

SYDNEY GLASS LIFTERS PTY LTD – TERMS AND CONDITIONS OF HIRE

- 1. Definitions**
- 1.1 "Contractor" means SYDNEY GLASS LIFTERS PTY LTD, its successors and assigns or any person acting on behalf of and with the authority of SYDNEY GLASS LIFTERS PTY LTD.
- 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting the Contractor to supply the Equipment as specified in any invoice, quotation, authority to hire, or any other work authorisation form/s and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
- (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
- (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Equipment" means all Equipment (including any accessories) supplied on a wet hire basis (where the operator of the Equipment is hired with an operator) by the Contractor to the Client, at the Client's request from time to time, and:
- (a) where the context so permits shall include any incidental supply of services ("Services");
- (b) the Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form/s as provided by the Contractor to the Client; and
- (c) the Contractor may, at its sole discretion, decline to supply the Equipment to the Client.
- 1.4 "Site" means the location/s at which the Equipment is to be operated.
- 1.5 "Hire Term" means the period of hire of the Equipment by the Client, as described on the invoices, quotation, authority to hire, or any other work authorisation form/s as provided by the Contractor to the Client.
- 1.6 "Hire Charges" means the cost (plus any GST where applicable) for the Services and/or of the hire of the Equipment as agreed between the Contractor and the Client subject to clause 5 of this contract.
- 1.7 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" Cth.
- 2. Acceptance**
- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for the Equipment, or accepts Delivery.
- 2.2 These terms and conditions may only be amended with both parties consent in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Client and the Contractor.
- 2.3 These terms and conditions may be meant to be read in conjunction with the Contractor's Plant Hire Form, and:
- (a) the Client acknowledges that the dry hire of the Equipment excludes the supply of an operator; and
- (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.
- 2.4 Unless otherwise agreed to in writing between the parties, the Contractor shall not be deemed the principle contractor and shall not be obligated to maintain any contract works insurance cover or be responsible with regard to any work cover requirements (including, but not limited to, compliance under any relevant legislation or policy, etc).
- 2.5 In the event that the Contractor is required to provide the Services outside the Contractor's standard hours of operation (Monday to Friday, 5am to 5pm, including but not limited to working through lunch breaks, weekends and/or Public Holidays, then the Contractor reserves the right to charge the Client additional Hire Charges (penalty rates will apply as stipulated on the Contractor's Plant Hire Form), unless otherwise agreed between the Contractor and the Client, such additional rates will be detailed in writing and treated as a variation to the Hire Charges in accordance with clause 6.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.7 Equipment is supplied by the Contractor only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 3. Errors and Omissions**
- 3.1 The Client acknowledges and accepts that the Contractor shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Contractor in the formation and/or administration of this contract; and/or
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of the Contractor, the Client shall not be entitled to treat this contract as repudiated nor render it invalid.
- 4. Change in Control**
- 4.1 The Client shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax numbers, or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client's failure to comply with this clause.
- 5. Hire Charges and Payment**
- 5.1 At the Contractor's sole discretion Hire Charges shall:
- (a) be as indicated on invoices provided by the Contractor to the Client in respect of Equipment/Services supplied; and
- (b) the Contractor's current hourly rate (subject to clause 6) for the Services as at the date of the delivery of the Services as quoted by the Contractor;
- (c) the Contractor's quoted Price (subject to clause 6) which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within thirty (30) days.
- 5.2 Time for payment for the Equipment being of the essence, the Hire Charges will be payable by the Client on the date/s determined by the Contractor, which may be:
- (a) on Delivery of the Equipment/Services;
- (b) before Delivery of the Equipment/Services
- (c) the date specified on any invoice or other form as being the date for payment; or
- (d) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by the Contractor.
- 5.3 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, the Contractor reserves the right to treat all retentions as placing the Client's account into default.
- 5.4 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and the Contractor.
- 5.5 The Client shall not be entitled to set off against, or deduct from the Hire Charges, any sums owed or claimed to be owed to the Client by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute
- 5.6 Unless otherwise stated the Hire Charges do not include GST. In addition to the Hire Charges, the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply of the Equipment by the Contractor under this or any other contract for the hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Hire Charges. In addition, the Client must pay any other taxes and duties (including stamp duties, tolls, fines, penalties, levies, freight, government charges arising out of the Client's use of the Equipment, etc.) that may be applicable in addition to the Hire Charges except where they are expressly included therein.
- 5.7 The Client acknowledges and agrees that the Client's obligations to the Contractor for the supply of the Equipment shall not cease until:
- (a) the Client has paid the Contractor all amounts owing to the Contractor; and
- (b) the Client has met all other obligations due by the Client to the Contractor in respect of all contracts between the Contractor and the Client.
- 5.8 Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then the Contractor's rights and ownership in relation to the Equipment, and this contract, shall continue.
- 6. Other Charges**
- In addition to the Hire Charges, the Client will be required to pay to the Contractor, immediately upon request:
- (a) for any consumables, fuel or trade materials supplied to the Client by the Contractor;
- (b) where applicable, the costs of delivering and/or collecting the Equipment (as per clause 7.1);
- (c) all costs incurred in cleaning and/or repairing the Equipment where the Equipment is not returned in good working order;
- (d) any lost Hire Charges the Contractor would have otherwise been entitled to for the Equipment, under this, or any other contract;
- (e) any insurance excess payable in relation to a claim made by either the Client or the Contractor in relation to any damage caused by, or to, the Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or the Contractor's;
- (f) for Services to be performed outside the Contractor's standard hours of operation.
- 6.2 Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Client shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 7. Delivery**
- 7.1 Delivery of the Equipment ("Delivery") is taken to occur at the time that the Contractor delivers the Equipment to the Client's nominated address, even if the Client is not present at the address.
- 7.2 In the event the Client is unable to accept Delivery as arranged, or there are any delays due to free and clear access to the Site not being available, the Contractor shall be entitled to charge all additional costs involved with the redelivery and/or storage, or subsequent attempts at recovery, as applicable, and all Hire Charges lost as a direct result of the Equipment being unavailable.
- 7.3 Any time or date given by the Contractor to the Client is an estimate only. The Client must still accept Delivery, even if late, and the Contractor will not be liable for any loss or damage incurred by the Client as a result of Delivery being late.
- 8. Hire Term**
- 8.1 The Hire Term shall commence from the time the Equipment departs from the Contractor's premises, and will continue until the return of the Equipment thereto and/or until the expiry of the specified Hire Term, whichever last occurs.
- 8.2 Notification of all stand downs must be received by the Contractor no later than 8:00am of the relevant day or full Hire Charges shall apply.
- 8.3 In the event of Equipment breakdown, provided the Client notifies the Contractor immediately, Hire Charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of, or attributable to, the Client.
- 8.4 The Hire Term shall be completed when the Equipment has been returned to the Contractor's premises in the same condition as when it was hired on, or by, the date and time specified herein or by any subsequent extension of the Hire Term (where agreed to by the Contractor).
- 9. Extension of the Hire Period**
- 9.1 If, and only if not later than one (1) month before the expiry of the Hire Period, the Client gives notice to the Contractor requesting an extension of the Hire Period, such extension is, if any, subject to the Contractor's contract, the availability of the Equipment and the following conditions:
- (a) the Hire Charges and all other payments due under this contract having been received by the Contractor in full as at the expiry of the Hire Period;
- (b) there is no breach of the Client's covenants, the Hire Period shall be extended for the period specified between the parties, commencing on the day following the date of expiration of the Hire Period and at the Hire Charges, as varied, on the same terms and conditions of this contract, except for the insertion of the extended term.
- 10. Use, Operation and Maintenance of the Equipment**
- 10.1 Whilst the operator of the Equipment remains an employee of the Contractor, they operate the Equipment in accordance with the Client's instructions. As such the Contractor shall not be liable for any actions of the operator in following the Client's instructions.
- 10.2 The Client shall:
- (a) be responsible for:
- (i) ensuring the Contractor has clear and free access and egress to the Site;
- (ii) ensuring that the ground (and access) at the Site is firm and stable, with adequate compaction to support the Equipment under its wheels, tracks or outriggers, including ensuring any footpaths, curbs and channels are suitably planked;
- (iii) ensuring that the Site (or access thereto) does not have excessive slope;
- (iv) ensuring that adequate lighting is provided during the provision of Services;
- (v) making all necessary arrangements where any access is required through private property;
- (vi) ensuring that a maximum clearance of three and a half metres (3.5m) is allowed in respect of overhead obstacles, tress or power lines;
- (vii) notifying the Contractor of the location of any underground services on Site.
- (b) provide amenities and first aid services to the Contractor's employees in compliance with all applicable work health and safety legislation in operation in the state where the Services are undertaken;
- (c) should it be necessary for the Equipment to be towed in, or out of the Site, then the Client shall be responsible for all damage and/or salvage costs involving the Equipment, and said costs shall be in addition to the Hire Charges and either:
- (i) charged to the Client's account, plus a margin of ten percent (10%); or
- (ii) payable direct to the salvage company by the Client.
- (d) provide adequate security for any Equipment left at the Site overnight or during periods when the Site is left unattended, unless it has been otherwise agreed in writing that the Contractor arrange such security on the Client's behalf.
- 10.3 The Contractor reserves the right not to enter the Site if the Contractor believes it unsafe, and the Client shall remain liable for the Hire Charges payable until the issue is resolved.
- 10.4 In the event the Client requires an employee of the Contractor to undertake a recognised safety course or medical examination during working hours, the Client will be liable to pay the hourly Hire Charges for that period, notwithstanding that the Equipment is not being operated during such time.
- 10.5 Furthermore, the Client:
- (a) acknowledges and agrees that the use of the Equipment carries with it dangers and risks of injury, and the Client accepts full responsibility for, and shall keep the Contractor indemnified against, all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the Contractor's possession, use, maintenance, storage or transport of the Equipment during the Hire Term and whether or not arising from any misuse, negligence, failure or omission of the Client or any other persons. This indemnity shall not apply where it can be proven to be shown by the Client that such actions, proceedings, claims, etc. have arisen where Equipment supplied by the Contractor was in a defective state or condition; and
- (b) will affect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment; and
- (c) will use the Equipment solely for the Client's own work, and shall not permit the Equipment of any part thereof to be used by any other party for any other work, without the express written permission of the Contractor; and
- (d) agrees to maintain (in good working order, and ensuring that all safety personnel protection equipment is in place and is fully operational), store and transport the Equipment in a proper manner, with all due care and diligence, and (where required) strictly in accordance with any instruction provided by the Contractor. Daily maintenance and care of the Equipment, including but not limited to, checking all fluids (e.g. fuel, oil, water, battery levels, etc.), general tightening of any loose nuts, bolts, belts or fittings, and lubrication of all grease points;
- (e) agrees that the Equipment will only be used for its intended purpose and in accordance with any manufacturer's instructions and recommendations in regard to its operation, maintenance and storage, whether supplied by the Contractor or posted on the Equipment;
- (f) agrees to comply with all occupational health and safety laws and regulations relating to the use of the Equipment and associated operations;
- (g) shall ensure that the Equipment is delivered up to the Contractor in good working order and clean of all foreign matters. The Client's failure to adhere to this clause shall incur additional Hire Charges as per clause 6.1(c).
- 11. Client's Warranties**
- 11.1 The Client warrants that:
- (a) by accepting Delivery, the Client is satisfied that the Equipment complies with its description, is clean and in good working condition, and is suitable for the Client's purposes;
- (b) the Client will not conceal, alter or make any additions or alterations to the Equipment, including (but without limitation) tampering, repairing, modifying, defacing or erasing any identifying mark, plate or number on or in the Equipment, or in any other manner interfere with the Equipment, and shall not permit any other person or party to do so;
- (c) the Client will not use the Equipment, nor permit it to be used, in such a manner as would permit an insurer to decline any claim (including, but not limited to, using the Equipment for any illegal purpose, etc.);
- (d) the Equipment shall be kept in the Client's own possession and control, and the Client shall not assign the benefit of this hire contract, nor be entitled to take a lien, or grant any encumbrance over the Equipment.
- 12. Title**
- 12.1 The Client acknowledges that the Contractor retains title to the Equipment, and the Client:
- (a) has the right to use the Equipment as a mere bailee only;
- (b) is not authorised to pledge the Contractor's credit for repairs to the Equipment, or to create a lien over the Equipment in respect of any repairs;
- (c) shall not agree, offer or purport to sell, assign, sub-let, lend, pledge, mortgage, let or hire, or otherwise part with, or attempt to part with, personal possession of, or otherwise not to deal with, the Equipment.
- 12.2 Notwithstanding anything else herein contained, the Contractor, or any authorised agent of the Contractor, may at any time (as the invitee of the Client) enter upon and into any premises where the Equipment is located to exercise any rights they have under this contract, or at law, including (if the need arises), the right to repossess the Equipment from the relevant premises, without being responsible for any damage thereby caused, in the event the Client is in breach of any obligation (including those relating to payment) under this contract, and:
- (a) the Client agrees to obtain all necessary consents from the Contractor, occupier and other interested parties (such as any mortgagee) of the relevant premises where the Equipment is located to enable the Contractor to do this;
- (b) any costs incurred by the Contractor as a result of so repossessing the Equipment shall be charged to the Client;
- (c) the Contractor shall only charge the Client for the Hire Charges up to and including the time of repossession;
- (d) in addition to the Contractor's right to repossess the Equipment, the Contractor is entitled, at its sole discretion, following any breach of any provision of this contract by the Client and to terminate this contract and/or sue for recovery of any damages or Hire Charges or loss suffered by the Contractor.
- 13. Personal Property Securities Act 2009 ("PPSA")**
- 13.1 In this clause the terms: financing statement, financing change statement, security agreement, and security interest have the meaning given to them by the PPSA.
- 13.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
- (a) all Equipment supplied by the Contractor to the Client;
- (b) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to the Contractor for Services – that have previously been provided and that will be provided in the future by the Contractor to the Client.
- 13.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to:
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 13.3(a)(i) or 13.3(a)(ii);
- (b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change

Please note that a larger print version of these terms and conditions is available from the Contractor on request.

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- statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of the Contractor;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Equipment in favour of a third party without the prior written consent of the Contractor;
- (e) not, without giving the Contractor fourteen (14) days' prior notice, change their name, ABN or any other identifier required to be recorded on the PPSR in connection with any security interest arising under this contract.
- 13.4 The Contractor and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 13.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by the Contractor, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Client must unconditionally ratify any actions taken by the Contractor under clauses 13.2 to 13.5.
- 13.9 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 13.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 13 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 13 will apply generally for the purposes of the PPSA.
- 14. Security and Charge**
- 14.1 In consideration of the Contractor agreeing to supply Equipment:
- (a) the Client:
- (i) charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money); and
- (ii) indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause; and
- (iii) irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14, including, but not limited to, signing any document on the Client's behalf.
- 15. Load Measuring Devices**
- 15.1 If any crane has been fitted with a load measuring device, the Client hereby acknowledges and agrees that the Contractor has made no warranties or representations whatsoever with respect to the ability of said load measuring device to accurately or consistently measure the weight of the load being lifted by such crane. The Client further acknowledges and agrees that it is the responsibility of the Client to independently determine the weight of every load to be lifted by any crane comprising all or a portion of the Equipment so as to ensure that any such load to be lifted does not exceed the rated load as determined by such crane's capacity chart and that the load measuring device shall be used as an operator-aid only.
- 15.2 The Client will be liable for, and shall indemnify and hold harmless the Contractor of and from, any and all liabilities, costs, damages, charges, legal fees and disbursements (including those on a solicitor and own client basis with right of full indemnity) fines, penalties, expenses, actions, suits, proceedings and demands, all of whatever kind or nature which the Contractor may suffer or incur or be liable for, either directly or indirectly, by reason of failure of any load measuring device to perform consistently or accurately, notwithstanding the negligence of the Contractor directly or indirectly related thereto. The Client hereby releases the Contractor of and from any and all liabilities, losses, costs, damages, claims and demands which it may have against the Contractor, either directly or indirectly, arising by reason of the failure of any load measuring device to perform consistently or accurately, notwithstanding the negligence of the Contractor. Without restricting the generality of the foregoing, the Client covenants and agrees that they shall not sue the Contractor for any such losses, or costs, damages, claims or demands. Furthermore, the Client acknowledges and agrees that if they rely in any way whatsoever on any such load measuring device that they do so completely at their own risk.
- 16. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 16.1 The Client must inspect the Equipment on Delivery and must within three (3) days of Delivery (time being of the essence) notify the Contractor in writing of any evident defect/damage, error or omission, shortage in quantity, or failure to comply with the description or order. The Client must notify any other alleged defect in the Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Contractor to inspect/review the Equipment.
- 16.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions ("**Non-Excluded Guarantees**").
- 16.3 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 16.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Equipment. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.5 If the Client is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.6 If the Contractor is required to rectify, re-supply, or pay the cost of re-supplying any Equipment under this clause or the CCA, but is unable to do so, then the Contractor may refund any money the Client has paid for the hire of the Equipment but only to the extent that such refund shall take into account the value of Equipment which have been provided to the Client which were not defective.
- 16.7 If the Client is not a consumer within the meaning of the CCA, the Contractor's liability for any defect or damage in the Equipment is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by the Contractor at the Contractor's sole discretion;
- (b) otherwise negated absolutely.
- 16.8 Notwithstanding clauses 16.1 to 16.7 but subject to the CCA, the Contractor shall not be liable for any defect or damage which may be caused or partly caused by, or arise as a result of:
- (a) the Client's failure to comply with any of their obligations under this contract;
- (b) the Client continuing the use of the Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (c) the Client failing to follow any instructions or guidelines provided by the Contractor;
- (d) fair wear and tear, any accident, or act of God.
- 17. Loss, Damage or Breakdown of the Equipment**
- 17.1 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies the Contractor for all loss, theft, or damage to the Equipment, howsoever caused (except for fair wear and tear), during the Hire Term, and without limiting the generality of the foregoing, whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
- 17.2 The Client shall notify the Contractor immediately (by telephone) of the full circumstances of any mechanical breakdown, failure or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification.
- 17.3 Immediately on request by the Contractor, the Client will pay the new list price of any Equipment that is, for whatever reason, destroyed, written off or not delivered up to the Contractor.
- 18. Cancellation**
- 18.1 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms of hire the Contractor may repossess the Equipment as per clause 12.2, or suspend or terminate the supply of Equipment to the Client and any of its other obligations under the terms and conditions. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.
- 18.2 The Contractor may cancel these terms and conditions, or cancel Delivery at any time before the Equipment is delivered, by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any sums paid in respect of the Hire Charges. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 In the event that the Client cancels this contract, or Delivery, the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19. Termination**
- 19.1 Without prejudice to any other remedies the Contractor may have against the Client, and notwithstanding the Hire Term, this contract may be terminated by the Contractor:
- (a) upon giving the Client twenty-four (24) hours verbal notice of termination at any time during the Hire Term;
- (b) without notice, and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable in the event that:
- (i) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to meet its payments as they fall due; or
- (ii) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (iii) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client; or
- (iv) the Client commits a breach of any part of this contract.
- 20. Default and Consequences of Default**
- 20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's contract default fee, and bank dishonour fees).
- 20.3 Further to any other rights or remedies the Contractor may have under this contract, if a Client has made payment to the Contractor, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 20 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 21. Privacy Act 1988**
- 21.1 The Client agrees for the Contractor to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by the Contractor.
- 21.2 The Client agrees that the Contractor may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 21.3 The Client consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit.
- 21.4 The Client agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Equipment; and/or
- (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Equipment; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (d) enabling the collection of amounts outstanding in relation to the Equipment.
- 21.5 The Contractor may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
- (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 21.6 The information given to the CRB may include:
- (a) personal information as outlined in 21.1 above;
- (b) name of the credit provider and that the Contractor is a current credit provider to the Client;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Contractor has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of the Contractor, the Client has committed a serious credit infringement;
- (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 21.7 The Client shall have the right to request (by e-mail) from the Contractor:
- (a) a copy of the information about the Client retained by the Contractor and the right to request that the Contractor correct any incorrect information; and
- (b) that the Contractor does not disclose any personal information about the Client for the purpose of direct marketing.
- 21.8 The Contractor will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 21.9 The Client can make a privacy complaint by contacting the Contractor via e-mail. The Contractor will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 22. Building and Construction Industry Security of Payments Act 1999**
- 22.1 At the Contractor's sole discretion, if there are any disputes or claims for unpaid Equipment then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 22.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.
- 23. Service of Notices**
- 23.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this contract;
- (c) by sending it by registered post to the address of the other party as stated in this contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 24. Trusts**
- 24.1 If the Client at any time upon or subsequent to entering into the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Contractor may have notice of the Trust, the Client covenants with the Contractor as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- (c) The Client will not without consent in writing of the Contractor (the Contractor will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Client as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.
- 25. Force Majeure**
- 25.1 Subject to clause 25.2, neither party shall be responsible for any delays in Delivery or collection due to causes beyond their control (including, but not limited to, acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of governments of any relevant jurisdiction, fires, floods, strikes, lockouts or other labour difficulties, shortages of, or inability to obtain shopping space, or land transportation).
- 25.2 Nothing in clause 25.1 will limit or exclude the Client's responsibility and liability under this contract for Equipment that is lost, stolen or damaged beyond fair wear and tear during the Hire Term, or had broken down, or become unsafe to use as a result of the Client's conduct or negligence.
- 26. General**
- 26.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 26.2 These terms and conditions, and any contract to which they apply, shall be governed by the laws of Victoria, the state in which the Contractor has its principal place of business, and are subject to the jurisdiction of the Melbourne Courts in that state.
- 26.3 Subject to clause 15, the Contractor shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Hire Charges).
- 26.4 The Contractor may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 26.5 The Client cannot licence or assign without the written approval of the Contractor.
- 26.6 The Contractor may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.
- 26.7 The Client agrees that the Contractor may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Contractor to provide Goods to the Client.
- 26.8 Both parties warrant that:
- (a) they are not insolvent and that this contract creates binding and valid legal obligations on them; and
- (b) the person signing any document which forms part of this contract for and on behalf of the Client has the power to enter into this contract on the Client's behalf and grant the security interest in connection with it, and have obtained all necessary authorisations to allow them to do so.
- 26.9 The covenants, contracts and obligations contained in this contract will not merge or terminate upon the termination of this contract, and to the extent that they have not been fulfilled or satisfied, or are continuing obligations, they will remain in force and effect.