

**Important Notice** – If you do not understand this document, you should seek independent legal advice.

**THESE TERMS AND CONDITIONS WILL BE INCORPORATED INTO EVERY CONTRACT BETWEEN THE CUSTOMER AND SOLID ON THE ISSUE OF ANY PURCHASE ORDER BY THE CUSTOMER.**

**1 Terms and Conditions**

These Terms and Conditions are incorporated into and apply to every contract and to every transaction between the Customer and Solid for the Supply of Equipment, the hire of Equipment, the sale of Equipment and for the supply of Services.

**2 Definitions:**

In these Terms and Conditions unless the context otherwise requires the following words have the following meanings and cognate expressions have corresponding meanings:

**ACL** means the Australian Consumer Law (contained in the CCA).

**Business Hours** means, for dispatch and return of Equipment, 7:00 am – 1:30 pm Monday to Thursday and 7:00 am – 12 noon on Fridays.

**Solid** means Solid Scaffolding ABN 14 117 970 761 of 31 Berrington Trail, The Vines WA, 6069.

**Solid Premises** means the location where Solid holds the Equipment for delivery and dispatch and to receive the return of the Equipment and includes any other premises designated by Solid for that purpose as may be notified to the Customer from time to time.

**Contract** means the relevant contract between Solid and the Customer for the Supply of the Equipment and or Services in question, as recorded in the Quote and as varied from time to time by Solid.

**Customer** means the company named on the Quote.

**Daily Rate** means the rate based upon the Equipment being hired on a daily rate as set out in the Quote, as varied from time to time during the Hire Period in accordance with these Terms and Conditions.

**Delivery** means and is taken to have been completed when the Equipment is loaded onto a vehicle for dispatch to the Customer.

**Delivery Docket** means the Docket itemising the Equipment dispatched to the Customer.

**Dispatch Date and Delivery Date** means the date when the Equipment is loaded onto a vehicle for delivery to the Customer.

**Equipment** means all of the goods and items for sale or hire Delivered to the Customer, or at the Customer's directions, by Solid or on behalf of Solid, and includes all goods and items Supplied to the Customer or at the Customer's directions by or on behalf of Solid from time to time, and as the context requires includes any part of such Equipment.

**Force Majeure** means a circumstance beyond the control of Solid that results in Solid being unable to perform or perform on time any of its obligations, including acts of god, fire, explosions or any other natural disaster industrial disputes, Government control or regulation;

**Hire Period** means the period for the hire of the Equipment commencing on the Dispatch Date and concluding on the Return Date, as provided for in clause 1 below.

**Hire Rate or Hire Price** means the rate due and payable by the Customer for the hire of the Equipment as specified in the Quote, as varied from time to time during the Hire Period in accordance with these Terms and Conditions.

**Insolvency Event** means the happening of any of the following events in relation to the Customer:

- (a) an application is made to a court that it be wound up or a provisional liquidator or official manager be appointed or it is wound up voluntarily or by the court or a provisional liquidator or official manager is appointed;
- (b) A meeting is called to place the Customer into liquidation or to appoint an administrator;
- (c) an order is made for it to be wound up;
- (d) it proposes to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement;
- (e) a receiver or receiver and manager is appointed to any of its assets;
- (f) it is taken to be insolvent or unable to pay its debts within the meaning of section 459C or section 585 of the Corporations Act; or
- (g) the Customer is, or states that it is, unable to pay its debts as and when they fall due;
- (h) the Customer ceases, or threatens to cease, to carry on business;
- (i) it becomes an insolvent under administration as defined in section 9 of the Corporations Act;
- (j) a judgment for payment of money is entered against the Customer, and not being the subject of an appeal remains unsatisfied for more than 14 days;
- (k) any execution is levied against the Customer;
- (l) the Customer being a natural person, commits an act of bankruptcy or becomes bankrupt.

**Interest Rate** means the rate being two percent (2%) greater than the ANZ Bank Reference Rate from time to time and, if there is no such Reference Rate, or it cannot be determined, then fifteen percent (15%) per annum.

**Invoice** means a tax invoice given by Solid for the Supply of Equipment and or Services to the Customer.

**List Price** means the price in Solid's current list of prices (which is available to the Customer on request), as varied from time to time by Solid.

**Minimum Hire Period** means a period of 14 days.

**Obligations** includes all obligations, liabilities and duties, whether express or implied.

**PPSA** means the *Personal Property Securities Act 2009 (Cth)* and any other legislation and regulations in respect of it.

**Purchase Order** means any written communication, including any email, from or on behalf of the Customer accepting the Quote.

**Price** means the price and rates set out in the Quote, as varied from time to time in accordance with these Terms and Conditions.

**Quote** means the quote provided by Solid to the Customer for the Supply of Equipment and or Services.

**Return Date** means the date when the Equipment is returned and delivered to the Solid Premises in accordance with these Terms and Conditions.

**Return Docket** means the record made by Solid of the Equipment, including the condition of the Equipment returned to Solid.

**Services** means those services specified in the Quote and may include erection and dismantling of scaffolding and other consultative services and Transportation Services, scaffolding design, temporary access design, and temporary works design.

**Site** means the place to which the Equipment is transported, following dispatch, and it includes any place where any of the Equipment is kept or used.

**Supply** means any delivery and supply by any means of Equipment to or at the direction of the Customer and it includes every hire and every sale of Equipment to the Customer, and it includes also the supply and provision of Services where the Contract requires.

**Termination Date** means the date the Hire Period actually terminates in accordance with these Terms and Conditions.

**Transportation Services or Transport** means transport of Equipment by Solid or at the direction of Solid.

**Weekly Rate** means the initial rate for 7 days' hire as set out in the Quote, as varied from time to time during the Hire Period in accordance with these Terms and Conditions.

**3 Supply of Services and Equipment**

- (a) Solid will give the Customer a Quote for the Supply of Equipment and or Services.
- (b) The issue of a Purchase Order by the Customer will be an acceptance by the Customer of the Quote and these Terms and Conditions and will be acceptance and agreement by the Customer that these Terms and Conditions will apply to every arrangement, contract and transaction between the Customer and Solid for the Supply of Equipment, the hire of Equipment, the sale of Equipment and for the Supply of Services.
- (c) The Customer will be deemed to have accepted the Quote for the Supply in question on receipt by Solid of a Purchase Order from the Customer.
- (d) Solid will Supply the Equipment and Services initially at the rates as specified in the Quote and may Supply additional Equipment and Services from time to time as requested by the Customer.
- (e) The Customer must pay the rates specified in the Quote and any amended rates as notified by Solid from time to time for the Supply of the Equipment and or Services promptly by due date.
- (f) If Solid changes the Hire Rates during the Hire Period, Solid may apply the new Hire Rates for the Equipment by giving the Customer seven days' notice in writing of the change. The Customer will be liable to and must pay the increased rates from the date specified in the notice.
- (g) If the new Hire Rates are not acceptable to the Customer, the Customer may terminate the Contract in question on written notice to Solid which must be given within seven days after receipt of notice of the new Hire Rates and if the Customer fails to give notice terminating the Contract within seven days after receipt of notice of the new Hire Rates, the new Hire Rates as notified will apply to the Contract in question from the date specified in the notice to the Customer. Any notice given by the Customer outside the seven day period will be of no force or effect and may be ignored by Solid.
- (h) If the Customer objects to the new Hire Rates, the Customer must give Solid notice in writing within the seven day notice period referred to in clause (a) above, which notice will be deemed to be notice of termination of the Contract for the hire of the Equipment. In those circumstances the Equipment must be returned to Solid by the Customer immediately in accordance with the Customer's obligations under these Terms and Conditions, without affecting any other rights that Solid may have as a consequence of the termination of the Contract.
- (i) If the Customer terminates the Contract in question, the Customer remains liable for all Hire Rates and all other costs and expenses until the Equipment is returned to Solid as provided for in these Terms and Conditions.

**4 Alteration of Terms and Conditions**

- (a) Solid may add to and vary these Terms and Conditions by giving 7 days' written notice to the Customer. If the amendment is not acceptable to the Customer, the Customer may terminate the Contract in question within 7 days after receipt of the notice of variation and if the Customer fails to do so the notified amendment will apply to the Contract in question. The provisions of clause 3 above regarding the giving and effect of notice given will apply to this clause making the necessary adjustments.
- (b) These Terms and Conditions may not be altered by the Customer.

**5 Payment by Customer**

- (a) The Customer must pay the Price (and rates) for the Supply of the Equipment and Services:
  - a. on Delivery, and in the case of Services, on the first performance of the Services; or if, and only if, credit terms are given, then
  - b. within 30 days of the date each Invoice given to the Customer, or such other period as specified in the Quote or as notified to the Customer by Solid in writing from time to time.
- (b) The Hire Rates become due and payable on each due date, commencing with effect from Delivery, in accordance with the provisions of the Quote.

**6 Extension of credit**

- (a) The Customer is not entitled to credit.
- (b) If Solid agrees to give credit to the Customer, Solid may on seven days' notice to the Customer at any time and in Solid's absolute discretion refuse to provide or extend any further credit to the

Customer and Solid may refuse to supply any further Equipment or Services (or both) to the Customer on credit terms.

- (c) If Solid declines to give the Customer further credit, the Customer must pay cash as Invoiced by Solid from that date on. And the Customer remains liable for all accumulated, unpaid credit.
- (d) The provisions of clause 3 above regarding the giving and effect of notice given will apply to this clause, making the necessary adjustments.

## 7 Overdue accounts and security

- (a) If the Customer fails to pay to Solid any moneys on the due date (including any moneys under any judgment which Solid may obtain against the Customer) that indebtedness, or so much as remains unpaid, will bear interest at the Interest Rate computed from and including the due date up to and including the date of actual payment, interest at the Interest Rate to accrue from day to day compounded monthly and is due and payable on demand.
- (b) The Customer must pay all costs and expenses (including legal costs on a full indemnity basis, all commissions payable by Solid to any commercial or mercantile agent and all dishonour fees) incurred by Solid directly or indirectly in connection with the non-payment and recovery of any overdue amounts, the recovery of any Equipment and in enforcing Solid's rights under these Terms and Conditions.
- (c) A statement in writing signed by an officer or manager of Solid setting out the moneys owing to Solid at the date of the statement shall be full and complete proof of the amount so owing until the contrary is proved by the Customer.

## 8 Risk

- (a) All risk in the Equipment Supplied for sale or hire passes to the Customer on Delivery.
- (b) In the case of hire, all of the risk in the Equipment remains with the Customer until the Equipment is returned to Solid in accordance with the provisions of these Terms and Conditions
- (c) The Customer is solely liable and responsible for the transportation of the Equipment, engineering, design, erection and dismantling of the Equipment, unless otherwise stated in the Quote.

## 9 Collection and Return of Equipment

Subject to the Quote:

- (a) All hire rates and all sale prices exclude any cost of transporting the Equipment.
- (b) The Customer must collect the Equipment for sale or hire during Business Hours from the Solid Premises at the Customer's cost and in the case of hire, deliver it to the Site.
- (c) The Customer must return all of the hired Equipment to Solid at the Solid Premises during Business Hours in accordance with clause 21.
- (d) The Customer must give Solid not less than 48 hours' notice of the proposed collection or return of Equipment.

## 10 Arrangements for delivery and return

- (a) If it is specified in the Quote that Solid will provide Transportation Services, the Customer must make all arrangements and give Solid due notice necessary to ensure the Equipment can be dispatched and transported in an efficient and timely manner, including providing at the Customer's cost, traffic management and unrestricted access to the Site.
- (b) The Customer must also ensure that the Equipment can be safely unloaded at the Site and upon completion of the Contract that the Equipment can be safely re-loaded for transportation back to Solid's Premises.
- (c) Solid may deliver or accept return of the Equipment, whether or not a representative of the Customer is present at the time of delivery or return.

## 11 Transportation Services

- (a) The cost of any Transportation Services will be set out in the Quote.
- (b) The Customer is liable for and must pay any additional charges for or relating to Transportation Services at the rate shown on the Quote, or if unspecified then at the rate as shown on the List Price applicable at the time if:
  - (i) Transportation Services are required out of normal working hours;
  - (ii) Transportation takes longer than allowed for in the Quote;
  - (iii) The loading/unloading time exceeds 2 hours; or
  - (iv) There are any delays to access the Site, either for loading or unloading not due to Solid's fault.
- (c) If there are any delays in transporting the Equipment not due to Solid's fault, the Customer must reimburse Solid for any extra costs and expenses incurred by reason of the delay and upon Solid providing an Invoice to the Customer of such costs and expenses, such amounts shall become a debt due and payable from the Customer to Solid.
- (d) Solid will not be liable in any way for any delay in delivery or failure to deliver for any reason.

## 12 Defects/inspection

- (a) The Delivery and Return Dockets are evidence of the:
  - (i) quantity and identity of the Equipment delivered or returned;
  - (ii) address the Equipment is delivered to or returned from, and
  - (iii) Delivery Date, Dispatch Date or the date of return of the Equipment.
- (b) The Customer must at its own cost provide a representative to check the accuracy of Delivery and Return Dockets.
- (c) The Delivery and Return Docket will be full and complete proof of the Equipment delivered or returned (whether or not the Customer has a representative present).
- (d) If the Delivery Docket and the Quote conflict regarding the Equipment delivered, the Delivery Docket prevails, and the necessary adjustments to the Hire Price will be made by Solid.
- (e) The Customer must notify Solid in writing of any alleged defect, shortage in quantity, damage or failure to comply with the Delivery Docket within 24 hours of delivery.
- (f) If the Customer alleges defects in the Equipment, then the Customer must provide to Solid written notice of each of the defects complained of and immediate unrestricted access to inspect the Equipment.
- (g) If the Customer fails to comply with this clause, and in particular fails to give notice as referred to in clause (e) above, the Customer will be deemed to have received the Equipment, free from any defect, and in accordance with the Delivery Docket.
- (h) If the Equipment suffers from a defect notified in accordance with the provisions of this clause, Solid's liability is limited to the replacement or the repair of the affected Equipment.

## 13 Customer's Site responsibilities

- (a) The Customer must ensure that, at the cost of the Customer:

- (i) The Site is ready for the safe offloading and delivery and, where required, for the safe erection and installation, of the Equipment.
  - (ii) The Site has ground conditions (which may include supporting structures) adequate to support the Equipment (and the maximum live load of any structures intended to be built).
  - (iii) All overhead and in-ground services at the Site are located and identified or relocated, protected or temporarily shut down as necessary to ensure a safe working environment for the Equipment (including delivery and erection/installation and removal of the Equipment). All necessary authority, consents and approvals are obtained (including building permits and air rights), for the lawful use and erection of the Equipment, including payment of fees for such approvals.
  - (iv) All scaffolding is erected and dismantled by personnel suitably trained and licensed to erect and dismantle all Equipment as per manufacturer's requirements and the requirements of Australian Codes of Practice AS1576, AS1576.1 and AS/NZS 4576.
  - (v) Unless Solid is engaged to erect any scaffolding, Solid is not liable in any way for any Claim of any kind in connection with any erection of the Equipment.
  - (vi) Appropriate Site security is in place at all times to ensure the due and proper protection of the Equipment, including against theft and unauthorised access and use.
  - (vii) The Customer has given due notice to all local and any other authorities of its intention to erect the Equipment.
  - (viii) The Customer has paid all fees in connection with the erection and use of the Equipment.
- (b) Any hazards on Site must be clearly demarcated by the Customer prior to any works commencing and must be fully addressed and resolved prior to any Site mobilisation.

## 14 Hire Period

- (a) The initial Hire Period will be the period specified in the Quote and if unspecified will be a term of at least 14 days.
- (b) The Hire Period will commence on the date of Delivery and terminates upon the return of Equipment to Solid's Premises in accordance with the provisions of these Terms and Conditions.
- (c) On the expiry of the initial Hire Period, the Hire Period will automatically continue on the same terms and conditions until either party gives the other a minimum of [two] weeks' notice in writing of termination of the Hire and the Equipment is returned to Solid's Premises as required by these Terms and Conditions.
- (d) The Hire Period and the Customer's liability under the Contract will continue until all of the Equipment has been returned to Solid's Premises in its entirety, as required by these Terms and Conditions. A return of part of the Equipment will not result in a reduction of the Hire Rate.

## 15 Minimum Hire Period

- (a) The Customer will be charged for the Minimum Hire Period if the Hire Period is for anything less than the Minimum Hire Period.
- (b) For any period extending beyond the Minimum Hire Period, the Customer will be charged at the initial Quoted Rate, subject to variations to that Rate from time to time as provided for in these Terms and Conditions.

## 16 Ownership of Equipment

The Customer acknowledges that Solid owns the hired Equipment and that Solid retains full right title and interest in and to the hired Equipment.

## 17 Use of Equipment

- (a) The Customer is absolutely and solely responsible for and liable for the Equipment and the manner of use of the Equipment from the Delivery Date until the Equipment is returned to Solid in accordance with the provisions of these Terms and Conditions, and without limiting the foregoing, the Customer must at all times:
  - (i) use and operate the Equipment safely and strictly in accordance with the law (including, but not limited to Australian Building and Industry Codes and Occupational Health and Safety legislation)
  - (ii) use and operate the Equipment for its intended use only, and in accordance with best industry practice and in accordance with any manufacturer's instructions, whether supplied by Solid or noted on the Equipment;
  - (iii) ensure that all persons using or operating or erecting or dismantling the Equipment are suitably instructed in its safe and proper use, qualified and trained to use the Equipment and, where necessary, currently hold any required certificate of competency or licence;
  - (iv) ensure that no persons using, operating or erecting the Equipment are under the influence of drugs or alcohol;
  - (v) immediately notify Solid in writing of the full circumstances of any Equipment failure or accident;
  - (vi) not move or relocate the Equipment or any part of the Equipment from the Site without Solid's prior written consent;
  - (vii) not allow nor authorise any other person or entity to use, re-hire or have possession of the Equipment at any time, without Solid's prior written consent;
  - (viii) not alter the Equipment in any way, including but not limited to making additions, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment; and
  - (ix) ensure that there are no dealings with the Equipment by the Customer which are inconsistent with Solid's ownership of the Equipment; and without limiting the generality of the foregoing, the Customer may not offer, sell, assign, hire, sub-let, part with possession or control of the Equipment and the Customer may not charge, mortgage, pledge or create any form of security interest over, or otherwise deal with the Equipment in any way.
- (b) Solid may at any time and from time to time inspect the Equipment on the Site (or wherever the Equipment may be located). The Customer must promptly do all things and take all necessary steps to ensure that that Solid has unrestricted access to the Site (or wherever the Equipment may be located) and to the Equipment to enable Solid to exercise this right.

## 18 Indemnity

- (a) The Customer indemnifies Solid against all Claims arising from or in connection with any injury (including death) to any persons and any damage to any property (including the Equipment) directly or indirectly arising out of or in connection with the Equipment and any use of the Equipment howsoever arising, and whether authorised or unauthorised, including erection and dismantling, and including also without limitation, where the Equipment is being erected or used or operated for any reason by any employee, servant or agent of Solid.
- (b) The Customer is solely liable and responsible for the safekeeping and safe return to Solid of the Equipment and the Customer indemnifies Solid against all Claims in connection with all loss or damage of any kind to the Equipment howsoever caused.
- (c) The Customer indemnifies Solid against all Claims directly or indirectly arising from or in connection with or as a consequence of any failure by the Customer to carry out any of its obligations under any part of its Contract with Solid.

## 19 Insurance

The Customer must:

- (a) Take out and at all times keep in force at its own cost an insurance policy with a reputable insurance company to cover the loss of, or damage to, the Equipment, for its full insurable value, for any cause whatsoever during the Hire Period, including while in transit.
- (b) Must notify Solid within 24 hours of any event that may give rise to a claim under the policy of insurance, including loss, destruction or damage however caused to the Equipment.
- (c) Any money received by the Customer in respect of any insurance must be used promptly by the Customer to reinstate the damage or loss in question.
- (d) Must take out and at all times keep in force at its own cost public liability insurance cover of not less than \$10 million per event in respect of the Equipment, its possession, use and operation and including cover against bodily injury, death and third-party property damage.
- (e) Whenever requested to do so provide Solid with certificates of currency for all such insurance and make available to Solid for inspection, all such documentation and proof of payment of all premiums and charges due in respect of such insurance.

The requirement to hold insurance does not relieve the Customer of its obligation to indemnify Solid in accordance with the provisions of these Terms and Conditions.

## 20 Contaminated Equipment

- (a) Whilst on hire, the Equipment must not be exposed to any hazardous material, including but not limited to asbestos.
- (b) If the Equipment is likely to be, or has been, exposed to any hazardous material the Customer must immediately notify Solid in writing and must ensure the Equipment is cleaned and decontaminated in accordance with best industry practice including any applicable Occupational Health and Safety regulations and any other applicable regulations before returning the Equipment to Solid.
- (c) The Customer must not return, or seek to return, any Equipment that is contaminated or has been exposed to any hazardous material unless and until the Customer has produced a written certificate from a duly qualified specialist certifying that the Equipment has been duly cleaned and decontaminated in accordance with prescribed best practice and any applicable Occupational Health and Safety regulations and any other applicable regulations.
- (d) Solid may in its absolute discretion refuse to accept any contaminated Equipment if a certificate required by this clause is not supplied and in those circumstances the Customer will be liable for and must on demand pay the replacement cost of the Equipment as notified to the Customer by Solid and until that cost is paid the Customer will remain liable for and must pay the Hire Rates in respect of the Equipment.

## 21 Return of Equipment

- (a) The Customer acknowledges that it has a duty of care to notify Solid and the Customer must notify Solid if the Equipment is likely to be, or has been, contaminated in any way, or exposed to any hazardous substance, including but not limited to asbestos.
- (b) Subject to the Quote, the Customer must return and deliver the hired Equipment (complete with all parts and accessories) to the Solid Premises on the Return Date:
  - (i) at the Customer's cost;
  - (ii) during Business Hours;
  - (iii) clean, with all mortar, render, epoxy, paint or other applied finishes removed;
  - (iv) uncontaminated;
  - (v) not coated in any ore residue;
  - (vi) in good condition/undamaged (usual fair wear and tear excepted);
  - (vii) stacked in the manner the Equipment was in when received by the Customer. Specifically:
    - i. Equipment delivered in stillages or mesh cages must be returned in them;
    - ii. timber boards must be returned stacked in bundles 5 boards wide and 10 boards high with 2 plastic fillets between each layer of boards;
    - iii. layher decks must be returned stacked 3 boards wide and 10 boards high, with 1 facing up and the next one facing down;
    - iv. alloy beams must be stacked in a uniform way, with truck straps only over areas of beam which have dunnage directly underneath; and
    - v. The use of steel on steel gluts is strictly prohibited (as load may slip in transit).
- (c) Solid may in its absolute discretion refuse to accept the return of any Equipment from the Customer if this clause has not been complied with. If Solid elects to accept the return of any Equipment that does not comply with the provisions of this clause the Customer will be liable to Solid as provided for in clause 22 below.
- (d) Without affecting the Customer's obligations under the provisions of clause 22 below, if it is agreed that Solid will collect and return the Equipment, the Equipment must be ready for collection on the designated date and in the condition required by clause 21(b) above.

## 22 Damage or loss of Equipment

- (a) If Equipment is not returned on the Return Date or is not in the condition required by clause 21 when it is returned the Customer will remain liable for and must continue to pay the Hire Rates for the Equipment until the Equipment is duly returned in the condition required by clause 21.
- (b) If Equipment is damaged and is able to be repaired, the Customer will remain liable for and must continue to pay the Hire Rates for the Equipment until the Equipment is repaired and the repaired Equipment is returned to Solid as required by these Terms and Conditions.
- (c) If Equipment requires replacement, the Customer will remain liable for and must continue to pay the Hire Rates for the Equipment until Solid receives payment of the replacement value of the Equipment calculated at the Prices in the Solid List Price applicable at the Return Date.
- (d) If Equipment is not returned in accordance with clause 21, the Customer will receive a compliance report within 7 days of return and the Customer must, as a debt due and payable by the Customer to Solid, pay Solid immediately on demand by Solid:
  - (i) the List Price of any Equipment which:
    - i. is for whatever reason not returned to Solid; or
    - ii. has been returned, but requires replacement because it is damaged beyond economical repair. Solid's decision in that regard will be final and binding on the Customer.
  - (ii) All disbursements and all costs (which will be charged at the List Price as applicable at the Return Date) incurred by Solid in:
    - i. cleaning the Equipment;
    - ii. repairing any damage to the Equipment (except for any damage caused by fair wear and tear and proper use of the Equipment in accordance with good industry practice and Solid's decision in that regard will be final and binding on the Customer);
    - iii. stacking the Equipment; and

iv. Otherwise ensuring compliance with the provisions of clause 21 above.

## 23 Breakdown of Equipment

- (a) If the Equipment breaks down, fails or becomes unsafe, the Customer must immediately stop using the Equipment and must take all necessary steps to prevent injuries to any persons or damage to any property as a result of the condition of the Equipment. And the Customer must immediately notify Solid in writing of such breakdown, failure or defect.
- (b) Solid shall not be liable for any Claims, including consequential damages, expenditure, damages, loss or inconvenience incurred by the Customer, or anyone claiming through the Customer, arising out of any breakdown in the Equipment, whether caused by fair wear and tear, lack of repair or negligence on the part of Solid or any other reason whatsoever.
- (c) If any Equipment breaks down, fails or is damaged due to the act or omission of the Customer (including any of the Customer's employees, servants, agents or invitees) or any third party, Solid will continue to charge and the Customer will be and remain liable for all hire charges until the Equipment has been repaired or replaced and has been returned to Solid as provided for in these Terms and Conditions.
- (d) In the event of a break down or failure, which in the sole opinion of Solid is caused by fair wear and tear, or any inherent defect in the Equipment, Solid will at its own expense restore the Equipment to working order as quickly as reasonably possible.
- (e) If any Equipment breaks down or fails due to fair wear and tear or an inherent defect in the Equipment, Solid may in its absolute discretion determine not to charge the Customer for the hire of the affected equipment during the time in which the affected equipment is not working.
- (f) In such event Solid will notify the Customer of the extent to which the hire charges are abated and the period of such abatement. The amount of the abatement and the duration of the abatement will be determined in the absolute discretion of Solid. The Customer remains liable for and must pay any unaffected Hire Rates promptly on due date as required in accordance with the terms of the Contract in question.
- (g) In the event of any break down or failure of the Equipment, the Customer may not repair or attempt to repair the Equipment and may not have any repairs effected to the Equipment by any person other than a person authorised or approved by Solid.
- (h) The Customer acknowledges the Equipment can from time to time break down or fail during ordinary use.
- (i) The Customer will not have any Claim of any kind, including consequential damages, against Solid for any delay, loss or damage of any kind directly or indirectly arising out of or in connection with the late or non-delivery, break down, failure or defect in the Equipment, failure to repair the Equipment timeously or at all, or any accident arising from or in connection with to the Equipment.

## 24 Termination of hire

Upon termination of any hire contract for any reason, the Equipment must be returned to Solid by the Customer at the Customer's sole cost and expense in accordance with the provisions of these Terms and Conditions.

## 25 Sale of Equipment

The sale of any Equipment to the Customer will be in accordance with the provisions of the Quote.

## 26 Retention of title

In the case of the sale of any Equipment to the Customer:

- (a) Solid retains full legal and equitable title and all of its right title and interest in and to any Equipment Supplied to the Customer until payment in full has been received by Solid and the funds have been cleared by Solid's bank.
- (b) Until payment in full has been received by Solid, the Customer must keep the Equipment safe and free from deterioration, destruction, loss or harm, and the Customer must clearly designate the Equipment as the property of Solid, store the Equipment in such a way that it is clearly identified as the property of Solid and keep full and complete records, firstly, of the physical location of the Equipment and, secondly, the ownership of the Equipment by Solid.
- (c) Until payment in full has been received by Solid for the Equipment, and in consideration of delivery of the Equipment prior to payment being made by the Customer, the Customer irrevocably authorises Solid at any time and from time to time to inspect and to recover and retake possession of such Equipment and otherwise exercise in relation to the Equipment any of Solid's rights, whether those rights are as owner and/or unpaid Seller or otherwise pursuant to these Terms and Conditions and whether those rights are conferred or arise by common law, contract, statute or in any other way.
- (d) In order to exercise such entitlement, and in consideration of delivery of the Equipment prior to payment being made by the Customer, Solid and its agents are irrevocably authorised by the Customer to enter any of the Customer's premises or those of any third party where the Customer has located the Equipment. The Customer agrees to and must on demand by Solid obtain the consent of any such third party to such entry by Solid and the Customer will indemnify Solid and its agents against any Claims and any liability whatsoever arising from or in connection with any entry upon the Customer's or any third party's premises and the removal of the Equipment or any part thereof and the retaking of possession of the Equipment by Solid.

## 27 Security interest

The retention of title arrangement described in clause 26 constitutes the grant of a purchase money security interest by the Customer in favour of Solid in respect of all present and after-acquired Equipment Supplied to the Customer by Solid.

## 28 Sale of Used Equipment

All used equipment is sold as is and where is. The Customer has sole responsibility to undertake any independent testing to ensure said Equipment is fit for use and complies with the appropriate Australian Standards. No warranty, guarantee or refund is offered on any used item sold.

## 29 Default

If:

- (a) There is any default by the Customer in the performance of any provision of any Contract, including these Terms and Conditions, and including in the performance of any obligation, term, agreement or condition contained in or implied in any Contract or these Terms and Conditions; or
- (b) Any payment or any other money due by the Customer is at any time unpaid for seven (7) days after becoming due, whether formal demand has been made or not; or
- (c) The Customer fails to comply with any of its other obligations under any Contract or these Terms and Conditions and that failure continues after the expiration of seven (7) days written notice, which has been given by Solid to the Customer to remedy the default; or An Insolvency Event occurs; or
- (d)

- (e) The Customer ceases or threatens to cease to carry on its business, or a material part of its business, or disposes of or threatens to dispose of its business or a material part of its business or any of its material assets; or
- (f) The Customer stops using the Equipment or threatens to stop using the Equipment; or
- (g) Any distress or execution is levied or enforced against any of the Customer's assets or property;
- (h) Any representation, warranty, reply to a requisition or any financial or other information provided to Solid by or on behalf of the Customer in connection with any Contract, Supply of Equipment or these Terms and Conditions is or becomes untrue, false or misleading; or
- (i) the reasonable opinion of Solid there is a material adverse change in the financial condition of the Customer or its business; or
- (j) Customer parts with possession of, ceases to retain control of, vacates, abandons or otherwise surrenders the Equipment for any reason,

Then without prejudice to any of Solid's other rights and remedies:

- (k) all amounts owing to Solid shall immediately become due and payable; and
- (l) Solid may without the requirement to give any notice:
  - i. suspend or terminate the Supply of Equipment and any of its other obligations to the Customer; and
  - ii. Immediately recover all of the Equipment Supplied to the Customer, in accordance with clause 30.

### 30 Recovery and Repossession of Equipment

- (a) For the purpose of recovering and repossessing the Equipment the Customer authorises Solid, its directors, servants and agents to enter upon any premises occupied by, or being used by, the Customer, and to search such premises and to remove the Equipment therefrom.
- (b) The Customer shall be liable for and hereby indemnifies Solid against any Claims, loss, expense, cost or damage whatsoever that may be incurred or suffered by Solid as a result of or in any way in connection with Solid entering upon and searching any premises to locate and or remove Equipment, taking possession of and/or removing the Equipment, including but not limited to any damage caused to the Equipment, and to any gate, door, fence wall or obstruction and to any structure. The Customer must pay all of Solid's costs and expenses incurred in connection with the recovery and repossession and transportation of the repossessed Equipment to Solid's premises.
- (c) The Customer shall indemnify Solid and hold Solid harmless against all Claims suffered or incurred by Solid arising or in connection with Solid repossessing the Equipment.
- (d) The Customer shall remain liable for all hire costs and any other monies due to Solid in connection with the Supply of the Equipment up to the time of the due and proper return of the Equipment to Solid at its premises in accordance with the provisions of these Terms and Conditions.
- (e) If there is any delay in recovering the Equipment, then the Customer shall be and remain liable for and must reimburse Solid for all costs and expenses incurred by reason of the delay, together with all lost hire fees arising from or in connection with the Supplied Equipment being unavailable. Upon Solid providing written notification to the Customer of such costs and expenses, such amounts shall become a debt due and payable by the Customer to Solid.

### 31 Notification of insolvency event

- (a) Customer must promptly advise the Solid in writing of the occurrence of any event that might affect its ability to perform its obligations under any Contract with Solid, including any Insolvency Event, any change in its name, ownership or control, or any step being taken to sell an asset or assets (separately or together having a value being greater than 20% in value of the Customer's gross assets) as soon as practicable and not later than within two business days of such event, change or step occurring.
- (b) The Customer acknowledges that, despite any such event, change, or step the Customer remains liable to pay all monies due for all Equipment or Services Supplied.

### 32 PPSA

- (a) Solid may register any actual or impending security interest (in any manner Solid considers appropriate) in relation to any security interest in the Equipment and the proceeds arising in respect of any dealing in the Equipment contemplated or constituted by any contract for the Supply of Equipment and by these Terms and Conditions.
- (b) Solid may at any time register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest).
- (c) Without limiting Solid's rights to register a Security Interest in respect of any of the Equipment, these Terms and Conditions and any Contract constitute a Security Agreement for the purposes of the PPSA.
- (d) The Customer covenants and undertakes to:
  - a. promptly do anything that is required by Solid, including executing documents and providing assistance and information to Solid:
    - (i) so that Solid can acquire and maintain one or more perfected security interests under the PPSA in respect of the Equipment and its proceeds,
    - (ii) to facilitate the registration and maintenance of any security interest under the PPSA
    - (iii) to register a financing statement or financing change statement and
    - (iv) to ensure that Solid's security position and its rights and obligations, are not adversely affected by the PPSA;
  - b. not register a financing change statement in respect of a security interest contemplated or constituted by these Terms and Conditions without Solid's prior written consent; and
  - c. not create or purport to create any security interest in the Equipment, nor register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without Solid's prior written consent.
- (e) The Customer waives their right under section 157 of the PPSA to receive a copy of the verification statement relating to a security interest created under these Terms and Conditions and any Contract in connection with the Equipment.
- (f) The Customer agrees that to the extent permitted by the PPSA, the following provisions of the PPSA will not apply and are contracted out of:
  - a. pursuant to section 115(1) of the PPSA; section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and

- b. pursuant to section 115(7) of the PPSA; section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.
- (f) Unless otherwise agreed and to the extent permitted by the PPSA, Solid and the Customer agree not to disclose information of the kind referred to in section 275(1) of the PPSA to an interested person, or any other person requested by an interested person. The Customer waives any right they may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the said information.
- (g) For the purposes of section 20(2) of the PPSA, the collateral is the Equipment. These Terms and Conditions are a security agreement for the purposes of the PPSA.
- (h) Solid may apply amounts received in connection with any contract to satisfy obligations secured by a security interest contemplated or constituted by any contract and these Terms and Conditions in any way Solid determines in Solid's absolute discretion.
- (i) The Customer must notify Solid in writing of any change to the Customer's details set out in the Customer's credit application, within 2 days from the date of such change.
- (j) All Equipment hired by or for or to the Customer will be registered until the Equipment is returned to Solid in accordance with the provisions of these Terms and Conditions.
- (k) All Equipment sold to the Customer will be registered until the Equipment is fully paid for.

### 33 Liability

- (a) To the extent permitted by law, all warranties, guarantees, representations, promises, conditions and statements of any kind (whether statutory or otherwise, and whether express or implied, oral or written) as to the suitability, state, quality or fitness for purpose of the Equipment, are hereby expressly excluded.
- (b) The Customer may have the benefit of consumer guarantees under the ACL, otherwise to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into any contract and these Terms and Conditions are excluded
- (c) To the extent permitted by law, and subject only to where the Contract expresses otherwise, Solid is not liable to the Customer for, and the Customer forever releases and discharges Solid from, any Claim by, or loss to the Customer arising out of or connected with the Supply, Hire and or Sale of the Equipment or the operation of the Equipment, and any breach or default by Solid, or any negligence of Solid.
- (d) Nothing in the Contract is intended to exclude, restrict or modify rights which the Customer may have under the ACL or any other legislation, which may not be excluded, restricted or modified by agreement.
- (e) Solid shall have no liability to the Customer for any consequential loss.
- (f) To the extent that Equipment Supplied by Solid are not goods of a kind ordinarily acquired for personal, domestic or household use and the Customer is deemed to be a consumer for the purposes of section 64A of the ACL, the Customer agrees that Solid's liability for a failure to comply with a consumer guarantee that the Customer may have a benefit under the ACL (other than a guarantee under sections 51 (title), 52 (undisturbed possession) and 53 (undisclosed securities), is limited to, at the option of Solid, one or more of the following:
  - (i) Replacement of the Equipment or the supply of equivalent Equipment;
  - (ii) The repair of the Equipment;
  - (iii) The payment of the cost of replacing the Equipment or of acquiring equivalent Equipment; or
  - (iv) The payment of the cost of having the Equipment repaired.
- (g) And without limiting the foregoing, Solid's liability for any breach of any condition or warranty or guarantee of any kind express or implied is limited to Solid doing one or more of the following at its election:
  - (i) Replacement of the Equipment or the supply of equivalent Equipment;
  - (ii) The repair of the Equipment;
  - (iii) The payment of the cost of replacing the Equipment or of acquiring equivalent Equipment; or
  - (iv) The payment of the cost of having the Equipment repaired.
- (h) To the extent that Services supplied by Solid are services other than services of a kind ordinarily acquired for personal, domestic or household use or consumption, Solid's liability for failure to comply with a consumer guarantee that the Customer may have the benefit of is limited to, at the option of Solid:
  - (i) the supply of the Services again; or
  - (ii) the payment of the cost of having the Services supplied again.
  - (iii) Solid suffers or incurs as a consequence of the Customer's failure to carry out its obligations under any clause of these Terms and Conditions.
- (i) In consideration of the Supply of the Equipment to the Customer, the Customer irrevocably and unconditionally indemnifies Solid against, and releases Solid from, any Claim or loss of whatsoever nature and kind and whether sustained by the Customer or any other person, in relation to or connected with the Supply, Hire and or Sale of any Equipment under any contract or these Terms and Conditions.
- (j) Without affecting any of its other rights under the Contract and these Terms and Conditions, Solid shall not be liable for any delay or failure to perform any of its obligations if such is due to Force Majeure or where such delay or failure arises by reason of, as a consequence of or in connection with non-payment of monies to it by the Customer.
- (k) All the rights, immunities and limitations of liability in the any contract or these Terms and Conditions benefiting Solid shall continue to have full force and effect in all circumstances and notwithstanding any breach by Solid or any termination of any contract or by Solid.

### 34 Privacy Act

- (a) The Customer consents and authorises Solid to obtain and collect from any source including all banks and financial institutions and to retain and use all personal information about the Customer including the Customer's finances, credit history, credit worthiness and financial standing (Information) for the purposes of:
  - (i) assessing the customer's credit worthiness;
  - (ii) administering the provision of credit and finance in respect to the Customer's dealings with Solid and enforcing Solid's rights against the Customer.
- (b) The Customer consents and authorises Solid to provide the Information to:
  - (i) any person for the purposes set out in clause (a) above;
  - (ii) any bank or credit agency for the purposes of obtaining information and maintaining credit records.

### 35 Waiver

Any failure by Solid to enforce any provision of any contract or of these Terms and Conditions, or any forbearance, delay or waiver of its rights under indulgence granted by Solid to the Customer will not be construed as a waiver of its rights under such contract or these Terms and Conditions.

**36 Severability**

If any provision of these Terms and Conditions (and any Contract between Solid and the Customer) is held invalid, unenforceable or illegal for any reason, the remaining provisions of these Terms and Conditions (and any Contract between Solid and the Customer) shall otherwise remain in full force apart from such provisions that shall be deemed deleted.

**37 Survival of Agreement**

Subject to any provision to the contrary, these Terms and Conditions shall endure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assigns or receivers, but shall not endure to the benefit of any other persons.

The covenants, conditions and provisions of these Terms and Conditions which are capable of having effect after the expiration of any contract shall remain in full force and effect following the expiration of the contract in question.

**38 Authority**

The Customer and its representative warrants and represents to Solid, that they have obtained all necessary authority and consent to enable them to enter in to the contract or transaction in question and to bind the Customer to perform all of its obligations thereunder.

**39 Notices**

- (a) The Customer chooses its address set out in the Quote as its address for the purposes of the giving of any notice, the serving of any process and for any other purpose arising from these Terms and Conditions.
- (b) In addition to any service approved by law, any notice given by Solid to the Customer which:
- (i) is delivered by hand during normal business hours to the Customer at its chosen address, is deemed to be received by the Customer at the time of delivery; and
  - (ii) is posted by pre-paid post is deemed to be received by the Customer on the third day after the date of posting; and
  - (iii) is sent by facsimile transmission is deemed to be received by the Customer upon completion of that transmission; and
  - (iv) is sent by email, is deemed to be received by the Customer upon a delivery confirmation report being received by the sender that records the time that the email was delivered to the Customer's email address.

**40 Governing Law:**

These Terms and Conditions takes effect, is governed by, and shall be construed in accordance with the laws of the State of Western, Australia and each party hereby unconditionally submits to the jurisdiction of the Courts of Western Australia, Australia and of any Court competent to hear appeals there from.

**41 Tax & GST**

- (a) The Customer must on demand pay any duty assessed on this document and any fee to register or maintain any security interest held by Solid in respect of Equipment or Services Supplied to the Customer.
- (b) Words and expressions defined in the GST Law have the same meaning when used in this clause.
- (c) All amounts payable by the Customer in respect of any transaction, contract or supply have been set and determined without regard to GST.
- (d) Subject to the Customer's right to a valid tax invoice, the Customer must pay an amount equivalent to the GST Amount payable in respect of any taxable supply by Solid at the same time as payment for that supply is made.
- (e) The Customer will indemnify Solid and hold Solid harmless in respect of any GST payable with regard to any Supply made by Solid to the Customer or at the Customer's direction.

**42 Legal costs**

The Customer must pay all legal costs (on a solicitor/client basis) and expenses (including commissions payable to a commercial agent) incurred by Solid in enforcing these Terms and Conditions Immediately on demand by Solid.

**43 Intellectual Property**

All intellectual property (including copyright) in or incidental to the Equipment, its use (including erection) and in any designs, drawings, specifications, sketches and samples provided by Solid is vested in and remains the property of Solid.

**44 Interpretation**

- (a) Captions and headings of clauses are for convenience only and do not affect the interpretation of these Terms and Conditions.
- (b) Where an expression is defined anywhere in these Terms and Conditions, it has the same meaning throughout.
- (c) The singular includes the plural and one gender includes the other genders and vice versa.
- (d) An obligation, representation or warranty on the part of more than one person is entered into by and is enforceable against those persons jointly and each of them severally.
- (e) The use of words such as "include", or "including", or "for example", does not limit the generality of any term or expression that precedes such words.
- (f) The word "person" and reference to a person includes a firm, a body corporate, an unincorporated association, an authority and any other entity, and vice versa.
- (g) The presence or absence of capital letters will not affect the meaning of a defined term.
- (h) The provisions of the Recitals and any Schedule, other than the captions and headings form part of these Terms and Conditions.
- (i) If anybody or authority has ceased to exist, reference to that body or authority will be deemed to be reference to the body or authority as then serves substantially the same objects as that former body or authority.
- (j) A reference to the president of a body or authority will, in the absence of a president, be read as reference to the senior officer for the time being of the body or authority, or any other person fulfilling the duties commonly associated with those of a president.
- (k) Unless otherwise stated, if a party's consent or approval is required, it may be granted or withheld at that party's discretion and will not be effective unless in writing.
- (l) If any provision of these Terms and Conditions requires a notice to be given by a party, it must be in writing, unless the provision states it may be given orally.
- (m) If any provision of these Terms and Conditions is or becomes void, invalid or unenforceable for any reason, the same shall be severed from these Terms and Conditions and the remainder of these Terms and Conditions shall continue in full force and effect.
- (n) Reference to any thing includes any part of that thing.
- (o) A reference to these Terms and Conditions includes the recitals and any schedules, annexures and exhibits to these Terms and Conditions and, where amended, means these Terms and Conditions as so amended.
- (p) Reference in these Terms and Conditions to "day" shall mean a period of 24 hours ending at midnight.

- (q) Wherever in these Terms and Conditions a period of time is referred to, the day upon which that period commences shall be the day after the day from which the period is expressed to run, or the day after the day upon which the event occurs which causes the period to start running, and, in calculating that period, the last day shall be included.
- (r) A reference to any legislation or legislative provision includes and statutory modification or re-enactment of or legislative provision substituted for and any statutory instrument issued under that legislation or legislative provision.
- (s) A reference to any party to these Terms and Conditions or any other document or arrangement includes that party's executors, administrator substitutes, successors and permitted assigns.
- (t) A reference to currency is a reference to Australian currency unless otherwise specifically stated.
- (u) Any reference to Solid in these Terms and Conditions includes its directors, servants and agents, as the context requires.