

GENERAL CONDITIONS

IT IS AGREED AS FOLLOWS

1. DEFINITIONS AND INTERPRETATION:

1.1 In this Agreement:

- (a) **"Agreement"** means this Agreement between the parties and includes the Particulars, the General Conditions, the Schedule(s) and any ancillary documents attached to this document. The Particulars, the General Conditions and the Schedule(s) are to be interpreted in that order of priority in the absence of any provision to the contrary.
- (b) **"Business Day"** means any day which is not a Saturday, Sunday or recognized public holiday in the State.
- (c) **"Commencement Date"** means the date this Agreement commences as specified at **Item 4** of the Particulars.
- (d) **"Insolvency Event"** means the happening of any one or more of the following events:
 - (a) in relation to a natural person: (i) that person being unable to pay his or her debts as and when they fall due;
 - (ii) an application and filing for bankruptcy being made in respect of that person; or (iii) a receiver, or receiver and manager, trustee for creditors or trustee in bankruptcy or analogous person being appointed over that person's assets or undertakings or any of them; or (b) in relation to a body corporate: (i) that body corporate being unable to pay its debts as and when they fall due; (ii) a receiver, receiver and manager, administrator or liquidator being appointed over that body corporate's assets or undertakings or any of them; (iii) an application for winding up or other process seeking orders which, if granted, would render that body corporate an externally-administered body corporate being filed and not being withdrawn within 20 Business Days; (iv) that body corporate being or becoming the subject of an order, or a resolution being passed, for the winding up or dissolution of that body corporate; or (v) that body corporate entering into, or resolving to enter into, a deed of company arrangement or an arrangement, composition or compromise with, or proceedings being commenced to sanction such a deed of company arrangement or arrangement, composition or compromise, other than for the purposes of a bona fide scheme of solvent reconstruction or amalgamation.
- (e) **"PPSA"** means the *Personal Property Securities Act 2009* (Cth).
- (f) **"PPSR"** means the Personal Property Securities Register established pursuant to the PPSA.
- (g) **"Security Interest"** has the same meaning as defined in the PPSA.
- (h) **"Price"** means the amount charged per unit by the Supplier to the Hirer as stated in **Item 8** of the Particulars or as amended by the Supplier from time to time.
- (i) **"Products"** means the products supplied by the Supplier to the Hirer pursuant to this Agreement, such products being specified at **Item 3** of the Particulars.
- (j) **"Recovery Costs"** means in relation to the loss of or damage to the Products hired:
 - (i) Appraisal fees;
 - (ii) Transport, storage and recovery costs; and
 - (iii) Administrative fees reflecting the costs of arrangements for repairs, transport and other administrative expenditure incurred.
- (k) **"State"** means the state this Agreement is made as specified at **Item 6** of the Particulars
- (l) **"Supplier"** means the party or parties identified at **Item 1** of the Particulars.
- (m) **"Term"** means the term of this Agreement as specified at **Item 5** of the Particulars commencing on the Commencement Date.

1.2 Interpretation:

- (a) Words importing the singular include the plural and vice versa and words importing any particular gender include all genders. Words importing persons must include corporations, firms, partnerships and natural persons.
- (b) Headings to this Agreement have been inserted for convenience and guidance only and will not form part of the context and will not limit or govern the construction of any provisions of this Agreement.
- (c) All provisions of this Agreement will so far as possible be construed so as not to be invalid, illegal, or unenforceable in any respect, but if any provision on its true interpretation is illegal, invalid or unenforceable, that provision will so far as possible be read down to such extent as may be necessary to ensure that it is not illegal, invalid or unenforceable as may be reasonable in all the circumstances so as to give a valid operation of a partial character. If any such provision or part of it cannot be so read down, such provision or part will be deemed to be void and severable and the remaining provisions of this Agreement must not in any way be affected or inhibited.
- (d) No word, words or provisions of this Agreement will operate to limit or in any way prejudice the effect of any other word, words or provisions of this Agreement unless it is expressly provided otherwise.
- (e) Any reference to "us", "we", or "our" is a reference to the Supplier.
- (f) Any reference to "you", or "your" is a reference to the Hirer, its representatives, agents and employees.
- (g) Reference to any document or Agreement will be deemed to include references to such document or agreement as amended, notated, supplemented, varied or replaced from time to time.
- (h) References to any legislation or to any provision of any legislation will include any modification or re-enactment of any such legislation or any legislative provisions substituted for and/or legislation and statutory instruments issued under such legislation.
- (i) The Special Conditions contained in **Item 9** of the Particulars ("**Special Conditions**") are essential terms of this Agreement and if inconsistent with any other provisions of this Agreement, override them.
- (j) This Agreement will be governed by and construed in accordance with the laws for the time being of the State. The parties agree that this Agreement will be deemed to have been made in the State and that the courts of law in the State will have the jurisdiction to entertain any dispute relating to a point of law or fact in respect of this Agreement.

2. OWNERSHIP OF PRODUCTS HIRED

- 2.1 Products hired are our sole and absolute property. You must not sell, offer for sale, assign, mortgage, pledge, hire out, lend or dispose of or otherwise deal with the products hired in any way without our prior written consent.
- 2.2 Any signage on the Products indicating the name or ownership of the Products by the us must NOT be removed, defaced, obliterated or covered over by you and we must have free access always thereto for maintaining the same.

3. HIRE PERIOD

- 3.1 You must pay us the full and complete amount of the Price for the rental Term agreed upon and thereafter any extension thereof.
- 3.2 The rental period will be computed from the date we deliver to you and/or install at your requested address, the products hired, and continuing until the termination of the hire in accordance with this Agreement.
- 3.3 After the expiration of the Term, all rental fees payable by you will automatically continue to accrue and will be chargeable on a month to month basis until such time that you notify us in writing or over the phone or via email to cease the hire agreement and have the products picked up and removed from your site.
- 3.4 You may terminate this agreement after the expiration of the initial hire period by giving not less than 48 hours' notice to us to have the products picked up from the site they were delivered to, without prejudice to any additional charges that may accrue pursuant to clause 3.3 or any of our rights under this Agreement

4. TERMS OF TRADE

- 4.1 All prices quoted by us remain firm for thirty (30) days from the date of quotation with deliveries to be made within sixty (60) days from the date of order, unless otherwise stated by us.
- 4.2 You must place all orders for Products directly with our staff by phone, or email to the contact details stated in **Item 1**. We do not guarantee that orders made or placed via voice messages left on our answering machine will be attended to.
- 4.3 Prior payment must be made for any of our products or services in cash, funds directly deposited into our bank account, with an approved cheque or with a credit/debit card prior to delivery of the products or services, unless you hold an approved trading account with us.
- 4.4 You acknowledge and agree that payments made by cheque are not deemed to have been made until the funds have cleared into our nominated bank account and that the products or services will not be released until after such time,
- 4.5 You acknowledge and agree to pay us the full amount of any loss or damage however sustained to our Product(s) caused by, or arising out of, or incidental to the default or neglect of the hire of our products or services to you.
- 4.6 You are not entitled to recover from us any sum for any expenditure, delay, inconvenience, damage or loss of any kind that you may incur due to or arising out of any break down or failure of the products hired whether caused by fair wear and tear, negligence on our part or any other reason whatsoever.
- 4.7 No indulgence or extension of time for the making of any payment or committing of any act granted by us to you will affect the strict rights or obligations of the parties under this contract.
- 4.8 Any notice required to be served by one party on the other must be deemed to have been properly served when sent by email to the known address or two working days after the notice has been posted by prepaid post the other party at the address appearing herein.
- 4.9 In this contract where the context must admit, the singular must include the plural and the masculine, feminine and neutral genders.
- 4.10 Where there is more than one Hirer, the terms and conditions hereof, must bind them jointly and severally.
- 4.11 The term "you" or "your" must include your respective successors, heirs, assignees and transferees.

5. PAYMENT

- 5.1 Payment may only be made via credit card, EFTPOS, or an approved trading account.
- 5.2 Any new trading accounts may only be opened with our approval (at our sole discretion) and are done so on a strict 30-day basis provided always that you meet all the criteria set by us, including without limitation, providing us with all relevant particulars and personal guarantees. Any requests by you to extend your existing trading account terms or to increase your credit limit will require all appropriate account documentation to be correctly filled out, subject always to approval by us at our sole discretion.
- 5.3 If you choose to provide your credit card or EFTPOS details to pay for products hired, you acknowledge that these details will remain on file with us until any and all products hired have been returned.
- 5.4 If any Products hired by you continue to remain at your site in excess of the original paid period, you agree that we will be entitled to debit the appropriate amount from your credit card, EFTPOS details or trading account (where applicable) for each week or month (as the case may be) that the Products remain on your site, at the quoted over hire rate, until the Products hired have been picked up by us.
- 5.5 You further acknowledge and agree that any loss or damage to the Products suffered during the hire period are directly billable and that any debits to your credit/debit card, or trading account are deducted without notice to you.
- 5.6 Copies of invoices and statements will be sent by email to you.

6. OVERDUE ACCOUNTS

- 6.1 Any overdue accounts will be automatically and immediately placed on hold when the account has exceeded the agreed terms of trade.
- 6.2 Whilst your account is on hold, any further trade with you can only be undertaken on a cash basis, funds deposited into our bank account or approved credit/debit card basis, subject always to our further approval at our sole discretion.
- 6.3 If no payment is received from you within an agreed period (as solely determined by us) we are entitled to pick up our Products from your site and to commence debt collection proceedings. You hereby acknowledge and agree that you will bear all liability for any and all debt collection costs incurred by us in addition to all outstanding amounts owed to us.

7. DELIVERY/PICK UP

- 7.1 Delivery of the Products hired by you shall be deemed per the order invoice unless you provide us with written notice detailing any discrepancy or defect within (7) days from the date of the delivery.
- 7.2 We retain the right to, at our sole discretion, charge you any maintenance, cleaning or repair fees at the completion of the hire if the product(s) hired is returned and requires excessive repair and cleaning as a result of misuse whilst at your site.
- 7.3 You are not entitled to recover from us any sum for any expenditure, delay, inconvenience, damage or loss of any kind incurred by you due to or arising out of any failure to effect delivery or pick-up at the scheduled time on our part.
- 7.4 Where a crane truck is required for Product delivery it is your strict responsibility to:
- (a) Provide clear and sufficient access to the delivery site, with no less than a 4.6 metres clearance away from any power lines or other encumbrances to the point of delivery and to provide all necessary assistance for unloading (if required) and/or act as a spotter;
 - (b) Provide a clear, flat and stable site for our delivery vehicles to be parked. If it is determined by our staff member conducting the delivery that there is danger of bogging or that your site is unsuitable for lifting, you agree to bear any additional costs if we are unable to effect a delivery, pick up or service, including wasted call out fees;
 - (c) Ensure that our driver is not unnecessarily detained beyond a reasonable delivery time as a result of poor access conditions or the nature of the site. If this occurs, then any additional costs incurred by us will be due and payable by you;
 - (d) Ensure that we are not liable for any damage to the site, kerb, footpath, driveways etc, that may occur during the delivery process.
- 7.5 If we are unable to collect the Products hired from the site as a result of your failure to provide us with access to the site as required in clause 9.4, then at our option and sole discretion:
- (a) You are further liable to pay rent on a weekly basis until we have been given immediate and ready access to the Products hired by you;
 - (b) If we are unable to access a site to effect a delivery, pick up or service, then an additional fee will be due and payable by you to us, at our sole discretion.
- 7.6 We are not responsible for any loss or damage suffered by or occasioned to you or any third party either directly or indirectly because of us delivering or removing any of the Products hired in accordance with the terms of these conditions and you must indemnify us against any claims or actions brought against us by any third party in respect of such loss or damage.

8. PRODUCT MAINTENANCE/CONDITION

- 8.1 You must keep the Products hired secure and in clean, good condition and proper working order and at all times only use the Products hired for the purpose of which they were hired
- 8.2 You are liable for any damage to or loss of the Products hired from any cause whatsoever, including but not limited to damage through misuse, theft, graffiti, storm, tempest, fire, act of God, flood or other natural catastrophe but excepting fair wear and tear, throughout the hire period until such time that the Products have been safely picked up and inspected by us from your site.
- 8.3 If any of our Product is stolen or maliciously damaged on your site, it your responsibility to immediately report such incidents to us and to the police and to obtain a police report for the theft or damage. Copies of this report must be forwarded onto us within 48 hours via emailed to orders@eaglehire.com.
- 8.4 We may recover from you as a debt due and payable the costs of repairing and/or replacing the same where it is, in our opinion necessary.
- 8.5 You are further liable to pay additional rental on a weekly basis until the Products hired have been repaired and/or replaced.

9. YOUR RESPONSIBILITIES

- 9.1 You are solely responsible and liable for ensuring that all necessary permits and approvals have been obtained and that the use of any site nominated by you for the use of our Products complies with all statutory regulations and permits.
- 9.2 If you elect to commence any construction works or commence an event before our Products are delivered /installed on-site, you agree that you accept full and sole responsibility for any penalties or fines incurred if that site is in breach of any statutory regulations and permit requirements. You further acknowledge that we are not responsible for any penalties or fines incurred as a result of the site being in breach of any relevant statutory or permit requirements.
- 9.3 You acknowledge that you have made no reliance on any advice or representations made by us as to the suitability of our Product for your intended use, whether orally or in writing.
- 9.4 You must during the term of the hire use the Products hired strictly in accordance with our directions/conditions and the purpose for which the products hired are intended to be used and must indemnify us against any loss occasioned to or damage suffered by us or any third party or any action which may be brought by any responsible authority against us because of your failure to comply with these conditions.
- 9.5 You must comply with provision of all laws, statutes, ordinances and proclamations (including all orders, regulations, rules and by-laws made thereunder) affecting the client and/or use of the products hired.
- 9.6 In the event that we suffer any penalty or loss in respect of any breach or non-observance by you of the foregoing, we are entitled to recover from you as a debt due and payable any amount expended by us in the respect thereof.

10. PRODUCTS ON SITE

- 10.1 Any location nominated by you for placing of the Products on site must have a stable and flat surface to ensure that the Product does not topple.
- 10.2 You must provide clear and precise directions for your preferred location to place the Products at the time of order.
- 10.3 Products must not be relocated or moved by you once placed on site.

- 10.4 You are responsible for notifying us if a Product is to be erected over any underground services. We do not accept any liability for any damage to such underground services.
- 10.5 We are not responsible for any underground services where ground penetration is required for installation. All underground penetration work that may be performed by us is strictly in the capacity as your agent and you are solely responsible for any issues arising out of ground penetration, whether directly or indirectly.
- 10.6 You cannot move our Products from one site to another.
- 10.7 You are strictly prohibited from altering or making any changes (whether structural or otherwise) to any of our Products.
- 10.8 You must inform us at the time of order if you wish to attach any temporary signage or other items to our Products and you agree that you are responsible for removing such temporary signage or other items prior to collection of the Products by us, failing which an additional cost will be payable by you for the costs of removing any temporary signage or items attached to our Products. You are also liable for any damage incurred in removing any temporary signage or items attached to our Products by you.
- 10.9 Whilst a Product is on site, you are liable for:
- (a) Any and all costs of repairing any damage to the Product;
 - (b) Any damage to the Product, to the site, or to the property of any third party caused by you or any person on your site during the relevant rental periods, whether or not such damage has occurred negligently, deliberately or recklessly;
 - (c) Any costs of replacement if a Product is lost or stolen, including any part or accessory of the Product.
- 10.10 If any damage or loss occurs to the Products, you must pay us for the damage or loss, failing which you acknowledge and agree that we are entitled to debit your account or credit card for the estimated cost of repairs at the time of loss, or damage to the Product pending our assessment of the loss, damage, and/or if applicable, the repair of the Product.
- 10.11 In calculating the cost of any repairs, we are entitled to add Recovery Costs to the amount of costs of damage and repair to the Product.

11. RETENTION OF TITLE AND THE PPSA

- 11.1 Until we have received payment in full and secured the return for all Products supplied by us under this Agreement:
- (a) we retain full legal and equitable right and title to the Products;
 - (b) you expressly and irrevocably agree that we are entitled to enter any premises where the Products supplied by us are located, to repossess, remove, sell and service such goods. You (and your successors and assigns, including any external manager or administrator) must not object to us, or our agents, entering any premises for the purpose of this Clause 11 and you agree to indemnify and keep us indemnified in respect of any claims, actions and costs that may arise against us in relation to the removal, repossession, service and sale of the Products pursuant to these terms and conditions including any claims brought by third parties;
 - (c) you hold the goods for us as bailee or fiduciary and you must store the Products securely and separately from other items and mark them clearly as our goods;
 - (d) you must not dispose of the Products or any interest in them or alter or use them; and
 - (e) if you dispose of the Products, alter or use them in a manufacturing process, you must hold the proceeds of sale of the Products or the goods they become, in trust for us and pay them to us immediately on request.
- 11.2 Possession of the Products is transferred to you on the basis that we retain a Security Interest and/or PMSI pursuant to the PPSA in the Products until full payment pursuant to Clause 11.1 and we may require the facilitation of a registered Financing Statement under the PPSA to perfect this Security Interest.
- 11.3 You agree to execute any documents, provide all necessary information and do anything else required by us to ensure that the Security Interest constitutes a "Perfected Security Interest" as defined in the PPSA and which will have priority over all other Security Interests in the Products.
- 11.4 You will, upon demand, pay all expenses and legal costs on a solicitor/client basis incurred by us in or in connection with the registration of a Financing Statement or Financing Change Statement relating to the Security Interest created by this Agreement.

12. TERMINATION OF AGREEMENT

- 12.1 This Agreement will terminate upon any of the following events occurring:
- (a) A party commits a breach of this Agreement which is incapable of remedy and the other party serves a notice of immediate termination of this Agreement;
 - (b) A party commits a breach of this Agreement and fails to remedy that breach, which is capable of remedy, within thirty (30) days from the date of service of a written notice by the other party specifying the breach and requiring it to do so; or
 - (c) You suffer an Insolvency Event and we serve a written notice upon you immediately terminating this Agreement.
- 12.2 Upon termination of this Agreement:
- (a) Your rights under this Agreement immediately cease; and
 - (b) All amounts owing from you to us are immediately due and payable; and
 - (c) Any Products in your possession, your agents, employees, representatives or contractors must be immediately returned to us at your cost.
- 12.3 The termination of this Agreement will be without prejudice to the rights of the parties accrued up to the date of such termination.
- 12.4 Any breach of this Agreement by you will not be deemed to be satisfied unless and until you have paid to us all costs, expenses, or damages suffered by you arising from such breach, including legal costs on an indemnity basis.

13. MEDIATION

Any dispute, difference or question which may arise at any time between us and you with respect to the true construction of this Agreement or the rights and liabilities of the parties or any inability to reach agreement on any operational aspect of this Agreement will unless otherwise provided be referred to mediation by a mediator agreed to by the parties or failing agreement by a mediator nominated by the President of the Law Institute in Australia or his or her nominee.

14. SERVICE OF NOTICES

14.1 Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement:

- (a) may be given by personal service, post or email;
- (b) must be in writing;
- (c) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):
 - (i) if to us, to the address and/or email address specified at **Item 1** of the Particulars, or such other address nominated by us in writing from time to time;
 - (ii) if to you, to the address and/or email address specified at **Item 2** of the Particulars, or such other address nominated by you in writing from time to time.

14.2 Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement is taken to be received by the addressee:

- (a) (in the case of prepaid post) on the third day after the date of posting;
- (b) (in the case of delivery by hand) on delivery; and
- (c) (in the case of email) unless the party sending the email knows or reasonably ought to suspect that the email was not delivered to the addressee's domain specified in the email address notified for the purposes of this clause, 24 hours after the email was sent, but if the communication would otherwise be taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.

15. ASSIGNMENT

You must not assign, charge, encumber, sell or otherwise deal with any rights under this Agreement without our prior written consent which will be at our sole discretion.

16. NO PARTNERSHIP OR AGENCY CREATED

Nothing in this Agreement will constitute or be deemed to constitute a partnership or joint venture between the parties or constitute or be deemed to constitute you as our agent for any purpose other than as provided in this Agreement and you shall have no authority or power to bind us or to contract in our name and create a liability against us in any way or for any purpose.

17. FORCE MAJEURE

In the event of any delay in performance by either party of any of their obligations or liabilities due to any cause arising from or attributable to acts, events, non-happenings, omissions, accidents or acts of God beyond the reasonable control of the party to perform, the party so delayed or prevented will be under no liability for loss or injury suffered by the other party and such delay or failure to perform will not constitute a breach of this Agreement. If such delay or non-performance exceeds three (3) months from the date on which such performance was required then the party entitled to call upon the performance of such obligation may give twenty (20) Business Days written notice of termination of this Agreement to the other party.