

## 1. Definitions

- 1.1 "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.
- 1.2 "Hirer" means Glenearn Pty Ltd trading as Gunsyn Plant Hire Pty Ltd, ABN 86 600 066 760, its successors and assigns or any person acting on behalf of and with the authority of Glenearn Pty Ltd trading as Gunsyn Plant Hire Pty Ltd.
- 1.3 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting the Hirer 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 part of a Trust, shall be bound in their capacity as a trustee; and  
(c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 "Goods" means the Equipment and or Vehicles (including any parts, accessories and/or consumables) supplied on hire by the Hirer to the Client (and where the context so permits shall include any incidental supply of services). The Goods shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by Hirer to the Client.
- 1.5 "Minimum Hire Period" means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by Hirer to the Client.
- 1.6 "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.
- 1.7 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between the Hirer and the Client in accordance with clause 5 below.
- 1.8 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999".

## 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 Goods.
- 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 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. Pricing

- 3.1 Prices quoted for the supply of goods and services exclude GST and any other taxes or duties imposed on or in relation to the goods and services. Any such GST and other taxes or duties are additionally at the Client's account.
- 3.2 At the Hirer's sole discretion, the Price shall be either:  
(a) as indicated on any invoice provided by the Hirer to the Client; or  
(b) the Hirer's quoted price (subject to clause 3.3) which will be valid for the period stated in the quotation or otherwise for a period of fourteen (14) days.
- 3.3 If the Client requests any variation to the Agreement, the Hirer may increase the price to account for the variation.
- 3.4 Where there is any change in the costs incurred by the Hirer in relation to goods or services, the Hirer may vary its price to take into account of any such change, by notifying the Client.
- 3.5 At the Hirer's sole discretion, a non-refundable deposit may be required.

## 4. Payment

- 4.1 The time for payment for the Goods is of the essence.
- 4.2 The Price will be payable by the Client on the date/s determined by the Hirer, which may be:  
(a) on delivery of the Goods;  
(b) by way of installments/progress payments in accordance with the Hirer's payment schedule;  
(c) within fourteen (14) days in which a statement is posted to the Client's address or address for notices;  
(d) the date specified on any invoice or other form as being the date for payment; or  
(e) 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 Hirer.
- 4.3 Payment may be made by cheque, bank cheque, credit card, electronic/on-line banking, or by any other method as agreed to between the Client and the Hirer.
- 4.4 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

- 4.5 Payment made by credit card will incur a 2% surcharge.
- 4.6 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 Hirer nor to withhold payment of any invoice because part of that invoice is in dispute.
- 4.7 Prices quoted for supply of goods & services exclude GST and any other taxes or duties imposed on or in relation to the goods & services. In addition to the Price the Client must pay to the Hirer an amount equal to any GST the Hirer must pay for any supply by the Hirer under this or any other contract for the sale of the Goods. 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.
- 4.8 Payment terms may be revoked or amended at the Hirer's sole discretion, immediately upon giving the Client written notice.
- 5. Credit Card Information**
- 5.1 The Hirer will:
- (a) keep the Client's personal details, including credit card details for only as long as is deemed necessary by Hirer;
  - (b) not disclose the Client's credit card details to any third party;
  - (c) not unnecessarily disclose any of the Client's personal information, except in accordance with the Privacy Policy (clause 19) or where required by law.
- 5.2 The Client expressly agrees that, if pursuant to this Contract, there are:
- (a) any unpaid charges;
  - (b) other amounts due and outstanding by the Client;
  - (c) any Goods (or any part of them) supplied on hire that are subject to any loss, theft or damaged;
  - (d) any other additional charges are due from the Client which were not known at the time of the return of the Goods,
- The Hirer is entitled to immediately charge the Client's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Client pursuant to the terms of this Contract.
- 6. Hire Period**
- 6.1 Hire charges shall commence from the time the Goods departs from Hirer's premises and will continue until the return of the Goods to Hirer's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 6.2 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 6.3 No allowance whatsoever can be made for time during which the Goods is not in use for any reason, unless Hirer confirms special prior arrangements in writing. In the event of Goods breakdown provided the Client notifies Hirer immediately:
- (a) Hirer will endeavour to (at their sole discretion) either repair the Goods on-site or provide a replacement as soon as reasonably possible. Hirer shall not be liable for any direct, indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of any delay in replacing the Goods due to the unavailability of any necessary replacement Goods). Furthermore, Hirer cannot guarantee the availability of a replacement Goods, or that the replacement Goods will match exactly to the Goods originally hired; and
  - (b) hiring charges will not be payable during the time the Goods is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.
- 7. Extension of the Hire Period**
- 7.1 If, and only if not later than Seventy two (72) hours before the expiry of the hire period, the Client gives notice to Hirer requesting an extension of the hire period, such extension is, if any, subject to Hirer's agreement, the availability of the Goods and the following conditions:
- (a) the Price and all other payments due under this Contract having been received by Hirer in full as at the expiry of the hire period;
  - (b) there is no breach of the Client's covenants, the hire period shall be extended for the period specified between the parties, commencing on the day following the date of expiration of the hire period and at the Price, as varied, on the same terms and conditions of this Contract, except for the insertion of the extended term.
- 8. Delivery and Recovery**
- 8.1 As agreed by the Hirer and at Hirer's sole discretion:
- (a) Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
    - (i) the Client or the Client's nominated carrier takes possession of the Goods at Hirer's premises; or
    - (ii) Hirer (or Hirer's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
  - (b) recovery of the Goods ("**Recovery**") will be completed when the Goods has been either collected from the Client's nominated pick-up address and/or returned to Hirer's premises.
  - (c) the cost of Delivery/Recovery of the Goods by Hirer is included in the Price, subject to the Delivery/Recovery address being within a fifty (50) kilometer radius from the initial Delivery address. Where the Delivery/Recovery site is outside this radius the cost of Delivery/Recovery will be in addition to the Price and subject to change at the Hirer's sole discretion.
- 8.2 In the event the Client is unable to accept Delivery and/or Recovery as arranged, or there are any delays due to free and clear access to the site or Goods not being available, the Hirer shall be entitled to charge all additional costs, including delays

in recovery, involved with the redelivery, or subsequent attempts at Recovery, as applicable, and all hire charges lost as a direct result of the Goods being unavailable.

- 8.3 The Client acknowledges and accepts that (at Hirer's sole discretion) a late and or wait fee (at Hirer's current hourly rate) shall apply in the event the Goods is returned late or the recovery is delayed.
- 8.4 Any time or date given by Hirer to the Client is an estimate only. The Client must still accept Delivery even if late and Hirer will not be liable for any loss or damage incurred by the Client as a result of any delay in Delivery and/or Recovery of the Goods.

## 9. Insurance

9.1 At Hirer's sole discretion, and depending on the Client's proposed use of the Goods:

- (a) the Client must insure, or self-insure, Hirer's interest in the Goods 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 provide Hirer proof of such insurance policy on request;
- (b) subject to the payment of any insurance excess as set out by the Hirer, and the exclusions set out in clauses 9.2 and 9.3, the Client is fully indemnified in respect of any liability they might have to the Hirer in respect of the loss or damage to the Goods (and its accessories and spare parts) and any other expenses of the Hirer, including towing and salvage costs associated with the recovery of the Goods. This clause:
- (i) in no way entitles the Client to, or implies the availability of, compensation from Hirer for any liability incurred by the Client in relation to the use of the Goods;
- (ii) will not continue to operate after the expiration of this Contract, unless any extension thereof is granted by Hirer in writing and additional Hire Charges are paid;
- (iii) will not apply to loss or damage which relates to, or arises from:
- (A) breach of any statutory laws or regulations in connection with the use of the Goods by the Client;
- (B) misuse, abuse, wilful and/or malicious acts, negligent and/or reckless use and/or overloading of the Goods;
- (C) unexplained disappearances of the Goods.

9.2 The indemnities referred to in clause 9.1(b) shall not apply where the damage, injury or loss arises when:

- (a) the Goods is in an unsafe or un-roadworthy condition that arose during the course of the Hire Term and that caused or contributed to the damage or loss, and the Client or driver was aware of or ought to have been aware of the unsafe or un-roadworthy condition of the Goods; or
- (b) the Client fails to their adhere to clauses 10; or
- (c) the Goods is driven by any person other than the Client and any authorised driver named in this Contract; or
- (d) the Goods is driven by any person who, at the time when they drove the Goods, is disqualified from holding or has never held a driver's licence appropriate for the Goods; or
- (e) the Goods is willfully or recklessly damaged either by the Client, or any other person named on the front of this form, or any person driving the Goods under the authority of the Client; or
- (f) the Goods is operated outside the Hire Term or any agreed extension thereof.

9.3 The indemnities referred to in clause 9.1(b) shall exclude:

- (a) damage occurring whilst the Goods is being driven in reverse;
- (b) damage occurring due to mud or poor road conditions;
- (c) damage to the under body of the Goods and any resulting damage linked to under body damage (including, but not limited to, all parts of the drive train, chassis, suspension, brakes, exhaust, floor pan and fuel systems);
- (d) water damage caused by immersion of the Goods in water or from the Goods being driven in flood waters;
- (e) damage caused by the Goods being driven by methods, or in areas, expressly prohibited under this Contract.

## 10. Client's Responsibilities

10.1 The Client shall:

- (a) ensure that the operator of any Goods is not under the influence of alcohol or any drug that may impair their ability to operate the Goods;
- (b) ensure that all persons driving and/or operating Goods are suitably instructed in the Goods's safe and proper use, are twenty-five (25) years of age or older and holds a current full (non L's or P's) valid licence with a minimum two (2) driving experience (and shall provide evidence of the same to the Hirer upon request);
- (c) maintain the Goods as is required by the Hirer including, but not limited to, maintaining (where applicable) water (which must be maintained with the use of distilled water only, oil and fluid levels, tyre pressures (including pneumatic punctures) and batteries;
- (d) ensure that all reasonable care is taken by the driver in handling and/or parking the Goods and that the Goods are left locked and/or securely stored when not in use;
- (e) be liable for any parking or traffic infringement, toll fees, impoundment, towage and storage costs incurred during the hire period and will supply relevant details as required by the Police and/or the Hirer relating to any such matters or occurrences;
- (f) not:
- (i) permit smoking within the Goods. The Hirer reserves the right to charge a fee to clean and deodorise the Goods if necessary (as per clause 10.2(b), in the event the Goods is smoke affected);
- (ii) carry any animals, illegal, prohibited or dangerous products on, or in, the Goods supplied without the prior written permission of the Hirer;

- (iii) exceed the recommended or legal load and capacity limits of the Goods (including the recommended number of passengers (if applicable));
  - (iv) alter or make any additions to the Goods including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Goods or in any other manner interfere with the Goods;
  - (g) notify the Hirer immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Goods by giving such notification;
  - (h) satisfy itself at commencement that the Goods is suitable for its purposes;
  - (i) operate the Goods safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by the Hirer or posted on the Goods;
  - (j) comply with all work health and safety laws relating to the Goods and its operation;
  - (k) on termination of the hire, deliver the Goods complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to the Hirer (or the Hirer's designated employee);
  - (l) keep the Goods in their own possession and control and shall not assign the benefit of the hire Contract nor be entitled to take a lien, or grant any encumbrance over the Goods;
  - (m) use the Goods solely for the Client's own works and shall not permit the Goods or any part thereof to be used by any other party for any other work;
  - (n) immediately notify the Hirer should the Goods become bogged or stuck.
- 10.2 Immediately on request by the Hirer the Client will pay:
- (a) the new list price of any Goods, accessories or consumables that are for whatever reason destroyed, written off or not returned to the Hirer;
  - (b) all costs incurred in cleaning the Goods, including where the Hirer are of the opinion that the Goods is smoke affected;
  - (c) all costs of repairing any damage caused by:
    - (i) the ordinary use of the Goods up to an amount equal to ten percent (10%) of the new list price of the Goods;
    - (ii) willful or negligent actions of the Client or the Client's employees;
    - (iii) vandalism, or (in the Hirer's reasonable opinion) in any way whatsoever other than by the ordinary use of the Goods by the Client;
  - (d) the cost of fuels and consumables provided by the Hirer and used by the Client;
  - (e) any costs incurred by the Hirer in picking up and returning the Goods to the Hirer's premises if the Client does not return the Goods to the Owners premises or any pre-agreed pickup location when it was originally agreed that the Client would do so.
  - (f) any lost hire fees the Hirer would have otherwise been entitled to for the Goods, under this, or any other hire Contract;
  - (g) any insurance excess (per separate event) payable in relation to a claim made by either the Client or the Hirer in relation to any damage caused by, or to, the hired Goods whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or the Hirer's.
- 11. Risk**
- 11.1 The Hirer retains ownership and title in the Goods nonetheless all risk for the Goods passes to the Client on Delivery.
  - 11.2 The Client accepts full responsibility for and shall keep the Hirer 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 Goods during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons.
- 12. Title**
- 12.1 The Goods is and will at all times remain the absolute property of the Hirer, and the Client must return the Goods to the Hirer upon request to do so.
  - 12.2 If the Client fails to return the Goods to the Hirer as is required under this Contract or when requested to do so, then the Hirer or the Hirer'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 Goods is situated and take possession of the Goods, without being responsible for any damage thereby caused. Any costs incurred by the Hirer as a result of the Hirer so repossessing the Goods shall be charged to the Client.
  - 12.3 The Client is not authorised to pledge the Hirer's credit for repairs to the Goods or to create a lien over the Goods in respect of any repairs.
- 13. Personal Property Securities Act 2009 ("PPSA")**
- 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
  - 13.2 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 Goods and/or collateral (account) – being a monetary obligation of the Client to the Hirer for Services – that have previously been supplied and that will be supplied in the future by the Hirer to the Client.
  - 13.3 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 Hirer 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 13.3(a)(i) or 13.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, the Hirer for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Hirer;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Hirer;
- 13.4 The Hirer 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.
- 13.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by the Hirer, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Client must unconditionally ratify any actions taken by the Hirer under clauses 13.3 to 13.5.
- 13.9 Subject to any express provisions to the contrary (including those contained in this clause 13) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

#### **14. Collateral & Assignment**

- 14.1 The Client hereby charges all its right, title and interest in the property or properties referred to in the Client's Credit Application and also any property or properties that it owns currently or may acquire in the future solely or jointly or have or become to have a beneficial interest in, in favour of the Hirer, with the due and punctual observance and performance of all the obligations of the Client. The Client indemnifies the Hirer against all expenses and legal costs (on a solicitor/own client basis) for preparing, lodging and removing any caveat.
- 14.2 The Client hereby acknowledges that the Hirer may at its discretion register and lodge a caveat(s) on such property or properties in respect of the interests conferred on it under clause 14.1. Such registration of a caveat by the Hirer over the Client's property or properties must not be challenged by the Client in any way whatsoever, and the Client agrees not to take any steps in filing a "lapsing notice" via the Land Titles Office to have the caveat removed, until such time that the Client has paid all monies owing by it to the Hirer as claimed from time to time.

#### **15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**

- 15.1 The Client must inspect the Goods on delivery and must within twenty four (24) hours of delivery notify the Hirer 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 Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Hirer to inspect the Goods.
- 15.2 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**).
- 15.3 The Hirer acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Hirer makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Hirer's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Client is a consumer within the meaning of the CCA, Hirer's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If Hirer is required to rectify, re-supply, or pay the cost of re-supplying any services or Goods under this clause or the CCA, but is unable to do so, then Hirer may refund any money the Client has paid for the services or Goods but only to the extent that such refund shall take into account the value of any services or Goods and consumables which have been provided to the Client which were not defective.
- 15.7 If the Client is not a consumer within the meaning of the CCA, Hirer's liability for any defect or damage in the services or Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by Hirer at Hirer's sole discretion;
  - (b) limited to any warranty to which Hirer is entitled, if Hirer did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 15.8 Notwithstanding clauses 15.1 to 15.7 but subject to the CCA, Hirer 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 Goods;
  - (b) the Client interfering with the Goods in any way without Hirer's written approval to do so;
  - (c) the Client using the Goods for any purpose other than that for which it was designed;
  - (d) the Client continuing the use of the Goods 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 Hirer;

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

## 16. Cancellation

- 16.1 Without prejudice to any other remedies Hirer may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms of hire Hirer may repossess the Goods as per clause 16.2, or suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. Hirer will not be liable to the Client for any loss or damage the Client suffers because Hirer has exercised its rights under this clause.
- 16.2 Hirer may cancel these terms and conditions or cancel Delivery of Goods at any time before the Goods is delivered by giving written notice to the Client. On giving such notice Hirer shall repay to the Client any sums paid in respect of the Price. Hirer shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.3 In the event that the Client cancels Delivery of the Goods the Client shall provide Hirer with twenty-four (24) hours prior written notification. The Client shall be liable for any and all loss incurred (whether direct or indirect) by HIRER (including, but not limited to, any loss of profits) up to the time of, or as a direct result of the cancellation, notwithstanding that at Hirer's sole discretion (where the appropriate notice is not received):
- (a) a minimum termination fee of ten percent (10%) of the Price may be applicable; or
  - (b) the Client forfeits any security bond paid; and
  - (c) be liable for all monies due and payable up to date of termination.

## 17. Default and Consequences of Default

- 17.1 If the Client defaults in payment by the due date of any amount payable to the Hirer, then all money which would become payable by the Client to the Hirer at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Client, and the Hirer may, without prejudice to any of its other accrued or contingent rights:
- (a) 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 Hirer's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment;
  - (b) charge the Client a late payment administration fee equal to 10% of the invoice to a maximum of \$200 plus GST;
  - (c) charge the Client for, and the Client must indemnify the Hirer from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;
  - (d) cease or suspend supply of any further goods or services to the Client
  - (e) by written notice to the Client, terminate any uncompleted contract with the Client.
- 17.2 Clauses 17.1(d) and 17.1(e) may also be relied upon, at the Hirers option:
- (a) where the Client is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
  - (b) where the Client is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Client.

## 18. Change In Control

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, 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.

## 19. Privacy

- 19.1 All emails, documents, images or other recorded information held or used by the Hirer is Personal Information, as defined and referred to in clause 19.2, and therefore considered Confidential Information. The Hirer 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 Hirer acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by the Hirer that may result in serious harm to the Client, the Hirer 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.
- 19.2 The Client agrees for the Hirer to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by the Hirer.
- 19.3 The Client agrees that the Hirer 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.
  - 19.4 The Client consents to the Hirer being given a consumer credit report to collect overdue payment on commercial credit.
  - 19.5 The Client agrees that personal credit information provided may be used and retained by the Hirer for the following purposes (and for other agreed purposes or required by):
    - (a) the provision of Goods; and/or
    - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
    - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
    - (d) enabling the collection of amounts outstanding in relation to the Goods.
  - 19.6 The Hirer may give information about the Client to a CRB for the following purposes:
    - (a) to obtain a consumer credit report; allow the CRB to create or maintain a credit information file about the Client including credit history.
  - 19.7 The information given to the CRB may include:
    - (a) personal information as outlined in 19.1 above;
    - (b) name of the credit provider and that the Hirer 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, 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 Hirer 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 Hirer, 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).
  - 19.8 The Client shall have the right to request (by e-mail) from the Hirer:
    - (a) a copy of the information about the Client retained by the Hirer and the right to request that the Hirer correct any incorrect information; and
    - (b) that the Hirer does not disclose any personal information about the Client for the purpose of direct marketing.
  - 19.9 The Hirer 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 fulfill the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
  - 19.10 The Client can make a privacy complaint by contacting the Hirer via e-mail. The Hirer 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](http://www.oaic.gov.au).
- 20. General**
- 20.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
  - 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which the Hirer has its principal place of business and are subject to the jurisdiction of the courts in Brisbane.
  - 20.3 Subject to clause 9, the Hirer 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 Hirer of these terms and conditions (alternatively the Hirer's liability shall be limited to damages which under no circumstances shall exceed the Price of the Hire Contract).
  - 20.4 The Hirer may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
  - 20.5 The Client cannot licence or assign without the written approval of the Hirer.
  - 20.6 The Hirer 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 Hirer's subcontractors without the authority of the Hirer.
  - 20.7 The Client agrees that the Hirer may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Hirer to provide Goods to the Client.
  - 20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lockout, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
  - 20.9 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.