

1. Definitions

- 1.1 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **“Contractor”** means Red Pumps Pty Ltd trading as Red Pumps or All Coast Concrete Pump Hire its successors and assigns or any person acting on behalf of and with the authority of Red Pumps Pty Ltd trading as Red Pumps or All Coast Concrete Pump Hire.
- 1.3 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Contractor to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Client, is a reference to each Client jointly and severally; and
(b) if the Client is a partnership, it shall bind each partner jointly and severally; and
(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 **“Incidental Items”** means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by the Contractor in the course of it conducting, or supplying to the Client, any Services.
- 1.5 **“Services”** means all Services supplied by the Contractor to the Client at the Client’s request from time to time.
- 1.6 **“Plant”** means the concrete pump (including all associated accessories, attachments, ancillary equipment, machinery and motor vehicles).
- 1.7 **“Equipment”** means all Equipment including any accessories supplied on hire by the Contractor to the Client (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 Contractor to the Client.
- 1.8 **“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.
- 1.9 **“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 Client does not wish to allow Cookies to operate in the background when using the Contractor’s website, then the Client 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.**
- 1.10 **“Price”** means the price payable (plus any GST where applicable) for the Services and/or Equipment hire as agreed between the Contractor and the Client in accordance with clause 6 of this Contract.
- 1.11 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

2. Acceptance

- 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 Services/Equipment provided by the Contractor.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Services/Equipment on credit shall not take effect until the Client has completed a credit application with the Contractor and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Services/Equipment requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse delivery.
- 2.6 In the event of a mechanical breakdown (wherein any concrete blockage or chock within the Plant will not be construed as a breakdown in accordance with this clause 2.6) of the Plant, the Contractor shall make every reasonable effort to repair the Plant or to supply another Plant to complete the Services. In the event of such breakdown, the liability of the Contractor whether in contract, tort or otherwise shall be specifically limited to a maximum amount of damages equal to the Price of the Services accrued up to the time of the breakdown. The Contractor shall not be liable for any loss whatsoever suffered by the Client or others. The Contractor shall not be liable for any loss caused by breakdown of the Plant due to defective or un-pumpable concrete.
- 2.7 In the event that the Contractor is required to provide the Services outside the Contractor’s standard hours of operation (including, but not limited to, working through lunch breaks, weekends and/or Public Holidays), then the Contractor reserves the right to charge the Client additional labour charges (penalty rates will apply), unless otherwise agreed between the Contractor and the Client. The Client further acknowledges that the operating hours of the Plant may be subject to statutory requirements.
- 2.8 The Client accepts and acknowledges that the Contractor shall only supply the Plant in accordance with the Client’s booking, and shall transfer concrete supplied at ground level to such parts of the site as the Client shall direct. This shall be affected by pipeline from a portable pumping Plant. The Contractor’s responsibilities do not include any other function, including, but not limited to, setting or placing the concrete in position or transferring the concrete by any means other than by the pump and pipeline.
- 2.9 The Client further accepts that the Contractor will supply and the Client will receive the Plant at the kerb alignment. If at the Client’s request the Plant enters the site, the Client will indemnify and hold indemnified the Contractor, its servants and agents against all liability and against all actions, suits, fines, proceedings, claims, demands, costs and expenses incurred by the Contractor to its servants or its agents out of or in any way relating to the presence of the Plant on the site and/or entry onto the site.
- 2.10 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to the Contractor as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Services on the Client's behalf and/or to request any variation to the Services on the Client's behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies the Contractor in writing that said person is no longer the Client's duly authorised representative).
- 3.2 In the event that the Client's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client's behalf, then the Client must specifically and clearly advise the Contractor in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to the Contractor for all additional costs incurred by the Contractor (including the Contractor's profit margin) in providing any Services, Incidental Items or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that the Contractor shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Contractor in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of the Contractor; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

5. Change in Control

- 5.1 The Client shall give the Contractor 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 Contractor as a result of the Client's failure to comply with this clause.

6. Price and Payment

- 6.1 At the Contractor's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by the Contractor to the Client; or
 - (b) the Contractor's current rates (per hour and/or per cubic metre of concrete) as at the date of the delivery of the Services; or
 - (c) the Price as at the date of delivery of the Services/Equipment according to the Contractor's current price list; or
 - (d) the Contractor's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 The Contractor reserves the right to change the Price:
- (a) if a variation to the Services originally scheduled (including any applicable plans, scope of works or specifications) is requested; or
 - (b) 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, waiting time, availability of Plant, safety considerations, prerequisite work by any third party not being completed, non-compliant to the building code, poor surface preparation, unidentifiable difficulties which are only discovered following assessment or delays in receipt of approvals or permits etc.), which are only discovered on commencement of the Services; or
 - (c) in the event of increases to the Contractor in the cost of labour, which is beyond the Contractor's control.
- 6.3 Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Client shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At the Contractor's sole discretion a deposit may be required.
- 6.5 Time for payment for the Services/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:
- (a) on or before delivery of the Services/Equipment;
 - (b) by way of instalments/progress payments in accordance with the Contractor's payment schedule;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Contractor.
- 6.6 Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Contractor.
- 6.7 The Contractor may in its discretion allocate any payment received from the Client towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Contractor may re-allocate any payments previously received and allocated.
- 6.8 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 Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for providing the Contractor's Services/Equipment. 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.

7. Provision of the Services

- 7.1 Subject to clause 7.2 it is the Contractor's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 7.2 The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Client to:
- (a) have the site ready for the Services; or
 - (b) notify the Contractor that the site is ready.
- 7.3 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this Contract.
- 7.4 The Contractor may deliver the Services/Equipment by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 7.5 Any time specified by the Contractor for delivery of the Services/Equipment is an estimate only and the Contractor 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 Services/Equipment to be supplied at the time and place as was arranged between both parties.

8. Risk

- 8.1 Irrespective of whether the Contractor retains ownership of any Incidental Items all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as the Contractor may repossess the Incidental Items in accordance with clause 15.3(f). The Client must insure all Incidental Items on or before delivery.
- 8.2 The Contractor reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Incidental Items as a result of the Client's failure to insure in accordance with clause 8.1.
- 8.3 The Client accepts and acknowledges that the Contractor gives no warranty as to its capacity and performance of its concrete pumping Plant. In the event of any failing or breakdown of the concrete pumping Plant the Client accepts that the Contractor shall under no circumstances be liable for any loss or damages howsoever arising, (including, but not limited to, loss of time, concrete or other materials or any extra costs to the Client).
- 8.4 The Contractor's obligation is to transfer concrete supplied at ground level and to place the concrete at such parts of the site as the Client requires. This shall be effected by pipeline from a portable pumping Plant. The Contractor's obligation does not extend in any way to settling the concrete in position or finishing the surface thereof unless otherwise specified, and the Contractor accepts no liability for the slump strength quality or suitability of the concrete pumped by it, nor for any defects, inadequacy, or failing of foundations, formwork or any other part of the site, or the Client's instructions, and may complete the Services without reporting any apparent defect or failing aforesaid.
- 8.5 The Services are provided in accordance with the Client's instructions, and the Client accepts full responsibility for, and shall keep the Contractor fully indemnified against, all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the provision of the Services by the Contractor (howsoever arising and whether or not arising from any negligence, failure or omission of the Client). This indemnity shall not apply where it can be evidentially shown by the Client that such actions, proceedings, claims, etc. have arisen through a negligent act of the Contractor or that the Services provided by the Contractor are defective.
- 8.6 The Contractor gives no guarantee (expressed or implied) as to the length of time the curing process will take and/or against cracking of concrete that may occur naturally in the Services such as:
- (a) hairline cracking of paving and grout; or
 - (b) damage caused by contact with chemicals, solvents, oils or any other substances; or
 - (c) the affects by elements such as heat exposure or wet weather conditions that prolong the curing process.
- 8.7 The Client acknowledges and agrees that it is their responsibility to organise and be liable for all costs associated with protecting the concrete and shall take all reasonable precautions to protect against destruction or damage by way of vandalism. In the event that the concrete is destroyed or damaged due to vandalism then the cost of repair or replacement shall be borne by the Client.
- 8.8 The Contractor shall not be liable for any defect in the Services if the Client does not follow the Contractor's recommendation to:
- (a) water the concrete for a periodically to limit the risk of possible cracking due to weather conditions;
 - (b) no foot traffic and/or any vehicles on the concrete for a minimum of forty-eight (48) hours but preferably seven (7) days;
 - (c) no heavy furniture to be placed on the concrete area for a minimum of twenty-four (24) hours.
- 8.9 Where the Contractor gives advice or recommendations to the Client, or the Client's agent, regarding the suitability of the site for the laying of concrete slabs, foundations or similar works and such advice or recommendations are not acted upon then the Contractor shall require the Client or their agent to authorise commencement of the Services in writing. The Contractor shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 8.10 The Client accepts that the Contractor has no control over added colours once the product has touched the concrete.
- 8.11 No responsibility will be taken by the Contractor for any possible capillary action of water, sealants, fluids, rising damp or contaminants within the concrete or stone during the grinding and sealing process.
- 8.12 Contaminated and stained concrete can affect the sealants adhesion and life span, due to unknown contaminations. No responsibility will be taken by the Contractor under these circumstances.
- 8.13 Whilst the Contractor will take all due care to avoid contamination of the finished surface, the Contractor accepts no responsibility for contamination by other trades people or natural contaminates such as dust, insects or hair which may be present at the site.
- 8.14 The Client acknowledges that concrete supplied may:
- (a) fade or change colour over time; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.

9. Client's Responsibilities

- 9.1 It is the Client's responsibility to provide the Contractor, while at the site, with adequate access to available water, electricity, toilet and washing facilities.
- 9.2 The Client accepts and agrees to provide an appropriate area on the site for the purposes of washing out the Contractor's concrete pumping Plant upon completion of the concrete pumping and for depositing all unused concrete and slurry that meets council and any other environmental protection regulation requirements. The Client further accepts this area must not allow for any leakage of slurry/water to roads, gutters or storm water drainage systems. In the event there is no such area available on the site the Client accepts that the concrete pumping Plant will be taken elsewhere and an offsite wash out fee of the relevant concrete pumping Plant will be added to the Client's invoice.
- 9.3 The Client shall be responsible for the protection of the Contractor's equipment during the provision of Services from the public and animals.
- 9.4 The Client shall ensure that the correct traffic and pedestrian measures are in place and council permits where applicable. Failure to do so will result in the Client becoming liable for any costs incurred to the Contractor.
- 9.5 The Client shall provide and maintain, in position, effective screening to protect against damage caused by any malfunction of the pump or pipe line.
- 9.6 The Client further acknowledges that, in the case of high-rise or multi-level jobs:
- (a) the Client shall maintain and control all pipe line (according to the standards of the relevant code of practice) except the Contractor's lines between the pump and the stack; and
- (b) the Client shall ensure that all surrounding areas are adequately protected.
- 9.7 The Contractor shall not be liable in any way whatsoever for any damages or losses that occur should the Client fail to adhere to clauses 9.5 and 9.6.

10. Dimensions, Plans and Specifications

- 10.1 The Contractor shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client
- 10.2 If the giving of an estimate or quotation for the supply of concrete involves the Contractor estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of the Contractor's estimated measurements and quantities, before the Client places an order based on such estimate or accepts such quotation.
- 10.3 Should the Client require any changes to the Contractor's estimated measurements and quantities, the Client shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.

11. Measurement of Concreting Services

- 11.1 At the completion of the Services, the Client (or the representative of the Client) shall be in attendance and the Services shall then be duly measured. In the absence of either the Client or their representative, the Contractor shall carry out the necessary measurements and forward to the Client their calculations. If the Client does not object to the calculations within seven (7) days of receipt of the same then it shall be deemed acceptance of the same and the Services completed.

12. Service Locations

- 12.1 Prior to the Contractor commencing any work the Client must advise the Contractor of the precise location of all services on the site and clearly mark the same. The mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 12.2 Whilst the Contractor will take all care to avoid damage to any services the Client agrees to indemnify the Contractor 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 as per clause 12.1.

13. Access

- 13.1 The Client shall ensure that the Contractor has clear and free access to the site at all times to enable them to undertake the Services. The Contractor 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 Contractor.

14. Compliance with Laws

- 14.1 The Client and the Contractor 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, including any occupational health and safety (OHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
- 14.2 Both parties acknowledge and agree to comply with the National Construction Code of Australia (NCC) and the Building Act 1993, in respect of all workmanship and building products to be supplied during the course of the Services.
- 14.3 Where the Client has supplied products for the Contractor to complete the Services, the Client acknowledges that it accepts responsibility for the suitability of purpose, quality and any faults inherent in those products. However, if in the Contractor's opinion, it is believed that the products supplied will not conform to the state regulations, then the Contractor shall be entitled, without prejudice, to halt the Services until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 6.2.
- 14.4 The Client shall be responsible for obtaining and paying for any necessary consent, approvals, licences or certificates required for the Services, including those required subsequent to commencement of the Services.

15. Title to Incidental Items

- 15.1 The Contractor and the Client agree that where it is intended that the ownership of Incidental Items is to pass to the Client that such ownership shall not pass until:
- (a) the Client has paid the Contractor all amounts owing for the Services/Equipment; and
 - (b) the Client has met all other obligations due by the Client to the Contractor in respect of all contracts between the Contractor and the Client.
- 15.2 Receipt by the Contractor 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 and until then the Contractor's ownership or rights in respect of the Incidental Items shall continue.
- 15.3 It is further agreed that, until ownership of the Incidental Items passes to the Client in accordance with clause 15.1:
- (a) the Client is only a bailee of the Incidental Items and must return the Incidental Items to the Contractor immediately upon request by the Contractor;
 - (b) the Client holds the benefit of the Client's insurance of the Incidental Items on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Incidental Items. If the Client sells, disposes or parts with possession of the Incidental Items then the Client must hold the proceeds of sale of the Incidental Items on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand;
 - (d) the Client should not convert or process the Incidental Items or intermix them with other goods, but if the Client does so then the Client holds the resulting product on trust for the benefit of the Contractor and must dispose of or return the resulting product to the Contractor as the Contractor so directs;
 - (e) the Client shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of the Contractor;
 - (f) the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Incidental Items are kept and recover possession of the Incidental Items.

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

- 16.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 16.2 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:
- (a) all Incidental Items/Equipment previously supplied by the Contractor to the Client;
 - (b) all Incidental Items/Equipment will be supplied in the future by the Contractor to the Client; and
 - (c) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to the Contractor for Services – that have previously been provided and that will be provided in the future by the Contractor to the Client.
- 16.3 The Client 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 Contractor 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 16.3(a)(i) or 16.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Contractor 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 Incidental Items/Equipment charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Contractor;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items/Equipment in favour of a third party without the prior written consent of the Contractor;
 - (e) immediately advise the Contractor of any material change in its business practices of selling Incidental Items which would result in a change in the nature of proceeds derived from such sales.
- 16.4 The Contractor 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.
- 16.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 16.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 16.7 Unless otherwise agreed to in writing by the Contractor, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 16.8 The Client must unconditionally ratify any actions taken by the Contractor under clauses 16.2 to 16.5.
- 16.9 Subject to any express provisions to the contrary (including those contained in this clause 16), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 16.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 16 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 16 will apply generally for the purposes of the PPSA.

17. Security and Charge

- 17.1 In consideration of the Contractor agreeing to supply Services/Equipment, the Client 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 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).
- 17.2 The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
- 17.3 The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Client's behalf.

18. Defects, Warranties and the Competition and Consumer Act 2010 ("CCA")

- 18.1 The Client must inspect the Contractor's Services on completion, and the Equipment on delivery and must within seven (7) days notify the Contractor in writing of any evident defect in the Services/Equipment (including the Contractor's workmanship), or any Incidental Items provided, or of any other failure by the Contractor to comply with the description of, or quote for, the Services/Equipment which the Contractor was to supply. The Client must notify any other alleged defect in the Contractor's Services, Equipment or Incidental Items as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Contractor to review the Services, Equipment or Incidental Items that were provided.
- 18.2 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**).
- 18.3 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 18.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services/Equipment. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 18.5 If the Client is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.
- 18.6 If the Contractor is required to rectify, re-supply, or pay the cost of re-supplying the Services/Equipment under this clause or the CCA, but is unable to do so, then the Contractor may refund any money the Client has paid for the Services/Equipment but only to the extent that such refund shall take into account the value of Services/Equipment and Incidental Items which have been provided to the Client which were not defective.
- 18.7 If the Client is not a consumer within the meaning of the CCA, the Contractor's liability for any defective Services/Equipment or Incidental Items is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by the Contractor at the Contractor's sole discretion;
 - (b) otherwise negated absolutely.
- 18.8 Notwithstanding clauses 18.1 to 18.7 but subject to the CCA, the Contractor 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 Client failing to properly maintain or store any Incidental Items;
 - (b) the Client using the Incidental Items for any purpose other than that for which they were designed;
 - (c) the Client continuing to use any Incidental Item after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Services/Equipment by the Client or any third party without the Contractor's prior approval;
 - (e) the Client failing to follow any instructions or guidelines provided by the Contractor;
 - (f) fair wear and tear, any accident, or act of God.

19. Default and Consequences of Default

- 19.1 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 Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's contract default fees, and bank dishonour fees).
- 19.3 Further to any other rights or remedies the Contractor may have under this Contract, if a Client has made payment to the Contractor, 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 Contractor under this clause 19 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.
- 19.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by the Contractor;
 - (c) the Client 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20. Cancellation

- 20.1 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Services/Equipment to the Client. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.
- 20.2 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Services/Equipment at any time before the Services are commenced or Equipment provided by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any money paid by the Client for the provision of the Services/Equipment. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Client cancels delivery of the Services/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).

21. Privacy Policy

- 21.1 All emails, documents, images or other recorded information held or used by the Contractor is Personal Information, as defined and referred to in clause 21.3, and therefore considered Confidential Information. The Contractor 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 Contractor acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Contractor that may result in serious harm to the Client, the Contractor 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.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to the Contractor in respect of Cookies where the Client utilises the Contractor's website to make enquiries. The Contractor 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:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Contractor when the Contractor sends an email to the Client, so the Contractor may collect and review that information ("collectively Personal Information")
- If the Client consents to the Contractor's use of Cookies on the Contractor's website and later wishes to withdraw that consent, the Client may manage and control the Contractor's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 21.3 The Client agrees for the Contractor to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. 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) about the Client in relation to credit provided by the Contractor.
- 21.4 The Client agrees that the Contractor may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) 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
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 21.5 The Client consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit.
- 21.6 The Client agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services/Equipment; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services/Equipment; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Services/Equipment.
- 21.7 The Contractor may give information about the Client 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 Client including credit history.
- 21.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 21.3 above;
 - (b) name of the credit provider and that the Contractor is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) 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);
 - (f) advice of consumer credit defaults (provided the Contractor is a member of an approved QAIC 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 Contractor 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 Contractor, the Client has committed a serious credit infringement;

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- (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 21.9 The Client shall have the right to request (by e-mail) from the Contractor:
- (a) a copy of the Personal Information about the Client retained by the Contractor and the right to request that the Contractor correct any incorrect Personal Information; and
 - (b) that the Contractor does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 21.10 The Contractor 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.
- 21.11 The Client can make a privacy complaint by contacting the Contractor via e-mail. The Contractor 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.

22. Equipment Hire

- 22.1 Equipment shall at all times remain the property of the Contractor and is returnable on demand by the Contractor. In the event that Equipment is not returned to the Contractor in the condition in which it was delivered the Contractor retains the right to charge the Client the full cost of repairing the Equipment. In the event that Equipment is not returned at all the Contractor shall have right to charge the Client the full cost of replacing the Equipment.
- 22.2 The Client 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 Contractor to the Client.
- 22.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, the Contractor's interest in the Equipment and agrees to indemnify the Contractor 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 the use 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.
- 22.4 Notwithstanding the above clause, immediately on request by the Contractor the Client will pay:
- (a) any lost hire charges the Contractor would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
 - (b) any insurance excess payable in relation to a claim made by either the Client or the Contractor 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 Contractor's.
- 22.5 Return of the Equipment ("**Return**") will be completed when the:
- (a) Equipment is returned by the Client to the Contractor's place of business; or
 - (b) Contractor takes back possession of the Equipment once collection by the Contractor is affected.

23. Service of Notices

- 23.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) 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;
 - (e) if sent by email to the other party's last known email address.
- 23.2 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.

24. Trusts

- 24.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Contractor may have notice of the Trust, the Client covenants with the Contractor as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of the Contractor (the Contractor will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

25. Building and Construction Industry Security of Payments Act 1999

- 25.1 At the Contractor's sole discretion, if there are any disputes or claims for unpaid Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 25.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

26. General

- 26.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 26.2 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.
- 26.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which the Contractor has its principal place of business, and are subject to the jurisdiction of the courts in Gosford, New South Wales.
- 26.4 Subject to clause 18, the Contractor 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 Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price paid for the Services/Equipment).
- 26.5 The Contractor may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 26.6 The Client cannot licence or assign without the written approval of the Contractor.
- 26.7 The Contractor 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 Contractor's sub-contractors without the authority of the Contractor.
- 26.8 The Client agrees that the Contractor may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to 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 Contractor to provide Services/Equipment to the Client.
- 26.9 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.
- 26.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.