditions will be governed by the laws of New South Wales, Australia and are subject to the exclusive jurisdiction of the courts of New South Wales. The parties may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

18.5 We will not be under any liability whatsoever to you for any Consequential Loss.

18.6 We may license or sub-contract all or any part of our rights and obligations without your consent. In addition, we may assign or novate any or all of our rights and obligations under these terms and conditions to a third party by providing you with notice.

18.7 You agree that we may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which we notify you of such change. Except where we supply further Goods and/or Services to you and you accept such Goods or Services, you will be under no obligation to accept such changes with respect to those Goods and/or Services already supplied.

18.8 No modification amendments or other variation of these terms and conditions will be valid and binding on us unless made in writing and duly executed by and on our behalf.

- 18.9 Each party must keep these terms and conditions and related information confidential, except to the extent it is in the public domain through no fault of a party or if required to be disclosed by law.
- 18.10 Our failure to enforce any provision of this contract will not be treated as a waiver of that provision, nor will it affect our right to subsequently enforce that provision.
- 18.11 You acknowledge that we not have made any representation or other inducement to you to enter into these terms and conditions and you have not entered into these terms and conditions in

reliance on any representations or inducements except for those representations contained in these terms and conditions.

- 18.12 If any part of these terms and conditions become void or unenforceable for any reason then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.
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**PART B – SPECIAL TERMS: HIRE OF GOODS**

**19. Definitions**

For the purpose of this Part B, unless otherwise defined in this Part B, capitalised words have the same meaning ascribed to them in Part A “General Terms and Conditions” of these terms and conditions.

**20. Terms of supply**

20.1 Our hire of the Goods to you are governed by the following documents (in order of precedence):

- (a) Any agreement/hire schedule provided to you by us with respect to the Goods, including any conditions contained in that schedule.
- (b) This Part B “Special Terms: Hire of Goods”.
- (c) Part A “General Terms and Conditions”.

20.2 In the event of any inconsistency between the above documents, the documents will prevail to the extent of that inconsistency in the order set out in clause 20.1.

**21. Our commitment to you**

21.1 We will provide the Goods to you in good working order.

21.2 You are (as hiree) permitted to exclusively use the Goods during the hire period. Notwithstanding the preceding sentence, we reserve the right to replace the Goods hired to you at any time.

**22. Hire period**

22.1 The hire period for the Goods:

- (a) commences when you take Delivery of the Goods; and
- (b) ends on the earlier of:
  - (i) two (2) years less one day from the commencement date;
  - (ii) an agreed date between you and us;
  - (iii) the Goods being returned into our possession and control;
  - (iv) the expiry of the period referred to in clause 22.5.

22.2 The hire period is continuous and includes all times when the Goods are in your possession and control, including weekends and public holidays.

22.3 If a minimum hire period applies to the Goods and you return the Goods to us prior to the end of the minimum hire period, you will be required to pay the full Price payable for the minimum hire period.

22.4 You must notify us in writing when the Goods are available to be returned to us at the end of the hire period.

22.5 We may terminate the contract and/or any hire period for any Goods under these terms and conditions (with or without providing reasons) at our absolute discretion by providing you with twenty-four (24) hours written notice. You cannot make any claim (of any nature) against us if we elect to exercise our rights under this clause 22.5

**23. Price**

23.1 You must pay the Price until such time as the Goods have been returned to us.

23.2 The Price payable for the Goods hired to you will be based on the following:

- (a) Daily rate (minimum one (1) day)

Based on a maximum of 8 hours use per 12 hour period (**Operations Cap**). Any usage in excess of the Operations Cap will be charged on pro-rata basis in one (1) hour blocks. For example, if you use an item of machinery for 8 hours 15 minutes, then you will be liable to pay for an additional full hour. Stand-downs (a period where no fees are payable because there is a stand-down on site) may be allowed only where there is a stand down table in the quotation provided by us (where applicable and if displayed).

- (b) Weekly rate (minimum five (5) days)

Based on a maximum of 40 hours (in aggregate) use per week. Additional hours of use will be charged on a pro-rata basis in one (1) hour blocks. Stand-downs are not allowed on weekly rates.

- (c) Monthly rates (minimum thirty (30) days)

Based on a maximum of 200 hours (in aggregate) use per month. Additional hours of use will be charged on a pro-rata basis in one (1) hour blocks. Stand-downs are not allowed on monthly rates.

23.3 In addition to the Price for the Goods, you agree to pay the following (if applicable):

- (a) Where required, transport of the Goods to and from the site(s) nominated by you.
- (b) Any consumables, fuel or trade materials that we supply to you.
- (c) If you do not return the Goods in clean and/or good working condition, charges for the cleaning and/or repair of the Goods and which will include the imposition of ongoing hire charges for the time required to clean and/or repair the Goods.
- (d) A charge for pumping out waste tanks or refilling water or fuel tanks.
- (e) Any applicable levies, fines, penalties and any other government charges arising out of your use of the Goods.
- (f) Operational and training Services provided by us to you (at your request) in connection with the Goods.
- (g) Any reasonable charges incurred by us if we are unable to inspect or carry out maintenance on the Goods during normal working hours.
- (h) If applicable, charges under the Loss and Damage Waiver as set out in clause 35.
- (i) Any rates, costs or charges notified to you in writing prior to you entering into this contact, which may include an environmental charge, administration charge etc.

23.4 If no time is stated for the payment of the Price on an invoice issued to you, then payment will be on or prior to delivery of the Goods (COD).

23.5 We reserve the right at any time to revise the hire fees/Price by providing you with written notice (**Price Increase Notice**). However, the Price cannot be increased during the period of an agreed fixed term hire unless you agree to the increase in writing. Where the increase in Price applies to Goods already on hire to you, you may in your discretion terminate the hire in writing to us and return the Goods to us within two (2) Business Days of receiving a Price Increase Notice. If such notice is not received by us and the Goods are not returned within the period referred to in the preceding sentence then the increased Price set out in the Price Increase Notice will apply on and from the time stipulated in that notice.

**24. Return of Goods**

24.1 You must return the Goods to us in the same clean condition and good working order as given to you (ordinary fair wear and tear excepted) on the date the hire period ends.

24.2 If you do not properly clean the Goods, we will charge you a cleaning fee and you will be liable to continue to pay hire charges for that portion of the hire period during which we clean the Goods.

24.3 Subject to clause 24.4, unless we have otherwise agreed in writing, it is your responsibility to return the Goods to the branch you hired it from during normal business hours.

24.4 If we agree to collect the Goods, you must ensure that the Goods are kept safe and secure until the time of collection.

**25. Your obligations**

25.1 You must not allow nor authorise any other person to use, re-hire or have possession of the Goods at any time, unless expressly agreed by us in writing.

25.2 You agree that before taking delivery of the Goods, you have satisfied yourself as to the suitability and condition of the Goods and you will ensure that the Goods are used only for the purpose for which they were designed by the manufacturer. You acknowledge that we have made the manufacturer’s operating and safety instructions available to you.

25.3 We make no representations and give no guarantee or warranty that the Goods are suitable for your intended purpose.

25.4 You must:

- (a) operate the Goods safely, strictly in accordance with all laws, only for intended use and in accordance with the manufacturer's instructions and our instructions;
- (b) ensure persons operating or erecting the Goods are suitably trained on safe and proper use, qualified to use the Goods and where necessary, hold the appropriate licences and authorisations;
- (c) ensure persons operating the Goods wear suitable clothing and protective equipment when operating the Goods as required or recommended by us or the manufacturer;
- (d) ensure that no persons operating the Goods are under the influence of drugs or alcohol;
- (e) conduct a job safety analysis prior to using the Goods;
- (f) ensure that no person carries illegal, prohibited or dangerous substances in or on the Goods;
- (g) display all safety signs and instructions (as required by law) and ensure that all instructions and signs are observed by operators of the Goods;
- (h) clean, fuel, lubricate and keep the Goods in good condition and in accordance with the manufacturer's and our instructions at your own cost;
- (i) not in any way alter, modify, tamper with, damage or repair the Goods without our prior written consent;
- (j) not deface, remove, vary or erase any identifying marks, plate, number, notices or safety information on the Goods;
- (k) not remove fuel or oil tank caps, bund plugs or seals from the Goods and ensure that they are in place when you return the Goods to us; and
- (l) arrange for the emptying of any waste tanks and water carts.
- 25.5 At all times during the hire period for the Goods, you must store the Goods safely and securely.
- 25.6 Whenever you are moving the Goods, you must ensure the safe loading, securing and transportation of all Goods in accordance with all laws, the manufacturer's guidelines and our requirements. You must observe any safety directions advised by us and/or the manufacturer of the Goods to ensure safe loading and handling.
- 25.7 You must not remove the Goods from the State or Territory in which you hired it without our written consent.
- 25.8 You must not use the Goods off-shore, in a mine, in an area where friable asbestos is present, or move the Goods over, in or close proximity to water or in forestry projects without our prior written consent.
- 25.9 You warrant that you will comply with all laws in relation your use of the Goods and immediately rectify any breach of an law caused by the use of the Goods.
- 25.10 You must use best endeavours to ensure that the Goods are not contaminated with any contaminants and/or hazardous substances (including, without limitation, asbestos, insects, fire ants, weeds or seeds). You must advise us of any risks of hazardous substance or contamination to the Goods as soon as they become apparent. Where Goods may have been subjected to contamination, you must immediately and effectively decontaminate the Goods, as well as provide us with written details of decontamination processes applied. If, in our opinion acting reasonably, the Goods are not capable of being decontaminated, you will be charged for the replacement cost of the Goods.
- 25.11 Any electrical Goods (including but not limited to, battery powered Goods) provided by us will be tested and tagged before it is hired to you, but during the hire period for the Goods, you are responsible for arranging the re-testing and re-tagging of any electrical Goods in accordance with our and/or the manufacturer's instructions and the applicable laws and standards at your cost and you will be liable for any damage that may result from incorrect testing of the electrical Goods.
- 26. Responsibility for the Goods**
- 26.1 You are responsible for any loss, theft or damage to the Goods, except where any such loss, theft or damage was caused by our act or omission.
- 26.2 We are responsible for the cost of ordinary wear and tear to tyres, track gear, ground engaging tools and wear on blades/buckets/rippers.
- 26.3 You are responsible and liable for the cost of:
- (a) repairing or replacing flat or damaged tyres; and
- (b) repairing or replacing all wear and tear and damage to tyres, track gear, ground engaging tools, wear on blades/buckets/rippers which is caused by use of the tyres, track gear and ground engaging tools, blades/buckets/rippers in conditions which we reasonably consider adverse or abnormal;
- (c) any daily service checks covered under clause 26.5 which include top ups of oils and lubricants as required; and
- (d) fuel and refuelling during the hire period. Goods returned us without a full tank of fuel will incur further charges which will be payable by you at rates determined by us.
- 26.4 At all times you must adhere to the manufacturer's recommended tyre pressure and track tension. You are responsible for replacing tyres, track gear, ground engaging tools, wear on blades/buckets/rippers and fuel lubricants when they become worn out or used up during the hire period.
- 26.5 You are responsible for undertaking the daily "Hire Daily Plant Inspection Check List" as outlined in our "Daily Inspection/Checklist Procedure Booklet", which is located in the protective pouches on the Goods.
- 26.6 You are responsible for the correct installation, calibration and use, as per the manufacturer's instructions of any attachments fitted to the Goods.
- 26.7 If you wish to use any attachments fitted to the Goods which have not been supplied by us, you must seek our approval in writing.
- 26.8 You are required to use best endeavours to prevent the theft of any device designed to guide the operation of the Goods, including but not limited to cross slope, laser, universal tracking systems, global positioning systems or compaction meters (**Device**). You must remove any detachable operator display or receiver of a Device from the Goods at the end of every use of the Goods and store in a safe place.
- 26.9 You are responsible for verifying the accuracy of any Device during the hire period. You must check the calibration of the Device on the Goods before each use and calibrate it at frequent intervals during use of the Goods.
- 27. Inspection**
- 27.1 Upon request being made by us, you must immediately allow us to enter the premises on which the Goods are located, and inspect and maintain the Goods from time to time at any time during the hire period during normal working hours.
- 27.2 If you cannot, or refuse to allow us to inspect or maintain the Goods during normal working hours, then additional charges may apply at our absolute discretion.
- 27.3 You may request to conduct a joint inspection of the Goods with us at the end of the hire period.
- 28. Services provided by us**
- If you request that we supply an operator to operate the Goods, and we agree to the same then:
- (a) the operator will be under your sole direction, responsibility and control during the hire period and will comply with your reasonable and lawful directions;
- (b) we will not be liable to you for any acts or omissions of the operator while under your direction, responsibility and control; and
- (c) you will not allow any other person to operate the Goods without our prior written consent.
- 29. Breakdown of the Goods**
- 29.1 In the event that the Goods break down or become unsafe to use during the hire period, you must:
- (a) immediately stop using the Goods and notify us;
- (b) take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Goods;
- (c) take all steps necessary to prevent any further damage to the Goods; and



- (d) not repair or attempt to repair the Goods without our written consent.
- 29.2 Subject to clause 29.3, upon receiving notice from you, we will:
- (a) take all reasonable steps to repair the Goods or provide suitable substitute Goods as soon as reasonably possible; and
- (b) not impose a hire charge forming part of the Price for that portion of the hire period for which the Goods were broken down or unsafe, nor the costs associated with any repair or replacement of the Goods.
- 29.3 If the Goods break down or become unsafe as a result of your acts or omissions or your failure to comply with these terms and conditions, then you will be liable to us for the full Price of the hire period for which the Goods are inoperable, as well as all costs associated with any repair or replacement of the Goods.

### 30. Stand-Downs

- 30.1 In circumstances where we have provisioned or allowed for stand-downs in our quotation, stand-downs may be allowed by us for rostered days off, wet weather and industrial disputes where the Goods cannot be used. Otherwise you will not be entitled to any stand-downs.
- 30.2 Stand-downs may be charged by us at a percentage of the applicable Price.
- 30.3 You must notify us prior to 9.00am on the morning of such stand-downs for stand-downs to be considered by us.
- 30.4 If approved (which will be at our absolute discretion), a stand-down number will be quoted by us which should be recorded by you as proof of stand-down. If you do not record proof of stand-down, we will not acknowledge the stand-down.
- 30.5 For the avoidance of doubt, a stand-down date must be a current or future date and cannot be retrospectively applied.

### 31. Telematics data

- 31.1 We are not liable with respect to Your use or reliance on any telemetry data we have provided to you in relation to the Goods.
- 31.2 You acknowledge and agree that:
- (a) we own all rights, title and interest in such data;
- (b) you must obtain our prior written approval for the purposes for which you intend to use the data and you must not disclose the data to any third party;
- (c) we do not warrant the accuracy of any data nor guarantee that such data will be available to you;
- (d) we are not required to retain any data and such data may not be available for retrieval; and
- (e) we may disclose, from time to time, any data to a third party who is not a party to this contact and we are not required to obtain your prior permission with respect to such disclosure.

### 32. Tracking equipment

- 32.1 You consent to the installation, use and maintenance of a tracking and preventative maintenance device installed on the Goods to allow us to:
- (a) monitor the geographical location of the Goods from time to time;
- (b) monitor and assist with preventative maintenance scheduling;
- (c) monitor the usage of our Goods by you (including the hours and times the Goods have been used); and
- (d) monitor anything else in connection with the Goods.
- 32.2 You will ensure that the notice of the installation and use of such a tracking device is drawn to the attention of every operator that you have authorised to use the Goods before they commence using such Goods by way of a notice that is affixed to the Goods and which is not obscured, defaced or removed.

### 33. Title in the Goods

- 33.1 You acknowledge that we own the Goods and in all circumstances we retain title to the Goods. Your rights to use the Goods are as a bailee only.

- 33.2 Subject to clause 33.5, you are not entitled to offer, sell, assign, licence, lease, sub-let, charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Goods in any way.
- 33.3 In no circumstances will the Goods be deemed to be a fixture.
- 33.4 You acknowledge that we may hire or lease Goods from a third party if we cannot provide the Goods to you and if this occurs, title in the Goods remains with that third party owner.
- 33.5 You must not lease, hire, bail or give possession (**Sub-Hire**) of the Goods to anyone else unless we, in our absolute discretion, first consent in writing. Any such Sub-Hire must:
- (a) be in writing in a form acceptable to us and must be expressed to be subject to our rights under the Sub-Hire agreement;
- (b) be consistent with these terms and conditions; and
- (c) does not relieve your rights and obligations with respect to the Goods pursuant to these terms and conditions.

You may not vary the arrangements relating to a Sub-Hire without our prior written consent which we, at our absolute discretion, may refuse or approve subject to any conditions we think fit. You must ensure that we are provided at all times with up-to-date information about the Sub-Hire including the location and condition of our Goods.

### 34. Lost, stolen or damaged Goods

- 34.1 If the Goods:
- (a) have broken down or become unsafe to use as a result of your acts or omissions or your failure to comply with these terms and conditions; or
- (b) if the Goods are lost, stolen or damaged beyond fair wear and tear,
- you will be liable for:
- (c) any costs incurred by us to recover and repair or replace the Goods; and
- (d) the Price for that portion of the hire period during which the Goods are being recovered and repaired or replaced,

except where you have paid the Damage Waiver Fee, in which case your liability is subject to clause 35 below.

- 34.2 Provided that you pay the costs and charges described in clause 35, we will return or replace the Goods, and you must continue to pay the Price for the remainder of the hire period.

### 35. Loss and Damage Waiver

- 35.1 The Loss and Damage Waiver set out in this clause 35 is an agreement to limit your liability in certain circumstances for loss, theft or damage to the Goods to an amount known as the **Damage Waiver Fee**, and which currently comprises 12.50% of the hire fees/Price payable on an upfront basis. We may, at our discretion, change the percentage referred to in the preceding sentence by notice in writing to you from time to time.
- 35.2 If applicable, the Damage Waiver Fee will be automatically charged to you in addition to the Price.
- 35.3 You are not required to pay the Damage Waiver Fee from the date you produce a certificate of currency for an appropriate policy of insurance that covers loss, theft or damage to the Goods for an amount not less than the replacement value of the Goods. For the avoidance of any doubt, you are liable to pay the Damage Waiver Fee for that portion of the hire period where a certificate of currency remains outstanding and you are not entitled to any credit and/or reimbursement of the Damage Waiver Fee charged and/or paid that relates to the uninsured period. You are responsible for any excess and any other costs associated with your insurance and you are responsible for any shortfall in repair or replacement costs of the Goods following payment of any amount received under your insurance, including any loss we suffer as a result of not being able to hire or other utilise the Goods.
- 35.4 Subject to clauses 35.5 and 35.6, where you have paid the Damage Waiver Fee, we will waive our right to claim against you for loss, theft or damage to the Goods if:
- (a) for theft, you have promptly reported the incident to the police and provided us with a written police report; and
- (b) you have co-operated with us and provided us with the details of the incident, including any written or photographic evidence we require.

35.5 If any item of Goods is either lost, stolen or damaged and you have paid the Damage Waiver Fee, you must pay the **Damage Waiver Excess** for each such item of Goods and which is the amount calculated as follows:

Replacement where the Goods are lost, stolen or damaged beyond repair:

- (a) Subject to paragraph (b) below, the **Damage Waiver Excess** for each item of Goods that is lost, stolen or damaged beyond repair will be the amount equal to the greater of:
  - (i) \$5,000.00; or
  - (ii) fifteen percent (15%) of market value to replace the Goods with a new item of the same goods, or if the same is not available, then the cost to replace the Goods with a new item of goods of the same quality, function and capacity (**New Replacement Cost**).
- (b) Where the **New Replacement Cost** is less than \$5,000.00, the **Damage Waiver Excess** will be an amount equal to the **New Replacement Cost**.

Repair where the Goods are partially damaged and can be repaired:

- (c) Subject to paragraph (d) below, the **Damage Waiver Fee** for each item of Goods that is partially damaged and can be repaired will be the amount equal to the greater of:
  - (i) \$5,000.00; or
  - (ii) fifteen percent (15%) of the repair cost.
- (d) Where the repair cost of the Goods is less than \$5,000.00, the **Damage Waiver Excess** will be an amount equal to the lesser of the repair cost and the **New Replacement Cost**.

35.6 Even if you have paid the Damage Waiver Fee, we will not waive our rights to claim against you for loss, theft or damage to the Goods and the Loss and Damage Waiver will not apply if the loss, theft or damage:

- (a) has arisen as a result of your breach of any contract we have with you for the Goods;
- (b) has been caused by your negligent act or omission;
- (c) has arisen as a result of your use of the Goods in violation of any laws;
- (d) has been caused by your failure to use the Goods for their intended purpose or in accordance with our instructions or the manufacturer's instructions;
- (e) occurs to the Goods whilst they are located, used, loaded, unloaded, transported on or over water, wharves, bridges or vessels of any kind;
- (f) occurs to the Goods whilst working in or close proximity to water or whilst being used in forestry projects. In such cases,

you must ensure that you effect all necessary insurances, at your cost, with respect to the Goods and provide a certificate of currency in that respect before taking possession of the Goods;

- (g) has been caused by a lack of lubrication or a failure to properly service or maintain the Goods;
- (h) has been caused by collision with a bridge, carpark, awning, gutter, tree or any other overhead structure or object due to insufficient clearance;
- (i) has been caused by the overloading of the Goods or any components thereof;
- (j) is to motors or other electrical Goods or components within the Goods caused by electrical overload, a surge in electrical current or the use of under-rated or excessive lengths of extension leads with the electrical Goods;
- (k) is caused by exposure to any corrosive or caustic substance, such as cyanide, salt water, acid, etc.;
- (l) is caused by vandalism;
- (m) is to tyres or tubes; or
- (n) is to windscreens, mirrors, glass, or perspex.

**36. Defective Goods on Delivery**

Pursuant to clause 10, you must inspect the Goods on delivery and must within twenty-four (24) hours notify us in writing of any alleged defect, shortage in quantity, damage or failure to comply with the description, specification or quote.

**37. Your indemnity**

37.1 You are liable for and indemnify us against all liability, claims, damages, losses, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against us) (**Losses**) in respect of:

- (a) personal injury;
- (b) damage to property; or
- (c) a claim by a third party,

in respect of your use of the Goods and/or breach of these terms and conditions. Your liability under this indemnity is reduced to the extent that such claim or loss was incurred as a result of our negligent acts or omissions.

37.2 We will not be liable to you for any acts or omissions of any person supplied by us where that person is acting under your direction and control during the hire period and you indemnify us against all Losses arising from or incurred in connection with such acts or omissions.

**PART C – SPECIAL TERMS: SUPPLY OF SPARE GOODS AND SERVICES**

**38. Definitions**

For the purpose of this Part C:

- (a) unless otherwise defined in this Part C, capitalised words have the same meaning ascribed to them in Part A “*General Terms and Conditions*” of these terms and conditions; and
- (b) **Goods** means all goods and spare parts and items supplied by us to you (and where the context so permits will include any supply of Services) and are as described on the invoices, quotations, authorisations or any other form or document as provided by us to you.

**39. Quotations and additional work**

- 39.1 Where you have requested us to prepare a quotation for the provision of Services which requires us to perform disassembly of any of your Supplied Items and you do not accept the quotation, you will be responsible for all labour and associated costs and charges incurred by us in preparing the quotation and will be charged the Price accordingly.
- 39.2 Your disassembled Supplied Items will not be reassembled following rejection of a quotation unless you request us to do so and agree to pay us the Price for such reassembly. Such re-assembly will not come with warranties of any nature.
- 39.3 Where you have requested us to provide Services, and additional Services and tests are required in connection with the Services, we will inform you of such and provide details of the usual or likely charges in relation to these additional Services and/or tests for your consideration and acceptance.

**40. Price**

If no time is stated for the payment of the Price on an invoice issued to you, then payment will be due on or prior to delivery (COD).

**41. Specifications of Goods**

- 41.1 We reserve the right to make any changes to the Goods found necessary due to the unavailability of Goods or which we or the manufacturer reasonably considers would improve the Goods, subject to any change not altering the function or nature of the Goods in a substantial or material way.
- 41.2 Specifications including (without limitation) performance, dimension and weight are approximate only and we shall not be liable for any error or inaccuracy in the specifications provided the error or inaccuracy arises from any of the circumstances described in clause 41.1 or which arises from a change made to the Goods by the manufacturer.

**42. Return and/or cancellation of Goods**

- 42.1 If we decide to accept a return of Goods that are not defective (which will be at our absolute discretion), such return will be subject to a handling and administration charge of \$25.00 or ten percent (10%) of the invoice value of the returned Goods (whichever is higher) and is limited to a maximum charge of \$500.00. Furthermore, for the avoidance of doubt, you will be responsible for all costs and expenses incurred by you in returning the Goods to us (including any freight charges).
- 42.2 Once any Goods are ordered, you cannot cancel the order without our consent. If we elect to accept your cancellation of the relevant order before the Goods are delivered, then you will be liable to pay us:
  - (a) subject to paragraph (b) below, the fees set out in clause 42.1; or
  - (b) where the Goods are of a nature set out in clause 42.3 then all costs incurred by us in ordering the relevant Goods (including any freight costs) that we may have paid or are liable to pay.
- 42.3 All:
  - (a) electronic Goods; and/or
  - (b) specially sourced or special ordered Goods (being Goods are not generic, and specially ordered to your requirements or specifications),
 are non-returnable.

**43. Warranties**

- 43.1 Goods supplied by us are subject only to the then applicable manufacturer’s written warranty (if any) and, except to the extent prohibited by law, all other warranties with respect to Goods are hereby excluded.
- 43.2 Unless stated otherwise by us in writing, in the case of Services which comprise the supply of labour that is directly related to the supply of Goods (such as labour for the installation of the Goods):
  - (a) the Goods component is subject only to the then applicable manufacturer’s written warranty (if any) and, except to the extent prohibited by law, all other warranties are hereby excluded; and
  - (b) the labour component is warranted by us to be free from defects for the same duration and subject to the same terms and conditions as the then applicable manufacturer’s written warranty applying to the Goods (if any).
- 43.3 Unless stated otherwise by us in writing, in the case of Services performed on our behalf by a subcontractor, those Services are subject only to the then applicable subcontractor’s warranty (if any) and, except to the extent prohibited by law, all other warranties with respect to those Services are hereby excluded.
- 43.4 Unless stated otherwise by us in writing, in the case of Services which comprise the supply of labour, the Services are warranted to be free from defects for a period of six (6) months from the date of completion of the Services and except to the extent prohibited by law, all other warranties with respect to Services are hereby excluded. This warranty is conditional upon the following:
  - (a) You providing us with written notice of any claim pursuant to the warranty within the warranty period.
  - (b) Delivery at your expense of the components to us at an address nominated by us.
  - (c) Our satisfaction that the Services supplied by us were defective.
- 43.5 Any claim under the terms of the warranties set out in this clause 43 must be made by you at your own cost.

**PART D – SPECIAL TERMS: CARRIAGE/TRANSPORTATION SERVICES**

**44. Definitions**

For the purpose of this Part D:

- (a) unless otherwise defined in this Part D, capitalised words have the same meaning ascribed to them in Part A “*General Terms and Conditions*” of these terms and conditions; and
- (b) **Services** includes services provided by us in connection with the carriage of Supplied Items, including carriage, storage, loading, unloading, packing, unpacking and all other incidental services in connection with the transportation of the Goods whether by air, sea, rail or road.

**45. Not a common carrier**

45.1 We are not a common carrier and will accept no liability as such.

45.2 All Supplied Items are carried and other Services are performed by us subject only to the terms and conditions in these terms and conditions and we reserve the right to refuse the carriage of goods for any person and the carriage of any class of goods at our discretion.

**46. Our obligations**

In respect to the Services provided, we will:

- (a) take reasonable care to protect and safeguard the Supplied Items;
- (b) provide the Services exercising the degree of skill, care and efficiency that would be expected from a competent service provider experienced in providing carriage;
- (c) obtain and maintain at our own expense all proper and necessary licences as may be required by Law in connection with the provision of the Services;
- (d) use reasonable endeavours to deliver the Supplied Item to the address nominated by you and to effect delivery at the date and time requested by you (subject to compliance with all applicable laws); and
- (e) use reasonable endeavours to comply with your reasonable and lawful directions.

**47. Route and deviation**

47.1 You authorise any deviation from the usual route or manner of carriage of the Supplied Items that may, in our reasonable opinion, be considered desirable or necessary in the circumstances.

47.2 If you expressly or impliedly instruct us to use, or it is expressly or impliedly agreed that we will use a particular method of handling or storing the Supplied Items, or a particular method of carriage, whether by road, rail, sea or air, we will give priority to that method but if, in our reasonable opinion, it cannot practicably or conveniently be adopted by us, you authorise us to handle, store or carry or to have the Supplied Items handled, stored or carried by another method or methods at our discretion.

**48. Your warranties**

48.1 You warrant and acknowledge that:

- (a) the Supplied Items are fit for carriage and have been suitably packaged for those purposes;
- (b) you have the authority of all persons owning or having any interest in the Supplied Items to accept these conditions on their behalf;
- (c) the details of description, items, pallet space, quantity, weight, volume, quality, value and measurements supplied by you or any other party is correct;
- (d) there is a suitable practicable road and approach for us and our vehicles to the place from which the Supplied Items are to be collected and the place to which the Supplied Items are to be delivered;
- (e) any place from which the Supplied Items are to be collected or to which any of the Supplied Items are to be delivered will have safe and adequate loading facilities and equipment available for our use;
- (f) carriage is supplied for the purpose of a business, trade, profession or occupation carried on or engaged in by you;

- (g) where required by law, you have accurately completed and supplied a weight declaration form;
- (h) you have complied with all laws in relation to carriage of the Supplied Items;
- (i) the Supplied Items are not dangerous goods that are or may become noxious, dangerous, flammable or damaging or that may harbour or encourage vermin or other pests, or that are or may become liable to damage any property whatsoever (**Dangerous Goods**);
- (j) the Supplied Items will be free from any contaminants and/or hazardous substances (including, without limitation, asbestos, insects, fire ants, weeds or seeds), and where applicable, will be thoroughly cleaned before we collect the Supplied Items;
- (k) we rely on the details of description, items, pallet space, quantity, weight, quality, value and measurements supplied by you but do not admit their accuracy; and
- (l) we accept no responsibility for collection of cash or other payments from any party.

**49. Your indemnities**

You indemnify us:

- (a) in respect of any liability whatsoever in respect of the Supplied Items to any person who claims to have, who has, or who in the future may have any interest in the Supplied Items or any part of the Supplied Items; and
- (b) against all losses, damages, claims, fines, expenses, duty, tax, demands, actions and proceedings or any other liability suffered or incurred by, or made or instituted against us as a result of:
  - (i) a breach of your obligations under these terms and conditions;
  - (ii) any material inaccuracies in safety data sheets; or
  - (iii) any negligence, wilful misconduct or recklessness of you or your consignee.

**50. Charges**

Where we store Supplied Items for you (in any manner and in any place we determine at our absolute discretion), you must:

- (a) pay our expenses and charges to comply with any law or with the requirement of any market, harbour, dock, railway, shipping, customs, excise or warehouse authority, or other person;
- (b) if any Supplied Items are under customs control, pay all customs duty, excise duty and costs (including any fine or penalty) that we become liable to pay;
- (c) supply or pay for labour or machinery, or both, to load or unload the Supplied Items; and
- (d) if the Supplied Items are at any time re-quantified, re-weighed or re-measured, pay any proportional additional charges.

**51. Liability**

51.1 The Supplied Items are at all times your sole risk. You acknowledge and agree that, to the extent permitted by law, neither us or any other person will, in any circumstances, be under any liability whatsoever (whether in contract, tort, bailment or otherwise) for:

- (a) any loss of or damage to the Supplied Items; or
- (b) misdelivery or non-delivery of the Supplied Items or any of them, unless such loss, damage, misdelivery, or non-delivery was caused by our negligence or wilful default, reduced proportionately to represent the extent to which you or any other persons negligent or wrongful acts or omissions caused the loss, damage, misdelivery, or non-delivery of the Supplied Items.

51.2 Notwithstanding any other provision of this contact, we will not be liable for:

- (a) any loss of or damage to the Supplied Items:
  - (i) caused by us following your instructions;
  - (ii) caused by the Supplied Items becoming infected or contaminated with any virus, bacteria, fungi, pathogen, disease, mould, vermin or like condition;



- (iii) caused by vibration, road conditions, weather or weather events of any kind whatsoever, including stone, rain, hail or storm damage;
  - (iv) caused by the Supplied Items being inherently defective or in such a condition that they cannot be loaded, unloaded or transported by road without damage;
  - (v) caused by a decline in value, or loss of value as a result of the Supplied Items becoming past their use by or expiry date;
  - (vi) where such loss becomes apparent as the result of a stock count or stocktake;
  - (vii) where such loss or damage comprises of mechanical, electrical or electronic breakdown, derangement, or malfunction of the Supplied Items;
  - (viii) caused by the inherent vice or the nature of the Supplied Items; or
  - (ix) caused by insufficiency or unsuitability of packing or preparation of the Supplied Items to withstand the ordinary incidents of carriage;
- (b) loss or damage suffered in connection with any delay in the delivery or collection of Supplied Items; or
- (c) any loss of or damage to the Supplied Items where the loss of or damage to the Supplied Items occurs during storage.

## 52. Delivery

- 52.1 You warrant that We are authorised to deliver the Supplied Items at the address nominated to us by you for that purpose. We will be conclusively presumed to have delivered the Supplied Items if, at that address, we obtain from any person a receipt or signed delivery docket for the Supplied Items.
- 52.2 If the nominated place of delivery should be unattended or if delivery cannot otherwise be effected by us or you otherwise fail to take delivery of the Supplied Items, we will attempt to contact you to obtain alternative instructions for delivery (which may be subject to additional charge at our discretion).
- 52.3 If we are unable to obtain alternative instructions that we can reasonably and practicably carry out, we may at our option deposit the Supplied Items at that place (which will be conclusively presumed to be due delivery) or store the Supplied Items.
- 52.4 If the Supplied Items are stored by us, you will pay or indemnify us for all costs and expenses incurred in such storage and we will be at liberty to redeliver them to you from the place of storage at your expense.

## 53. Storage

- 53.1 Where Supplied Items are stored by us, you:
- (a) will supply details of the persons entitled to collect the Supplied Items and an inventory of the Supplied Items to be stored; and
  - (b) must effect and maintain an insurance policy in your name that covers loss of or damage to the Supplied Items while the Supplied Items are being stored and must provide a certificate of currency in respect of the policy within seven (7) days of receiving a request from us.
- 53.2 We may remove the Supplied Items from a place of storage to another place of storage at our discretion.
- 53.3 Storage charges do not include removing, packing, unpacking, stowing, restoring or delivering the Supplied Items.
- 53.4 You must give forty-eight (48) hours' notice to us or your intention to remove Supplied Items from storage.
- 53.5 We will not be obliged to deliver any Supplied Items:
- (a) except to you or to a person authorised in writing by you to receive the Supplied Items; or
  - (b) where we have not received payment of all amounts due by you to us on any account whatsoever.
- 53.6 You must remove Supplied Items from storage within seven (7) days of receipt of written notice from us.
- 53.7 If any identifying document or mark is lost, damaged, destroyed or defaced, we may open any document, wrapping, package or other container in which the Supplied Items are placed or carried to inspect

them, either to determine their nature or condition, or to determine their ownership.

## 54. General Lien

- 54.1 The Supplied Items are accepted subject to a general lien for all charges now due or that may become due to us by you on any account whatsoever.
- 54.2 Without prejudice to any other rights we may have under law, if charges remain outstanding for more than thirty (30) days, or the Supplied Items are not collected within thirty (30) days of the date required or designated, we may, without notice, and immediately do any of the following:
- (a) remove all or any of the Supplied Items and store them as we think fit at your risk and expense; and/or
  - (b) open and sell all or any of the Supplied Items as we consider fit (whether by private treaty or public auction) and apply the proceeds to discharge the lien and costs of sale without being liable to any person for any loss or damage caused.
- 54.3 The parties agree that the lien attaches to Supplied Items when the Supplied Items are accepted by us for carriage.

## 55. Notification of claim

- 55.1 We will be discharged from all liability whatsoever in respect of the Supplied Items unless written notice of a claim or an intended claim (together with particulars of the circumstances on which the claim is based) is given to us:
- (a) in the case of Supplied Items allegedly lost or damaged in the course of loading, unloading or transit within seven (7) days from the delivery of the Supplied Items; or
  - (b) in the case of Supplied Items allegedly lost or damaged during storage, within seven (7) days of the date of removal or attempted removal of the Supplied Items from storage.
- 55.2 We will, in any event, be discharged from all liability whatsoever in respect of the Supplied Items unless suit is brought:
- (a) in the case of the Supplied Items allegedly lost or damaged in the course of loading, unloading or transit, within three (3) months of their delivery or of the date on which they should have been delivered; or
  - (b) in the case of Supplied Items allegedly lost or damaged during storage, within three (3) months of the date of removal or attempted removal of the Supplied Items from storage.