



AUSTRALIAN COMPONENT GROUP PTY LTD - TERMS & CONDITIONS OF TRADE

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

1.1 In this Contract:

- (a) Australian Consumer Law means schedule 2 of the Competition and Consumer Act 2010 (Cth), and any equivalent state or territory legislation.
- (b) Australian Standards means any applicable Australian and New Zealand Standards and related documents as amended from time to time.
- (c) Bailed Goods means any goods left with the Company by a Bailor or any Goods in the possession of the Company.
- (d) Bailor means, the Purchaser or third party who has left the Bailed Goods with the Company under clause 10.
- (e) Candidate shall mean any individual sent by the Company to the Purchaser for employment by the Purchaser on a temporary, casual, or part time basis.
- (f) Cash Sale Purchaser is any Purchaser who is not a Credit Account Purchaser.
- (g) Claim means any claim, demand, suit, action, proceedings or any other related matters.
- (h) Company means Australian Component Group Pty Ltd ABN 49 641 153 871.
- (i) Company Branch means a location other than the registered office where business is conducted or operated from.
- (j) Consumer Guarantee means a right or guarantee the Purchaser may have under the Australian Consumer Law or other rights in relation to the supply of goods or services (such as implied terms) that cannot lawfully be excluded.
- (k) Contract means the agreement recorded by this document including any schedule to it.
- (l) Core means worn equipment, parts or components supplied to the Company in accordance with the Service Exchange program.
- (m) Core Deposit means the Price of Refurbished Goods, being the initial amount payable by a Purchaser in accordance with the Service Exchange program.
- (n) Corporations Act means the Corporations Act 2001 (Cth).
- (o) Credit Account Purchaser means a Purchaser who has an approved credit account with the Company.
- (p) Currency means Australian dollars unless the Company (in its sole discretion) nominates or agrees to a different currency to apply to a particular Order or future Orders from time to time.
- (q) Delivery means, in relation to the delivery of Goods to the Purchaser, the earliest of:
- (i) the passing of title in the Goods to the Purchaser in accordance with clause 8.5;
 - (ii) the physical delivery of the Goods to the Purchaser;
 - (iii) the time when the Goods are loaded at the Company's premises or another location nominated by the Company for delivery to the Purchaser by a carrier nominated, arranged or engaged by the Purchaser;
 - (iv) the time when the Goods arrive at the premises of the Purchaser (prior to being taken off the carrier) where the carrier which is to effect delivery of the Goods from the Company or another location nominated by the Company to the Purchaser has been nominated, arranged or retained by the Company;
 - (v) in the case of export orders, when the Goods are made available from the place of production, manufacture or distribution unless otherwise agreed by the parties upon the Company's receipt of the Order.
- (r) Due Date means
- (i) in respect of a Credit Account Purchaser: the last day of the applicable payment term, as agreed by the purchaser upon establishing the approved credit account with the Company, from the date on which an invoice is issued by the Company to the Purchaser;
 - (ii) in respect of a Cash Sale Purchaser: the date of the invoice issued to the Purchaser; or
 - (iii) any other due date for payment as determined by the Company, and as advised by the Company; or
 - (iv) failing any notice to the contrary, the date which is seven (7) days following the invoice issued by the company to the purchaser.
- (s) Equipment means all Equipment (including any accessories) supplied on hire by the Company to the Purchaser (and where the context so permits shall include any incidental supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by the Company to the Purchaser.
- (t) Force Majeure Event includes:
- (i) any natural disaster, lightning, earthquake or other act of God;
 - (ii) war, terrorist act, riot, insurrection or civil commotion;
 - (iii) fire or explosion; or
 - (iv) industrial or other action beyond the control of the Company.
- (u) Goods means any goods or services purchased from the Company by the Purchaser or the subject of the Contract and includes Refurbished Goods.
- (v) Guarantor means any person or entity which has guaranteed the due payment to the Company of all monies which have or will become payable to the Company for or in consequence of the supply of Goods by the Company to the Purchaser.
- (w) GST means Goods and Services Tax as defined in A New Tax Act (Goods and Services) 1999 (Cth).
- (x) Insolvency Event means, for a person:
- (i) being in liquidation, provisional liquidation or under administration;
 - (ii) having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property;
 - (iii) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
 - (iv) being unable to pay its debts as and when they fall due or otherwise insolvent;
 - (v) the taking of any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act); or
 - (vi) entering into a compromise or arrangement with, or assignment for the benefit of, any of its creditors, or any analogous event, except where the compromise or arrangement does not prejudice the interests of any creditors.
- (y) Minimum Hire Period means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Company to the Purchaser.
- (z) Notice means a notice in accordance with clause 27.
- (aa) Notice to Collect means a Notice issued by the Company to a Bailor whereby the Bailor is required to collect any Bailed Goods.
 - (bb) Notice of Disposal means a Notice issued by the Company to a Bailor whereby the Bailor is put on notice that if Uncollected Goods are not collected within the period specified under the relevant legislation, the Company may exercise its rights under clauses 10.2 and 10.4.
 - (cc) Normal Wear and Tear means the gradual reduction in performance of Goods having regard to the age of the Goods and the nature and frequency of use of the Goods.
- (dd) Order means the Purchaser's offer to the Company to purchase the Goods.
- (ee) PPS Act means the Personal Property Securities Act 2009 (Cth).
- (ff) Price has the meaning stated in clause 4.
- (gg) Purchaser means any purchaser or potential purchaser of Goods from the Company and includes a Cash Sale Purchaser and a Credit Account Purchaser.
- (hh) Refurbished Goods means a Core that has been repaired, rebuilt and tested by the Company to perform as intended by the manufacturer during the course of its serviceable life.
- (ii) Service Exchange means the Company's exchange of Refurbished Goods with the Purchaser's prior, simultaneous or subsequent supply of a Core to the Company for refurbishment at the Purchaser's cost.
- (jj) Uncollected Goods means any Bailed Goods which remain uncollected for a period of 7 days after the Company issues a Notice to Collect.
- (kk) Warranty has the meaning stated in clause 11.
- (ii) Work Health and Safety Laws includes:
- (i) all applicable work health and safety legislation, including regulations; and
 - (ii) all applicable standards, codes and other guidance material relating to work health and safety.
- (jj) You means the Purchaser where the Purchaser is a "consumer" within the meaning of the Australian Consumer Law.

1.2 Headings are for convenience only and do not affect interpretation.

1.3 A reference to a "person" includes a natural person, corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.

1.4 A reference to legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.

1.5 Each indemnity provided by the Purchaser in this Contract is a separate and continuing indemnity which survives the termination of this Contract and the delivery and supply of the Goods.

1.6 If the Purchaser is made up of more than one person:

(a) an obligation of those persons is joint and several;



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(b) a right of those persons is held by each of them severally; and

(c) any reference to the Purchaser is a reference to each of those persons separately, and any warranty, covenant or indemnity is given by each of them separately.

1.7 The parties agree that in this Contract, a reference to "dollars", "\$", a value or a payment amount, is to an amount or value (as the case may be) in the Currency.

1.8 Unless otherwise agreed in writing between the parties, the Convention on Contracts for the International Sale of Goods 1980 is excluded from this Contract.

2. ORDER, ACCEPTANCE AND APPLICATION

2.1 If the Purchaser:

(a) places an Order which is accepted by the company in writing or by actions;

(b) accepts delivery of the Goods;

(c) signs an authority to proceed;

(d) accepts a quotation from the Company that is expressed to be an offer capable of acceptance to form a contract,;

(e) makes any application for credit in respect of the Goods;

(f) makes any payment in respect of the Goods or performs any obligation under this Contract,

then:

(g) the Purchaser shall be taken to have agreed to and accepted:

(i) the terms of this Contract; and

(ii) that (notwithstanding any discussions, agreements, courses of conduct, understandings or arrangements between the Purchaser and the Company, or any statement, representation, request for proposal, or offer made by the Purchaser) this Contract, together with the terms of the quotation and/or any notice of acceptance of the Order given by the Company (if applicable):

(A) constitutes the entire agreement between the Purchaser and the Company in connection with the application for credit, Order, sale, purchase, delivery and supply of the Goods; and

(B) supersedes and will prevail over all prior discussions, agreements, understandings, courses of conduct or arrangements between the Purchaser and the Company, or any statements, representations, requests for proposal, or offers made by the Purchaser in connection with the application for credit, Order, sale, purchase, delivery and supply of the Goods;

(h) the Order and/or application for credit (as the case may be) is accepted by the Company on the basis that this Contract, together with the terms of any quotation and/or any notice of acceptance of the Order given by the Company (if applicable), constitutes the entire agreement between the Purchaser and the Company in connection with the application for credit, Order, sale, purchase, delivery and supply of the Goods.

2.2 For the avoidance of doubt, clause 2.1 does not prevent the Contract being varied in accordance with clause 25.1.

2.3 To the fullest extent permitted by law any prior representations, agreements and arrangements, including representations as to the suitability of the Goods, and any descriptions, illustrations and material contained in any advertisement, website, catalogue, price list or brochure are excluded from, and do not form part of, this Contract unless specifically stated in this Contract to the contrary.

2.4 All specifications, drawings, and particulars of weight and dimensions of the Goods are approximate only. Unless the accuracy of such specifications, drawings, and particulars of weight and dimensions of the Goods has been confirmed by the Company to the Purchaser in writing in respect of a particular Order, the Purchaser cannot claim against the Company for any deviation in such specifications, drawings, or particulars of weight or dimensions.

2.5 Unless agreed in writing by the parties, the Company does not make any promises, assurances, guarantees or representations whatsoever that the Goods comply with Australian Standards.

2.6 Any request by the Purchaser to cancel an Order must be made in writing. The Company may, at its discretion, accept or reject the request and specify the terms and conditions and reasonable charges upon which such request may be agreed to.

2.7 Acts and omissions (including, without limitation, in relation to the placement or alteration of Orders) of the Purchaser's directors, employees, former directors and/or employees, contractors, agents and any other person who purports to act on behalf of the Purchaser, shall be treated as the Purchaser's acts and omissions. The Purchaser is responsible for the acts and omissions of its directors, employees, former directors and/or employees, contractors, agents and any other person who purports to act on behalf of the Purchaser, even if they act outside their authority.

2.8 All Orders (including alterations to Orders) must be in writing, unless the Company agrees otherwise. If the Company permits the Purchaser to make an Order other than in writing, then that permission applies to that Order only, and is subject to such conditions the Company may impose.

3. PERFORMANCE

3.1 Any performance figures in relation to the Goods given to the Purchaser by the Company are estimates only.

3.2 The Company is not liable to the Purchaser or any other person for any loss or damage, including any consequential loss or damage (including for example, loss of profits or business opportunity), in connection with a failure of any Goods to attain such figures, unless the Company gives a written guarantee in relation to such figures.

3.3 The Purchaser may inspect and test the Goods at the premises of the Company or at other premises with the prior written approval of the Company to verify any of the estimated performance figures. The Purchaser must bear the costs of the inspection, including any transport and any tests except to the extent that inspection or testing is expressly included in the Price.

3.4 No performance figures other than performance figures obtained under such inspection and/or testing may be used by the Purchaser to support any claim by the Purchaser.

4. QUOTATIONS AND PRICE

4.1 Any quotation in relation to the Goods issued by the Company is an estimate of the cost of the Goods only and does not constitute an offer by the Company that is capable of acceptance by the Purchaser unless expressly stated to the contrary in the quotation. Any quotation may be withdrawn or altered by the Company without notice. Nothing in this Contract, or any verbal representation, shall oblige the Company to honour any quotation that has been altered or withdrawn by the Company.

4.2 If the Company does not alter or withdraw a quotation that is expressed to be capable of acceptance by the Purchaser, then it is valid for the period stated on the quotation or if no period is stated on the quotation, then it is valid for a period of 30 days from the date of the quotation. Nothing in this Contract, or any verbal representation, shall oblige the Company to extend or honour any quotation which has expired in accordance with the terms of this clause. Where the Purchaser places an Order in response to a quotation that is not expressed to be capable of acceptance by the Purchaser, then there is no contract formed until the Company accepts such Order in accordance with clause 2.1(a).

4.3 To the extent that an Order made by a Purchaser is inconsistent with a quotation issued by the Company, including noting additional requirements or specifications, the Company is not obliged to honour any additional requirements or specifications not included or noted in the Company's quotation and the Company may apply reasonable additional charges as appropriate, and such additional charges shall form part of the Price.

4.4 The Price of the Goods

(a) is the amount, confirmed by the Company, that the Purchaser is required to pay to the Company to purchase the Goods;

(b) excludes the cost of Freight;

(c) includes the cost of packaging; and

(d) is GST exclusive.

4.5 The Price of the Goods is subject to reasonable adjustment by the Company to take into account any alteration in costs associated with providing the Goods, prior to the final delivery of the Goods. For the purpose of this clause 4.5, the Price of the Goods can be increased by the Company:

(a) if a variation to the Company's quote is requested; or

(b) at the Company's sole discretion and, with written notice to the Purchaser, if exchange rate fluctuations between the date of any quotation provided to the Purchaser and the date the Company purchases imported Goods causes the cost of those Goods to increase by more than 5%; and

(c) without notice to the Purchaser if any government authority imposes any further duty, tax or fee in respect of the Goods or this Contract.

4.6 The Purchaser agrees to pay to the Company any reasonable adjustment to the Price of the Goods pursuant to clause 4.5.

4.7 Any Price concession or discount the Company provides to the Purchaser is conditional on the Purchaser's full compliance with this Contract and shall not give rise to any expectation of any future Price concession or discount being offered to the Purchaser, and shall in no way oblige the Company to offer any future Price concession or discount to the Purchaser.

4.8 at the company's sole discretion a non refundable deposit may be required.

5. PAYMENT

5.1 The Purchaser agrees to accept and pay for the Goods in accordance with this Contract.

5.2 Payment of any invoice issued by the Company must be made:

(a) in full by the Due Date; and

(b) in the Currency applicable to the Order to which the invoice relates.

(c) by cash, cheque, bank cheque, electronic funds transfer, or by any other method as agreed to between the company and the purchaser.



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5.3 The provisions in clause 5.2 are a condition precedent to future deliveries and services under this Contract or any other contract between the Purchaser and the Company.

5.4 Without prejudice to any other right or remedy the Company may have:

(a) it may impose a charge to the purchaser for accepting payments by credit card of 1.5% of the total invoice amount.

(b) it may charge the Purchaser interest on any overdue amounts payable by the Purchaser to the Company at the then prevailing penalty interest rate fixed by the Attorney General under section 2 of the Penalty Interest Rate Act 1983 calculated daily on the amount overdue from the Due Date until payment is received in full. If no such rate exists, the Company may nominate an overdraft interest rate charged by a major Australian bank plus 2.5%;

(c) it may charge the Purchaser for any costs or expenses, including the Company's reasonable legal costs, incurred in recovering or seeking to recover from the Purchaser, or any Guarantor, any overdue amounts payable by the Purchaser to the Company; and

(d) if at any point in time there is an overdue amount payable by the Purchaser to the Company, then:

(i) the Company may, at its discretion, notify the Purchaser in writing of all monies payable by the Purchaser to the Company (whether or not the Due Date in respect of those monies has passed);

(ii) if the Company notifies the Purchaser in accordance with clause 5.4(c)(i), then notwithstanding clause 5.2, the Purchaser must, within 7 days of receiving the notification, pay all monies specified in the notice (whether or not the Due Date in respect of those monies has passed) to the Company; and

(iii) the Company may at its sole discretion suspend or cancel any existing credit arrangement with the Purchaser. The Company may then reinstate any credit arrangement with the Purchaser, on the same or different terms, at any time, at its sole discretion.

5.5 The Purchaser indemnifies the Company for any and all expenses incurred by the Company in enforcing the Company's rights against the Purchaser under this Contract or any guarantee provided by a Guarantor and will reimburse the Company as a debt due and payable for such expenses when requested to do so by the Company.

5.6 The Purchaser must not withhold payment of any invoice by reasons of set off, counter claim or otherwise.

6. DELIVERY

6.1 The Purchaser must provide the Company with adequate Delivery instructions for the Goods no later than 7 days after the Company informs the Purchaser that the Goods are ready for collection.

6.2 Where the Company agrees to provide Delivery of the Goods to the Purchaser:

(a) the Company may, on or at the time of acceptance of the Order approve and accept the Delivery time;

(b) the Company will use its best endeavours to deliver the Goods within the accepted or agreed time with the Purchaser, or if no such time is agreed, then at the Company's reasonable discretion; and

(c) any Delivery time is an estimate only and the Company shall not be responsible for any loss or damage suffered as a result of the failure to meet any Delivery date, whether agreed to by the parties to this Contract or otherwise. The Purchaser shall not be relieved of performance because of the Company's failure to meet a Delivery date.

(d) The purchaser must take delivery by receipt or collection of the goods whenever they are tendered for delivery. In the event that the purchaser is unable to take delivery of the goods as arranged then the company shall be entitled to charge a reasonable fee for redelivery and / or storage.

6.3 the company may deliver goods in separate instalments. Each separate instalment shall be invoiced and paid by the Due date.

6.4 Any time or date given by the company to the purchaser is an estimate only. The Purchaser must still accept delivery of the goods even if late and the company will not be liable for any loss or damage incurred by the purchaser as a result of the delivery being late.

6.5 If by any reason of any event beyond the reasonable control of the Company, including any Force Majeure Event, Delivery becomes impracticable or impossible in the Company's opinion, the Company may terminate this Contract by Notice to the Purchaser. In these circumstances, the Purchaser must pay to the Company any unpaid amounts in relation to such Goods (including any variation thereof) that were actually delivered.

7. COST OF FREIGHT AND PACKING

7.1 The Price excludes the cost of Freight from the premises of the Company or another location nominated by the Company to the Purchaser unless otherwise agreed in writing between the Purchaser and the Company.

7.2 The Purchaser may specify the carrier to effect delivery of the Goods from the Company or another location nominated by the Company to the Purchaser. Where the Purchaser does not specify the carrier in its delivery instructions, the Company may nominate, arrange or retain the carrier.

7.3 The Purchaser must bear all Freight costs, including associated insurance and or storage costs, unless otherwise agreed in writing between the Company and the Purchaser.

7.4 The Price includes standard packing unless otherwise agreed in writing between the Purchaser and the Company.

8. TITLE AND RISK

8.1 The risk in the Goods passes to the Purchaser from Delivery.

8.2 The Company is not liable for any loss or damage or deterioration of the Goods after risk in the Goods has passed to the Purchaser. The purchaser must insure the goods on or before delivery.

8.3 The Company's rights under this clause 8 secure:

(a) the Company's right to receive the Price for all the Goods sold under this Contract; and

(b) all other amounts owing to the Company under this Contract or any other agreement between the Purchaser and the Company.

8.4 All payments received from the Purchaser must be applied in accordance with section 14(6)(c) of the PPS Act.

8.5 Until full payment in cleared funds is received by the Company for all Goods supplied by it to the Purchaser, as well as all other amounts owing to the Company by the Purchaser under this or any other Contract:

(a) legal title and property in all Goods supplied under this Contract remains vested in the Company and does not pass to the Purchaser;

(b) the Purchaser must store the Goods separately and in such a manner and maintain any labelling and packaging of the Company, so that the Goods are clearly and readily identifiable as the property of the Company;

(c) the Purchaser must not sell the Goods except in the ordinary course of its business;

(d) the Purchaser holds and agrees to hold the proceeds of any sale, lease or other dealing with the Goods on trust for the Company and must pay or deliver the proceeds to the company on demand; and

(e) the Company may repossess the Goods if any amount due in respect of the Goods is outstanding or if the Company reasonably believes that any such amount will not be paid in full when it falls due for payment, including;

(i) any goods in transit whether or not delivery has occurred.

(f) if the goods are lost, damaged or destroyed the company is entitled to receive all insurance proceeds payable for the goods. The production of these terms and conditions by the company is sufficient to receive the insurance proceeds without the need for any person dealing with the company to make further enquiries.

(g) the purchaser should not convert or process the goods or intermix them with other goods but if the purchaser does so then the purchaser holds the resulting product on trust for the benefit of the company and must sell, dispose or return the resulting product to the company as it so directs.

8.6 In addition to any rights the Company may have under Chapter 4 of the PPS Act, the Company may, at any time, demand the return of the Goods and shall be entitled without notice to the Purchaser and without liability to the Purchaser to enter any premises where it suspects the Goods may be located in order to search for and remove the Goods without committing a trespass, even though they may be attached or annexed to other goods or land not the property of the Company, and for this purpose the Purchaser:

(i) grants the Company an irrevocable licence to enter upon any premises of the Purchaser for the purpose of taking possession of the Goods in accordance with this clause; and

(ii) undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies the Company from and against all loss suffered or incurred by the Company as a result of exercising its rights under this clause 8.6.

If there is any inconsistency between the Company's rights under this clause 8.6 and its rights under Chapter 4 of the PPS Act, this clause 8.6 prevails to the extent permitted by law.

8.7 The Purchaser warrants that it does not intend to use the Goods predominantly for personal, domestic or household purposes.

8.8 The Purchaser must, at its own cost, insure and keep insured the Goods against such risks as a prudent owner of the Goods would insure at their full cost price, with a reputable insurance company.

8.9 If the purchaser requests the company to leave goods outside the companies premises for collection, or to deliver the goods to an unattended location then such goods shall be left at the purchasers sole risk.

8.10 The Purchaser may sell and deliver the Goods as the Company's fiduciary to a third party in the ordinary course of the Purchaser's business provided that:

(a) where the Purchaser is paid by the third party for the Goods, the Purchaser shall account to the Company in respect of the payment in accordance with the Purchaser's fiduciary obligations; and

(b) where the Purchaser is not paid by the third party the Purchaser agrees to assign to the Company its claim against the third party upon receiving the Company's written request to that effect.



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8.11 For the purposes of this clause 8, where the Company supplies particular Goods of the same or similar nature on multiple occasions, where the Purchaser does not make payment in respect of particular Goods, the non-payment is treated as being first in respect of particular Goods of the same or similar nature still in the possession of the Purchaser, and then against particular Goods which have passed out of the possession of the Purchaser.

8.12 Receipt of payment by the company shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

9. PPS ACT

9.1 Unless a contrary intention appears, words or expressions used in this clause 9 that are defined in the PPS Act have the same meaning as given to them in the PPS Act.

9.2 The Purchaser agrees that this Contract constitutes a security agreement for the purposes of the PPS Act and creates a security interest (as defined in the PPS Act) in all Goods previously supplied by the Company to the Purchaser and all future Goods supplied to the Purchaser.

9.3 The Purchaser agrees to do all such things, including providing any necessary consents, signing all necessary documents, and providing any further information, as reasonably required by the Company from time to time, to enable the Company to register a first ranking perfected security interest in respect of all Goods supplied by the Company to the Purchaser, or exercise any rights in connection with any security interest.

9.4 The Purchaser acknowledges that it shall be liable for the costs and expenses incurred by the Company in relation to the registration, maintenance, enforcement or discharge of any security interest, and must make payment to the Company for any such reasonable costs incurred by the Company on demand by the Company.

9.5 The Purchaser acknowledges that it shall assist the Company, to the extent required, in relation to the registration, maintenance, enforcement or discharge of any security interest.

9.6 Until such time as title to the Goods passes to the Purchaser, the Purchaser agrees not to register, or permit to be registered, a security agreement in relation to the Goods in favour of a third party without the prior written consent of the Company.

9.7 The Purchaser acknowledges that it shall not, without prior written notice to the Company, change its corporate or trading name or amend any registration documentation, or act in any manner, which would adversely impact on the Company's registered security interest.

9.8 The Company need not give any notice to the Purchaser or any other person (including a notice of verification statement) unless the notice is required to be given by the PPS Act and cannot be excluded.

9.9 The Company and the Purchaser agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

9.10 The Purchaser waives their rights to receive notices under sections 95,118,121(4), 130, 132(3)(d) and 132(4) of the PPSA.

9.11 The purchaser waives their rights as a grantor and/or a debtor under section 142 and 143 of the PPSA.

9.12 Unless otherwise agreed to in writing by the company, the Purchaser waives their right to receive a verification statement in accordance with section 157 of PPSA.

9.13 The Purchaser must unconditionally ratify an actions taken by the Company under clauses 9.1 to 9.12

9.14 Subject to any express provision to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA

10. UNCOLLECTED GOODS: CONTRACTUAL LIEN AND SECURITY INTEREST

10.1 The Purchaser warrants that it has full and unencumbered title to any Bailed Goods.

10.2 From the time the Company (or its subcontractors, servants or agents) receives the Bailed Goods into its custody, the Company shall have a special and general lien on the Bailed Goods and a right to sell the Bailed Goods whether by public or private sale or auction without notice, for any amounts due to the Company which have been unpaid for a period of 26 weeks.

10.3 In addition, the lien shall cover all of the costs and expenses of the lien, including the costs of a public or private sale or auction, including any legal costs and administration costs. The lien and rights granted by this clause 10 shall survive delivery of the Bailed Goods and the Company shall be entitled to retain the proceeds of sale of the Bailed Goods in respect of any outstanding amounts whatsoever referred to in this clause. The Purchaser accepts that any sums due and owing to the Company are secured debts and that any payment made to the Company in discharge of the lien does not amount to a preference, priority or advantage, in any manner or turn.

10.4 The Company may sell or otherwise dispose of such Bailed Goods pursuant to clause 10.3 as principal and not as agent and the Company is not the trustee or the power of sale.

10.5 From the time the Company (or its subcontractors, servants or agents) receive the Bailed Goods into its custody, the Bailed Goods and all of the Purchaser's present and future rights in relation to the Bailed Goods, are subject to a continuing security interest in the Company's favour for the payment of all amounts of any kind due to the Company whatsoever and without limitation and for any and all debts,

charges, expenses or any other sums due and owing by the Purchaser (or its principals, servants or agents). In addition the continuing security interest shall cover all the costs and expenses of exercising the lien, including the costs of public or private sale or auction, including any legal costs and administration costs.

10.6 The lien of the Company shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Company having been obtained against the Purchaser.

10.7 For the purposes of this Contract, and in particular this clause as a whole, the Company shall be deemed to have custody and possession of the Bailed Goods whether the Bailed Goods are in the actual physical custody and possession of the Company (or its subcontractors, servants or agents on the Company's behalf), and whether or not the Company is in possession of any documents of title relating to the Bailed Goods. The Purchaser agrees that the Company has possession of the Goods within the meaning of section 24 of the PPS Act, even if the Bailed Goods are in the possession of the Company's subcontractors, servants or agents.

10.8 The Purchaser acknowledges that the Company may, at the Purchaser's cost, register a security interest in the Bailed Goods, and all of the Company's present and future rights in relation to the Bailed Goods, on the Personal Property Securities Register established under the PPS Act.

10.9 The Purchaser will not:

(a) permit to subsist any other security interest in relation to the Bailed Goods which would rank ahead of the Company's security interest; or

(b) except in the normal course of business, sell, lease or dispose of, or permit the sale, lease or disposal of, the Bailed Goods, whilst they are in the possession of the Company (or its subcontractors, servants or agents).

10.10 In the event of any inconsistency between this Contract and any laws dealing with Uncollected Goods, these terms and conditions will prevail to the extent permitted by law.

10.11 The Bailor is liable to the Company, and the Company may charge to the Bailor, the following charges in relation to any Goods or Uncollected Goods:

(a) a charge of \$100.00 per square metre per month for storing the Uncollected Goods from the date of the expiration of the period specified in the Notice to Collect;

(b) an administration charge of \$200.00, or such higher amount as may be reasonable, for each item of Bailed Goods; and

(c) any expenses of the Company incidental to the sale or such other disposition of the Uncollected Goods under this clause 10.

10.12 The charges under clause 10.11 are a debt due and payable to the Company.

10.13 Any Goods or Uncollected Goods stored by the Company are at the Bailor's risk.

11. WARRANTY

11.1 The Company gives the warranty contained in Schedule 1 in respect of the Goods (Warranty).

11.2 Subject to clause 13, where You are:

(a) a consumer within the meaning of the Australian Consumer Law, our Goods come with guarantees that cannot be excluded under the Australian Consumer Law.

(b) not a consumer within the meaning of the Australian Consumer Law, the guarantees referred to in clause 11.2(a) above do not apply.

11.3 The Warranty is given in addition to all statutory rights conferred on the Purchaser.

11.4 The Company does not make any promise, for example, that any part or repair facility in respect of the Goods will be available at any time or at any specified location, other than as expressly provided for in the Warranty.

11.5 The Company will use its reasonable endeavours to make available to the Purchaser the benefit of any guarantee or warranty given by the manufacturer to the Company in respect of any Goods not manufactured by the Company.

12. REPAIRS AND REPLACEMENTS

12.1 The Purchaser acknowledges and agrees that the Company shall carry out testing of any Goods or Bailed Goods, or component or part of the Goods or Bailed Goods, that:

(a) are to be serviced or repaired under this contract; or

(b) have been returned under clause 16; or

(c) are to be replaced or repaired under clause 11,

to the original specifications of those Goods.

12.2 Where testing occurs under clause 12.1, the Purchaser acknowledges and agrees that:

(a) the Purchaser will release and indemnify the Company and hold it harmless in respect of any breach or any damage that arises during the testing as a result of Normal Wear and Tear in the Goods or Bailed Goods or that component of the Goods or Bailed Goods that has not been repaired or replaced; and



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(b) the Company shall not be liable for any consequential loss or damage in connection with the testing or that arises from the Goods being damaged during testing.

13. LIMITATION OF LIABILITY

13.1 With the exception of Consumer Guarantees, the Company excludes:

(a) any term, condition or warranty that may otherwise be implied into this Contract; and

(b) any liability for loss or damage incurred as a result of or in connection with the negligence of the Company; and

(c) any liability to the Purchaser or to any other person for any loss of profit or other economic loss, indirect, special, consequential, general or other similar loss or damage how so ever arising.

13.2 Subject to clause 13.3, the liability of the Company in respect of any breach of or failure to comply with any Consumer Guarantee is limited to the events set out in Schedule 1.

13.3 The liability of the Company in respect of any breach of or failure to comply with a Consumer Guarantee will not be limited in the way set out in clause 13.2 if:

(a) it is not 'fair or reasonable' for the Company to rely on such limitation in accordance with section 64A(3) of the Australian Consumer Law; or

(b) the relevant Consumer Guarantee is a guarantee pursuant to sections 51, 52 or 53 of the Australian Consumer Law.

14. WARRANTY, COVENANT AND INDEMNITIES BY THE PURCHASER

14.1 The Purchaser warrants the accuracy of any specification or information relating to the Goods or this Contract provided to the Company including via any third party who is the Purchaser's customer, supplier, contractor, subcontractor or agent.

14.2 The Purchaser covenants not to make any Claim against any employee, director, agent or subcontractor of the Company in connection with this Contract including in connection with any misrepresentation by, or negligence of, them or the Company.

14.3 Without limitation to any other right or remedy of the Company under this Contract or at common law, to the maximum extent permitted by law, the Purchaser must indemnify and hold harmless the Company and its employees, directors, officers, agents and subcontractors in respect of any and all Claims, losses and liabilities incurred by the Company and its employees, directors, officers, agents, contractors and subcontractors as a result of, or arising directly or indirectly from:

(a) a breach by the Purchaser of clause 14.1 or clause 14.2; and/or

(b) the supply or delivery of Goods by or on behalf of the Company, except to the extent such Claims, losses or liabilities arise directly from a breach of this Contract by the Company or, the gross negligence or wilfully wrongful act or omission of the Company or its employees, directors, officers, agents, contractors and subcontractors.

14.4 If the Purchaser fails to accept or to pay for the Goods in accordance with this Contract, then the Purchaser must (without prejudice to any other rights of the Company) indemnify the Company and hold it harmless in respect of any Claim, loss, damage, cost of labour or other overhead or expense, that is attributable to such failure.

14.5 The benefit of this clause 14 is held on trust by the Company for the benefit of its employees, directors, agents, contractors and subcontractors and can be enforced by the Company on their behalf.

15. SUSPENSION AND TERMINATION

15.1 If the Purchaser:

(a) defaults in any of its obligations under this Contract;

(b) suspends or ceases to carry on business; or

(c) is, or the Company in its reasonable discretion determines that it is likely to be, the subject of an Insolvency Event;

then the Company may immediately upon notifying the Purchaser, do one or more of the following:

(i) terminate this Contract or any other contract between the parties to this Contract including any credit arrangement;

(ii) suspend the performance of any or all of its obligations under this Contract until the end of the period in which the Purchaser has suspended or ceased to carry on business;

(iii) demand immediate payment for any Goods:

(A) already delivered or provided by the Company to the Purchaser for which payment in accordance with this Contract has not been received by the Company; and

(B) ordered by the Purchaser but not yet delivered or provided by or on behalf of the Company, other than that contained in the Warranty; and/or

(iv) exercise those rights under clause 8.6.

15.2 The rights of the Company provided for in clause 15.1 shall be without prejudice to any other rights the Company may have against the Purchaser.

15.3 The Company may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Purchaser. On giving such notice the Company shall repay to the Purchaser any money paid by the Purchaser for the undelivered Goods to the extent that there are no overdue amounts payable by the Purchaser. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.

16. RETURN OF GOODS

16.1 The Purchaser must not return Goods to the Company except upon the written consent of the Company obtained in advance of such return.

16.2 Any request by the Purchaser to return Goods to the Company must be made within 7 days of receipt of Goods by the Purchaser and must be returned to the Company within 14 days of the date of written consent (or otherwise within the Warranty Period).

16.3 Subject to clause 11, Goods specially procured or procured on indent or manufactured for the Purchaser are not returnable.

16.4 Responsibility for the return Freight of Goods rests solely with the Purchaser.

16.5 Any consent given under clause 16.1 may specify further terms and conditions and charges upon which a return may be made.

16.6 Where Goods are returned by the Purchaser under this clause, or the Company inspects the Goods for the purposes of a potential Warranty claim at a particular location, then the Company shall, in its reasonable discretion, determine whether the Purchaser has any rights against the Company in relation to those Goods under the Warranty. If the Company determines that the Purchaser has no such rights, then the Purchaser must:

(a) reimburse the Company for all related shipping costs incurred by the Company; and

(b) pay to the company reasonable labour costs and travel costs associated with travelling to a particular location to test or inspect the goods; and

(c) in the case of goods previously serviced or repaired by the Company, pay to the Company an amount equal to the Company's reasonable costs incurred in inspecting and testing the goods; and

(d) in the case of products sold by the Company, pay to the Company an amount representing the Company's costs associated with undertaking inspection and repackaging, warehousing and handling and/or returns to suppliers, being 25% of the Price of the Goods,

by the applicable Due Date.

17. LAWFUL USE OF GOODS

17.1 The Purchaser must:

(a) acquaint itself with the requirements of all relevant Government and statutory bodies or other authority (including, but not limited to, a manufacturer's technical, copyright and operational requirements) in relation to the Goods and to the application(s) to which the Goods are put; and

(b) comply with such requirements at all times while the Goods are in its possession or under its control; and

(c) procure that any purchaser of the Goods from the Purchaser acquaints itself with and complies with such requirements.

17.2 The Purchaser must:

(a) comply with any instructions by the Company relating to the Goods; and

(b) indemnify the Company in respect of any breach of this clause 17.

18. INTELLECTUAL PROPERTY RIGHTS

18.1 No right or licence is granted to the Purchaser under any patent, copyright, registered design or other intellectual or industrial property right or interest other than the right to install, operate or resell the Goods in the ordinary course of the Purchaser's business.

18.2 Copies of documents in relation to the Company or the Goods such as drawings, plans and specifications that the Company submits to the Purchaser remain the property of the Company. The Purchaser must treat the information contained in those documents as strictly confidential. The Purchaser must use the information contained in those documents only to install or operate the Goods. The Purchaser must not use this information in any other way to the advantage of the Purchaser or the detriment of the Company.

18.3 By purchasing the Goods, the Purchaser does not gain any licence or right under any of the Company's intellectual or industrial property such as a patent, registered design, trademark or copyright, or confidential information, and shall indemnify the Company in respect of any breach of this clause 18.

19. SERVICE EXCHANGE

19.1 Where the Purchaser wishes to exchange a Core on a Service Exchange basis and the Company can provide such service at the time, the Purchaser will offer to exchange the Core with Refurbished Goods by sending the Company an Order authorising the Company to;

(a) repair the Purchaser's Core; and

(b) charge the Core Deposit applicable to the Refurbished Goods.



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19.2 If the Company accepts the Order, then the Purchaser must pay the Core Deposit to the Company at that time or on credit terms at the Company's sole discretion and the Company will:

(a) exchange the Core with Refurbished Goods of the same, comparable, or superseded model and part number;

(b) accept delivery of the Purchaser's Core in accordance with clause 19.5;

(c) inspect and assess for acceptance and then repair, rebuild or refurbish, and test the Core to the extent which enables the Core to be placed into the Company's inventory and issued to the Purchaser or another customer as Refurbished Goods; and

(d) invoice the Purchaser for the cost of repairing, rebuilding, refurbishing and testing the Core including the costs of labour, materials, machinery and equipment, and consumables at the Company's then prevailing standard Price.

19.3 Where the Purchaser has paid the Core Deposit the Company will;

(a) return the Core Deposit less the cost of repairing, rebuilding, refurbishing and testing the Core as invoiced to the Purchaser.

(b) retain the Core Deposit if the Purchaser does not supply a Core in accordance with clause 19.5; or

(c) retain the Core Deposit or part thereof at the Company's reasonable discretion if the Core does not meet the required standard for acceptance of the Core by the Company, in which case the Company will allow the Purchaser to collect such Core provided it does so within 30 days of the Company notifying the Purchaser that the Core does not meet such standards.

19.4 The Purchaser agrees:

(a) to pay the Core Deposit for the Refurbished Goods;

(b) to deliver the Core to the Company in accordance with clause 19.5;

(c) to return to the Company at the Purchaser's cost, with the Core or otherwise, any apparatus, frame or structure provided by the Company to support the Refurbished Goods during transport and delivery to the Purchaser, or pay to the Company the reasonable replacement cost of any such apparatus, frame or structure;

(d) to pay the invoice from the Company for the cost of repairing, rebuilding, refurbishing and testing the Core less the applicable Core Deposit paid;

(e) to only use the Refurbished Goods for the purpose for which the goods were designed;

(f) to advise the Company of any malfunctioning of the Refurbished Goods as soon as practically possible and to cease using the Refurbished Goods as soon as it becomes aware of any malfunction;

(g) not to alter or make any addition to the Refurbished Goods without the prior written consent of the Company; and

(h) where the Purchaser undertakes servicing and maintenance of the Refurbished Goods resulting in the replacement of existing parts of the Refurbished Goods, to use only genuine new or reconditioned parts, components and other items, and such parts will become the property of the Company.

(i) where the Purchaser does not return a Core, or return a Core that is accepted by the Company, at the Company's reasonable discretion, the purchaser will be liable for all costs of the procurement of a replacement Core, the inspection and assessment and then repair, rebuild or refurbish, and testing of the Core to the extent which enables the Core to be placed into the Company's inventory and issued to the Purchaser or another customer as Refurbished Goods; and

19.5 Cores must be delivered to the Company within 30 days of Delivery of the Refurbished Goods.

19.6 Title to and ownership of the Core passes to the Company at the time of acceptance of the Core by the Company.

19.7 The Company provides the same Warranty for Refurbished Goods supplied in accordance with Service Exchange as for Goods as set out in clause 11 and Schedule 1.

19.8 Freight charges for the delivery of Refurbished Goods and the supply of Cores are payable by the Purchaser.

19.9 Where any term of this clause 19 conflicts with another clause of this Contract, the terms of this clause 19 prevails to the extent of the inconsistency.

20. WORK HEALTH AND SAFETY

20.1 To the fullest extent permitted by law, the Company is not liable for any Claim regarding the Goods made to the Purchaser's specification brought under or in relation to Work Health and Safety Laws.

20.2 The Purchaser warrants that it has provided the Company with all relevant information required for the Goods to comply with Work Health and Safety Laws.

20.3 The parties agree that the Company is entitled to rely fully on the information provided by the Purchaser in relation to the design and specification of the Goods.

20.4 The Purchaser covenants that it is responsible for, and will not threaten to make or initiate, or make or initiate any Claim against the Company in relation to:

(a) loss or damage caused by errors or omissions in the information provided by the Purchaser, or any third party who is the Purchaser's customer, supplier, contractor, subcontractor or agent, to the Company; or

(b) any modifications to the Goods made or caused by the Purchaser or any other person.

20.5 Nothing in this clause is intended to exclude or limit any duties imposed on the Company by Work Health and Safety Laws that cannot be excluded or limited.

21. ASSIGNMENT AND SUBCONTRACTING

21.1 The Company may assign, sub-contract or sub-let this Contract or the production, manufacture or supply of the whole or any part of the Goods without seeking the consent of the Purchaser.

22. WAIVER

22.1 Any waiver by the Company must be in writing signed by the Company.

22.2 Failure by the Company to enforce any right or remedy is not a waiver of any right or remedy, or a waiver in respect of a continuing breach.

22.3 Failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company'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.

23. SEVERABILITY

If any provision of this Contract is invalid or unenforceable in any jurisdiction, it is, to the extent possible, to be read down so as to be valid and enforceable. The read down provision will only apply in the relevant jurisdiction. If the provision cannot be read down, and it can be severed to the extent of the invalidity or unenforceability, it is to be severed. The rest of the provisions, and the validity or enforceability of the affected provision in any other jurisdiction, will not be affected.

24. GOVERNING LAW AND JURISDICTION

24.1 This Contract is governed by and must be construed under the laws in force in Western Australia, Australia.

24.2 Each party submits to the exclusive jurisdiction of the courts:

(a) of the State or Territory of Australia in which the Order was made if the Company has a Company Branch in such State or Territory; and

(b) where the Order has been made from a State or Territory of Australia where the Company does not have a Company Branch or from outside Australia, then, the courts of Western Australia, Australia,

and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

24.3 The Purchaser indemnifies the Company for any and all Claims, losses, costs and expenses suffered or incurred by the Company in connection with a breach by the Purchaser of clauses 24.1 or 24.2 and/or in connection with the Purchaser seeking to pursue or defend a Claim or otherwise enforce its rights:

(a) in a state or territory other than the jurisdiction determined under clause 24.2; or

(b) pursuant to the laws of a state or territory other than the state of Western Australia.

25. VARIATION

25.1 Any variation of this Contract must be in writing and authorised by a Director of the Company, the Company Secretary, or the Company's appointed legal representative, and must refer to the provision(s) being amended.

25.2 Notwithstanding clause 25.1, the Company may amend or vary the terms of the Contract by giving Notice to the Purchaser and;

(a) referencing specific terms being amended or varied; or

(b) providing the amended or varied Contract in its entirety.

25.3 Any Notice under clause 25.2 shall apply to any Order placed from the date after Notice is given to the Purchaser of such change..

26. CHANGE OF OWNERSHIP

The Purchaser must notify the Company of any material change of ownership of the Purchaser within 7 days of any such change. The Purchaser and its Directors and Guarantor(s) agree to indemnify the Company against any loss or damage incurred by the Company as a result of the Purchaser's failure to notify the Company of any such change.

27. NOTICE

27.1 Any Notice must be in writing and delivered by hand or sent by post, email or facsimile as follows:

(a) if the Company: the registered office of the Company; and

(b) if the Purchaser: as per the Application for Credit details, the Order details or any registered office of the Purchaser, if



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the Purchaser is a registered business or operating under a registered business name or is a company.

27.2 A Notice is regarded as given by the sender and received by the addressee:

(a) if the Notice is delivered by hand, when delivered to the addressee;

(b) if the Notice is sent by post within Australia, at 9:00am on the 6th business day following the date of postage;

(c) if sent by facsimile, when the transmission is successfully completed (as reported by the sender's machine), unless the addressee informs the sender that the transmission is illegible or incomplete by telephone or Notice within 2 hours of the transmission being received; and

(d) if sent by electronic mail, is sent to the receiving party at the receiving party's most recent email address provided in connection with an Application for Credit or Order, unless the sending party receives a notification of delivery failure within 24 hours of the email being sent.

27.3 A Notice delivered or received:

(a) on a day which is not a business day or after 4.00 pm (recipient's time) is regarded as received at 9:00 am on the following business day; and

(b) before 9.00 am (recipient's time) on a business day it is regarded as received at 9.00 am that day.

27.4 Each party must ensure that the email address(es) used:

(a) in the Application for credit; and

(b) in connection with an Order,

are maintained and, where necessary, updated periodically to ensure that all Notices can be delivered or received in accordance with clause 27.3. Each party is solely responsible for maintaining its email address(es) and notifying the other party of any change to such address(es).

28. PRIVACY

28.1 The Company may use and disclose to third parties personal information held by the Company, including information relating to the Purchaser's commercial dealings and transactions with the Company for reasons including to:

(a) arrange for the delivery of the Goods;

(b) facilitate the Company's internal business operations, including fulfilment of any legal requirements;

(c) undertake credit reference checks and verification of the Purchaser's financing arrangements. The Purchaser understands that the information exchanged can include anything about the Purchaser's creditworthiness, credit

standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988;

(d) arrange or facilitate any Warranty repairs or services; and

(e) provide the Purchaser with information and promotional material about products and services that may be of benefit to the Purchaser.

28.2 The Purchaser can request access at any time to personal information held by the Company relating to the Purchaser, and the Company will process the request within a reasonable time. The Purchaser may ask the Company at any time to correct personal information held by the Company relating to the Purchaser which the Purchaser believes is incorrect. Access and correction requests will be granted in accordance with the Privacy Act 1988 (Cth).

28.3 The Purchaser consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

28.4 The Company may give information about the Purchaser to a credit reporting agency for the following purposes: (a) to obtain a consumer credit report about the Purchaser; (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Purchaser.

28.5 The information given to the credit reporting agency may include: (a) personal particulars (the Purchaser's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number); (b) details concerning the Purchaser's application for credit or commercial credit and the amount requested; (c) advice that the Company is a current credit provider to the Purchaser; (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started; (e) that the Purchaser's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed; (f) information that, in the opinion of the Company, the Purchaser has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Purchaser's credit obligations); (g) advice that cheques drawn by the Purchaser for one hundred dollars (\$100) or more, have been dishonoured more than once; (h) that credit provided to the Purchaser by the Company has been paid or otherwise discharged.

29. SECURITY AND CHARGE

29.1 In consideration of the Company agreeing to supply the Goods, the Purchaser 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 Purchaser either now or in the future, to secure the performance by the Purchaser of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

29.2 The Purchaser indemnifies the Company from and against all the Purchaser's costs and disbursements including legal costs on a solicitor and own Purchaser basis incurred in exercising the Purchaser's rights under this clause.

29.3 The Purchaser irrevocably appoints the Company and each director of the Company as the Purchaser's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause including, but not limited to, signing any document on the Purchaser's behalf.

Terms & Conditions Only Applicable to Equipment Hire

30. HIRE PERIOD

30.1 For Equipment in which a timing device is installed the hire period shall be the number of hours or part thereof recorded on the timing device whilst the Equipment is in the Purchaser's possession.

30.2 Where the Equipment does not have a timing device installed hire charges shall commence from the time the Equipment is collected by the Purchaser from the Company's premises and will continue until the return of the Equipment to the Company's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

30.3 If the Company agrees with the Purchaser to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves the Company's premises and continue until the Purchaser notifies the Company that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

30.4 The date upon which the Purchaser advises of termination shall in all cases be treated as a full day's hire.

30.5 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless the Company confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Purchaser notifies the Company immediately, hiring 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 Purchaser.

31. RISK

31.1 The Company retains property in the Equipment nonetheless all risk for the Equipment passes to the Purchaser on delivery.

31.2 The Purchaser accepts full responsibility for the safekeeping of the Equipment and indemnifies the Company for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Purchaser.

31.3 The Purchaser will insure, or self insure, the Company's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Purchaser will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

31.4 The Purchaser accepts full responsibility for and shall keep the Company indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Purchaser or any other persons.

32. TITLE TO EQUIPMENT

32.1 The Equipment is and will at all times remain the absolute property of the Company.

32.2 If the Purchaser fails to return the Equipment to the Company then the Company or the Company's agent may (as the invitee of the Purchaser) enter upon and into land and premises owned, occupied or used by the Purchaser, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.

32.3 The Purchaser is not authorised to pledge the Company's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

33. PURCHASER'S RESPONSIBILITIES

33.1 The Purchaser shall: (a) notify the Company immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Purchaser is not absolved from the requirements to safeguard the Equipment by giving such notification; (b) satisfy itself at commencement that the Equipment is suitable for its purposes; (c) operate the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by the Company or posted on the Equipment; (d) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall



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provide evidence of the same to the Company upon request; (e) comply with all occupational health and safety laws relating to the Equipment and its operation; (f) on termination of the hire, deliver the Equipment complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to the Company; (g) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Equipment; (h) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment; (i) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work; (j) not exceed the recommended or legal load and capacity limits of the Equipment; (k) not use or carry any illegal, prohibited or dangerous substance in or on the Equipment; (l) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold; (m) indemnify and hold harmless the Company in respect of all claims arising out of the Purchaser's use of the Equipment.

33.2 Immediately on request by the Company the Purchaser will pay: (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to the Company; (b) all costs incurred in cleaning the Equipment; (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment; (d) the cost of repairing any damage to the Equipment caused by the negligence of the Purchaser or the Purchaser's agent; (e) the cost of repairing any damage to the Equipment caused by vandalism, or (in the Company's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Purchaser; (f) the cost of fuels and consumables provided by the Company and used by the Purchaser.

34. WET HIRE

34.1 In the event of "wet" hire of the Equipment the operator of the Equipment remains an employee of the Company and operates the Equipment in accordance with the Purchaser's instructions. As such the Company shall not be liable for any actions of the operator in following the Purchaser's instructions.

Terms & Conditions Only Applicable to Labour Hire

35. SERVICES

35.1 The Company undertakes to: (a) use its best endeavours to provide suitably qualified Candidates to undertake work duties in compliance with the Purchaser's requirements; and (b) make the payment of all amounts due to the Candidate under the terms of any relevant industrial

instrument or contract; and (c) make the payment of all leave entitlements (including, but not limited to, annual leave, sick leave, parental leave and long service leave) if the Candidate is a fulltime employee; and (d) deduct the requisite amounts of income tax, fringe benefits tax, pay roll tax and all other applicable deductions as required by Australian law; and (e) ensure payment of any other statutory taxes, superannuation contributions and/or levies as required by Australian law; and (f) maintain workers compensation insurance for all Candidates, except where state laws specify otherwise.

36. FEE AND PAYMENT

36.1 The Company's quotation shall specify: (a) the Services to be provided by each Candidate; (b) the job description of each Candidate; (c) the commencement and termination dates of the Services; (d) the location where Services shall be performed; (e) the Fee payable by the Purchaser for the Services.

36.2 The Company must be advised by the Purchaser of any specific site or project allowances which may be applicable. All such allowances (including, but not limited to, meal, travel or tool allowances) shall be on-charged to the Purchaser accordingly.

36.3 The Purchaser acknowledges that only lunch breaks shall be deducted from total hours charged by the Company to the Purchaser.

36.4 The Purchaser acknowledges and agrees that the Purchaser's obligations to the Company for the supply of Services shall not cease until: (a) the Purchaser has paid the Company all amounts owing for the particular Services; and (b) the Purchaser has met all other obligations due by the Purchaser to the Company in respect of all contracts between the Company and the Purchaser.

36.5 Receipt by the Company 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 Company's ownership or rights in respect of the Services shall continue.

37. MINIMUM HIRE PERIOD

37.1 A minimum hire period of eight (8) hours is applicable to all Candidates supplied by the Company to the Purchaser.

38. PURCHASER'S RESPONSIBILITIES / AGREEMENTS

38.1 The Purchaser agrees that they shall not alter the location where the Candidate is to undertake any agreed duties without the prior consent of the Company.

38.2 The Purchaser agrees that they shall supply to the Company (on the day specified by the Company) a duly authorised timesheet to enable the Company to pay the Candidate when due.

38.3 It is the responsibility of the Purchaser to: (a) provide supervision of Candidates to ensure that work is carried out to a satisfactory standard; and (b) provide Candidates with appropriate information, supervision and training to enable them to work safely; and (c) provide Candidates with workplace specific and job specific induction if necessary. This induction is to be completed before the Candidate commences work with the Purchaser; and (d) familiarise the Candidate with the Purchaser's operations, facilities, policies and procedures, and properly inform the Company of any specific requirements of the job which the Candidate will be required to undertake; and (e) provide safe working conditions and to comply with all statutory and other obligations that are applicable pursuant to Australian law (including but not limited to, Occupational Health and Safety legislation) applicable to employers and otherwise to treat Candidates as if they were employed by the Purchaser; and (f) effect and maintain insurance cover in respect of any claims which may be made against the Purchaser by a Candidate that arises as a result of the Purchaser's occupation of premises, and otherwise in respect of any act or omission in respect of machinery, equipment or vehicle(s) used by the Candidate, and to indemnify the Company against any such claims; and (g) properly maintain plant and equipment; and (h) provide a minimum payment for wet weather of four (4) hours per Candidate.

38.4 The Purchaser agrees that it will not request a Candidate to engage in any works or use any equipment that a Candidate is unfamiliar with, or unqualified to use or perform, or have not received adequate training for.

38.5 The Purchaser agrees that they will immediately notify the Company of any variation of duties given to a Candidate that may affect the remuneration payable to the Candidate or may involve additional risk to the Candidate.

38.6 The Purchaser agrees that it will immediately notify the Company of any injury sustained by the Candidate.

38.7 The Purchaser acknowledges that they remain responsible for controlling the manner, time and place in which the Candidate shall carry out their duties as assigned by the Purchaser and that in doing so the Purchaser shall be liable for all acts and omissions of the Candidate the same as they would be for any of their own employees.

38.8 In no circumstances shall the Company be liable for any personal injury resulting in injury or death, loss and/or damage or expense arising out of, or caused by, any act or omission of a Candidate whether or not any such act or omission is negligent, and the Purchaser acknowledges and agrees to indemnify the Company against all such liability whether alleged or proved. The Purchaser is to include all Candidates in the Purchaser's own public liability insurance cover.

38.9 If any event arises which is likely to lead to any dispute or claim, the Purchaser must notify the Company of the same within thirty (30) days of the event. If the Purchaser shall fail to comply with this provision then all Services provided by the Company shall be deemed to have been provided in accordance with these terms and conditions, and free from any disputes or claims.

38.10 The Purchaser agrees that any working environment in which a Candidate is placed during the period of the engagement will comply with all applicable equal opportunity legislation or regulations. The Purchaser agrees to immediately notify the Company if a Candidate is involved in a sexual harassment or discrimination claim during the performance of the Services.

38.11 The Purchaser acknowledges that the Company makes no representation or guarantee that any Candidate will achieve a certain level of performance, achieve a certain outcome, solve a particular problem or attain a specific goal.

39. CONFIDENTIALITY

39.1 The Company and the Purchaser agree to keep confidential any information in relation to the other party which is not in the public domain (including, but not limited to, trade secrets, processes, formulae, accounts, marketing, designs, databases and all other information held in any form).

40. EMPLOYEES OF THE COMPANY

40.1 The Purchaser agrees not to employ, contract, subcontract or utilise in any way an employee or past employee of the Company (other than through the Company) for a period of no less than twelve (12) months after that employee's last employment with the Company.

40.2 The Purchaser agrees that if clause 26.1 is contravened the Company will be able to invoice the Purchaser at its current hourly rate the hours that the employee has been employed, contracted, subcontracted or utilised in any way by the Purchaser and agrees to pay said invoice in accordance with the standard payment terms contained in this contract.

SCHEDULE 1 - WARRANTY

(CLAUSE 11 - WARRANTY)

This Warranty forms part of and is to be read in conjunction with the Contract.

1. DEFINITIONS IN THIS SCHEDULE 1

1.1 Warranty Period means the period outlined in table 1, following the date of installation of the goods. All warranty periods start from the date of installation, however is subject to purchaser storage conditions.



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2. GOODS

2.1 Subject to clauses 3 and 4 of this Warranty, and in the absence of a third party manufacturer warranty, the Company agrees, in relation to any faulty workmanship in Goods that are purchased by the Purchaser and reported by the Purchaser to the Company during the Warranty Period, to any one or more of any the following:

- (a) in the case of goods:
 - (i) to replace the goods or supply equivalent goods;
 - (ii) to repair the goods;
 - (iii) to pay the cost of replacing the goods or acquiring equivalent goods; or
- (iv) to pay the cost of having the goods repaired; and
- (b) in the case of services:
 - (i) to supply the services again; or
 - (ii) to pay the cost of having the services supplied again.

2.2 Where a component failure is determined to be caused by a part failure, parts failures will be warranted "back to back" in line with the warranty of the part supplier.

2.3 For the avoidance of doubt, the Company has sole discretion as to any one or more of the alternatives specified in clauses 2.1(a) or 2.1(b).

2.4 This Warranty does not cover anything which is not expressly included in the Warranty.

2.5 Where a component or part of the Goods are repaired or replaced by the Company pursuant to clause 11, the liability of the Company will be limited to that particular component or part.

2.6 Where a component or part of the Goods are repaired or replaced by the Company pursuant to clause 11, the repairs performed under this warranty do not extend the warranty period beyond the time frame set forth when the component was originally purchased.

3. EXCLUSIONS

3.1 To the extent permissible by law, the Warranty does not cover:

- (a) anything caused or contributed to by:
 - (i) Normal Wear and Tear and the gradual reduction in operating performance of the Goods;
 - (ii) the Company being the subject of a Force Majeure Event;
 - (iii) an accident, abuse, neglect of a person other than of the Company, including any wilful, negligent or inappropriate act or omission of a person other than of the Company which occurs during transportation of Goods, the loading and/or unloading of Goods, installation of Goods, moving of Goods or storage of goods;
 - (iv) vandalism, power outages, surges, inadequate or improper voltage or current, or use and instalment of Goods contrary to any instruction or manual;
 - (v) repair or modification of Goods carried out:
 - (a) without the proper written consent of the Company; or
 - (b) by a person other than the Company or its agent;

(vi) any criminal, deliberate, wilful, dishonest or fraudulent act, error or omission of the Purchaser or any of its officers, employees or agents; or

(vii) any breach by the Purchaser of a law or regulatory requirement;

(b) costs of removal, reinstallation, recommissioning or shipping of the Goods;

(c) damage occurring during transportation, freight, installation of the Goods or while moving the Goods; or

(d) any defect or faulty workmanship in relation to the Goods:

(i) not notified to the Company within the Warranty Period; or

(ii) where the Purchaser continues to use the Goods after the Purchaser knew or discovered or ought reasonably to have known or discovered the defect or faulty workmanship.

(e) damage occurring as a result of the incorrect operation of machine by the Customer in accordance with Original Equipment Manufacturer (OEM) Operation and Maintenance Guidelines

(f) components that have an installation date that exceeds 12 months from the purchasers date of receipt.

(g) where the company has not received the required installation and associated documentation (published separately and available by contacting the Company) from the purchaser, within 21 days of installation of the component.

(h) electrical components

(i) air starters on engines

(j) used parts sold by the company, where goods have been visually inspected and are considered reusable and sold in good faith and can be re-used, that have been fitted and accepted by the purchaser as to be fit for use.

(k) used components sold by the company that are opened and visually inspected with no history, and are sold by the company with the intent that the component will be rebuilt prior to use.

(l) Any component rebuilt to the purchasers requirements that are not to the repair standards of the company.

4. WARRANTY CLAIMS AND ASSOCIATED COSTS

4.1 If a Purchaser wishes to lodge a claim under this Warranty in relation to the Goods then the Purchaser must complete and submit the company warranty claim form (published separately and available by contacting the Company) notifying the Company in detail within 24 hours of the problem occurring and/or at the discretion of the Company representative during the Warranty Period.

4.2 Components repaired by the company must not be dismantled or removed by the purchaser or any parties without explicit consent from the company.

4.3 The Company may, under this Warranty, direct the Purchaser to facilitate an inspection of the goods under the guidance of the company to:

- (a) Return the goods to the location from which the Goods were originally dispatched to the Purchaser; or
- (b) Return the goods to another location, provided that the cost of returning the Goods to such a location does not

exceed the cost of returning the Goods to the location from which the Goods were originally dispatched to the Purchaser.

(c) Hold the goods at their current location.

4.4 Where the Company directs the Purchaser under clause 4.3 of this Warranty, the Purchaser must action the Goods in accordance with such direction within a reasonable time at the Purchaser's cost (if that cost is not significant); and in as close a condition to that in which they were delivered as is possible.

4.4 The Company may at its discretion require the Purchaser to issue a purchase order with respect to additional inspection, testing and / or assessment required in order for the Company to assess a Warranty claim and the Purchaser shall be obliged to issue such documentation prior to any further inspection, testing and / or assessment being undertaken by the Company under the Warranty terms.

4.5 To aid the assessment being undertaken by the company, the company may at its discretion require the purchaser to;

- (a) provide service records, results, oil samples, undercarriage reports etc
- (b) Oil Samples must be carried out every 250 hours on engines and every 500 hours on power train components and/or as per manufacturers specifications, and must be made available to the company if so requested.

4.6 The Company will be the sole arbitrator in determining the acceptance of the claim, in the event that the Company reasonably determines that a claim is not accepted under this Warranty, the Purchaser shall be liable for any costs incurred by the Company associated with a Warranty claim, including all costs incurred by the Company in inspecting, testing and / or assessing the Goods as part of any claim, including reasonable labour costs and travel costs associated with travelling to a particular location to inspect, test and / or assess the Goods.

4.7 In the event that the Company does not accept a Warranty claim, the Purchaser shall be notified of the Company's decision and will be issued with an invoice for the costs incurred by the Company associated with a Warranty claim pursuant to clause 4.6 of this Warranty.

4.8 Where a third party manufacturer warranty applies, the Purchaser agrees to comply with any applicable warranty terms and conditions, to the extent that they contain additional warranty requirements.

4.9 The Purchaser shall be required to pay any invoice issued to the Purchaser pursuant to clause 4.7 of this Warranty by the Due Date.

4.10 The Purchaser shall indemnify the Company in respect of any and all Claims, losses, expenses and liabilities incurred by the Company arising indirectly or directly out of any Warranty claim not accepted by the Company.

4.11 Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

4.12 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 (NonExcluded Guarantees).

4.13 The Company acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

4.14 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Company makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Company's liability in respect of these warranties is limited to the fullest extent permitted by law.

4.15 If the Purchaser is a consumer within the meaning of the CCA, the Purchaser's liability is limited to the extent permitted by section 64A of Schedule 2.

4.16 Notwithstanding anything contained in this clause if the Company is required by a law to accept a return then the Company will only accept a return on the conditions imposed by that law.

TABLE 1 – WARRANTY

Component Type	Warranty from date of installation
Engines, Transmission, Torque Converters, Differentials, Wheel Groups	<ul style="list-style-type: none"> • 12 Months Full Warranty • Unlimited hours
Grader front axle assemblies, Grader "A" Frame circle assemblies, all other equalizer bars, Hydraulic cylinders, valves and pumps, Radiators	<ul style="list-style-type: none"> • 6 Months Full Warranty
New Parts – OEM or aftermarket	<ul style="list-style-type: none"> • 6 Months warranty on defects and quality
Reconditioned Components – Labour & Machining	<ul style="list-style-type: none"> • Standard 3 month warranty workmanship only
Used Components inspected with history	<ul style="list-style-type: none"> • 3 Months full warranty