

By ordering Goods, Services and/or hiring Equipment 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

- 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 "Buyer" means the person/s submitting the credit application and/or ordering Goods/Services and/or hiring Equipment as specified in any invoice, document or order, and it includes the Buyer's personal representatives, successors and permitted assigns;
- 1.3 "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;
- 1.4 "Equipment" means all equipment including any accessories supplied on hire by the Seller to the Buyer. 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.
- 1.5 "Goods" means all goods supplied by the Seller to the Buyer at the Buyer's request from time to time (or ordered by the Buyer but not yet supplied);
- 1.6 "Loss" means any losses, liabilities, damages, costs, interest, charges, fines, penalties or expenses (including lawyer's fees and expenses on a full indemnity basis and debt collection costs) whether direct, indirect, special, or otherwise;
- 1.7 "PPSA" means the *Personal Property Securities Act 2009* (Cth);
- 1.8 "PMSI" means a purchase money securities interest and has the meaning given in section 14 of the PPSA;
- 1.9 "Price" means the Price payable for the Goods, Services and/or hire of Equipment in accordance with clause 4 below;
- 1.10 "Seller" means ADX Depot Pty Ltd ACN 621 639 914 trading under licence from ADX Building Systems Pty Ltd ABN 46 414 202 215 and includes their successors and permitted assigns;
- 1.11 "Services" means any services supplied by the Seller to the Buyer at the Buyer's request from time to time (or ordered by the Buyer but not yet supplied); and
- 1.12 "Terms" means these Credit Account Terms and Conditions.

## 2 General

- 2.1 Any orders received by the Seller from the Buyer for the supply of Goods, Services and/or hire of Equipment shall constitute a binding contract and acceptance of these Terms.
- 2.2 The Buyer acknowledges that these Terms take precedence over any terms and conditions contained in any document provided by the Buyer.
- 2.3 The Buyer expressly warrants and acknowledges that any credit provided to the Buyer by the Seller is to be used for wholly (or predominantly) business purposes.

## 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, Payment and Quotation

- 4.1 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 clauses 4.2 and 4.4) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days; or
  - (c) the price set by the Seller at the date of delivery/collection.
- 4.2 Where a quotation is given by the Seller for the supply of Goods and/or Services, or to hire of Equipment, the Seller reserves the right, until the quote is accepted, to alter the quotation because of circumstances beyond its control, including and in no way limited to, increases in the price charged by its suppliers for products, services, freight and/or insurance.
- 4.3 A quotation does not constitute an offer by the Seller to supply Goods and/or Services, or to hire Equipment, to the Buyer. No contract for the supply of Goods and/or Services, or to hire of Equipment shall arise unless and until the Buyer's order has been accepted by the Seller in writing. The Seller may, in its absolute discretion, accept or reject any order and may make its acceptance conditional upon receipt of a satisfactory credit assessment of the Buyer.

- 4.4 The Seller reserves the right to vary the Price where the Buyer requests any variation to the Seller's quotation. Any variation to the original order or specifications, including, without limitation, variations arising from fluctuations in currency exchange rates, freight or insurance costs, or increases in the Seller's costs of materials or labour, shall be charged in addition to the original quoted Price. All such variations will be itemised as a variation on the Seller's invoice and must be paid in full upon completion of the variation.
  - 4.5 At the Seller's sole discretion, a non-refundable deposit may be required when an order is placed by the Buyer for the supply of Goods and/or Services, or to hire of Equipment.
  - 4.6 Time for payment for the supply of Goods and/or Services, or to hire 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/Services/Equipment;
    - (b) thirty (30) days following the end of the month in which the Goods/Services/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 funds transfer, or by any other method as agreed to between the Buyer and the Seller.
  - 4.8 The Seller, may, in its sole discretion, accept payment by credit card, in which case a surcharge may be charged to the Buyer (currently 3%+GST of the Price for AMEX cards and 1.3%+GST of the Price for any other cards).
  - 4.9 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.
  - 4.10 The Buyer must pay the Price and the GST thereupon without set-off, deduction, withholding or counterclaim.
  - 4.11 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, Services and/or hire of 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.
  - 4.12 Any amounts received by the Seller may be applied at the Seller's sole 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.
- ## 5 Delivery of Goods
- 5.1 Delivery of the Goods 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 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 and insurance to the point of delivery is in addition to the Price.
  - 5.3 The Seller may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these Terms.
  - 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, act of God, war, pandemic or any other cause beyond the reasonable control of the Seller.
  - 5.5 The Buyer shall not be relieved of any obligation to accept or pay for Goods because of any delay in delivery. To the extent permitted by law, the Seller will not be liable for any Loss, including Consequential Loss, arising from any delay in delivery to the Buyer beyond the reasonable control of the Seller.
  - 5.6 The Buyer authorises the Seller to deliver Goods to the place nominated by the Buyer and to leave the Goods 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 delivered.

- 5.8 The Seller may charge a reasonable storage fee for storage and/or redelivery charges in the event the Buyer does not, or is unable to, accept delivery of the Goods.
- 5.9 The Buyer is responsible for unloading the Goods at the point of delivery.

## 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 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 Where the Buyer arranges freight to its nominated location, risk in any Goods shall pass when its nominated agent/carrier collects the Goods from the Seller.
- 6.5 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 & Personal Property Securities Act 2009 ("PPSA") Goods

- 7.1 Whilst risk in the Goods passes on delivery, legal and beneficial title in the Goods shall remain with the Seller until it has received payment in full for all monies owed by the Buyer.
- 7.2 Until the Seller has received payment in full for all monies owed by the Buyer, the Seller reserves the following rights:
- legal and beneficial ownership of the Goods;
  - right to enter the Buyer's premises (as the Buyer's invitee) to retake possession of the Goods;
  - the right to keep or resell any Goods repossessed under sub-clause 7.2(b); and
  - any other rights it may have at law or under the PPSA.
- 7.3 Where, pursuant to sub-clause 7.2(b):
- the Seller resells the Goods repossessed, it is agreed that the Seller shall credit the Buyer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs); or
  - the Seller retains possession of the repossessed Goods, it is agreed that the Seller shall credit the Buyer's account with the invoice value less such sum as the Seller reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.
- 7.4 The Seller shall not be liable for any costs, damages, expenses or losses incurred by the Buyer or any third party as a result of any action taken to repossess the Goods (unless the action taken to repossess the Goods was grossly negligent or constituted wilful misconduct).
- 7.5 If the Goods are mixed (or commingled) with other property so as to be part of or a constituent of any new product, title to these products shall be deemed to be assigned to the Seller as security for the full satisfaction by the Buyer of the full amount owing by the Buyer to the Seller.
- 7.6 Until the Seller receives payment for Goods in full, the Buyer acknowledges that the Seller has a PMSI which attaches over the Goods and their proceeds and a Security Interest in relation to other amounts owed by the Buyer to the Seller.

### General

- 7.7 Upon assenting to these Terms, the Buyer acknowledges and agrees that these Terms constitute a Security Agreement for the purposes of the PPSA.
- 7.8 The Buyer undertakes to do anything (such as obtaining consents, producing documents, producing receipts and getting documents completed and signed) which the Seller asks and considers reasonably necessary for the purposes of:

- ensuring that a PMSI and/or Security Interest is enforceable, perfected and effective;
  - enabling the Seller to apply for any registration, or give any notification, in connection with the Security Interest created under this agreement so that the PMSI and/or Security Interest has the priority required by the Seller.
- 7.9 To the extent permitted by law, the Buyer irrevocably waives its right to:
- receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
  - redeem the Goods under section 142 of the PPSA;
  - reinstate this agreement under section 143 of the PPSA;
  - receive a Verification Statement.
- 7.10 It is further agreed that until ownership of the Goods passes to the Buyer:
- the Buyer is only a bailee of the Goods and must return the Goods to the Seller on request;
  - 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;
  - 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;
  - 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.
- 7.11 Nothing in clause 7 prevents the Seller from taking collection or legal action against the Buyer to recover any monies owed from time to time.
- ## 8 Security, Charge and Indemnity
- 8.1 The Buyer hereby charges in favour of the Seller all of the Buyer's estate and interest in any real property (whether held in its own right or in the capacity as trustee) that the Buyer now has, or which it may later acquire any such interest in, with payment of all moneys owed by the Buyer to the Seller now and in the future and hereby consents to the Seller lodging a caveat or caveats which note the Seller's interest.
- 8.2 The Buyer also charges all of its present and after-acquired personal property with payment of all moneys owed by the Buyer to the Seller now and in the future.
- 8.3 Where the Buyer has previously granted a charge, mortgage and/or other security interest to the Seller in any previous agreement, that charge, mortgage and/or security interest will continue, and shall be in addition to and separate from the charges and security interests created in this agreement, which shall secure all indebtedness and obligations of the Buyer under this agreement.
- 8.4 Subject to clause 8.5, the Buyer indemnifies the Seller (on a full indemnity basis) against any Loss suffered, incurred or for which the Seller is liable arising from or in connection with:
- any act or omission of the Buyer;
  - the Buyer's breach of any of these Terms;
  - any cheque given by the Buyer, or electronic funds transfer made by the Buyer, being dishonoured for whatever reason;
  - obtaining, or attempting to obtain, payment for any amount due by the Buyer;
  - the use of any Equipment hired by the Seller to the Buyer, except to the extent that such loss or damage arises from the negligence or wilful misconduct of the Seller or any of its officers, employees or agents;
  - the Buyer's failure to properly maintain or store any Goods or Equipment;
  - the use of the Goods or Equipment for any purpose other than that for which they were designed or intended;
  - the continued use of the Goods or Equipment after a defect has become apparent, or ought reasonably to have become apparent, to a prudent operator or user; and
  - the Buyer's failure to comply with any instructions, directions or guidelines provided by the Seller in relation to the Goods or Equipment.
- 8.5 The indemnity in clause 8.4 does not apply to the extent that any Loss is caused or contributed to by the Seller.
- 8.6 The Buyer acknowledges that collection agents' costs may be calculated on a commission basis at a percentage rate of up to 25% of the overdue debt, irrespective of the amount of work performed by the collection agent and irrespective of whether the overdue debt is recovered or paid. The Buyer agrees that it will pay any such commission or fees as liquidated damages even if the overdue debt

remains wholly or partly unpaid.

## 9 Disputes, Returns, Warranties and Limitation of Liability

- 9.1 The Buyer must, within seven (7) days of the relevant Goods and/or Services being provided, raise any issue associated with incomplete, damaged, incorrect or substandard quality and/or late supply ("**Complaint**"). The Buyer acknowledges this seven (7) day timeframe ensures the Seller can make contemporaneous enquiries and investigations about the issue and its causes.
- 9.2 In the event a Complaint is made, the Buyer must, upon request of the Seller, allow the Seller's nominated representative to attend the premises where the Goods are located or, in the case of Services involving workmanship, where the workmanship was done, in order to inspect the Goods and/or the workmanship (as the case may be).
- 9.3 If the Buyer fails to give notice of any claim within the seven (7) day period specified in clause 9.1 and/or fails to allow the Seller to inspect the Goods and/or workmanship in accordance with clause 9.2, then, to the extent permitted by law, the Goods and/or Services (if involving workmanship) are deemed to be accepted by the Buyer.
- 9.4 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.
- 9.5 Variations may occur in the colour, texture and appearance of materials used in the manufacture of the Goods, and accordingly, subject to the ACL, no warranty or guarantee is given by the Seller that the Goods will correspond in appearance with any sample, display or goods previously supplied. To the extent permitted by law, the Seller gives no warranty or guarantee as to the quality, condition, colour, merchantability or fitness for purpose of the Goods, and the Buyer expressly acknowledges that it has relied entirely on its own skill, knowledge and judgment in selecting and ordering the Goods.
- 9.6 Where the Goods are supplied with a manufacturer's warranty, the Seller will use its best endeavours to pass on to the Buyer the benefit of that warranty in respect of the Goods or any component of them, subject to the terms and conditions of the manufacturer's warranty.
- 9.7 Where the Goods are supplied with an express warranty provided by the Seller, that warranty will apply strictly in accordance with the terms and conditions set out in the applicable warranty card, and the Buyer must make any claim in the manner prescribed in that warranty card.
- 9.8 Where the Goods are of a kind other than goods ordinarily acquired for personal, domestic or household use, then the Seller's liability is limited, at its option, to anyone or more of the following:
- repairing the Goods;
  - the costs of repairing the Goods;
  - the replacement or supply of the equivalent of the Goods; or
  - the payment of the costs of replacing the Goods or acquiring their equivalent.
- 9.9 Where the Services are of a kind other than services ordinarily acquired for personal, domestic or household use, then the Seller's liability is limited at its option to:
- supplying the Services again; or
  - the payment of the costs of supplying the Services again.
- 9.10 Except to the extent that rights or remedies under the ACL cannot be lawfully excluded, restricted or modified, and except to the extent caused by a party's fraud, wilful misconduct or gross negligence:
- neither party is liable to the other for any Consequential Loss; and
  - all conditions, warranties and implied terms, whether statutory or otherwise, relating to the Goods, Services and/or hire of Equipment are excluded.
- 9.11 Nothing in these Terms excludes, restricts or modifies any non-excludable rights or remedies of the Buyer under the ACL.

## 10 Default and Consequences of Default

- 10.1 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.
- 10.2 If:
- 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
  - 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,

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, be entitled to do any or all of the following:

- place on stop any credit facilities which may have been extended to the Buyer;
- withdraw any credit facilities which may have been extended to the Buyer;
- withhold any further delivery of Goods/Services/Equipment;
- in respect of Goods already delivered, enter onto the Buyer's premises to recover and resell the goods for its own benefit; or
- exercise such rights as are afforded to the Seller under the PPSA.

- 10.3 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 clause 10.2 or at law.

## 11 Cancellation

- 11.1 Subject to clause 11.2, orders placed with the Seller cannot be cancelled by the Buyer without the written approval of the Seller. In the event that the Seller accepts the cancellation of any order placed, it is agreed that the Seller shall credit the Buyer's account with the invoice value less such sum as the Seller reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.
- 11.2 Where the Buyer orders any Goods from the Seller that the Seller does not have in stock, such that the Seller is required to order the Goods from a third party or to manufacture or fabricate the Goods (known as a "**Special Buy-In**"), the order is non-cancellable by the Buyer, unless the Seller in the third party itself is prepared to credit the Seller for the cancelled Special Buy-In in which case the Seller shall credit the Buyer's account with the invoice value (as rendered to the Buyer) less such sum as the Seller reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.

## 12 Privacy & Credit Reporting Policy Notification

- 12.1 The Seller collects personal information about the Buyer (if a sole trader, individual trustee, or partnership of individuals) for the purposes set out in its Privacy Policy and its Credit Reporting Policy. A hardcopy of these policies can be provided to the Buyer free of charge, upon request, and is also available on the Seller's website ([www.adxdepot.com.au](http://www.adxdepot.com.au)).
- 12.2 By the Buyer completing a Credit Application Form or providing orders to the Seller for the supply of Goods and/or Services, or the hire of Equipment, the Buyer is consenting to the Seller (including its agents) collecting, handling, using, disclosing and otherwise dealing with the Buyer's personal information (including credit-related personal information) in accordance with the terms of the Seller's Privacy Policy, its Credit Reporting Policy and in accordance with Australia's privacy laws.

## 13 Equipment Hire (applies only to the hire of Equipment)

### Charges & Delivery

- 13.1 The Buyer must pay to the Seller the hire charges for the Equipment ("**Hire Charges**"), calculated at the rates and on the basis specified in the Seller's quotation, authority to hire, rate schedule, invoice or other written agreement applicable to the hire. The Hire Charges form part of the Price and are payable in accordance with clause 4.
- 13.2 Delivery of the Equipment is deemed to occur on the earlier of the Buyer taking possession of the Equipment or, where the Seller has agreed to deliver the Equipment, delivery by the Seller to the address nominated by the Buyer. The Seller shall not be liable for any loss or damage (including any Consequential Loss) arising from any delay or failure to deliver or supply the Equipment where such delay or failure is reasonably beyond the Seller's control.

### Defects

- 13.3 The Buyer must inspect the Equipment upon delivery and notify the Seller in writing within two (2) hours of delivery of any defect or damage, shortage in quantity, or failure to comply with the description or quotation. The Buyer must notify the Seller of any other defect as soon as reasonably practicable after it becomes apparent and must, within a reasonable time, allow the Seller access to the Equipment for inspection. Failing such notice, the Equipment will be deemed to comply with the order and to be free from defect.

### Hire Term, Risk & Collection

- 13.4 The hire of the Equipment is for a finite period, being the period agreed in writing between the Seller and the Buyer prior to commencement of the hire, or such other period as the Seller and the Buyer may subsequently agree in writing. The hire commences on delivery of the Equipment and ends when the Equipment is returned to the Seller.
- 13.5 Despite clause 13.4, the hire period must not, in any circumstances, exceed twenty-four (24) months from delivery of the Equipment ("Maximum Hire Period") unless the Seller gives its express written consent.
- 13.6 Risk passes to the Buyer only when the Equipment has been delivered to, and received into the possession or control of, the Buyer.
- 13.7 When the hire ends for any reason, the Buyer must immediately stop using the Equipment and return it to the Seller.
- 13.8 The Buyer must ensure that the Equipment is safely accessible for collection at the agreed location, the Equipment is clean, complete, and ready to be collected, a responsible person is available to provide access at the agreed collection time.
- 13.9 If agreed with the Seller, or if the Seller requests it, the Buyer must return the Equipment to the Seller's nominated address.
- 13.10 Risk in the Equipment remains with the Buyer until the Equipment has been collected by, or returned to the possession or control of, the Seller.

#### **Buyer's Obligations**

- 13.11 The Buyer acknowledges and agrees:
- (a) to take proper care of the Equipment (whether insured or not) and to indemnify the Seller against all loss, theft or damage to the Equipment, however caused, including where arising from the Buyer's acts or omissions, except to the extent caused by the Seller's own acts or omissions;
  - (b) to indemnify and hold the Seller harmless from all liability, loss, damage, cost or expense arising out of or in connection with the Buyer's use of the Equipment, except to the extent caused by the Seller's own acts or omissions.
  - (c) not to alter, modify, adapt or add any object to the Equipment (whether permanently or temporarily), nor deface, remove, obscure or interfere with any identifying mark, plate or number on the Equipment.
  - (d) to satisfy itself at the time of delivery that the Equipment is suitable for its intended purpose and fit for use;
  - (e) to operate the Equipment safely, strictly in accordance with all applicable laws, only for its intended purpose, and in accordance with the manufacturer's instructions and any directions issued by the Seller;
  - (f) to ensure that suitable clothing and personal protective equipment are worn when operating the Equipment, as required by law or as recommended by the Seller or the manufacturer;
  - (g) to comply with all occupational health and safety laws, regulations and standards applicable to the Equipment and its operation;
  - (h) to ensure that no person operating the Equipment is under the influence of drugs or alcohol;
  - (i) to ensure that all persons operating, erecting or otherwise using the Equipment are suitably trained in its safe and proper use, are appropriately qualified, and where required by law, hold a current licence to perform high-risk work;
  - (j) to immediately notify the Seller by telephone of the full circumstances of any mechanical breakdown, malfunction or accident involving the Equipment, in which case the Buyer will immediately cease use of the Equipment;
  - (k) to 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;
  - (l) not to remove the Equipment from the delivery location, or permit it to be relocated, without the Seller's prior written consent;
  - (m) 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;
  - (n) to insure the Seller's interest in the Equipment against physical loss or damage, including (without limitation) loss or damage arising from accident, fire, theft or burglary and all other usual risks;
  - (o) 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;

- (p) that the Buyer is responsible for any insurance excess and all other costs associated with insurance arranged by the Buyer, and for any shortfall in the cost of repairing or replacing the Equipment after payment of insurance proceeds, including any loss suffered by the Seller due to the Equipment being unavailable for hire;
- (q) if the Buyer fails to effect or maintain any required insurance in accordance with this clause, the Seller may (but is not obliged to) effect such insurance and recover the cost as a debt due and payable from the Buyer;
- (r) the Buyer must return the Equipment to the Seller in the same clean condition and good working order it was in when hired, ordinary fair 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, acting reasonably, retains the right to charge the Buyer:
  - (i) a fee for cleaning the Equipment
  - (ii) the cost of repairing the Equipment; and/or
  - (iii) the cost of replacing the Equipment;
- (s) if the Equipment is not returned when required, the Seller may charge a daily hire or holding-over fee until return or replacement.

#### **PPSA**

- 13.12 Where the hire period exceeds the Maximum Hire Period, clauses 13.13 to 13.16 below shall apply.
- 13.13 The Buyer acknowledges that the Seller holds a:
- (a) PMSI in the Equipment (and its proceeds); and
  - (b) a security interest securing all amounts owed by the Buyer to the Seller.
- 13.14 The Buyer must, at the Seller's request, do all things and execute all documents reasonably required for the purpose of:
- (a) ensuring that any Security Interest is enforceable, perfected and otherwise effective;
  - (b) enabling the Seller to apply for, maintain or amend any registration, or give any notification, in connection with a Security Interest so that it has the priority required by the Seller, including under the PPSA;
  - (c) complying with anything the Seller reasonably requires in connection with the PPSA.
- 13.15 In no circumstances will the Equipment be deemed to be a fixture.
- 13.16 Clauses 7.7 to 7.9 above otherwise apply to the hire of the Equipment (with any references to 'Goods' in those clauses is to be replaced with 'Equipment').

#### **General**

- 13.17 The Buyer acknowledges that the Seller is always and remains the sole legal and beneficial owner of the Equipment, that the Buyer holds the Equipment as bailee only, and that the Equipment must be returned immediately upon demand by the Seller and in any event, upon termination or expiry of the hire.
- 13.18 If the Buyer is in breach of these Terms, or any contract formed under these Terms or any hire period has been terminated, the Seller may, at the Buyer's cost, take all steps reasonably necessary (including commencing legal proceedings) to recover possession of the Equipment. This includes entering any premises occupied or controlled by the Buyer for that purpose, and the Buyer irrevocably consents to such entry by the Seller as its licensee for the purpose of recovering the Equipment.

#### **14 General**

- 14.1 The failure by the Seller to enforce any provision of these Terms 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 shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 14.2 These Terms and any contract to which they apply shall be governed by the laws of South Australia, and are subject to the jurisdiction of the courts in that state.
- 14.3 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 14.4 Neither party shall be liable for any default due to any act of God, war, pandemic, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 14.5 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.
- 14.6 If the Buyer is the trustee of a trust (whether disclosed to the Seller or not), the Buyer warrants that it enters into this agreement both in its

capacity as trustee and in its personal capacity, that it is entitled to be indemnified out of the assets of the trust, and that it has full power and authority under the trust deed to enter into and perform this agreement. The Buyer further warrants that it will not retire as trustee, nor appoint any new or additional trustee, without first notifying the Seller, and must provide the Seller with a copy of the trust deed upon request.

- 14.7 Any credit sought or approved is for the Seller's internal credit assessment purposes only. It does not limit or reduce the Buyer's liability for all amounts owing, whether arising before or after any stated amounts, nor does it oblige the Seller to provide credit up to that amount. The Seller is not obliged to sell on credit terms and reserves the right to require payment before the Goods/Equipment are provided.
- 14.8 The Seller may vary these Terms from time to time by giving the Buyer at least thirty (30) days' written notice of the proposed variation. The notice will set out the nature of the variation and the date on which it is intended to take effect. Any variation will apply prospectively only and will not affect amounts already owing or transactions entered into prior to the effective date of the variation. If the Buyer does not agree to the proposed variation, the Buyer may, by written notice to the Seller given before the effective date of the variation, terminate the credit arrangement without penalty. Termination will not affect the Buyer's obligation to pay any amounts owing as at the date of termination. If the Buyer continues to request or receive credit, Goods, Services and/or the hire of Equipment from the Seller after the effective date of the variation, the Buyer will be taken to have accepted the variation.