



# COMMERCIAL CREDIT ACCOUNT APPLICATION

A/No
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## APPLICANT

BUSINESS STRUCTURE (Please Tick One)		SOLE TRADER <input type="checkbox"/>	PARTNERSHIP <input type="checkbox"/>	COMPANY <input type="checkbox"/>	TRUST <input type="checkbox"/>
(Please Print)					
NAME of CORPORATE ENTITY .....					
TRADING NAME (if different from above) .....					
BUSINESS ADDRESS .....				POSTCODE .....	
POSTAL ADDRESS .....				POSTCODE .....	
EXACT TYPE OF BUSINESS .....				BUSINESS COMMENCED .....	
DATE OF REGISTRATION / /		A.C.N. No. ....		PAID-UP CAPITAL \$ .....	
A.B.N. No. ....		AFFILIATED OR PARENT COMPANIES .....			
ACCOUNTS PAYABLE CONTACT: NAME: .....				PHONE No. (.....).....	
EMAIL ADDRESS .....				FAX No. (.....).....	
ESTIMATED CREDIT LEVEL REQUIRED: Generator Sales \$..... Maintenance Services \$..... Rental \$.....					
Do you Purchase using a Written Order? (Please tick which one applies )    Yes <input type="checkbox"/> No <input type="checkbox"/>					
Please note that in accordance with Clause 7.15, a Theft and Damage Waiver charge is mandatory unless the Customer/Hirer provides written evidence that separate insurance cover has been effected on the equipment.					
<b>INDUSTRY CODE</b> : In which industry is your business participating: (Circle Applicable one of the boxes below)					
A Agriculture, Forestry, Fishing	E Mining Contractor Hardrock	I Oil & Gas	M Electricity, Gas & Water suppliers	Q Manufacturing	
B Mining Company Coal	F Quarries	J Retail, Education, Cash, Personal Use, Trade	N Civil / Earthmoving Contractor	R Communication & Security Services	
C Mining Company Hardrock	G Property & Business Services	K Governments, Defence & Emergency Services	O Construction Contractors	S Health, Aged Care & Community Services	
D Mining Contractor Coal	H Electrical Contractor	L Hire or Rental	P Entertainment, Film, Sports & Events	T Ports & Shipping	

## OWNERS / DIRECTORS / GUARANTORS

IF SOLE TRADER/OWNER -			
Please supply Drivers Licence No. ....			
and details of next of kin not living with you. ....			
OWNER/PARTNERS/DIRECTORS/GUARANTORS			
FULL NAME	ADDRESS	PHONE No.	DATE OF BIRTH
1. ....	.....	(.....).....	...../...../.....
2. ....	.....	(.....).....	...../...../.....
3. ....	.....	(.....).....	...../...../.....
4. ....	.....	(.....).....	...../...../.....

**REFERENCES**

(References Should be Major Suppliers other than fuel supplier)		
NAME	PHONE NUMBER	EMAIL ADDRESS
1. ....	.....(.....)	.....
2. ....	.....(.....)	.....
3. ....	.....(.....)	.....
4. ....	.....(.....)	.....
5. Another Rental Company .....	.....(.....)	.....
6. Bank Details .....	.....(.....)	.....

**TRADING TERMS**

STRICTLY 30 DAYS NETT FROM DATE OF INVOICE  
 Failure to pay the account by the due date may result in Credit being suspended until the total amount owing is paid.

**APPLICATION CERTIFICATION, TRADING TERMS AND CREDIT INFORMATION AGREEMENT.**

The Applicant \*1 in this Credit Application, with full knowledge of the provisions of the Privacy Act 1988, hereby consents to Total Rentals Pty Ltd;

- (a) disclosing to or obtaining from a credit reporting agency or other credit provider, information of a personal nature; \*2
- (b) obtaining a report containing personal credit information, information on commercial activities and/or a report or commercial credit worthiness of the Applicant from a credit reporting agency;
- (c) obtaining a credit report containing personal information on the Applicant for the purpose of collecting overdue payments on commercial credit transactions.

\*1 In this disclosure Agreement, "the Applicant" in the case of a Company includes all Directors of such Company and in the case of a non-incorporated business, includes all partners in such business.

\*2 Information of a personal nature includes:

- identify particulars;
- the fact that you have applied for credit and the amount of such credit;
- the fact that Total Rentals Pty Ltd is a current credit provider to you;
- the fact that payments are overdue in excess of 60 days;
- advice that payments are no longer overdue;
- serious credit infringements;
- the fact that credit provided to you has been paid or otherwise discharged.

The Applicant(s) also agree to notify Total Rentals Pty Ltd in writing within 7 (seven) days of any changes to his / her or their Business or Corporate Structure.

I/We the undersigned are duly authorised to make this application.

I/We understand and agree to be bound by Total Rentals Pty Ltd 'Terms & Conditions of Sale and Rental Terms & Conditions' as set out attached to this form, which I have read and agree with.

**I hereby certify that the aforementioned particulars are correct to the best of my knowledge.**

**SIGNATURE OF GUARANTOR/APPLICANT OR AUTHORISED REPRESENTATIVE** ..... **DATE** / /

**FULL NAME OF GUARANTOR/APPLICANT OR AUTHORISED REPRESENTATIVE** .....  
 (Please Print Name)

**GUARANTEE INDEMNITY AND CHARGE**

I/We, the person/s named and described in the Schedule hereto ("the Guarantor") (and being the Directors of the Applicant) in consideration of Total Rentals Pty Ltd ("the Owner") agreeing to enter into a Rental agreements from time to time with the Applicant named and described in the within Contract ("the Applicant") do hereby for ourselves, our respective executors and administrators JOINTLY AND SEVERALLY COVENANT with the Owner that if at any time default shall be made in the payment of moneys by the Applicant to the Owner under the within contract or in the performance, observance of any term or condition of the contract to be performed or observed by the applicant. I/We will unconditionally and irrevocably indemnify the Owner in relation to its obligations and will forthwith on demand by the owner pay to the Owner all losses, costs, charges and expenses whatsoever which the owner may incur by reason of any default as aforesaid by the Applicant. This Guarantee shall be a continuing Guarantee and shall not be released by any neglect or forbearance on the part of the Owner, in enforcing payment of any of the moneys payable by the Applicant or for the time being given to the Applicant for any such payment, performance or observance or by any other thing which may be under the law relating to sureties which would but for these provisions have the effect of releasing us, our executors and administrators. I/We acknowledge that the Owner shall not be required to first proceed against the Applicant and that we have read, agree with and familiarised ourselves with the Contract and the Terms and Conditions referred to herein.

The Guarantors hereby grant to the company a Charge over all their right title and interest in all and any real property now held or acquired by them or either of them in the future such Charge to secure their obligations under this Guarantee and the Guarantors hereby undertake and agree as a separate obligation under this Guarantee to execute a registrable Mortgage over any such real property now held or acquired by them in the future and upon request by the company.

The applicant and the guarantors acknowledge and consent to the Owner registering a caveat over any real property to which the aforementioned charge relates.

The Guarantors and if more than one, each of them hereby acknowledge that they have received independent advice regarding their rights and obligations of Guarantors under this Guarantee.

I/We by the execution of this Guarantee Indemnity and Charge consent to Total Rentals Pty Ltd seeking information from another credit provider or reporting agency about my consumer worthiness in relation to commercial or consumer credit.

Dated this ..... day of ..... 20 .....

**Signature(s) of each Director(s) / Guarantor(s)** .....

Witness (Signature) .....  
 Witness (Name in full) .....  
 Witness (Address) .....

**TOTAL RENTALS USE ONLY**

MERCANTILE AGENCY REPORT.....

REFERENCES:

- 1. Trading Period ..... Comments ..... \$ ..... /Month Payment ..... Days
- 2. Trading Period ..... Comments ..... \$ ..... /Month Payment ..... Days
- 3. Trading Period ..... Comments ..... \$ ..... /Month Payment ..... Days
- 4. Trading Period ..... Comments ..... \$ ..... /Month Payment ..... Days
- 5. Trading Period ..... Comments ..... \$ ..... /Month Payment ..... Days

BANK OPINION .....

ASSETS \$ ..... LIABILITIES \$ .....

ACCOUNT APPROVED / REJECTED LIMIT \$ ..... ACCOUNT No. ....

SPECIAL CONDITIONS .....

OTHER: DEFERRED  C.O.D  CASH

NEW ACCOUNT LETTER SENT ...../...../..... CREDIT OFFICER signature .....



## TERMS & CONDITIONS OF RENTAL

### 1. TERMINOLOGY

In these conditions:

- 1.1 The "Owner" is Total Rentals Pty Ltd. as Trustee for the ANP Unit Trust trading as Total Generators
- 1.2 The "Customer" is the person, firm or corporation renting Equipment from the Owner.
- 1.3 The "Equipment" means all plant, equipment, vehicles and machinery, including tools, accessories and parts supplied to the customer.
- 1.4 "Insurer" meaning a person, firm or corporation insuring the Equipment and any authorised officer or employee.
- 1.5 "PPSA" means the Personal Properties Securities Act 2009 (Cth) and any subordinate legislation made pursuant to that Act.
- 1.6 "PPSR" means the Personal Properties Securities Register established under the PPSA.

### 2. RENTAL TERM

- 2.1 The rental rate has been structured upon a standard 12 hours working period unless a quoted Standby Rental applies. If the Equipment is used outside of this standard, then the rental rate will be quoted and adjusted accordingly.
- 2.2 Subject to clause 2.1, the term of the rental commences on the date on which the Equipment leaves the Owners depot and will terminate on the date the equipment returns to the Owner's depot or as otherwise agreed in writing.
- 2.3 The minimum rental period is one day.
- 2.4 Any Customer failing to off hire or return the Equipment to the Owner's depot within the period of rental quoted/ordered will continue to accrue additional rental charges for each day (or part of a day) that the Equipment is not confirmed as off hired or returned.

### 3. RETURN OF EQUIPMENT

If the Customer does not return the equipment to the Owner's depot within the period of rental quoted/ordered, the Customer is in default of these Rental Terms and Conditions and clause 9 applies.

### 4. LOADING & UNLOADING EQUIPMENT

The Customer shall at its cost unload the equipment upon delivery & load the equipment for return to the Owner.

### 5. SERVICE OF EQUIPMENT

- 5.1 Subject to clauses 5.2 to 5.6, the Owner will at its cost service & repair the Equipment.
- 5.2 If the Equipment requires repairs:
  - 5.2.1 For minor faults, rectification will be effected at the Customers site if possible, and
  - 5.2.2 For major breakdowns, the Owner will replace the Equipment if possible.
- 5.3 The Customer must:
  - 5.3.1 give written notice to the Owner immediately after the Equipment has operated for 250 hrs past the date of the immediately preceding service or the commencement date of the rental term which ever is the later; and
  - 5.3.2 Fax a copy of the 'Daily Record Sheet' for the Equipment to the Owner each Monday morning; and
  - 5.3.3 Seek prior written approval from the Owner before moving any Equipment to a different site.
- 5.4 The Owner will give written notice to the Customer, that it will service the Equipment within 1 week of the notice.
- 5.5 If the Customer does not comply with clauses 5.3.1 & 5.3.2 or the Owner is unable to access the Equipment to carry out the service during normal business hours within the period set out in clause 5.4, then the Customer must pay to the Owner on demand:
  - 5.5.1 Compensation for any wear, tear and damage to the Equipment as well as the costs of repairs to the Equipment caused by the failure to service.
  - 5.5.2 Overtime costs incurred by the Owner or its authorised service agents and the costs of the next service.
- 5.6 If the Customer does not comply with clause 5.3.3, and the Owner's service mechanic attends the site only to find the Equipment has been moved to another site, then the Customer must pay the costs of the Owner for the service call on demand.

### 6. ACKNOWLEDGEMENT BY OWNER

The Owner shall:

- 6.1 Make the Equipment available to the Customer at the Owner's premises, or if so required, deliver the Equipment to a site nominated by the Customer providing the Customer has an established credit rating with the Owner.
- 6.2 The Owner shall not be liable to the Customer or the Customer's servants or agents for any damages, suits, actions, claims and demands of every description whatsoever and howsoever arising either directly or indirectly from representations, warranties, terms and conditions, expressed or implied (except in so far as statutory conditions and representations, warranties cannot be excluded under the Trade Practices Act or any other relevant legislation), use, maintenance, transport, operation of the Equipment or otherwise and whether resulting from the negligence of the Owner, its servants, agents or otherwise.
- 6.3 The owner shall not be obligated to consider any claim for a credit against any invoice, unless such claim is lodged within 7 days of the date shown on the Invoice.

### 7. ACKNOWLEDGEMENT BY CUSTOMER

The Customer shall:

- 7.1 Determine the condition and suitability of the Equipment for the purpose required.
- 7.2 Use the Equipment in a skilful and proper manner and only for the purpose and within the capacity for which it was designed, acknowledging that the Owner can give no warranty as to the said capacity.
- 7.3 Ensure that a suitably certified operator operates the Equipment.
- 7.4 Complete daily service checks on belts, tyres and all fluid levels & sign log book. Top up fluids only with approved materials.
- 7.5 At its own expense, clean, fuel, lubricate and maintain the Equipment in good condition (reasonable wear and tear excepted unless caused by negligence or misuse on the part of or attributable to the Customer) except for pre-arranged major servicing, which will be carried out by the Owner during normal working hours.
- 7.6 Accept full responsibility for flat and or damaged tyres.
- 7.7 Comply with any acts, regulations, ordinances, and bylaws enacted by any government or semi government authority including occupational health and safety legislation.
- 7.8 Permit access to the Equipment without notice for the purpose of inspection.
- 7.9 Clean the Equipment upon completion of the rental period or accept a cleaning fee by the Owner for any cleaning required as a result of the rental operating environment conditions.
- 7.10 Indemnify and keep indemnified and save harmless the Owner and the Owner's servants and agents from all damages, suits, actions, claims and demands of every description whatsoever and howsoever arising either directly or indirectly from the use, maintenance, transport, operation of the Equipment or otherwise and whether resulting from negligence of the Owner, its servants or agents or otherwise.
- 7.11 Accept full responsibility for, and indemnify the Owner against all claims in respect of any injury to persons, or damage to property, arising out of the use of the Equipment during the rental period however arising, whether from negligence of the Customer or Owner or otherwise.
- 7.12 Not be entitled to enter into any arrangement which has the effect of creating a security interest (as defined in the PPSA) in the Equipment with anyone other than the Owner, nor is it entitled to any lien over the Equipment, nor without the Owner's prior written consent part with possession of the Equipment or assign the benefit of the Agreement, nor remove the Equipment or allow it to be moved from the agreed rental site.
- 7.13 Not alter, make any additions to deface or erase any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
- 7.14 Subject to clause 12, pay the full replacement or reinstatement cost (whichever is applicable) for any loss, theft of damage to the Owner's Equipment.
- 7.15 Accept that waiver charges are automatically added to the Owner's rental charges, unless the Owner receives from the Customer written advice prior to the delivery of the Equipment together with proof of acceptable insurance cover held.
- 7.16 Pay to the Owner all rental charges and other costs.
- 7.17 Pay to the Owner all costs/commissions, fees and other expenses including the Owner's legal fees associated with any default by the customer under the terms and conditions of the customer's credit account with the owner, including without limitation, the collection of any outstanding moneys owed by the customer to the owner.
- 7.18 Pay to the Owner interest at the rate of 1.5% per month on any charges due by the customer to the owner that remain unpaid over 60 days.

### 8. IDENTIFICATION & INSTRUCTION MARKS

The Owner may affix or cause to be affixed on the Equipment or any part thereof, such plates or marks as the Owner may think fit.

### 9. TERMINATION ON DEFAULT

- 9.1 Without prejudice to any other remedies available to the Owner and notwithstanding any period of rental specified, the Owner may terminate the Rental:
  - 9.1.1 If the rent is not paid 7 days after the date appointed for payment (whether or not formally demanded) or
  - 9.1.2 without notice, if the Customer shall commit any breach of these terms & conditions or have a winding up petition presented against it or be wound up, or go into voluntary liquidation or commit an act of bankruptcy or if a receiver of its assets or any of them is appointed or if it makes an assignment or compromise for the benefit of its creditors or if its business is placed under official management or if it ceases to carry on business.
- 9.2 Upon termination of the Rental as aforesaid, the Owner shall be entitled to take possession of the Equipment and for this purpose the Customer irrevocably appoints the Owner its agent and authorises the Owner to enter on any land or premises owned by or under the control of the Customer, upon which the Equipment is then situated, and agrees to indemnify the Owner in respect of any claims, damages or expenses arising out of any action taken under this condition.

## **TERMS & CONDITIONS OF RENTAL continued**

### **10. WARRANTIES EXCLUDED**

Any warranty, condition, description or representation whether express or implied, as to the state, quality or fitness of the Equipment for the purpose for which the same is let on rental is excluded. The Owner shall not be responsible or liable to the Customer, whether on the ground of breach of a contractual duty or on the ground of negligence, for any loss or damage, directly or indirectly suffered or sustained by the Customer and arising from defects in or malfunctions, breakdown or failure or performance of the Equipment or otherwise and the Customer exonerates and releases the Owner from all claims and demands in respect thereof.

### **11. RENT**

The rental charges are exclusive of:

- 11.1 Government charges including but not limited to taxes, levies, GST, duties and excise payable in respect of the Rental. These will be charged as additional on all rental transactions.
- 11.2 Damage Waiver charges, lifting and transport charges, fuel and oils & an Environmental Levy for each item of equipment.
- 11.3 Costs not covered by the quotation but incurred by the Owner caused by changes, errors or omissions in the specification provided by the Customer.

### **12. WAIVER**

Where waiver charges may have been charged to the Customer, the Owner agrees upon prompt submission of a written police report 'in the case of theft' or a written report by the Customer 'in the case of damage', to waive its right to claim for loss or damage to the Equipment caused by fire, storm, collision, accident, theft or burglary provided:

- 12.1 Adequate precautions have been taken to safeguard the Equipment, and
- 12.2 Such waiving of rights is subject to payment by the Customer of an excess of:
  - 12.2.1 In the event of loss or theft of the Equipment, \$500 per item or 10% of the replacement cost of the Equipment (whichever is the greater), and
  - 12.2.2 In the event of damage to the Equipment, \$500 per item or 10% of the cost of the repairs to the Equipment (whichever is the greater).
- 12.3 Expressly excluded from the above waiver is loss or damage as defined below:
  - 12.3.1 Damage due to misuse, abuse or overloading of the Equipment;
  - 12.3.2 Loss or damage in contravention of these terms & conditions;
  - 12.3.3 Loss or damage from use in violation of any statutory laws and regulations;
  - 12.3.4 Loss or damage to accessories, hoses, electric cable and cable covers, distribution boards, electric tools, lights and other similar accessories;
  - 12.3.5 Loss or damage caused to tyres, tubes and batteries;
  - 12.3.6 Loss or damage relating to lack of lubrication or other routine servicing of the Equipment by Customer;
  - 12.3.7 Loss or damage to the Equipment whilst located, used, loaded, unloaded, transported on or over water, wharves, bridge or vessels of any kind;
  - 12.3.8 Loss or damage to equipment caused by overloading or exceeding rated capacity, including use of underrated leads;
  - 12.3.9 Loss or damage caused by mysterious disappearance or wrongful conversion of the Equipment;
  - 12.3.10 Loss or damage during transport, except where transported by the Owner;
  - 12.3.11 loss or damage to items on which the waiver premium is not charged;
  - 12.3.12 loss or damage caused by theft or burglary at a site location where the Equipment is not placed in a secured building or enclosure with adequate security provided or where a report prepared by any Insurer of the Equipment states that the customer contributed or failed to provide adequately secured premises at the site location.

### **13. FORCE MAJEURE**

- 13.1 The Customer will not be entitled to give notice to the Owner to terminate the rental or to terminate an order if the Owner does not perform any of its obligations due to Force Majeure.
- 13.2 Force Majeure includes but is not limited to a breakdown of plant & machinery, war or terrorist attack, strike or other industrial dispute, government interference, transport delay, act of god including flood, an accident, a non delivery or shortage of supplies and any other cause not under the control of the Owner.

### **14. NOTICES**

- 14.1 Any notice, demand or other similar communication to the Owner or the Customer made under these terms & conditions must be in writing signed by a duly authorised officer and delivered to the intended recipient by prepaid post, hand or fax to the address or fax number last notified by the intended recipient to the sender.
- 14.2 Such notices will be taken to have been given or made:
  - 14.2.1 In the case of delivery by post, three days after the day of posting.
  - 14.2.2 in the case of delivery by hand, when delivered and
  - 14.2.3 in the case of delivery by fax, on receipt by the sender of a transmission control report

### **15. GENERAL**

- 15.1 To the extent that Conditions 6.2 and 7.10 hereof are inconsistent with any other clauses in the quotation, these rental terms and conditions are to override such conditions and are to be of paramount force.
- 15.2 In these terms & conditions, unless repugnant to the context, words importing the singular number shall include the plural and words importing the plural only shall include the singular number and words importing the masculine gender shall include the feminine and, if applicable, a corporation.
- 15.3 These terms & conditions are governed by and interpreted in accordance with the laws of Queensland and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of that jurisdiction and any appeal courts from them.
- 15.4 The Owner may assign all of its rights, benefits and interests under these terms & conditions to any other entity. The assignment will not affect the rights, claims or interests of the customer or the owner, which are present prior to the date of assignment.
- 15.5 The Customer must not assign, transfer or novate its rights and obligations under these terms & conditions without the prior written consent of the Owner.
- 15.6 If any provisions of these terms & conditions are, wholly or partly held to be illegal, void, invalid or unenforceable by a court of law or other competent authority, that provision will be severed in the relevant jurisdiction and all other provisions will continue in full force and effect.
- 15.7 Either failure to exercise, nor any delay in exercising, any right power or remedy by the Owner operates as a waiver. A single or partial exercise by the Owner of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the owner unless in writing. The Owners rights, powers and remedies under these terms & conditions are in addition to, and do not exclude or limit any right, power or remedy provided by law or equity or by any other agreement or instrument.
- 15.8 These terms & conditions apply to and bind the Customer's employees, contractors, agents and licensees.
- 15.9 Where the Owner's consent or approval is required that consent or approval may be withheld or granted in the sole and absolute discretion of the Owner.
- 15.10 Headings have been inserted for guidance only and will not form part or limit or govern the meaning of those terms & conditions.
- 15.11 If otherwise agreed by both parties then the ATO Fuel Tax Credit is claimed by Total Generators

### **16. GENERAL CONDITIONS OF SALE**

- 16.1 Where the owners quotation and the Customers Order applies to an 'Equipment Sale or Equipment Maintenance Contract', then the Total Generators 'Terms & Conditions of Sale' shall replace these 'Rental Terms & Conditions'.

### **17. PERSONAL PROPERTIES SECURITIES ACT**

To the extent that these Rental Terms and Conditions give rise to a security interest under the PPSA:

- 17.1 The Customer acknowledges that the Owner may register that security interest on the PPSR or otherwise perfect that security interest under the PPSA.
- 17.2 The Customer acknowledges that it must not enter into any arrangement which has the effect of creating a security interest in the Equipment with anyone other than the Owner, nor is the Customer entitled to charge, mortgage or otherwise encumber the Equipment.
- 17.2 The Customer will sign any document and/or provide any further information which the Owner may reasonably require to enable registration of the security interest, or a financing statement, a financing change statement or discharge financing statement in relation to the Equipment or otherwise considered necessary or desirable by the Owner in order to perfect, create, discharge or enforce any rights of the Owner under the PPSA in relation to the Equipment.
- 17.3 The Customer waives the right to receive a verification statement under section 157 of the PPSA.
- 17.4 The parties agree that to the fullest extent permitted by law, any rights the Customer may have in relation to enforcement of the security interests that are contained in any section of the PPSA that is referred to in section 115(1) of the PPSA are waived and do not form part of these Rental Terms and Conditions.



## TERMS & CONDITIONS OF SALE

### 1. DEFINITIONS

In these Terms and Conditions:

- 1.1 The "Seller" is Total Rentals Pty Ltd as Trustee for the ANP Unit Trust ABN 79 047 904 519 trading as "Total Generators".
- 1.2 The "Customer" is the person, firm or corporation purchasing the Goods or the Service from the Seller.
- 1.3 The "Goods" means all plant, equipment and machinery, including tools, accessories and parts supplied to the Customer under this Contract.
- 1.4 The "Service(s)" means all maintenance work carried out either by casual order or contract, work associated with the installation or removal of goods supplied or traded-in or equipment testing and reporting under this Contract.
- 1.5 The "Purchase Price" means the price of the Goods or Services payable by the Customer pursuant to the Quotation to supply the Goods or Services to which these Terms and Conditions form part.
- 1.6 The "Contract" means this contract between the Seller and the Customer for the supply of the agreed Goods and/or Services, as evidenced by the Quotation, the Customer's acceptance of the Quotation and these Terms and Conditions.
- 1.7 The "Quotation" means the invoice, quote or other similar document issued by the Seller to the Customer which details the Goods and/or Services offered to the Customer and the Purchase Price for these Goods and/or Services.

### 2. OFFER AND VARIATION:

- 2.1 The offer to supply the Goods or a Service in the Quotation is open for consideration and is valid for thirty (30) days from the date of the Quotation unless otherwise stated. It is not binding on the seller until accepted in writing by a duly authorised officer of the Customer, and can be withdrawn by the Seller at any time before such acceptance.
- 2.2 Unless otherwise stated in writing, prices are subject to any variations in currency exchange rates, ocean freight rates or marine insurance charges occurring to the time of delivery. Any other variations that may be applicable, such as labour and materials, etc, will be nominated in writing as part of the Quotation.
- 2.3 The prices given are based on current pricing schedules and/or exchange rates as may be stated in the Quotation, and are based on the quantity of Goods and/or Services specified in the Quotation. If there is any variation in the total quantity of Goods or Services ordered, the Seller reserves the right to amend the Purchase Price.
- 2.4 If repairs or variations are identified and/or recommended by the Seller in the course of providing any Services, the Seller will advise the Customer of such repairs and/or variations as soon as reasonably practicable. However, the Seller will only proceed to make such repairs and/or variations with the agreement of the Customer (including as to price). If the Customer instructs the Seller that the repairs and/or variations are not approved, then the Seller may, in its absolute discretion:
  - a) proceed with the agreed Services without affecting the repairs and/or variations;
  - b) proceed with the agreed Services with such parts of the repairs and/or variations as are agreed by the Customer in writing; or
  - c) terminate this Contract by notice to the Customer and invoice the Customer for the work performed.

### 3. GOVERNMENT TAXES & CHARGES:

Goods and Services Tax (GST) has not been included in the Purchase Price unless stated otherwise and will be payable in addition to the Purchase Price.

### 4. DELIVERY:

- 4.1 The Seller gives no warranty or other representation in respect to delivery times of the Goods or the performance of the Services.
- 4.2 No liability will be accepted by the Seller in respect of any claims through or in connection with the delivery of Goods or Services.
- 4.3 If at any time before delivery of the Goods by reason of any cause whatsoever beyond the control of the Seller, the Seller is prevented from making delivery and/or commissioning the Goods at the time stipulated, then the Seller shall be entitled to determine this Contract and the Customer shall not in consequence have any claim for damages but without prejudice to the rights of the Seller to recover all sums owing to it in respect of deliveries made or services performed prior to the date of such determination or to recover all payments made or expenses incurred by the Seller in connection with this Contract.
- 4.4 The Seller will not accept any liability for delays due to strikes, shipping, transport, inclement weather or due to any other cause beyond the control of the Seller, except as provided for in these Terms and Conditions.
- 4.5 For the purpose of these Terms and Conditions, 'delivery' will be deemed to occur:
  - a) in the case of any Service – upon the Seller providing the Service, and without the need of acceptance of that Service by the Customer; and
  - b) in the case of any Goods – the earlier of:
    - (i) the Seller leaving or attempting to leave the Goods at the Place of Delivery, whether or not any person is present to accept the Goods; and
    - (ii) 7 days after the Seller notifies the Customer, or a person ostensibly acting for the Customer, that the Goods are available for collection.
- 4.6 For the purpose of these Terms and Conditions, the "Place of Delivery" will be deemed to be:
  - a) the Customer's address as stated in the Quotation; or
  - b) such other place agreed by the parties.

### 5. CONTRACT LIABILITY

- 5.1 After the Customer has accepted the Quotation, such order shall not be cancelled or withdrawn by the Customer without the written consent of the Seller.
- 5.2 The liability of the Seller for any alleged breach of this Contract shall be limited to these Terms and Conditions and the Seller shall not be responsible for any special or consequential damages suffered by the Customer.
- 5.3 In cases where the Seller has arranged for delivery of the Goods to the Place of Delivery by rail, ship, aircraft or other transport method, the Customer will be responsible for the immediate examination of the Goods upon arrival and in the event of any Goods arriving in a damaged condition, the Customer must report the matter in writing to the Seller within three (3) days following the arrival of the Goods. The Seller will not be liable for any claim for Goods damaged in transit unless the Customer makes a claim within the specified timeframe of three (3) days.
- 5.4 Unless specified to the contrary in this Contract, and except to the extent prohibited by any law, the responsibility of the Seller ceases upon delivery of the Goods to the Place of Delivery.
- 5.5 Should the Seller carry out work of any kind on the Customer's site or any other site nominated by the Customer, the Seller shall not be liable for any loss or damage occasioned by the Customer arising from any cause connected in any way with such work.

### 6. UNLOADING GOODS

The Customer shall at its cost unload the Goods upon delivery at the Place of Delivery unless it is specified separately in this Contract.

### 7. RETURN OF GOODS

If the Customer wishes to return the Goods, the Seller may, in its absolute discretion, notify the Customer that it accepts the return of the Goods and that the Seller will refund the Purchase Price to the Customer subject to the conditions imposed by the Seller in its absolute discretion including, but not limited to, the following:

- a) a 10% handling charge will be deducted from the refund of the Purchase Price by the Seller;
- b) the Customer being liable for all costs associated with the return transportation of the Goods to the Seller; and
- c) the Goods not being damaged or used in any way;
- d) the Seller notifying the Customer that after the Goods being returned to the Seller, that the Goods are in a condition acceptable to the Seller;
- e) that title to the Goods will automatically vest in the Seller upon the Goods being returned to the Seller;
- f) that risk in the Goods remains with the Customer until the Goods have been received by the Seller and the Seller has notified the Customer that the Goods are in an acceptable condition;
- g) the Customer being liable for the cost of any items acquired by the Seller from other parties for inclusion in the Goods which are not able to be returned; and
- h) the Customer being liable for any losses or expenses incurred by the Seller as a result of the cancellation of the Contract and return of the Goods.

### 8. TERMS OF PAYMENT:

The Customer must:

- 8.1 Pay for all Goods prior to the delivery or collection of the Goods. Payment must be made by way of cash, electronic funds transfer, bank cheque or such other mode agreed by the Seller in its absolute discretion.
- 8.2 Pay to the Seller for all Services prior to performance of the Services.
- 8.3 Without prejudice to any other rights of the Seller; pay to the Seller interest at the rate of 1.5% per month on any charges due by the Customer to the Seller that remain unpaid over 30 days.
- 8.4 Not make any deduction from the Purchase Price by way of set-off or counterclaim.

### 9. ITEM PERFORMANCE AND DESCRIPTION:

- 9.1 Any information concerning the performance, dimensional information, operating costs and applications of the Goods contained in the Quotation or any other communication prepared by the Seller or its suppliers, are intended as guidelines only. As a result of the many variables peculiar to specific applications, to the extent permitted by law, neither the Seller nor its suppliers, expressly or implicitly make any representations or warranties whatsoever about the Goods.
- 9.2 All description specifications, illustrations, drawings, data, dimensions and weights supplied by the Seller or otherwise contained in catalogues, price lists and other advertising matters about the Goods are approximate only and are intended to be by way of a general description of the Goods and shall not form part of this Contract.
- 9.3 The *Competition and Consumer Act 2010* (Cth) and the *Australian Consumer Law* may impose certain guarantees in to this Contract. To the extent that these guarantees apply and cannot be excluded by contract, these Terms and Conditions do not purport to exclude any such guarantees.

### 10. TITLE:

- 10.1 As long as the Customer owes the Seller any part of the Purchase Price, the Seller retains the legal title to all of the Goods. When such Goods are used the legal title remains vested in the Seller.
- 10.2 All Goods, whether used or unused may only be on-sold by the Customer for market value in the ordinary course of business as bailee for the Seller and the proceeds of such sale, shall be received by the Customer as trustee of the Seller and shall be kept separate and on trust from other monies of the Customer.
- 10.3 If Goods are in the possession of a Customer to which the title has not passed:
  - a) the Customer is under an obligation to retain them in a good and merchantable condition and to ensure that they are stored separately and otherwise kept the same in such manner, which clearly identifies them as the goods of the Seller.
  - b) the Seller shall have a right of inspection and a right of repossession of the Goods as well as a right of entry on to the Customer's premises to give effect to these rights.
  - c) the Customer must on request disclose to the Seller all information regarding the Goods and any sale of any of them by the Customer.
- 10.4 Notwithstanding that the title to the Goods has not passed to the Customer, the party who has possession of the Goods shall accept all liability for damages to the Goods as well as any liability to person or property.

## **TERMS & CONDITIONS OF SALES continued**

### **11. PERSONAL PROPERTY SECURITIES ACT:**

11.1 The Customer acknowledges that this Contract constitutes a "Security Agreement" (in particular, a "Purchase-Money Security Interest") within the meaning of the PPSA in relation to all present and after-acquired Goods supplied to the Customer, while title in such Goods remains with the Seller.

11.2 The Customer agrees to:

- a) promptly, at its cost, sign any further documents and provide any further information which the Seller requires in order:
  - (i) to register a Financing Statement or a Financing Change Statement on the PPSR in relation to the Seller's Security Interest.
  - (ii) register any other document required or permitted to be registered by the PPSA; and
  - (iii) correct a defect in any statement or document referred to in this clause.
- b) pay the Seller on demand for all expenses incurred in registering any statement or document referred to in this clause or releasing any goods which are the subject of the Security Interest;
- c) not register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Goods in favour of a third party, without the written consent of the Seller;
- d) give the Seller not less than 14 days written notice of any proposed changes in the Customer's details, including but not limited to changes in name, address, facsimile number, email address or trading name;
- e) pay to the Seller any costs reasonably incurred by the Seller, including legal fees and disbursements on a solicitor-client basis, in obtaining an order pursuant to section 182 of the PPSA and/or enforcing or attempting to enforce any Security Interest created in favour of the Seller under these Terms and Conditions.

11.3 The Customer waives any right it has:

- a) to receive a Verification Statement under section 157 of the PPSA; and
- b) under any section of the PPSA referred to in section 115(1) of the PPSA (the intention being that such sections, to the extent they give the Customer rights, are contracted out of).

11.4 The parties acknowledge that the Seller does not, pursuant to these Terms and Conditions, waive any right that it has or may have under the PPSA.

11.5 In this clause 11:

"PPSA" means the Personal Property Securities Act 2009 (Cth), and includes subordinate legislation made under that Act.

"PPSR" means the Personal Property Securities Register established under the PPSA.

Words and expressions that are defined in the PPSA, have the meaning assigned to them in the PPSA.

### **12. INSURANCE AND RISK:**

12.1 Upon delivery of the Goods, the risk in the Goods (including risk of any loss or damage to or any deterioration in the Goods from whatever causes arising) shall pass to the Customer.

12.2 Until delivery of the Goods to the Customer, the Seller shall insure the goods and shall receive any and all benefit from any proceeds paid pursuant to a claim upon such insurance.

12.3 The Customer is responsible for insuring the Goods immediately following delivery.

### **13. WARRANTY:**

13.1 Unless otherwise notified by the Seller to the Customer before entry into this Contract, the Goods may be covered by the Seller's Warranty Program, ("the Warranty") which is available upon request subject to all necessary requirements, terms and conditions of the Warranty being fulfilled to the satisfaction of the Seller and the duration of the Warranty still being effective. To the extent allowed by law, the Warranty is to the exclusion of all other warranties, conditions or liabilities expressed or implied by statute, common law or otherwise. Equipment options, attachments and auxiliary equipment not manufactured by the manufacturer of the Goods offered may be covered by the individual manufacturer's warranties but are not covered in any way separately by the Seller.

13.2 The Seller will use its best endeavours to ensure the Warranty remains in effect. However, the Customer acknowledges that matters outside the control of the Seller, may render the Warranty ineffective. This includes the insolvency of the manufacturer of the Goods, a breach of any contract between the Seller and the manufacturer and any of the conditions of exclusion specified in the Warranty.

### **14. NOTICES**

Any notices, demand or similar communication to the Seller or to the Customer made under these Terms and Conditions must be in writing signed by a duly authorised officer and delivered to the intended recipient by prepaid post, hand or fax to the address or fax number last notified by the intended recipient to the sender. Such notices will be taken to have been given or made:

14.1 in the case of delivery by post, three days after the date of posting;

14.2 in the case of delivery by hand, when delivered; and

14.3 in the case of delivery by fax, on receipt by the sender of a transmission control report.

### **15. JURISDICTION:**

The legal jurisdiction of any dispute in relation to these Terms and Conditions shall be the State of Queensland in the Commonwealth of Australia and the Seller may institute and prosecute legal proceedings in this jurisdiction, which shall be accepted as the proper jurisdiction by the Customer.

### **16. TERMINATION**

The Seller shall have the right forthwith to terminate this Contract by notice to the Customer without prejudice to any claim or right the Seller may otherwise have, make or exercise against the Customer or otherwise in respect to the Contract, if:

16.1 the Customer makes default or commits a breach of this Contract; or

16.2 any distress or execution is levied upon the Customer's property or assets; or

16.3 the Customer makes, or offers to make, any arrangement or composition with creditors or commits an act of insolvency or bankruptcy, or if any petition or order in insolvency or bankruptcy is presented or made against it; or

16.4 where the Customer is a company and any resolution or petition to wind up the Customer's business (other than for the purpose of reconstruction) is passed or presented; or

16.5 a receiver or any provisional liquidator or official manager of such Customer's undertaking's, property or assets or any part thereof is appointed.

### **17. GENERAL**

17.1 The Seller may assign all of its rights, benefits and interests under this Contract to any other entity. The assignment will not affect the rights, claims or interests of the Customer or the Seller, which are present prior to the date of assignment.

17.2 The Customer must not assign, transfer or novate its rights and obligations under this Contract without the prior written consent of the Seller.

17.3 If any provision of this Contract is, wholly or partly held to be illegal, void, invalid or unenforceable by a court of law or other competent authority, that provision will be severed in the relevant jurisdiction and all other provisions will continue in full force and effect.

17.4 Failure to neither exercise, nor any delay in exercising, any right power or remedy by the Seller operates as a waiver. A single or partial exercise by the Seller of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Seller unless in writing. The Seller's rights, powers and remedies under this Contract are in addition to, and do not exclude or limit any right, power or remedy provided by law or equity or by any other agreement or instrument.

17.5 These Terms and Conditions apply to and bind the Customer's employees, contractors, permitted assigns, executors, successors, agents and licensees.

17.6 Where the Seller's consent or approval is required that consent or approval may be withheld or granted in the sole and absolute discretion of the Seller.

17.7 Headings have been inserted for guidance only and will not form part or limit or govern the meaning of these Terms and Conditions.