

Skyhook Scaffolding – Terms & Conditions of Hire

<p>1. Definitions</p> <p>1.1 "Supplier" shall mean Skyhook Scaffolding (QLD) Pty Ltd ATF Korschenko Family Trust T/A Skyhook Scaffolding, its successors and assigns or any person acting on behalf of and with the authority of Skyhook Scaffolding (QLD) Pty Ltd ATF Korschenko Family Trust T/A Skyhook Scaffolding.</p> <p>1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting the Supplier to provide the Equipment and/or Services as specified in any proposal, quotation, order, invoice or other documentation, and:</p> <p>(a) if there is more than one Client, is a reference to each Client jointly and severally; and</p> <p>(b) if the Client is a part of a trust, shall be bound in their capacity as a trustee; and includes the Client's executors, administrators, successors and permitted assigns.</p> <p>1.3 "Equipment" shall mean all Equipment (including any accessories) supplied on hire by the Supplier to the Client (and where the context so permits shall include any incidental supply of services and/or the sale of the Equipment). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by the Supplier to the Client.</p> <p>1.4 "Minimum Hire Period" shall mean the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Supplier to the Client or if no period stated, shall be for a period of at least twenty-eight (28) days.</p> <p>1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.</p> <p>1.6 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. If the Buyer does not wish to allow Cookies to operate in the background when using the Supplier's website, then the Buyer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.</p> <p>1.7 "Price" shall mean the cost of the hire of the Equipment as agreed between the Supplier and the Client subject to clause 6 of this contract.</p> <p>1.8 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).</p> <p>2. Acceptance</p> <p>2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Equipment.</p> <p>2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Client and the Supplier.</p> <p>2.3 The Client acknowledges and accepts:</p> <p>(a) the product supply of shrink wrap offers a manufacturer's guarantee of UV protection and can withstand up to the manufacturers specified tolerance and/or Bureau of Meteorology definition regarding gale force winds, being winds of up to 63-75kph; and</p> <p>(b) that when the contract period for hire completes under this contract and payment is not forthcoming when due and payable, then the Supplier reserves the right at their discretion to leave the scaffolding erected until such time as payment effected and the Client shall be liable for all loss hire charges in accordance with clause 15.5(e);</p> <p>(c) no cantilever scaffolds are included in the Price, unless otherwise agreed;</p> <p>(d) variations to the contract requested by the Client that are subject to labour charges, shall be at the Supplier's current hourly rate and any applicable site allowances, unless otherwise stated at the time of the variation request.</p> <p>2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.</p> <p>3. Errors and Omissions</p> <p>3.1 The Client acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):</p> <p>(a) resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of this contract; and/or</p> <p>(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Services.</p> <p>3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of the Supplier, the Client shall not be entitled to treat this contract as repudiated nor render it invalid.</p> <p>4. Authorised Representatives</p> <p>4.1 Unless otherwise limited as per clause 4.2, the Client agrees that should the Client introduce any third party to the Supplier as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Equipment, and/or to request any variation thereto, on the Client's behalf (such authority to continue until all requested Equipment has been returned to the Supplier, or the Client otherwise notifies the Supplier in writing that said person is no longer the Client's duly authorised representative).</p> <p>4.2 In the event that the Client's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Client's behalf, then the Client must specifically and clearly advise the Supplier in writing of the parameters of the limited authority granted to their representative.</p> <p>4.3 The Client specifically acknowledges and accepts that they will be solely liable to the Supplier for all additional costs incurred by the Supplier (including the Supplier's profit margin) in providing any Equipment, or variations thereto, requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).</p> <p>5. Change in Control</p> <p>5.1 The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.</p> <p>6. Price And Payment</p> <p>6.1 At the Supplier's sole discretion the Price shall be either;</p> <p>(a) as indicated on invoices provided by the Supplier to the Client in respect of Equipment supplied; or</p> <p>(b) the Supplier's quoted Price (subject to clause 6.2) which may be subject to a site inspection, and shall be binding upon the Supplier provided that the Client shall accept the Supplier's quotation in writing within thirty (30) days.</p> <p>6.2 The Supplier reserves the right to change the Hire Charges:</p> <p>(a) if a variation to the Equipment which is to be supplied is requested; or</p> <p>(b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or</p> <p>(c) 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, any subsidence of ground conditions, availability of machinery, protruding or dismantled formwork, repositioning or adjusting the Equipment, additional site visits required, safety considerations, prerequisite work by any third party not being completed etc.) which are only discovered on commencement of the Services.</p> <p>6.3 Variations will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Client shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the</p>	<p>variation to the Price. Payment for all variations must be made in full at the time of their completion.</p> <p>At the Supplier's sole discretion, a deposit may be required upon request.</p> <p>Time for payment for the hire of the Equipment being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which may be:</p> <p>(a) on delivery of the Equipment;</p> <p>(b) before delivery of the Equipment;</p> <p>(c) by way of instalments/progress payments in accordance with the Supplier's payment schedule;</p> <p>(d) the Client's address or address for notices;</p> <p>(e) for certain approved Clients, due seven (7) days following the end of the month in which a statement is delivered to the Client's address or address for notices; or</p> <p>(f) the date specified on any invoice or other form as being the date for payment; or</p> <p>(g) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by the Supplier.</p> <p>6.4 Payment will be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Supplier.</p> <p>6.5 The Client acknowledges and agrees that the Client's obligations to the Supplier for the supply of Equipment on hire shall not cease until:</p> <p>(a) the Client has paid the Supplier all amounts owing for the hire of the Equipment; and</p> <p>(b) the Client has met all other obligations due by the Client to the Supplier in respect of all contracts between the Supplier and the Client.</p> <p>6.6 Receipt by the Supplier of any form of payment shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Supplier's ownership or rights in respect of this contract shall continue.</p> <p>6.7 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Supplier.</p> <p>6.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other contract of the Equipment on hire. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client 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.</p> <p>7. Hire Period</p> <p>7.1 Hire charges shall commence from the latter of:</p> <p>(a) the date of as shown on the invoice; or</p> <p>(b) the time the Equipment is delivered to the Client.</p> <p>7.2 The hire period shall cease when:</p> <p>(a) the Equipment is returned to the Supplier (either on the date and at the time specified on the invoice or twenty-four (24) hours from the date of commencement of the hire period; or</p> <p>(b) on the Supplier repossessing the Equipment as per clauses 14 and 19.</p> <p>7.3 Where the hire period is less than the Minimum Hire Period specified, then the Client shall be charged for the full Minimum Hire Period applicable unless otherwise agreed to by the Supplier.</p> <p>7.4 At the expiry of the Minimum Hire Period, the hire period will automatically continue on the same terms and conditions until one party gives the other a minimum of five (5) days' notice in writing of termination and the Equipment is returned to the Supplier's premises. Charges for any extended hire period shall be at the initial quoted weekly rate, subject to variations to that rate from time to time.</p> <p>7.5 Where partial return of the Equipment occurs, the Price may be amended at the Supplier's sole discretion depending on the type and/or quantities of the Equipment returned.</p> <p>7.6 No allowance whatever can be made for time during which the Equipment is not in use for any reason, unless the Supplier confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies the Supplier immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.</p> <p>7.7 Hire rebates will not be given for Equipment dismantled prior to the period stated on the contract.</p> <p>7.8 The Client accepts and acknowledges that all fixed contracts are subject to annual price reviews in line with Consumer Price Index (CPI) inflation increases.</p> <p>8. Delivery of Equipment</p> <p>8.1 Delivery of the Equipment ("Delivery") is taken to occur at the time that:</p> <p>(a) the Client or the Client's nominated carrier takes possession of the Equipment at the Supplier's address; or</p> <p>(b) the Supplier (or the Supplier's nominated carrier) delivers and/or installs the Equipment to the Client's nominated address, even if the Client is not present at the address.</p> <p>8.2 At the Supplier's sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price and may exclude the Supplier providing unloading and/or lifting equipment.</p> <p>8.3 The Client must take Delivery by receipt or collection of the Equipment whenever it is tendered for Delivery. In the event that the Client is unable to take Delivery as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery.</p> <p>8.4 The Supplier may deliver the Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p> <p>8.5 Any time specified by the Supplier for Delivery is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Equipment to be supplied at the time and place as was agreed between both parties. In the event that the Supplier is unable to supply the Equipment as agreed solely due to any action or inaction of the Client then the Supplier shall be entitled to charge a reasonable fee for re-supplying the Equipment at a later time and date.</p> <p>8.6 The Client acknowledges and accepts that the Supplier may delay erection of the Equipment where the site is not suitably prepared and cleared of building materials. The Client shall clearly identify, demarcate, address and resolve (as applicable) all known hazards on the site prior to site mobilisation commences.</p> <p>9. Insurance</p> <p>9.1 The Client will insure, or self-insure, the Supplier's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary, during transit, climatic conditions and all other usual risks and will effect adequate Public Liability Insurance for an amount of not less than ten million dollars (\$10m) covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim. Where requested, the Client shall provide the Supplier with certificates of currency for all insurance and make available for inspection all such documentation and proof of payment of all premiums and charge due in respect of such insurance.</p> <p>9.2 The Client shall notify the Supplier within twenty-four (24) hours of any event that may give rise to a claim under the insurance policy including loss, destruction or damage however cause to the Equipment.</p> <p>9.3 Any money received by the Client in respect of any insurance claim must be used promptly by the Client to reinstate the damage or loss in question.</p> <p>10. Risk</p> <p>10.1 The Supplier retains property in the Equipment nonetheless, all risk for the Equipment passes to the Client on delivery.</p> <p>10.2 The Client accepts full responsibility for the safekeeping of the Equipment and ensure that appropriate site security is in place at all time to sure the due and proper protection of the Equipment including against theft and unauthorised access and use and indemnifies the Supplier for all loss theft or damage to the Equipment however caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.</p> <p>10.3 The Client accepts full responsibility for and shall keep the Supplier indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons (including death), damage to</p>	<p>property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons.</p> <p>10.4 Any advice, recommendation, information, assistance or service provided by the Supplier in relation to Equipment supplied is given in good faith, is based on the Supplier's own knowledge and experience and shall be accepted without liability on the part of the Supplier and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Equipment.</p> <p>10.5 The Supplier shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client for the purposes of estimating quantities and type of Equipment required. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Supplier accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.</p> <p>10.6 In the event of damage to a building as a result of any action by the Supplier's employees or contractors, the Supplier must be informed in order that the Supplier may inspect such damage before any agreement to rectification costs can be accepted.</p> <p>10.7 Any Equipment that is erected or dismantled by the Supplier's trained and licensed employees or contractors shall be as per the manufacturer's instructions and the Australian Codes of Practice AS1576, AS1576.1 and AS/NZS 4576 requirements. The Client acknowledges and accepts that the Supplier shall not be liable in any way for any claim made in connection with the erection and dismantling of the Equipment by non-the Supplier employees or contractors.</p> <p>11. Access and Installation</p> <p>11.1 The Client shall ensure that the Supplier has clear and free access to the nominated delivery address and as near as practicable to the work area to enable the Supplier to deliver/collect, install and/or dismantle the Equipment, and the Supplier agrees at the time of completion thereof to carry out in a reasonable way the clean-up of the site where scaffolding was installed. Any additional time associated with carrying the Equipment an unreasonable distance as a result of restricted access or obstructions will be charged as an extra. Furthermore, it is acknowledged that it is unreasonable to expect the clean-up to restore the property to its pre-existing condition, especially in the event where existing grass has died off due to the covering of base blocks to establish foundation support for the Equipment, such damage will remain the Client's responsibility.</p> <p>11.2 It shall be the Client's responsibility to ensure that where Equipment is installed on concrete areas, patios, driveways, timber decks, lower level roof areas or other structures that suitable coverings are put in place to help prevent any marking/staining of the finished product. The Supplier shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways, lower level roofs, and concrete or paved or grassed areas) unless due to the negligence of the Supplier.</p> <p>11.3 The Client shall ensure that the nominated delivery address is cleared and ready for installation of the Equipment prior to delivery of the Equipment, and that the foundations upon which the Supplier is to install the Equipment is sufficiently firm and otherwise suitable to safely carry the structure and the load to be put on it without subsidence. The Client will be liable to the Supplier for any loss, costs or damages which the Supplier may suffer or incur by reason of the Client's failure to carry out its obligations hereunder if the Supplier is unable or unwilling to install the Equipment due to the site not being cleared and ready as aforesaid. Nevertheless, the Client shall be liable to pay the costs on the hire of the Equipment on the terms stated herein.</p> <p>11.4 The Client shall provide access at any time for the Supplier to be able to inspect the Equipment on the site (or wherever the Equipment may be located).</p> <p>11.5 Where the Equipment is not installed or modified by the Supplier, the Client shall ensure that Equipment is erected, modified and dismantled by qualified persons. A suitable qualified person shall be the holder of any certificate of competency or license that may be required by any legislation or local regulatory authority for the purpose of the erection or the dismantling of the Equipment. The Supplier shall not accept any responsibility for any erection, modification or dismantling performed by anyone other than a scaffolder authorised by the Supplier unless prior arrangements have been with the Supplier.</p> <p>11.6 If during the course of the Client's work, the scaffold is modified or removed by the Client to the extent the scaffold is no longer compliant with the applicable legislative requirements, any rectification work performed by the Supplier will be at the Client's expense.</p> <p>11.7 The Client acknowledges and agrees that in the event the Supplier require access, in order to erect, alter or dismantle the Equipment, to an adjoining or adjacent property or land to the nominated work site, that is not owned by the Client, then it is the Client's responsibility to gain permission from the land owner to use the above mentioned property throughout the erection, alteration or dismantling of the Equipment. In the event the land owner denies access or use of the land or property, the Client shall be liable for all costs incurred by the Supplier in gaining permission to access and/or use the property through any legal process that may be deemed necessary.</p> <p>12. Affixation of Equipment to Land or Buildings</p> <p>12.1 Further to clause 15.4(f), if the Equipment or any part thereof is affixed to any land or buildings pursuant to this contract, and the land or buildings are or become the subject of a mortgage or charge whether under the PPSA or otherwise at law, then the Client shall, without first receiving any request from the Supplier, obtain the written acknowledgement of the mortgagee, administrator or liquidator (as the case may be) that:</p> <p>(a) the Equipment or any part thereof is not a fixture for the purposes of the mortgage or charge;</p> <p>(b) that the mortgagee, administrator or liquidator will not make any claim in relation to the Equipment or any part thereof; and</p> <p>(c) that the mortgagee, administrator or liquidator will permit the Supplier (whether or not there has been any default under the mortgage or charge) to enter upon the land or buildings and to remove the Equipment or part thereof.</p> <p>13. Compliance with Laws</p> <p>13.1 The Client and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Equipment including but not limited to, industry best practice guidelines for scaffolding, any Australian Standards relating to building/construction sites and any other relevant standards or legislation.</p> <p>13.2 The Client shall obtain (at the expense of the Client) all engineering reports, certificates, and all licenses and approvals that may be required for the Equipment hire/placement.</p> <p>13.3 The Client shall be responsible for the submission of notices and permits, authority, consents and approvals or bonds (including building permits and air rights) relevant to the local authority, councils or SafeWork.</p> <p>14. Title</p> <p>14.1 The Equipment is and will at all time remain the absolute property of the Supplier.</p> <p>14.2 If the Client fails to return the Equipment to the Supplier then the Supplier or the Supplier's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.</p> <p>14.3 The Client is not authorised to pledge the Supplier's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.</p> <p>15. Client's Responsibilities</p> <p>15.1 The Client warrants that any structures to which the Equipment is to be erected on is able to withstand all imposed loadings if for any reason that the Supplier, or employees of the Supplier, reasonably form the opinion that the Client's premises is not safe for the erection of the Equipment to proceed then the Supplier shall be entitled to delay erection of the Equipment until the Supplier is satisfied that it is safe for the erection to proceed.</p> <p>15.2 It is the Client's responsibility to give due notice to all local and any other authorities of its intention to erect the Equipment and to gain any consent required as per clause 13.2.</p> <p>15.3 Scaffold decks are to be cleared of all building materials and rubbish before planks are moved or dismantling can commence.</p>
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Skyhook Scaffolding – Terms & Conditions of Hire

- 15.4 The Client shall be solely responsible for and liable for the Equipment (and associated costs where applicable) and the manner of use and shall:
- maintain the Equipment as is required by the Supplier;
 - ensure scaffolding ties fixed by the Supplier are not removed or tampered with as the safety and stability of the scaffold depends on these ties;
 - not move or relocate the Equipment or any part of the Equipment from the site without the Supplier's prior written approval;
 - ensure all overhead and underground services at the site are located and identified or relocated, protected or temporarily shut down as necessary to ensure a safe working environment for the Equipment (including the Delivery, erection, installation and/or removal of the Equipment);
 - notify the Supplier immediately by telephone of the full circumstances of any failure or accident in connection with the Equipment. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
 - satisfy itself prior to taking delivery of the Equipment that the Equipment is suitable for its purposes;
 - use the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction and Australian Standards, whether supplied by the Supplier or posted on the Equipment;
 - ensure that all persons erecting or using the Equipment are suitably instructed in its safe and proper use, and where necessary, hold a current certificate of competency and/or are fully licensed;
 - ensure that the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment;
 - comply with all laws relating to the Equipment and its use (including, but not limited to work health and safety (WHS) laws, the Australian Building and Industry Codes);
 - keep the Equipment in their own possession and control, and shall not assign the benefit of the hire contract nor be entitled to take a lien, or grant any encumbrance over the Equipment without the Supplier's prior written approval;
 - not alter or make any additions to the Equipment including but without limitation defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
 - employ the Equipment solely in its own work and not permit the Equipment of any part thereof to be used by any other party for any other work;
 - ensure all overhead power likely to cause a hazard or adversely affect the installation of Equipment is turned off prior to the installation of the equipment;
 - ensure that no digging or excavation work is performed near or under the Equipment during the installation or once the Equipment is installed;
 - not exceed the recommended or legal load and capacity limits of the Equipment;
 - not use or carry any illegal, prohibited or dangerous substance on the Equipment;
 - not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
 - on termination of the hire, deliver up the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted, to the Supplier;
- 15.5 Immediately on request by the Supplier the Client will pay:
- the new list price of any Equipment, accessories or consumables that are for whatever reason destroyed, written off or not returned to the Supplier;
 - all costs incurred in cleaning the Equipment;
 - all costs of repairing any damage caused by:
 - the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;
 - wilful or negligent actions of the Client or the Client's employees;
 - vandalism, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
 - any costs incurred by the Supplier in dismantling the Equipment and returning it to the Supplier's premises if the Client does not return the Equipment to the Supplier's premises or any pre-agreed pickup location when it was originally agreed that the Client would do so;
 - any lost hire fees the Supplier would have otherwise been entitled to for the Equipment, under this, or any other hire contract;
 - any insurance excess payable in relation to a claim made by either the Client or the Supplier in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or the Supplier's.
16. **Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 16.1 The Client must inspect the Equipment on Delivery and/or Services on completion and must within forty-eight (48) hours of such time notify the Supplier in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Equipment and/or Services as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Supplier to inspect/review the Equipment and/or Services.
- 16.2 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**").
- 16.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 16.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Equipment and/or Services. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.5 If the Client is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.6 If the Supplier is required to rectify, re-supply, or pay the cost of re-supplying any Equipment and/or Services under this clause or the CCA, but is unable to do so, then the owner may refund any money the Client has paid for the supply of Equipment and/or Services, but only to the extent that such refund shall take into account the value (pro-rata) of the Equipment and/or Services (and consumables) which have been supplied to the Client which were not defective.
- 16.7 If the Client is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Equipment and/or Services is:
- limited to the value of any express warranty or warranty card provided to the Client by the Supplier in the Supplier's sole discretion;
 - otherwise negated absolutely.
- 16.8 The Supplier may in its absolute discretion accept surplus Equipment for return in which case the Supplier may require the Client to pay handling fees of up to twenty-five percent (25%) of the value of the returned Equipment plus any freight costs.
17. **Default and Consequences of Default**
- 17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).
- 17.3 Further to any other rights or remedies the Supplier may have under this contract, if a Client has made payment to the Supplier, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 17.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
- any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to make a payment when it falls due;
 - the Client has exceeded any applicable credit limit provided by the Supplier;
- the Client becomes insolvent or bankrupt, 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
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
18. **Security and Charge**
- 18.1 In consideration of the Supplier agreeing to supply the Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or personal property, title and interest, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 18.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- 18.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 18.1 including, but not limited to, signing any document on the Client's behalf.
19. **Cancellation**
- 19.1 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment, permits any act or thing to be done to the Equipment by way of which the Supplier's right in the Equipment may be prejudiced) under these terms and conditions the Supplier may suspend or terminate the supply of Equipment to the Client. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.
- 19.2 The Supplier may cancel these terms and conditions or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice. On giving such notice the Supplier shall repay to the Client any sums paid in respect of the Price. The Supplier shall not be liable for any loss or damage whatever arising from such cancellation.
- 19.3 In the event that the Client wishes to cancel this contract then the Client agrees to provide a minimum of forty-eight (48) hours' notice of termination of hire by either telephone or email. The Client shall remain liable for all hire charges due up to the time of cancellation until such notice is given.
20. **Privacy Policy**
- 20.1 All emails, documents, images or other recorded information held or used by the Supplier is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation ("GDPR") (collectively, "EU Data Privacy Laws"). The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Supplier that may result in serious harm to the Client, the Supplier will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to the Supplier in respect of Cookies where the Client utilises the Supplier's website to make enquiries. The Supplier agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- IP address, browser, email client type and other similar details;
 - tracking website usage and traffic; and
 - reports are available to the Supplier when the Supplier sends an email to the Client, so the Supplier may collect and review that information ("collectively Personal Information")
- If the Client consents to the Supplier's use of Cookies on the Supplier's website and later wishes to withdraw that consent, the Client may manage and control the Supplier's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 20.3 The Client agrees that the Supplier may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- to assess an application by the Client; and/or
 - to notify other credit providers of a default by the Client; and/or
 - to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 20.4 The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.
- 20.5 The Client agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):
- the provision of Equipment; and/or
 - analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Equipment; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - enabling the collection of amounts outstanding in relation to the Equipment.
- 20.6 The Supplier may give information about the Client to a CRB for the following purposes:
- to obtain a consumer credit report;
 - allow the CRB to create or maintain a credit information file about the Client including credit history;
- 20.7 The information given to the CRB may include:
- Personal Information as outlined in 20.3 above;
 - name of the credit provider and that the Supplier is a current credit provider to the Client;
 - whether the credit provider is a licensee;
 - type of consumer credit;
 - details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - advice of consumer credit defaults (provided the Supplier is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Supplier has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - information that, in the opinion of the Supplier, the Client has committed a serious credit infringement;
 - advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 20.8 The Client shall have the right to request (by e-mail) from the Supplier:
- a copy of the Personal Information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect Personal Information; and
 - that the Supplier does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 20.9 The Supplier will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 20.10 The Client can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
21. **Personal Property Securities Act 2009 ("PPSA")**
- 21.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 21.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Equipment and/or collateral (account) – being a monetary obligation of the Client to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Client.
- 21.3 The Client undertakes to:
- promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to:
 - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - register any other document required to be registered by the PPSA; or
 - correct a defect in a statement referred to in clause 21.3(a)(i) or 21.3(a)(ii);
 - indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods/Equipment charged thereby;
 - not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
 - not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment and/or collateral (account) in favour of a third party without the prior written consent of the Supplier;
 - immediately advise the Supplier of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 21.4 The Supplier and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 21.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 21.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 21.7 Unless otherwise agreed to in writing by the Supplier, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 21.8 The Client must unconditionally ratify any actions taken by the Supplier under clauses 21.3 to 21.5.
- 21.9 Subject to any express provisions to the contrary (including those contained in this clause 21), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 21.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 21 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 21 will apply generally for the purposes of the PPSA.
22. **Dispute Resolution**
- 22.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
 - conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
23. **Building and Construction Industry Payments Act 2004**
- 23.1 At the Supplier's sole discretion, if there are any disputes or claims for unpaid Equipment hire and/or Services then the provisions of the Building and Construction Industry Payments Act 2004 may apply.
- 23.2 Nothing in this contract is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.
24. **Service of Notices**
- 24.1 Any written notice given under this contract shall be deemed to have been given and received:
- by handing the notice to the other party, in person;
 - by leaving it at the address of the other party as stated in this contract;
 - by sending it by registered post to the address of the other party as stated in this contract;
 - if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - if sent by email to the other party's last known email address.
- 24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
25. **General**
- 25.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the State in which the Supplier has its principal place of business, and are subject to the jurisdiction of the Brisbane Courts in Queensland. Subject to clause 16, the Supplier shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 25.4 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 25.5 The Client cannot licence or assign without the written approval of the Supplier.
- 25.6 The Supplier may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.
- 25.7 The Client agrees that the Supplier may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Supplier to provide Goods to the Client.
- 25.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc., ("Force Majeure") or other event beyond the reasonable control of either party.
- 25.9 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision.