

**1. Definitions**

- 1.1 “Contractor” means MyScaffold Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of MyScaffold Pty Ltd.
- 1.2 “Customer” means the person/s or any person acting on behalf of and with the authority of the Customer requesting the Contractor to provide the hiring the Goods (and/or purchasing the Goods) as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
  - (b) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.3 “Goods” means all Goods supplied either by sale or by hire to the Customer by the Contractor at the Customer’s request from time to time, and:
- (a) includes any erection and/or dismantle of the Goods (“**Services**”), any parts, accessories and/or consumables supplied by the Contractor to the Customer, either separately or deposited incidentally by the Contractor in the course of it conducting, or supplying to the Customer, the Goods; and
  - (b) where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other.
- 1.4 “Minimum Hire Period” means the Goods shall be hired for a term of not less than one (1) week (or unless specified otherwise on the invoices, quotation, authority to hire, or any other forms as provided by the Contractor to the Customer).
- 1.5 “Price” means the Price payable (plus any GST where applicable) for the hire or purchase of the Goods as agreed between the Contractor and the Customer in accordance with clause 5 below.
- 1.6 “GST” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

**2. Acceptance**

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for Goods, or accepts Delivery.
- 2.2 The obligations of the Contractor to supply Goods to the Customer under this agreement shall be limited to those defined within these terms and conditions. All other conditions, warranties, stipulations and undertakings, whether expressed or implied by statute or common law, are excluded. Furthermore, these terms and conditions, unless amended with the Contractor’s consent in writing, shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Contractor,
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.4 In the event that the Contractor is required to provide the Services urgently, that may require the Contractor staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then the Contractor reserves the right to charge the Customer additional labour costs (penalty rates will apply), unless otherwise agreed between the Contractor Tyres and the Customer.

**3. Errors and Omissions**

- 3.1 The Customer acknowledges and accepts that the Contractor shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Contractor in the formation and/or administration of this contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Contractor; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

**4. Change in Control**

- 4.1 The Customer shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by the Contractor as a result of the Customer’s failure to comply with this clause.

**5. Price and Payment**

- 5.1 At the Contractor’s sole discretion the Price shall be either;
- (a) as indicated on invoices provided by the Contractor to the Customer in respect of Goods supplied; or
  - (b) the Price as at the date of delivery of the Goods according to the Contractor’s current price list; or
  - (c) the Contractor’s quoted Price (subject to clause 5.2) which shall be binding upon the Contractor provided that the Customer shall accept the Contractor’s quotation in writing within fifteen (15) days.
- 5.2 The Contractor reserves the right to change the Price if a variation to the Contractor’s quotation is requested. Any variation from the plan of scheduled Services and/or specifications of the Goods, any variation as a result of unforeseen circumstances, such as poor weather conditions, limitations to accessing the site and safety considerations (e.g. overhead hazards, etc.), prerequisite work by any third party not being completed, any relocation and/or alteration to working platforms and/or hop up brackets (or the Goods entirely), or as a result of any increase to the Contractor in the cost of materials (including the increase in overseas transactions as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) and labour, extended hire periods or any Government or regulatory body imposing or increasing fees, etc.) will be charged for on the basis of the Contractor’s quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 5.3 At the Contractor’s sole discretion, a non-refundable deposit may be required.
- 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Contractor, which may be:
- (a) on delivery of the Goods;
  - (b) by way of instalments/progress payments in accordance with the Contractor’s payment schedule;

- (c) thirty (30) days following the end of the month in which a statement is delivered to the Customer'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 thirty (30) days following the date of any invoice/s furnished to the Customer by the Contractor.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and the Contractor.
- 5.6 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply of Goods by the Contractor under this or any other agreement. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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.
- 5.8 Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then the Contractor's rights and ownership in relation to the Goods, and this agreement, shall continue.
- 6. Delivery**
- 6.1 Delivery of the Goods ("**Delivery**") is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at the Contractor's address; or
  - (b) the Contractor (or the Contractor's nominated carrier) delivers the Goods (or provides Services) to the Customer's nominated address, even if the Customer is not present at the address.
- 6.2 At the Contractor's sole discretion, the cost of Delivery is in addition to the Price.
- 6.3 Any time specified by the Contractor for Delivery of the Goods is an estimate only. The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for Delivery. The Contractor will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. In the event that the Customer is unable to take Delivery of the Goods as arranged then the Contractor shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.4 In the event that the Contractor is unable to supply the Goods (including any installation and/or removal thereof) as agreed solely due to any action or inaction of the Customer then the Contractor shall be entitled to charge a reasonable fee (to cover mileage and lost time hours) for re-supplying the Goods at a later time and date.
- 6.5 The Customer shall ensure that the Contractor has clear and free access to the nominated address at all times to enable them to make Delivery. The Contractor shall not be liable for any loss or damage to the property (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas), unless due to the negligence of the Contractor.
- 7. Title**
- 7.1 Where this is a hire agreement:
- (a) the Goods are, and will at all times remain, the absolute property of the Contractor, however the Customer accepts full responsibility for:
    - (i) the safekeeping of the Goods and indemnifies the Contractor for all loss, theft, or damage to the Goods 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 Customer; and
    - (ii) shall keep the Contractor 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 Customer or any other persons.
  - (b) subject to clause 20.3, the Customer will insure, or self-insure, the Contractor'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 effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Goods. Further the Customer will not use the Goods nor permit them to be used in such a manner as would permit an insurer to decline any claim;
  - (c) the Customer is not authorised to pledge the Contractor's credit for repairs to the Goods or to create a lien over the Goods in respect of any repairs.
- 7.2 Where is this an agreement for the purchase of the Goods:
- (a) the Contractor and the Customer agree that ownership of the Goods shall not pass until:
    - (i) the Customer has paid the Contractor all amounts owing to the Contractor; and
    - (ii) the Customer has met all of its other obligations to the Contractor.
  - (b) it is further agreed that, until ownership of the Goods passes to the Customer in accordance with sub-clause (a):
    - (i) the Customer is only a bailee of the Goods and must return the Goods to the Contractor on request.
    - (ii) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
    - (iii) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand.
    - (iv) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs.
    - (v) the Contractor may recover possession of any Goods in transit whether or not delivery has occurred.
    - (vi) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Contractor.

- (vii) the Contractor may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 7.3 If the Customer fails to return the Goods to the Contractor, then the Contractor or the Contractor's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods is situated and take possession of the Goods, without being responsible for any damage thereby caused.
- 8. Personal Property Securities Act 2009 ("PPSA")**
- 8.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 8.2 Upon assenting to these terms and conditions in writing the Customer 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 that have previously been supplied and that will be supplied in the future by the Contractor to the Customer.
- 8.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to;
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Contractor;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Contractor;
  - (e) immediately advise the Contractor of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 8.4 The Contractor and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 8.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 8.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.7 Unless otherwise agreed to in writing by the Contractor, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8 The Customer must unconditionally ratify any actions taken by the Contractor under clauses 8.3 to 8.5.
- 8.9 Subject to any express provisions to the contrary (including those contained in this clause 8), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 8.10 Only to the extent that the hire of the Goods exceeds a two (2) year hire period with the right of renewal shall clause 8 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 8 will apply generally for the purposes of the PPSA.
- 9. Security and Charge**
- 9.1 In consideration of the Contractor agreeing to supply Goods, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 9.2 The Customer indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
- 9.3 The Customer irrevocably appoints the Contractor and each director of the Contractor as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Customer's behalf.
- 10. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 10.1 The Customer must inspect the Goods on Delivery and must within seven (7) days of such time notify the Contractor in writing of any evident defect/damage, error or omission, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Contractor to inspect/review the Goods.
- 10.2 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**").
- 10.3 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 10.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 10.5 If the Customer is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.
- 10.6 If the Contractor is required to replace the Goods under this clause or the CCA, but is unable to do so, the Contractor may refund any money the Customer has paid for the Goods.
- 10.7 If the Customer is not a consumer within the meaning of the CCA, the Contractor's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by the Contractor at the Contractor's sole discretion;

- (b) limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 10.8 Subject to this clause 10, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 10.1; and
  - (b) the Contractor has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 10.9 Notwithstanding clauses 10.1 to 10.8 but subject to the CCA, the Contractor shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store the Goods;
  - (b) the Customer using the Goods for any purpose other than that for which they were designed;
  - (c) the Customer continuing the use of the Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Customer failing to follow any instructions or guidelines provided by the Contractor;
  - (e) fair wear and tear, any accident, or act of God.
- 10.10 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Contractor as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that the Contractor has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 10.10.
- 10.11 The Contractor may in its absolute discretion accept non-defective Goods for return in which case the Contractor may require the Customer to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.
- 10.12 Notwithstanding anything contained in this clause if the Contractor is required by a law to accept a return then the Contractor will only accept a return on the conditions imposed by that law.

## 11. Intellectual Property

- 11.1 Where the Contractor has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Contractor. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Contractor.
- 11.2 The Customer warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.
- 11.3 The Customer agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Contractor has created for the Customer.

## 12. Compliance with Laws

- 12.1 The Customer and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods, including any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
- 12.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Goods.

## 13. Default and Consequences of Default

- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Customer owes the Contractor any money the Customer shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's contract default fee, and bank dishonour fees).
- 13.3 Further to any other rights or remedies the Contractor may have under this agreement, if the Customer has made payment to the Contractor by credit card, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 13 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- 13.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer has exceeded any applicable credit limit provided by the Contractor;
  - (c) the Customer 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 Customer or any asset of the Customer.

## 14. Cancellation

- 14.1 Without prejudice to any other remedies the Contractor may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Goods to the Customer (including repossessing the Goods as per clause 7.3). The Contractor will not be liable to the Customer for any loss or damage the Customer suffers because the Contractor has exercised its rights under this clause.

- 14.2 The Contractor may cancel any contract to which these terms and conditions apply or cancel Delivery at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Contractor shall repay to the Customer any money paid by the Customer for the Goods. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.3 In the event that the Customer cancels Delivery the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 14.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once an order has been placed.

**15. Privacy Act 1988**

- 15.1 The Customer agrees for the Contractor to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by the Contractor.
- 15.2 The Customer agrees that the Contractor may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 15.3 The Customer consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit.
- 15.4 The Customer agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
  - (b) analysing, verifying and/or checking the Customer'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 Customer; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 15.5 The Contractor may give information about the Customer 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 Customer including credit history.
- 15.6 The information given to the CRB may include:
- (a) personal information as outlined in 15.1 above;
  - (b) name of the credit provider and that the Contractor is a current credit provider to the Customer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Customer'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 Customer no longer has any overdue accounts and the Contractor has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of the Contractor, the Customer has committed a serious credit infringement;
  - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 15.7 The Customer shall have the right to request (by e-mail) from the Contractor:
- (a) a copy of the information about the Customer retained by the Contractor and the right to request that the Contractor correct any incorrect information; and
  - (b) that the Contractor does not disclose any personal information about the Customer for the purpose of direct marketing.
- 15.8 The Contractor will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 15.9 The Customer can make a privacy complaint by contacting the Contractor via e-mail. The Contractor will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

**16. Building and Construction Industry Security of Payments Act 1999**

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

**17. Service of Notices**

- 17.1 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.

17.2 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.

## 18. Trusts

18.1 If the Customer at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Contractor may have notice of the Trust, the Customer covenants with the Contractor as follows:

- (a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (b) the Customer 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 Customer against the Trust or the trust fund. The Customer 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 Customer will not without consent in writing of the Contractor (the Contractor will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
  - (i) the removal, replacement or retirement of the Customer 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.

## 19. General

19.1 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.

19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which the Contractor has its principal place of business, and are subject to the jurisdiction of the Windsor Courts in New South Wales.

19.3 Subject to clause 10, the Contractor shall be under no liability whatsoever to the Customer for any damage to property of any kind, or any economic, indirect and/or consequential loss and/or expense (including loss of profits, business, production and goodwill, etc.) suffered by the Customer arising out of a breach by the Contractor of these terms and conditions (alternatively the Contractor's liability to the Customer pursuant to these terms and conditions shall be limited to that proportion of the Customer's losses which it would be just and equitable to require the Contractor to pay, having regard to the extent of the Contractor's liability of the same. Without prejudice to the aforementioned liability limitations, the Contractor's maximum overall liability under or in connection with this agreement shall be limited to an amount equal to the Price).

19.4 The Customer agrees that the Contractor may amend these terms and conditions at any time. If the Contractor makes a change to these terms and conditions, then that change will take effect from the date on which the Contractor notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Contractor to provide Goods to the Customer.

19.5 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

19.6 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.

## 20. Terms Specifically Applicable to the Hire of Goods Only

### 20.1 Hire Period:

- (a) The Hire Period shall commence from the time the Goods depart from the Contractor's premises, and will continue until the return of the Goods to the Contractor's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs. Additional charges will apply in the event that the Customer requests an extension of the Hire Period;
- (b) No allowance whatever can be made for time during which the Goods are not in use for any reason, unless the Contractor confirms special prior arrangements in writing. In the event of breakdown of the Goods, provided the Customer notifies the Contractor immediately, hire charges will not be payable during the time the Goods are not functional, unless the condition is due to negligence or misuse on the part of or attributable to the Customer.
- (c) If return of the Goods is required by the Customer, then it shall be the Customer's responsibility to obtain an "Off Hire" number which shall be verification that such notification has been received by the Contractor. The Off Hire must be obtained before 9:00am on the morning following the last day of hire to void a further day's hire. Failure of the Customer to obtain an Off Hire number shall mean that the date upon which the Customer advises of termination shall be treated as a full day's hire.

### 20.2 Insurance

- (a) The Contractor will maintain current insurance policies in respect of the Goods to its full insurable value. This insurance does not cover the Customer unless they elect to pay the Damage Waiver Fee described in clause 20.3.
- (b) Unless others agreed to prior to the Delivery of the Goods and acceptable evidence of the Customer's own insurance policy, the Customer accepts that a Damage Waiver Fee shall be automatically added to the hire charge.
- (c) Subject only to the obligations of the Contractor following payment by the Customer of the Damage Waiver Fee in accordance with clause 20.3, the Customer will be responsible for any loss, theft, damage or destruction to the Goods (howsoever caused, but excluding fair wear and tear) during the hire period, and without limiting the generality of the foregoing, whether or not such loss, theft (a prompt submission of a written police report will be required) or damage is attributable to any negligence, failure or omission of the Customer. Furthermore the Customer will pay to the Contractor (whichever is the greater):
  - (i) Loss or Damage - either one thousand dollars (\$1,000) per item or ten percent (10%) of the new list price of any Goods (or any part thereof) that are for whatever reason, destroyed, irrecoverable, or not returned to the Contractor;
  - (ii) Repair - either one thousand dollars (\$1,000) per incident or ten percent (10%) of the cost of repair in the event of damage to the Goods caused by;
    - (A) the ordinary use of the Goods;

- (B) caused by the negligence of the Customer or the Customer's agent;
- (C) caused by vandalism, or (in the Contractor's reasonable opinion) in any way whatsoever other than by the ordinary use of the Goods by the Customer;
- (iii) *Overtum* - either five thousand dollars (\$5,000) per item or ten percent (10%) of the new list price of any Goods in the event of overturning of the Goods resulting in the Goods being written off which shall be determined by the Contractor and/or the Contractor's insurer.

20.3 *Damage Waiver Fee*

- (a) Upon payment by the Customer of the Damage Waiver Fee, the Contractor shall be responsible for the cost of repairs or replacement of the Goods due to damage occurring during the hire period, subject to any excess payable by the Customer.
- (b) This clause:
  - (i) in no way entitles the Customer to, or implies the availability of, compensation from the Contractor of any liability incurred by the Customer in relation to the use of the Goods;
  - (ii) will not continue to operate after the expiry date, unless an extension of the hire period has been granted by the Contractor in writing, and an additional agreed fee is paid by the Customer; and
  - (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 Equipment by the Customer;
    - (B) misuse, abuse, wilful and/or malicious acts, negligent and/or reckless use and/or overloading of the Goods;
    - (C) theft, loss or damage by whatever cause to accessories supplied with the Goods (including, but not limited to, couplings, steps, platforms, safety harnesses etc.);
    - (D) theft or burglary at a site location where the Goods are not placed in a building secured or enclosure with adequate security or where prepared by an insurer of the Goods states the Customer contributed or failed to provide adequate secured premises at the site location.
    - (E) tyres and tubes by blow-out bruises, cuts or other causes inherent in the use of the Goods;
    - (F) disregard for instructions given to the Customer by the Contractor in respect of the proper use of the Goods or in contradiction of the manufacturer's instructions if supplied with the Goods upon commencement of the hire period;
    - (G) the lack of lubrication or other normal servicing of the Goods;
    - (H) whilst located, used, loaded, unloaded, transported on or over water, wharves, bridge or vessels of any kind;
    - (I) motors or electrical equipment or device caused by overloading or artificial electrical current, including use of underrated extension leads on electrical powered tools and machines;
    - (J) the mysterious disappearance or wrongful conversion of the Goods;
    - (K) transportation of the Goods except where transported by the Contractor;
    - (L) loss or damage on items on which the Damage Waiver Fee is not charged;

20.4 *Customer's Obligations:*

- (a) The Customer shall:
  - (i) satisfy itself on Delivery that the Goods are suitable for its purposes;
  - (ii) maintain the Goods as is required by the Contractor;
  - (iii) notify the Contractor immediately by telephone of the full circumstances of any mechanical malfunction, damage, loss, destruction or accident in connection with the Goods. The Customer is not absolved from the requirements to safeguard the Goods by giving such notification.
  - (iv) use the Goods safely, strictly in accordance with the law (in full compliance with all health and safety regulations relating to their use and any other relevant laws and regulations), only for their intended use, and in accordance with any manufacturer's instruction, whether supplied by the Contractor or posted on the Goods;
  - (v) keep the Goods in their own possession and control and shall not assign the benefit of this hire contract nor be entitled to take a lien, or grant any encumbrance over the Goods. This does not prevent the employees of the Customer using the Goods;
  - (vi) not 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 the Goods), or in any other manner interfere with the Goods, as doing so may undermine the structure and safety of the Goods. The Contractor will photograph, in detail, the Goods once erected as proof of this;
  - (vii) employ the Goods solely in their own work and not permit the Goods (or any part thereof) to be used by any other party for any other work;
  - (viii) not exceed the recommended or legal load and capacity limits of the Goods;
  - (ix) not use or place any illegal, prohibited or dangerous substance on the Goods;
  - (x) not fix the Goods (or any part thereof) in such a manner as to make them legal fixtures forming part of any freehold;
  - (xi) on termination of the hire, deliver up the Goods, complete with all parts and accessories, clean and in good order, as delivered, fair wear and tear accepted, to the Contractor.
- (b) Immediately on request by the Contractor the Customer will pay:
  - (i) all costs incurred in cleaning the Goods (including removing plaster, mortar, cement and/or concrete from the Goods) if the Goods are deemed by the Contractor (at their sole discretion) to be excessively dirty;
  - (ii) any lost hire charges the Contractor would have otherwise been entitled to for the Goods, under this, or any other agreement;
  - (iii) the cost of fuels and consumables provided by the Contractor and used by the Customer.
- (c) Only to the extent that the hire of the Goods exceeds a two (2) year hire period or a twelve (12) month period with the right of renewal shall clause 8 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 8 will apply generally for the purposes of the PPSA.
- (d) No warranty is given by the Contractor as to the quality or suitability of the Goods for any purpose, and any implied warranty is expressly excluded. The Customer shall indemnify and hold harmless the Contractor in respect of all claims arising out of the use of the Goods.

20.5 *Affixation of Goods to Land or Buildings*

- (a) If the Goods or any part thereof is affixed to any land or buildings pursuant to this agreement, 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 Customer shall, without first receiving any request from the Contractor, obtain the written acknowledge of the mortgagee, administrator or liquidator (as the case may be) that:
- (i) the Goods or any part thereof is not a fixture for the purposes of the mortgage or charge;
  - (ii) that the mortgagee, administrator or liquidator will not make any claim in relation to the Goods or any part therefore; and
  - (iii) that the mortgagee, administrator or liquidator will permit the Contractor (whether or not there has been any default under the mortgage or charge) to enter upon the land or buildings and to remove the Goods or part thereof.

20.6 *Inspection of Equipment*

- (a) The Customer hereby grants the Contractor (including its employees, duly authorised agents or representatives) the right, at all times, upon the Contractor giving to the Customer reasonable notice and without unduly interfering with the Customer's business or operations, to:
- (i) enter onto the worksite(s) where the Goods or any part thereof may be located;
  - (ii) inspect the state of repair or condition of the Goods;
  - (iii) carry out any such tests on the Goods as may be reasonably necessary including but not limited to, health and safety tests or inspections;
  - (iv) observe the use of the Goods by the Customer; and
  - (v) do any act, matter or action which may be required at law or to otherwise protect the Contractor's rights or interests in the Goods.

**21. Terms Specifically Applicable to the Sale of Goods Only**

21.1 *Risk:*

- (a) Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- (b) If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, the Contractor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.
- (c) If the Customer requests the Contractor to leave Goods outside the Contractor's premises for collection, or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.

21.2 *Returns:*

- (a) The Contractor may, in its absolute discretion, accept non-defective Goods for return, in which case the Contractor may require the Customer to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.