

1. Definitions

- 1.1 “Seller” means Smart Fabrication Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Smart Fabrication Pty Ltd.
- 1.2 “Customer” means the person/s buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by the Seller to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Equipment” means all Equipment including any accessories supplied on hire by the Seller to the Customer (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 Customer.
- 1.5 “Price” means the Price payable for the Goods and/or Equipment hire as agreed between the Seller and the Customer in accordance with clause 4 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods/Equipment.
- 2.2 These terms and conditions may only be amended with the Seller’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Seller.

3. Change in Control

- 3.1 The Customer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Seller as a result of the Customer’s failure to comply with this clause.

4. Price and Payment

- 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 Customer; 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 thirty (30) days.
- 4.2 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 Services or specifications of the Goods (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to the Seller in the cost of taxes, levies, materials and labour or where additional Services are required due to the discovery of hidden or unidentifiable difficulties including, but not limited to, poor weather conditions, limitations to accessing the site, safety considerations, prerequisite work by any third party not being completed) will be charged for on the basis of the Seller’s quotation and will be shown as variations on the invoice.
- 4.3 At the Seller’s sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods and shall become immediately due and payable.
- 4.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by the Seller, which may be:
 - (a) on delivery of the Goods/Equipment;
 - (b) before delivery of the Goods/Equipment;
 - (c) for approved Customers by way of instalments/progress payments in accordance with the Seller’s payment schedule;
 - (d) thirty (30) days following the end of the month in which a statement is posted to the Customer’s address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Seller.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the Price), or by any other method as agreed to between the Customer and the Seller.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer 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. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of Goods/Equipment

- 5.1 Delivery (“**Delivery**”) of the Goods/Equipment is taken to occur at the time that:
 - (a) the Customer or the Customer’s nominated carrier takes possession of the Goods/Equipment at the Seller’s address; or
 - (b) the Seller (or the Seller’s nominated carrier) delivers the Goods/Equipment to the Customer’s nominated address even if the Customer is not present at the address.

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- 5.2 At the Seller's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 5.3 The Customer must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Customer is unable to take delivery of the Goods/Equipment as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or the storage of the Goods.
- 5.4 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.
- 5.5 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 5.6 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that;
 - (a) such discrepancy in quantity shall not exceed 5%, and
 - (b) the Price shall be adjusted pro rata to the discrepancy.
- 5.7 Any time or date given by the Seller to the Customer is an estimate only. The Customer must still accept delivery of the Goods/Equipment even if late and the Seller will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

6. Risk

- 6.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer 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 Customer, 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 Customer 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 Customer's sole risk.
- 6.4 Where the Seller is required to install the Goods the Customer warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and the Seller shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 6.5 The Customer acknowledges that the Seller is only responsible for parts that are replaced by the Seller and that in the event that other parts/Goods, subsequently fail, the Customer agrees to indemnify the Seller against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 6.6 Any advice, recommendation, information, assistance or service provided by the Seller in relation to Goods or Services supplied is given in good faith, is based on the Seller's own knowledge and experience and shall be accepted without liability on the part of the Seller and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods or Services

7. Accuracy of Customers Plans and Measurements

- 7.1 The Seller shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Seller accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 7.2 In the event the Customer gives information relating to measurements and quantities of the Goods required to complete the Services, it is the Customer's responsibility to verify the accuracy of the measurements and quantities, before the Customer or Seller places an order based on these measurements and quantities. The Seller accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause.

8. Access

- 8.1 The Customer shall ensure that the Seller has clear and free access to the work site at all times to enable them to undertake the services. The Seller shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Seller.

9. Dial Before You Dig

- 9.1 Location of underground services by a licensed service locator is mandatory prior to commencement of any works. "Dial Before You Dig" must be consulted and any potential underground services marked on site. Whilst the Seller will take all care to avoid damage to any underground services the Customer agrees to indemnify the Seller in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified. If the Customer requests the Seller to engage the service locator then this shall be in addition to the Price.

10. Customer's Disclaimer

10.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Customer acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Seller shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Customer and shall not be transferable to any subsequent Customer.

11. Title To Goods

11.1 The Seller and the Customer agree that ownership of the Goods shall not pass until:

- (a) the Customer has paid the Seller all amounts owing to the Seller; and
- (b) the Customer has met all of its other obligations to the Seller.

11.2 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.

11.3 It is further agreed that:

- (a) until ownership of the Goods passes to the Customer in accordance with clause 11.1 that the Customer is only a bailee of the Goods and must return the Goods to the Seller on request.
- (b) the Customer holds the benefit of the Customer'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 Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand.
- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer 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 Customer 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 Customer 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.
- (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 Customer.

12. Personal Property Securities Act 2009 ("PPSA")

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

12.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods/Equipment that has previously been supplied and that will be supplied in the future by the Seller to the Customer.

12.3 The Customer 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) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);
- (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.

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

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

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

12.7 Unless otherwise agreed to in writing by the Seller, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

12.8 The Customer must unconditionally ratify any actions taken by the Seller under clauses 12.3 to 12.5.

12.9 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 of the PPSA.

13. Security and Charge

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

13.2 The Customer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising the Seller's rights under this clause.

13.3 The Customer irrevocably appoints the Seller and each director of the Seller as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Customer's behalf.

14. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

14.1 The Customer must inspect the Goods/Equipment on delivery and must within three (3) 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. The Customer must notify any other alleged defect in the Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Seller to inspect the Goods/Equipment.

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

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

14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, 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. The Seller's liability in respect of these warranties is limited to the fullest extent permitted by law.

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

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

14.7 If the Customer is not a consumer within the meaning of the CCA, the Seller's liability for any defect or damage in the Goods is:

(a) limited to the value of any express warranty or warranty card provided to the Customer by the Seller at the Seller's sole discretion;

(b) limited to any warranty to which the Seller is entitled, if the Seller did not manufacture the Goods;

(c) otherwise negated absolutely.

14.8 Subject to this clause 14, returns will only be accepted provided that:

(a) the Customer has complied with the provisions of clause 14.1; and

(b) the Seller has agreed that the Goods are defective; and

(c) the Goods are returned within three (3) days at the Customer'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.

14.9 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, the Seller shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

(a) the Customer failing to properly maintain or store any Goods/Equipment;

(b) the Customer using the Goods/Equipment for any purpose other than that for which they were designed;

(c) the Customer continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;

(d) the Customer failing to follow any instructions or guidelines provided by the Seller;

(e) fair wear and tear, any accident, or act of God.

14.10 The Seller may in its absolute discretion accept non-defective Goods for return in which case the Seller may require the Customer to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.

14.11 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.

15. Intellectual Property

15.1 Where the Seller has designed, drawn or developed Goods/Equipment for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Seller.

15.2 The Customer warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.

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15.3 The Customer agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Customer.

16. Default and Consequences of Default

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

16.2 If the Customer owes the Seller any money the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, the Seller's collection agency costs, and bank dishonour fees).

16.3 Without prejudice to any other remedies the Seller may have, if at any time the Customer 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 Customer. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.

16.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

17. Compliance with Laws

17.1 The Customer and the Seller shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the services.

17.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the works.

17.3 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

18. Cancellation

18.1 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 Customer. On giving such notice the Seller shall repay to the Customer any money paid by the Customer for the Goods/Equipment. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

18.2 In the event that the Customer cancels delivery of the Goods/Equipment the Customer 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).

19. Privacy Act 1988

19.1 The Customer agrees for the Seller to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by the Seller.

19.2 The Customer agrees that the Seller may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:

- (a) to assess an application by the Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.

19.3 The Customer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit.

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

- (a) the provision of Goods; and/or
- (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (d) enabling the collection of amounts outstanding in relation to the Goods.

19.5 The Seller may give information about the Customer to a CRB for the following purposes:

- (a) to obtain a consumer credit report;
- (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.

- 19.6 The information given to the CRB may include:
- (a) personal information as outlined in 19.1 above;
 - (b) name of the credit provider and that the Seller is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and the Seller has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of the Seller, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.7 The Customer shall have the right to request (by e-mail) from the Seller:
- (a) a copy of the information about the Customer retained by the Seller and the right to request that the Seller correct any incorrect information; and
 - (b) that the Seller does not disclose any personal information about the Customer for the purpose of direct marketing.
- 19.8 The Seller will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 19.9 The Customer can make a privacy complaint by contacting the Seller via e-mail. The Seller will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

20. Lien & Stoppage in Transit

- 20.1 Where the Seller has not received or been tendered the whole of the price, or the payment has been dishonoured, the Seller shall have:
- (a) a lien on the goods;
 - (b) the right to retain them for the price while the Seller is in possession of them;
 - (c) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and
 - (d) a right of resale,
 - (e) the foregoing right of disposal,
- provided that the lien of the Seller shall continue despite the commencement of proceedings or judgement for the price having been obtained.

21. Unpaid Seller's Rights

- 21.1 Where the Customer has left any item with the Seller for repair, modification, exchange or for the Seller to perform any other service in relation to the item and the Seller has not received or been tendered the whole of any moneys owing to it by the Customer, the Seller shall have, until all moneys owing to the Seller are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 21.2 The lien of the Seller shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Seller having been obtained against the Customer.

22. Equipment Hire

- 22.1 Equipment shall at all times remain the property of the Seller and is returnable on demand by the Seller. 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 Customer the full cost of repairing the Equipment. In the event that Equipment is not returned at all the Seller shall have right to charge the Customer the full cost of replacing the Equipment.
- 22.2 The Customer shall:
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.
 - (b) 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.
 - (c) 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 Customer.
- 22.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, the Seller's interest in the Equipment and agrees to indemnify the Seller against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of

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the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

23. Building and Construction Industry Security of Payments Act 2009

- 23.1 At the Seller's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 2009 may apply.
- 23.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of South Australia, except to the extent permitted by the Act where applicable.

24. General

- 24.1 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.
- 24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia in which the Seller has its principal place of business, and are subject to the jurisdiction of the courts in South Australia.
- 24.3 Subject to clause 14 the Seller shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer 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).
- 24.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 24.5 The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 24.6 The Customer agrees that the Seller may amend these terms and conditions at any time. If the Seller makes a change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Seller to provide Goods/Equipment to the Customer.
- 24.7 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.
- 24.8 The Customer 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.