

Australis Safety Rail Pty Ltd - Terms & Conditions of Hire

1. Definitions

- 1.1 **"Charges"** means the cost of the hire of the Equipment (plus any GST where applicable) as agreed between the Supplier and the Client subject to clause 6 of this Contract.
- 1.2 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Supplier 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.
- 1.3 **"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.
- 1.4 **"Contract"** means the terms and conditions contained herein, together with any quotation, Hire form, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.5 **"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 Supplier'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.**
- 1.6 **"Equipment"** means all Equipment (including, but not limited to, scaffolding or safety rails and any accessories) supplied on hire by the Supplier to the Client (and where the context so permits shall include any incidental supply of services). 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.
- 1.7 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.8 **"Minimum Hire Period"** means 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.
- 1.9 **"Site"** means the location/s at which the Equipment is to be operated.
- 1.10 **"Supplier"** means Australis Safety Rail Pty Ltd ATF Australis Safety Rail Unit Trust T/A Australis Safety Rail Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Australis Safety Rail Pty Ltd ATF Australis Safety Rail Unit Trust T/A Australis Safety Rail Pty Ltd.

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 Delivery of, the Equipment.
- 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 and accepts that:
- (a) the hire of Equipment on credit shall not take effect until the Client has completed a credit application with the Supplier and it has been approved with a credit limit established for the account. In the event that the hire of Equipment requested exceeds the Client's credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse Delivery;
 - (b) following the handover of the certified Equipment to the Client, it shall be the Client's responsibility to check the Equipment before each use. If the Equipment is deemed to be damaged, altered or appears unsafe it should **not** be used, and the Supplier is to be notified; and
 - (c) the Supplier reserves the right to remove the Equipment, without prejudice, should the Equipment be considered to be unsafe due to washout and/or erosion, upon such action this shall not be deemed to be a breach of Contract. The Supplier will not accept any claim in respect of any consequential loss to the Client that may result from such an event.
- 2.5 The Supplier will:
- (a) ensure that all completed standing scaffolds are tagged with an Aculog Scaffold Tag System certifying that the scaffolds are complete and safe to use; and
 - (b) regularly inspect all standing scaffolds prior to the Services commencing as per the Health and Safety requirements.
- 2.6 Any advice, recommendation, information, assistance or service provided by the Supplier in relation to the Equipment/Services supplied is given in good faith to the Client, or the Client's agent and is based on the Supplier's own knowledge and experience and shall be accepted without liability on the part of the Supplier.
- 2.7 Unless otherwise agreed, the Services will be conducted between the hours of 6:00am to 6:00pm Monday to Friday.
- 2.8 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.

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 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).
- 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 Supplier in writing of the parameters of the limited authority granted to their representative.

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- 3.3 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 variation/s thereto, 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 Supplier 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 Supplier 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 Supplier in respect of the Equipment hire and/or/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 Supplier; 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 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.
- 6. Charges and Payment**
- 6.1 At the Supplier's sole discretion the Charges shall be either;
- (a) as indicated on invoices provided by the Supplier to the Client in respect of Equipment supplied on hire; or
 - (b) the Supplier's quoted Charges (subject to clause 6.2) which shall be binding upon the Supplier provided that the Client shall accept in writing the Supplier's quotation within thirty (30) days.
- 6.2 The Supplier reserves the right to change the Charges:
- (a) if a variation to the Equipment which is to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans, erection and dismantle charges, Site requirements or specifications) is requested; or
 - (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, additional transport requirements, protruding or dismantled formwork, repositioning or adjusting the Equipment, additional Site visits required, safety considerations or overhead hazards, prerequisite work by any third party not being completed, any relocation and/or alteration to working platforms and/or hop up brackets (or the Equipment entirely), labour shortages etc.) which are only discovered on commencement of the Services; or
 - (d) if variations which are beyond the Supplier's control occur (such as the cost of materials, labour, taxes, levies, duties, insurance and/or freight etc.)
- 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 variation to the Charges. Payment for all variations must be made in full at the time of their completion.
- 6.4 At the Supplier's sole discretion, a deposit (in the form of a bond) shall be required at the commencement of this Contract, which shall be refunded to the Client by within thirty (30) days of the return of the Equipment, provided that the Client has complied with their obligations hereunder. The deposit may be used to offset any applicable Charges payable by the Client under clause 18.3, and any outstanding balance thereof shall be due as per clause 6.5.
- 6.5 Time for payment for the Equipment being of the essence, the Charges will be payable by the Client on the date/s determined by the Supplier, which may be:
- (a) on Delivery of the Equipment; or
 - (b) by way of instalments/progress payments in accordance with the Supplier'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 fourteen (14) days following the date of any invoice given to the Client by the Supplier.
- 6.6 Payment may be made by electronic/on-line banking, credit card (a surcharge per transaction may apply) or by any other method as agreed to between the Client and the Supplier.
- 6.7 The Supplier may in its discretion allocate any payment received from the Client towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Equipment.
- 6.8 The Client shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify the Supplier in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Supplier investigates the dispute claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Supplier placing the Client's account into default and subject to default interest in accordance with clause 22.1.
- 6.9 Unless otherwise stated the Charges does not include GST. In addition to the Charges 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 agreement for the hire of the 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 Charges. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.

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6.10 Receipt by the Supplier 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.

7. Hire Period

- 7.1 For Equipment in which a timing device is installed the hire period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Client's possession.
- 7.2 The hire Charges shall commence from the time that the Equipment has been installed and the handover certificate being issued.
- 7.3 All hire Charges are for a minimum of fourteen (14) days hire.
- 7.4 In the event that the Equipment has been delivered to the Site but could not be erected and installed due to circumstances outside of the Supplier's control (including, but not limited to, unforeseen events as per clause 28.9 further resulting in labour shortages etc) then the hire Charges shall begin from the date the Equipment has been installed and the handover certificate being issued in accordance with clause 7.2. The Supplier shall not accept any claim in respect of any consequential loss to the Client that may result from such an event.
- 7.5 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 7.6 No allowance whatsoever 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.

8. Delivery

- 8.1 Delivery ("**Delivery**") of the Equipment is taken to occur at the time that the Supplier (or the Supplier's nominated carrier) delivers the Equipment to the Client's nominated address even if the Client is not present at the address.
- 8.2 At the Supplier's sole discretion, the cost of Delivery is included in the Charges.
- 8.3 Any time specified by the Supplier for Delivery of the Equipment 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 arranged 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, and/or for storage of the Equipment.

9. Risk

- 9.1 The Supplier retains ownership of the Equipment nonetheless all risk for the Equipment passes to the Client on Delivery.
- 9.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies the Supplier for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
- 9.3 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 and all other usual risks and will effect adequate Public Liability Insurance 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.
- 9.4 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, damage to 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.
- 9.5 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.

10. Underground Locations

- 10.1 Prior to the Supplier commencing the Services the Client must advise the Supplier of the precise location of all underground services on the Site and clearly mark the same. The underground mains and 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 the Site.
- 10.2 Whilst the Supplier will take all care to avoid damage to any underground services the Client agrees to indemnify the Supplier 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 10.1.

11. Access and Installation

- 11.1 The Client shall ensure that the Supplier has clear and free access to the nominated Delivery address to enable the Supplier to 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 the Equipment was installed. 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.
- 11.2 The Client acknowledges and agrees to inform the Supplier in the event of damage to the Site as a result of any action by the Supplier's employees or contractors during the course of the Services, the Client further agrees to allow the Supplier access to inspect such damage before any agreement to rectification costs can be accepted.
- 11.3 The Client acknowledges and accepts that where the Equipment is required to be tied to the building structure, with ties at each scaffold lift, using either bolts, pins or screw eyes, the subsequent repairs of these holes and/or repainting shall be the responsibility of the Client.
- 11.4 The quotation is based upon wire ties and/or bolted scaffold ties to secure the Equipment to the building and the construction procedures must allow for these ties to remain in position whilst the Equipment is in use.

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- 11.5 It shall be the Client's responsibility to ensure that where the Equipment is installed on concreted areas, patios, driveways or timber decks 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 and concreted or paved or grassed areas) unless due to the negligence of the Supplier.
- 11.6 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.
- 11.7 Any Equipment above five metres (5m) high may only be erected, altered or dismantled under the supervision of a scaffolder holding a 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 or the Supplier.
- 11.8 If during the course of the Client's work, the Equipment is modified or removed by the Client to the extent the Equipment is no longer compliant with the applicable legislative requirements, any rectification work performed by the Supplier will be at the Client's expense.
- 11.9 The Client acknowledges and agrees that:
- the Supplier's erect and dismantle quotation, unless otherwise agreed, does not allow for subsequent visits to the Site to adjust or alter the Equipment, any additional rectification services will be charged as an extra;
 - any standing scaffold over five metres (5m) high or intended to extend over five metres (5m) high requires the Supplier and the people intending to use the scaffold to provide a notification to WorkSafe prior to any Services commencing; and
 - 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 Site, that is not owned by the Client, then it is the Client's responsibility to gain permission from the landowner to use the above-mentioned property throughout the erection, alteration or dismantling of the Equipment. In the event the landowner 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.
- 11.10 The Client shall be responsible for:
- confirming with the relevant authorities that all power cables are safe within four metres (4m) of the intended Equipment prior to the Services commencing;
 - arranging traffic/pedestrian management for the transportation of the Equipment or the erection/dismantling of the Equipment; and
 - providing the Supplier, while at the Site, with adequate access to available water, electricity, toilet and washing facilities unless otherwise agreed.
- 11.11 *Site Inductions*
- in the event the Client requires an employee or sub-contractor of the Supplier to undertake a Site induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the Client shall be liable to pay the Supplier's standard (and/or overtime, if applicable) hourly labour rate; or
 - where the Supplier is in control of the Site, the Client and/or the Client's third-party contractors must initially carry out the Supplier's Health & Safety induction course before access to the Site will be granted. Inspection of the Site during the course of the Works will be by **appointment only** and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by the Supplier.
- 12. Affixation of Equipment to Land or Buildings**
- 12.1 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 acknowledge of the mortgagee or chargeholder (as the case may be) that:
- the Equipment or any part thereof is not a fixture for the purposes of the mortgage or charge;
 - that the mortgagee or chargeholder will not make any claim in relation to the Equipment or any part thereof; and
 - that the mortgagee or chargeholder 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.
- 13. Inspection of Equipment**
- 13.1 The Client hereby grants the Supplier (including its employees, duly authorised agents or representatives) the right, at all times, upon the Supplier giving to the Client reasonable notice and without unduly interfering with the Client's business or operations, to:
- enter onto the Site(s) where the Equipment or any part thereof may be located;
 - inspect the state of repair or condition of the Equipment;
 - carry out any such tests on the Equipment as may be reasonably necessary including but not limited to, health and safety tests or inspections;
 - observe the use of the Equipment by the Client; and/or
 - do any act, matter or thing which may be required at law or to otherwise protect the Supplier's rights or interests in the Equipment.
- 14. Title**
- 14.1 The Equipment is and will at all times remain the absolute property of the Supplier, and the Client must return the Equipment to the Supplier upon request to do so.
- 14.2 If the Client fails to return the Equipment to the Supplier as is required under this Contract or when requested to do so, then the Supplier or the Supplier's agent may (as the invitee of the Client) enter upon and into any 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. Any costs incurred by the Supplier as a result of the Supplier so repossessing the Equipment shall be charged to the Client.

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- 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.
- 15. Personal Property Securities Act 2009 ("PPSA")**
- 15.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 15.2 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 that has previously been supplied and that will be supplied in the future by the Supplier to the Client.
- 15.3 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 Supplier 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 15.3(a)(i) or 15.3(a)(ii);
 - (b) 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 Equipment charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without the prior written consent of the Supplier.
- 15.4 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.
- 15.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7 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.
- 15.8 The Client must unconditionally ratify any actions taken by the Supplier under clauses 15.3 to 15.5.
- 15.9 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.
- 15.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 15 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 15 will apply generally for the purposes of the PPSA.
- 16. Security and Charge**
- 16.1 In consideration of the Supplier agreeing to supply 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, and the Client grants a security interest in all of its present and after-acquired property for the purposes of, including but not limited to registering the Supplier's security interest over the Client on the PPSA, 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).
- 16.2 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.
- 16.3 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 16 including, but not limited to, signing any document on the Client's behalf.
- 17. Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")**
- 17.1 The Client must inspect the Equipment on Delivery and must within twenty-four (24) hours of Delivery 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 as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Supplier to inspect the Equipment.
- 17.2 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).
- 17.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 17.4 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. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.5 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.
- 17.6 If the Supplier is required to rectify, re-supply, or pay the cost of re-supplying any services or Equipment under this clause or the CCA, but is unable to do so, then the Supplier may refund any money the Client has paid for the services or Equipment but only to the extent that such refund shall take into account the value of any services or Equipment and consumables which have been provided to the Client which were not defective.
- 17.7 If the Client is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the services or Equipment is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by the Supplier at the Supplier's sole discretion;
 - (b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Equipment;
 - (c) otherwise negated absolutely.

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- 17.8 Notwithstanding clauses 17.1 to 17.7 but subject to the CCA, the Supplier 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 Equipment;
 - (b) the Client interfering with the Equipment in any way without the Supplier's written approval to do so;
 - (c) the Client using the Equipment for any purpose other than that for which it was designed;
 - (d) the Client continuing the use of the Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (e) the Client failing to follow any instructions or guidelines provided by the Supplier;
 - (f) fair wear and tear, any accident, or act of God.

18. Client's Responsibilities

18.1 The Client shall:

- (a) satisfy itself at commencement that the Equipment is suitable for its purposes;
- (b) maintain the Equipment as is required by the Supplier;
- (c) inspect all Equipment every thirty (30) days, or immediately after severe storms or other adverse weather conditions;
- (d) notify the Supplier immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
- (e) not move the Equipment once placed in position by the Supplier, except with the express approval of the Supplier. Any relocation of the Equipment shall attract an additional fee, and all risk for the performance of such shall rest with the Client (as per clause 9.4);
- (f) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by the Supplier or posted on the Equipment;
- (g) ensure that:
 - (i) all persons operating or erecting 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 to operate the Equipment and shall provide evidence of the same to the Supplier upon request;
 - (ii) the operator of any Equipment is not under the influence of alcohol or any drug that may impair their ability to operate the Equipment.
- (h) comply with all work health and safety laws relating to the Equipment and its operation;
- (i) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to the Supplier;
- (j) keep the Equipment in their own possession and control and shall not assign the benefit of the hire Contract nor be entitled to lien over the Equipment;
- (k) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
- (l) 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;
- (m) no digging or excavation work is performed near or under the Equipment during the installation or once the Equipment is installed; and
- (n) indemnify and hold harmless the Supplier in respect of all claims arising out of the Client's use of the Equipment.

18.2 The Client shall not:

- (a) 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;
- (b) exceed the recommended or legal load and capacity limits of the Equipment;
- (c) use or carry any illegal, prohibited or dangerous substance in or on the Equipment;
- (d) fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.

18.3 Immediately on request by the Supplier the Client will pay:

- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to the Supplier;
- (b) all costs incurred in cleaning the Equipment;
- (c) all costs of repairing any damage caused by:
 - (i) the ordinary use of the Equipment;
 - (ii) the negligence of the Client or the Client's agent;
 - (iii) vandalism, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client.
- (d) the cost of consumables provided by the Supplier and used by the Client;
- (e) any:
 - (i) lost hire fees the Supplier would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
 - (ii) costs incurred by the Supplier in dismantling, picking up and returning the Equipment 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;
 - (iii) 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.

19. Wet Hire

19.1 "Wet Hire" shall mean that the Equipment is hired with an operator who shall at all times remain an employee of the Supplier.

19.2 In the event of Wet Hire, the operator of the Equipment remains an employee of the Supplier and operates the Equipment in accordance with the Client's instructions. As such the Supplier shall not be liable for any actions of the operator in following the Client's instructions.

20. Non-Solicitation

- 20.1 The Client agrees not to employ, contract, subcontract or utilise in any way an employee or past employee of the Supplier (other than through the Supplier) within twelve (12) months of that employee's last employment with the Supplier.
- 20.2 The Client agrees that if clause 20.1 is contravened the Supplier will be able to invoice the Client, at its current hourly rate, the hours that the employee has been employed, contracted, subcontracted or utilised in any way by the Client and agrees to pay said invoice in accordance with the standard payment terms contained in this Contract.

21. Cancellation

- 21.1 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) under these terms of hire the Supplier may repossess the Equipment as per clause 14.2, or suspend or terminate the supply of Equipment to the Client and any of its other obligations under the terms and conditions. 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.
- 21.2 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 to the Client. On giving such notice the Supplier shall repay to the Client any sums paid in respect of the Charges. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.3 Further to clause 21.2, the Supplier reserves the right to cancel the Contract and immediately repossess the Equipment at any time if;
- (a) the Supplier reasonably believes that a third party may attempt to take possession of the Equipment; or
 - (b) the Equipment is at risk.
- 21.4 In the event that the Client cancels Delivery of the Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).

22. Default and Consequences of Default

- 22.1 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 one 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.
- 22.2 If the Client owes the Supplier any money, the Client shall indemnify the Supplier from and against all costs and disbursements:
- (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Client would be liable;
- in regard to legal costs on a solicitor and own client basis, internal administration fees, the Supplier's contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 22.3 Further to any other rights or remedies the Supplier may have under this Contract, if the 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 22 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.
- 22.4 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 unperformed and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client has exceeded any applicable credit limit provided by the Supplier;
 - (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.

23. Compliance with Laws

- 23.1 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, the best practice guidelines for scaffolding as outlined in the Guidelines for the Provision of Facilities and General Safety in the Construction Industry Standards (AS1576 – Parts 1, 2, 3, & 4 and AS/NZS 4576), and any occupational health and safety laws relating to building/construction Sites and any other relevant safety standards or legislation.
- 23.2 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 Services.
- Modern Slavery*
- 23.3 For the purposes of clauses 23.3 to 23.8:
- (a) "**Act**" means the *Modern Slavery Act 2018 (cth)*
 - (b) "**Modern Slavery**", "**Modern Slavery Statement**" and "**Reporting Entity**" have the meanings given by the Act.
- 23.4 If the Client is a Reporting Entity, it shall comply with all of its obligations under the Act.
- 23.5 Whether the Client is a Reporting Entity or not, the Client shall:
- (a) use reasonable endeavours to identify, assess and address risks of Modern Slavery practices in its operations and supply chains;
 - (b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery;
 - (c) use its reasonable endeavours to ensure that if at any time the Client becomes aware of Modern Slavery practices in its operations and supply chains, the Client must as soon as reasonably practicable take all reasonable steps to address or remove these practices;
 - (d) provide to the Supplier a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and
 - (e) within seven (7) days of the Supplier's request (or such longer period as the Supplier agrees), provide to the Supplier any information or assistance reasonable requested by the Supplier;

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- (i) concerning the Client's compliance with the Act;
 - (ii) concerning the Client's operations and supply chains;
 - (iii) to enable the Supplier to prepare a Modern Slavery Statement or otherwise comply with the Act; or
 - (iv) to enable the Supplier to assess and address risks of Modern Slavery practices in its operations and supply chains.
- 23.6 The parties agree that in the circumstances a breach arises pursuant to this clause or the terms of the Act, the parties will try and resolve the breach by way of remediation and the Supplier will be able to terminate the Contract for any breach by the Client.
- 23.7 The Client warrants that any information supplied to the Supplier is true and accurate and may be relied upon for the purposes of the Act.
- 23.8 The Client shall indemnify the Supplier against any loss or liability suffered by the Supplier as a result of the Client's breach of this clause 23.

24. Privacy Policy

- 24.1 All emails, documents, images or other recorded information held or used by the Supplier is Personal Information, as defined and referred to in clause 24.3, 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.
- 24.2 Notwithstanding clause 24.1, 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:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) 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.
- 24.3 The Client agrees for the Supplier 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 Supplier.
- 24.4 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:
- (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 (2) years.
- 24.5 The Client consents to the Supplier being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 24.6 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):
- (a) the provision of Equipment; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of 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 Equipment.
- 24.7 The Supplier 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.
- 24.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 24.3 above;
 - (b) name of the credit provider and that the Supplier 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 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);
 - (g) information that, in the opinion of the Supplier, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 24.9 The Client shall have the right to request (by e-mail) from the Supplier:

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- (a) 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
- (b) that the Supplier does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 24.10 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.
- 24.11 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.
- 25. Building Industry Fairness (Security of Payment) Act 2017**
- 25.1 At the Supplier's sole discretion, if there are any disputes or claims for unpaid Equipment and/or Services then the provisions of the Building Industry Fairness (Security of Payment) Act 2017 may apply.
- 25.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Building Industry Fairness (Security of Payment) Act 2017 of Queensland, except to the extent permitted by the Act where applicable.
- 26. Service of Notices**
- 26.1 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.
- 26.2 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.
- 27. Trusts**
- 27.1 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 Supplier may have notice of the Trust, the Client covenants with the Supplier 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 Supplier (the Supplier 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.
- 28. General**
- 28.1 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.
- 28.2 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.
- 28.3 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 Maroochydore Courts in that state.
- 28.4 Subject to clause 17, 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 Charges).
- 28.5 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.
- 28.6 The Client cannot assign or licence without the written approval of the Supplier.
- 28.7 The Supplier may elect to subcontract out any part of the provision 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.
- 28.8 The Client agrees that the Supplier 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 Supplier to provide Equipment on hire to the Client.
- 28.9 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.

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- 28.10 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.
- 28.11 This Contract and any subsequent hire agreement between the Supplier and the Client, shall constitute as the entire agreement between the Supplier and the Client, and the Client hereby acknowledges that no reliance is placed on any representation made by the Supplier that is not embodied in this Contract.
- 28.12 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.