

## ADX Depot Terms and Conditions

By submitting a credit application and/or ordering Goods from the Seller, the Buyer agrees that the following terms and conditions of trade shall apply to the supply. These terms and conditions replace any previous terms and conditions of trade.

### 1 Definitions

In these terms and conditions and the following sections of this document entitled "Declaration" and "Guarantee and Indemnity" ("Guarantee") and any other associated documents (unless the context otherwise requires):

- 1.1 "ACL" is an abbreviation of the Australian Consumer Law (Schedule 2 of the Competition and Consumer Act 2010 (Cth) as amended from time to time)
- 1.2 "Consequential Loss" means loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise.
- 1.3 "Consumer" means a consumer as that term is defined in section 3 of the ACL;
- 1.4 "Seller" means ADX Depot Pty Ltd ACN 621 639 914 and includes their successors and permitted assigns.
- 1.5 "Buyer" means the person/s submitting the credit application and/or ordering Goods (and/or hiring Equipment) as specified in any invoice, document or order, and it includes the Buyer's personal representatives, successors and permitted assigns.
- 1.6 "Goods" means all goods or services supplied by the Seller to the Buyer at the Buyer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.7 "Equipment" means all equipment including any accessories supplied on hire by the Seller to the Buyer (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 Seller to the Buyer.
- 1.8 "PMSI" means a purchase money securities interest and has the meaning given in section 14 of the PPSA;
- 1.9 "PPSA" means the Personal Property Securities Act 2009 (Cth);
- 1.10 "Price" means the Price payable for the Goods as agreed between the Seller and the Buyer in accordance with clause 4 below.
- 1.11 "Promised Time" means the time agreed upon between the Seller and the Buyer for an order of Goods/Equipment to be delivered to the Buyer's nominated address.
- 1.12 "Small Business" means a small business that meets the criteria of section 23(4)(b) of the ACL.

### 2 General

- 2.1 The Buyer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Buyer places an order for or accepts delivery of the Goods/Equipment.
- 2.2 Unless otherwise specifically agreed in writing by the Seller, where any terms and conditions of the Buyer's order are inconsistent with these terms and conditions, then these terms and conditions will prevail. Any variations or additions to these terms and conditions not expressly agreed to in writing by the Seller are expressly rejected.
- 2.3 A quotation shall not constitute an offer to sell Goods or hire Equipment to the Buyer. No contract for the supply of Goods/Equipment shall exist between the Seller and the Buyer until a Buyer's order for Goods/Equipment has been accepted by the Seller in writing. The Seller may accept or refuse any order for Goods/Equipment in its absolute discretion and may make its acceptance of an order conditional upon it receiving a satisfactory credit assessment of the Buyer.
- 2.4 The Seller may vary these terms and conditions by notice in writing to the Buyer (which notice may be given via the Seller's website).
  - (a) If the Buyer is a Consumer or a Small Business, then the Buyer may consider the variation and, if not acceptable, may elect not to proceed with the purchase of the Goods ordered or Equipment hired before the date of the variation and which would be subject to the variation.
  - (b) If the Buyer is not a Consumer or a Small Business, the Buyer agrees that Goods/Equipment delivered and/or ordered after the date of the notice of the variation will be subject to the variation and acceptance of the Goods/Equipment or the placing of the order shall be deemed to be an acceptance of such varied terms and conditions.

### 3 Change in Control

- 3.1 The Buyer shall give the Seller not less than fourteen (14) days prior written notice of any proposed variation to any of the information supplied by the Buyer to the Seller or in the structure or nature of the Buyer's business (including but not limited to, changes in the Buyer's ownership structure, address, contact phone or fax number/s, or legal name). The Buyer shall be liable for any loss incurred by the Seller as a result of the Buyer's failure to comply with this clause.

### 4 Price and Payment

- 4.1 All transactions are processed in Australian Dollars (AUD)
- 4.2 At the Seller's sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by the Seller to the Buyer; or
  - (b) the Seller's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of ninety (90) days; or
  - (c) price ruling by the Seller at the date of delivery/collection.

- 4.3 The Seller reserves the right to change the Price if a variation to the Seller's quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation due to fluctuations in the currency exchange rate or as a result of increases to the Seller in the cost of materials and labour) will be charged in addition to the original quoted price on the Seller's quotation, and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.4 If the Buyer is a Consumer or a Small Business, then the Buyer may consider the variation referred to in clause 4.3 and, if not acceptable, may elect not to proceed with the purchase of the Goods ordered or Equipment hired before the date of the variation but which are intended to be subject to the variation.
- 4.5 At the Seller's sole discretion a non-refundable deposit may be required.
- 4.6 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Buyer on the date/s determined by the Seller, which may be:
- (a) on delivery/collection of the Goods/Equipment;
  - (b) thirty (30) days following the end of the month in which the goods/equipment were supplied; or
  - (c) the date specified on any invoice or other form as being the date for payment.
- 4.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of 3%+GST of the Price for AMEX cards and 1.3%+GST of the Price for any other cards), or by any other method as agreed to between the Buyer and the Seller.
- 4.8 The Buyer must pay the Price and the GST thereupon without set-off, deduction, withholding or counterclaim.
- 4.9 Unless otherwise stated the Price does not include GST. In addition to the Price the Buyer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods/hire of the Equipment. In addition the Buyer must pay any other taxes and duties (including, but not limited to, customs duty, packaging costs, freight charges or bank charges) that may be applicable in addition to the Price except where they are expressly included in the Price.
- 4.10 Any amounts received by the Seller may be applied at the Seller's discretion: first against interest, fees, charges, collection expenses and legal expenses; and second, towards any amount that the Buyer owes to the Seller from time to time.
- 4.11 The seller will be entitled to set off against any money owing to the Buyer amounts owed to the Seller by the Buyer on any account whatsoever.

## **5 Delivery of Goods/Equipment**

- 5.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that the Seller (or the Seller's nominated carrier) leaves the Seller's premises to deliver the Goods/Equipment to the Buyer's nominated address. If no such address is nominated, then delivery will be deemed to occur at the time when the goods are ready for collection at the Seller's premises.
- 5.2 At the Seller's sole discretion the cost of delivery is in addition to the Price.
- 5.3 The Seller may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.4 Any delivery time or date given by the Seller to the Buyer is an estimate only and the Seller shall not be liable to the Buyer for any failure to deliver or for delay in delivery of goods occasioned by strike, lockout or other industrial dispute, shortage of stock, shortage of labour, lack of skilled labour, delays in transit, fire, flood, hostility, civil commotion or any other cause whatsoever whether or not beyond the control of the Seller.
- 5.5 The Buyer shall not be relieved of any obligation to accept or pay for Goods/Equipment by reason of any delay in Delivery. To the extent permitted by law, the Seller will not be liable for any loss or damage, including consequential loss or damage, arising from any delay in delivery to the Buyer.
- 5.6 The Buyer authorises the Seller to deliver Goods/Equipment to the place nominated by the Buyer and to leave the Goods/Equipment at such place whether or not any person is present to accept delivery. The Seller shall not be liable on any basis whatsoever for loss suffered by the Buyer after delivery to the nominated address.
- 5.7 The Seller shall not be obliged to obtain a signed receipt or other acknowledgment from any person at the nominated place for delivery but if a signed receipt or other acknowledgment is obtained from someone believed by the Seller to be authorised by the Buyer to sign or otherwise take delivery, then such signed receipt or other acknowledgement shall be conclusive evidence of the Buyer's acceptance of the Goods/Equipment delivered.
- 5.8 The Seller guarantees that eligible orders of Goods/Equipment will be delivered in full within 2 hours from the time the order is placed. Should the order of Goods/Equipment not arrive at the Buyer's nominated delivery address within this timeframe, the freight charge will be waived. An order is deemed eligible if the following conditions are met:
- The order is placed after 8am on a business day
  - The total order weight does not exceed 8 ton
  - The nominated delivery address falls within Zone A of the Seller's Delivery & Charges map
  - The Buyer's account is not on credit hold at the time the order is placed

Exclusions include:

- House lots
- Orders requiring crane truck delivery
- Orders of Goods/Equipment with a Promised Time exceeding 2 hours from the time that the order is placed

- 5.9 The Seller guarantees that orders of Goods/Equipment with a Promised Time will be delivered in full before or at the Promised Time. Should the order of Goods/Equipment not arrive at the Buyer's nominated delivery address before or at the Promised Time, and only if the Buyer's account is not on credit hold at the time the order is placed, the freight charge will be waived. Delivery guarantee eligibility is subject to the criteria of the agreed upon Promised Time delivery service option between the Buyer and the Seller, outlined as follows:

adxpress

- Promised Time of 60 minutes
- The total order weight does not exceed 1 tonne
- The length of products does not exceed 3 metres
- The nominated delivery address falls within Zone A of the Seller's Delivery & Charges map
- Assisted Unload is provided

90xpress

- Promised Time of 90 minutes
- The total order weight does not exceed 5 tonne
- The length of products does not exceed 6 metres
- The nominated delivery address falls within Zone A of the Seller's Delivery & Charges map
- Assisted Unload is provided

adx24/7

- Promised Time as agreed upon between the Buyer and the Seller

**6 Risk**

- 6.1 Risk of damage to or loss of the Goods passes to the Buyer on Delivery and the Buyer must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 6.3 If the Buyer requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Buyer's sole risk.
- 6.4 The Buyer shall insure the goods against theft or any damage until such goods have been paid for or until they are sold by the Buyer whichever occurs first and the Seller will be entitled to call for details of the insurance policy. If the Buyer does not insure the goods or fails to supply details of its insurance policy, the Buyer will reimburse the Seller for the cost of any insurance which the Seller may reasonably arrange in respect of the goods supplied to the Buyer.

**7 Title**

- 7.1 The Seller and the Buyer agree that legal and beneficial ownership of the Goods shall not pass until:
- (a) the Buyer has paid the Seller all amounts owing to the Seller; and
  - (b) the Buyer has met all of its other obligations to the Seller.
- 7.2 Receipt by the Seller 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 by the Seller.
- 7.3 It is further agreed that until ownership of the Goods passes to the Buyer in accordance with clause 7.1 that:
- (a) the Buyer is only a bailee of the Goods and must return the Goods to the Seller on request;
  - (b) the Buyer holds the benefit of the Buyer's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - (c) the Buyer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value;
  - (d) the Buyer should not convert or process the Goods or intermix them with other goods but if the Buyer does so then the Buyer holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs;
  - (e) the Buyer irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods;
  - (f) the Seller may recover possession of any Goods in transit whether or not delivery has occurred;
  - (g) the Buyer 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 Seller; and
  - (h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Buyer.

**8 Personal Property Securities Act 2009 ("PPSA")**

- 8.1 In this clause 8, financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 8.2 The Buyer acknowledges and agrees that these terms and conditions constitute a security agreement and until the Seller has received payment for all amounts owing to it by the Buyer, the Seller has a:

- (a) PMSI in the Goods (and its proceeds) supplied presently and in the future by the Seller to the Buyer;
  - (b) PMSI in the Equipment (and its proceeds) supplied presently and in the future by the Seller to the Buyer, only to the extent that the parties have agreed that the hire period will exceed 24 months; and
  - (c) Security Interest in relation to any other amounts owed by the Buyer to the Seller.
- 8.3 The Buyer 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 Seller 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) ensure that a security interest is enforceable, perfected and otherwise effective, including to cure any defect in any registration.
  - (b) indemnify, and upon demand reimburse, the Seller 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 Seller;
  - (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 Seller;
  - (e) immediately advise the Seller 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.
- 8.4 The Seller and the Buyer 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 The Buyer waives their rights to receive notices under sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA.
- 8.6 The Buyer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.7 Unless otherwise agreed to in writing by the Seller, the Buyer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8 The Buyer must unconditionally ratify any actions taken by the Seller under clauses 8.3 to 8.5.
- 8.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

## **9 Security, Charge and Indemnity**

- 9.1 In consideration of the Seller agreeing to supply the Goods/Equipment, the Buyer hereby charges in the Seller's favour, all of its respective present and future rights, title and interests (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Buyer either now or in the future, to secure the performance by the Buyer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 9.2 The Buyer agrees that, on demand by the Seller, the Buyer will immediately execute such mortgage or other instrument of security ("Security Instrument"), as the Seller may require, and in the event that the Buyer fails to do so with a reasonable time of being so requested, the Buyer hereby irrevocably appoints any credit manager or solicitor engaged by the Seller and each director of the Seller as the Buyer's true and lawful attorney/s to execute and register any such Security Instruments including, but not limited to, signing any document on the Buyer's behalf. The Buyer will not object to the lodgment by the Seller of a caveat noting the interest given by this clause 9, or any other Security Instrument, on the title of the charged property.
- 9.3 The Buyer agrees to hold harmless and indemnify the Seller on demand, on a full indemnity basis, as a separate obligation against any liability (including but not limited to all losses, costs, charges, expenses, disbursements, collection and legal costs) incurred by, or assessed against, the Seller in connection with:
- (a) the supply of goods and/or services to the Buyer;
  - (b) the Buyer's breach of any of these terms and conditions of trade;
  - (c) any cheque given by the Buyer, or electronic banking transaction made by the Buyer, being dishonoured for whatever reason;
  - (d) obtaining, or attempting to obtain, payment for any amount due by the Buyer;
  - (e) otherwise arising out of the business relationship between the Buyer and the Seller;
  - (f) moneys paid by the Seller with the Buyer's consent in settlement of a dispute that arises or results from a dispute between, the Seller, the Buyer, and a third party or any combination thereof, over the supply of goods and/or services by the Seller to the Buyer
  - (g) in connection with the enforcement or discharge of this clause, clause 8 and/or clause 11.
- 9.4 The Buyer acknowledges that collection costs may be calculated on a commission basis at a percentage rate of up to 20% of the amount due and expressly agrees to pay for those expenses, irrespective of the amount of work actually performed by the collection agent.

## **10 Defects, Warranties and Returns**

- 10.1 The Buyer must inspect the Goods/Equipment on delivery and must within fourteen (14) days of delivery notify the Seller in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. Upon such notification the Buyer must allow the Seller to inspect the Goods/Equipment. If the Buyer fails to provide such notice then the

Buyer shall be deemed to have accepted the Goods/Equipment.

10.2 Subject to this clause 10, returns will only be accepted provided that:

- (a) the Buyer has complied with the provisions of clause 10.1; and
- (b) the Seller has agreed in writing that the Goods are defective; and
- (c) the Goods are returned within a reasonable time at the Buyer'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; and
- (e) the Goods were not specifically manufactured for the buyer or a special buy in item i.e non stock list item; and
- (f) the Goods are not prefinished aluminum including painted or anodised finishes.

10.3 The Seller may, in its absolute discretion, accept non-defective Goods for return in which case the Seller may require the Buyer to pay handling fees of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.

10.4 Under applicable State, Territory and Commonwealth Law (including, without limitation the ACL), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the ACL) may be implied into these terms and conditions ("Non-Excluded Guarantees"), Nothing in these terms and conditions is intended to exclude or restrict the application of such laws.

10.5 The Seller's liability for breach of any Non-Excluded Guarantees, conditions or warranty is limited at the Seller's option, to:

- (a) in the case of Goods, the repair of the Goods, the replacement of the Goods or paying for the cost of repair or replacement of the Goods; or
- (b) in the case of services, the resupply of services or paying for the cost of resupplying the services. The Seller shall not be liable for any indirect loss or damages whatsoever, including consequential loss, loss of profits, loss of opportunity or loss of use.

10.6 Notwithstanding clauses 10.1 to 10.5 but subject to the ACL:

- (a) the Seller shall not be responsible for the consequence of any representation made or technical advice given by its employees, agents or sub-contractors in connection with the design, installation and use of the Goods, and the Buyer agrees that all such advice is accepted by the Buyer entirely at the Buyer's risk;
- (b) except as otherwise expressly specified in the terms of any applicable written warranty provided by the Seller, the Seller's liability to the Buyer (whether arising under statute, contract, tort (including negligence), equity or otherwise) for any defect in the Goods, or the supply of the Goods, is limited, at the Seller's option, to:
  - (i) in the case of Goods, the repair of the Goods, the replacement of the Goods or paying for the cost of repair or replacement of the Goods; or
  - (ii) in the case of services, the resupply of services or paying for the cost of resupplying the services
- (c) and also subject to clause 10.6(b), the Seller is not liable to the Buyer or anyone else in connection with the Goods/Equipment or the supply of the Goods/Equipment or with these terms and conditions (including any changes to the terms and conditions), including without limitation for:
  - (i) any losses, costs, damages, expenses, claims, demands, actions, suits or proceedings (including without limitation for damage to the Goods/Equipment or injury to any person) arising from:
    - A. the loading, unloading or delivery of the Goods/Equipment;
    - B. a failure to deliver, or delay in delivering, the Goods/Equipment;
    - C. a failure to install the Goods/Equipment in accordance with the Seller's recommended fixing procedures as published from time to time;
    - D. the removal of defective Goods/Equipment or the installation of replacement Goods; or
    - E. the use of any tool or Equipment hired out by the Seller;
  - (ii) any direct, indirect or Consequential Loss or damage, any loss of actual or anticipated savings, opportunity, revenue, profit or goodwill, or other economic loss; and
  - (iii) any claim, action or proceeding by a third party against the Buyer (or any loss, damages or liability incurred or suffered by the Buyer as a result of any such claim, action or proceeding); and
- (d) the Buyer indemnifies the Seller from and against all losses, damages, costs and expenses suffered or incurred by the Seller, and all claims, demands, suits, actions or proceedings made or brought against the Seller, arising out of:
  - (i) the Seller's use of or reliance on any materials, design, drawing or specification provided to the Seller by the Buyer (including any allegation or claim that any such use or reliance by the Seller infringes the intellectual property rights of any person);
  - (ii) any loss or damage caused by or during the processing of materials supplied to the Seller by the Buyer; or
  - (iii) any loss or damage caused by any Equipment or the use of Equipment, hired out by the Seller to the Buyer, except if you are a Buyer that is a Consumer and such loss or damage arises from the negligence or wilful misconduct of the Seller, or any of its officers, employees or agents.
  - (iv) the Buyer failing to properly maintain or store any Goods/Equipment;
  - (v) the Buyer using the Goods/Equipment for any purpose other than that for which they were designed;
  - (vi) the Buyer continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (vii) the Buyer failing to follow any instructions or guidelines provided by the Seller;
  - (viii) fair wear and tear, any accident, or act of God.

- 10.7 Notwithstanding anything contained in this clause if the Seller is required by a law to accept a return then the Seller will only accept a return on the conditions imposed by that law.
- 10.8 Subject to this clause 10 and the terms of any applicable written warranty provided by the Seller, the Seller makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. All implied conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, relating to these terms and conditions or their subject matter are excluded to the maximum extent permitted by law.

**11 Default and Consequences of Default**

- 11.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of one and a half percent (1.5%) per calendar month or part thereof, and the Buyer shall be liable for, and expressly undertakes to pay, all such interest.
- 11.2 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Goods/Equipment to the Buyer. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller has exercised its rights under this clause.

11.3 if:

- (a) the Seller has any reasonable grounds to believe that the Buyer may not be able to make due and punctual payment to the Seller or there is any default or failure by the Buyer in making due and punctual payment to the Seller of any moneys owing by the Buyer; or;
- (b) the Buyer becomes bankrupt or 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 ceases to carry on a business; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.

1. then, all amounts owing to the Seller shall, whether or not due for payment, become immediately payable, and the Seller may, without prejudice to the Seller's other remedies at law the Seller, shall be entitled to do any or all of the following:

- (i) place on stop any credit facilities which may have been extended to the Buyer;
- (ii) withdraw any credit facilities which may have been extended to the Buyer;
- (iii) withhold any further delivery of Goods;
- (iv) in respect of goods already delivered, enter onto the Buyer's premises to recover and resell the goods for its own benefit;
- (v) recover from the Buyer the cost of materials or goods acquired for the purpose of future deliveries; or
- (vi) exercise such rights as are afforded to the Seller under the PPSA.

11.4 In addition to any interest charges applied to overdue account the seller will charge an overdue administration charge of \$15.00 for every payment made after the due date.

## **12 Cancellation**

- 12.1 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Buyer. On giving such notice the Seller shall repay to the Buyer any money paid by the Buyer for either the Goods or Equipment hire. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 12.2 In the event that the Buyer cancels delivery of the Goods/Equipment the Buyer shall be liable for any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 12.3 Cancellation of orders for Good made to the Buyer's specifications, or for nonstocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

## **13 Privacy**

- 13.1 The Seller's Privacy Policy, Credit Reporting Policy and Statement of Notifiable Matters, available on its website or upon request to the Seller, forms part of these terms and conditions.
- 13.2 The Seller's website may be hosted, or some data may be stored overseas. All personal information derived from Australia will still be treated in accordance with the Seller's policies whilst being stored overseas.
- 13.3 In accordance with the Seller's Policies, the Buyer agrees that the Seller may use or disclose information to its suppliers and to third parties for the purpose of providing the Goods, providing information about Goods; sending information about the Seller and/or the Seller's services; performing administrative and marketing operations; complying with legislative and regulatory requirements or as otherwise permitted or authorised by law; considering any other application the Buyer makes to the Seller; managing the Seller's rights and obligations in relation to external payment systems, e.g. credit card schemes and debit payment schemes; conducting market research or Buyer satisfaction research; and developing and identifying products and services that may interest the Buyer.

## **14 Equipment Hire**

- 14.1 The Buyer acknowledges that the Seller owns the Equipment and in all circumstances the Seller retains absolute title to the Equipment and is returnable on demand by the Seller.
- 14.2 The Buyer acknowledges and agrees:
  - (a) to safe keep the Equipment and indemnify the Seller for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Buyer; and
  - (b) to keep the Seller indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment by the Buyer and whether or not arising from any negligence, failure or omission of the Buyer or any other persons;
  - (c) that the Buyer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim;
  - (d) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
  - (e) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with

- any maintenance schedule as advised by the Seller to the Buyer;
- (f) that the Buyer is responsible for any loss, theft or damage to the Equipment from any and every event whatsoever and howsoever and by whosoever caused whilst on hire by the Buyer except where any such loss, theft or damage was caused by the Seller's actions.
- 14.3 The Buyer further acknowledges and agrees:
- (a) to effect Public Liability Insurance (with a minimum policy coverage of \$20 million) covering:
    - (i) any physical loss, damage or injury to property arising out of the use of the Equipment;
    - (ii) any loss, damage or injury to persons arising out of the use of the Equipment;
  - (b) to produce a certificate of currency for an appropriate policy of insurance that covers loss, theft or damage to the Equipment for an amount not less than the replacement value of the Equipment;
  - (c) that the Buyer is responsible for any excess and any other costs associated with any insurance taken out by it and the Buyer is responsible for any shortfall in repair or replacement of the Equipment following payment of any amount received under insurance, including any loss the Seller suffers as a result of not being able to hire the Equipment.
- 14.4 Except in the circumstances set out in clause 8, the Buyer is not entitled to offer, sell, assign, sub-let, charge, mortgage, pledge or create any form of Security Interest over, or otherwise deal with the Equipment in any way
- 14.5 The Buyer must return the Equipment to the Seller in the same clean condition and good working order it was in when hired, ordinary wear and tear excluded. In the event that Equipment is not returned to the Seller in the condition in which it was delivered the Seller retains the right to charge the Buyer:
- (a) a fee for cleaning the Equipment
  - (b) the cost of repairing the Equipment; and/or
  - (c) the cost of replacing the Equipment.

## **15 General**

- 15.1 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller'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.
- 15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which the Seller has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 15.3 Subject to clause 10 the Seller shall be under no liability whatsoever to the Buyer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- 15.4 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 15.5 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 15.6 The Buyer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.
- 15.7 Where the Buyer is a trustee:
- (a) The Buyer agrees to produce a stamped copy of the trust deed (with all amendments) if and when requested by the Seller.
  - (b) The Buyer warrants that it has full power and authority to enter into these terms and conditions.
- 15.8 To the maximum extent permitted by law, the Buyer agrees that it does not rely on the skill or judgment of the Seller in relation to the suitability of any Goods/Equipment for a particular purpose. Any advice, recommendation, information or assistance provided by the Seller is provided without any liability by the Seller whatsoever.