

**Standard Terms for Goods, Services and Equipment**

These Supply Conditions - Standard Terms for Goods, Services and Equipment apply to the supply of goods and services (the goods being 'Goods' and the services being 'Services'), and to the hire of equipment ('Equipment'), from Supplier to Customer from time to time. Additional terms also apply to the hire of Equipment as set out in the Additional Terms for Equipment Hire included later in this Part.

To the extent that the Goods or Services are supplied, or the Equipment is hired, by Supplier to Customer on credit, the Credit Conditions set out in Part 5 of the Credit Account Application of which these Supply Conditions form part, also apply.

Otherwise, Goods or Services will only be supplied, and Equipment hired, to Customer on cash in advance basis.

The Supply Conditions (including the Additional Terms for Equipment Hire) and (to the extent applicable) the Credit Conditions are together referred to as 'these conditions'.

**1. Quotations and Purchase Orders**

- (a) Customer may request a quotation from Supplier for the supply of particular Goods or Services or the hire of particular Equipment. Unless the express terms of a quotation provide otherwise, any quotation issued by Supplier does not constitute an offer to supply the Goods or Services, or to hire the Equipment, referred to in the quotation but is an invitation to Customer to submit a Purchase Order for those Goods or Services or the hire of that Equipment. Supplier may vary any aspect of a quotation issued by it at any time prior to Supplier providing its acceptance of a purchase order submitted by Customer in respect of those Goods, Services or Equipment.
- (b) Customer acknowledges and agrees that by submitting a purchase order to Supplier for the supply of Goods or Services, or for the hire of Equipment (as the case may be) (**Purchase Order**), the Customer agrees it is making an offer to purchase the Goods or Services, or hire the Equipment, referred to in the Purchase Order on these conditions.
- (c) A contract for the supply of Goods or Services, or the hire of Equipment, on these conditions (**Contract**) is formed between Customer and Supplier at the time (if any) Supplier provides its acceptance of a Purchase Order submitted by the Customer for such supply or hire.
- (d) For the purposes of these Supply Conditions, **Purchase Order** means and includes a formal document titled as a "Purchase Order" or any other form of written communication from the Customer, including fax or email pursuant to which Customer expresses an acceptance of a quote and / or an intention to acquire Goods or Services, or to hire Equipment.

**2. Prices and payment**

- (a) Customer must pay Supplier the total amount payable (exclusive of GST) set out in each tax invoice provided by Supplier to Customer for the supply of Goods or Services or the hire of Equipment (**Price**) when due.
- (b) Customer must pay all amounts payable to Supplier under these conditions without any deduction, withholding, counterclaim or setoff.
- (c) Unless Supplier specifies otherwise in writing to the Customer:
  - (i) all prices included in any quotation issued by Supplier are exclusive of GST;
  - (ii) if Supplier is liable to pay any GST or other taxes in connection with the supply of any Goods or Services or the hire of any Equipment to Customer, Customer must pay Supplier the amount of GST for

- which Supplier is liable in accordance with clause 9 of these Supply Conditions; and
- (iii) time is of the essence with respect to all amounts payable by Customer to Supplier.
- (d) Supplier has the right to charge an additional amount to the Customer compared to the amount stipulated in the applicable Purchase Order accepted by Supplier:
  - (i) if Supplier complies with a request by Customer, made after the date of the Supplier's acceptance of the Purchase Order, for the delivery of Goods or Equipment, or the provision of Services, outside Supplier's normal working hours;
  - (ii) if Supplier complies with a request by Customer, made after the date of the Supplier's acceptance of the Purchase Order, for a variation to the delivery arrangements in respect of the Goods or Equipment, or the provision of Services; or
  - (iii) if and to the extent that there is any change in the cost to Supplier of labour, materials or transport relating to the supply of Goods or Services or the hire of Equipment by Supplier.
- (e) If Customer disputes any amount included in a tax invoice provided by Supplier, Customer must nevertheless pay the full amount set out in the tax invoice. After the dispute is resolved in accordance with clause 10 of these Supply Conditions, if it is agreed or determined that Supplier has been paid more than Supplier was entitled to be paid, the amount of any overpayment must be refunded by Supplier to Customer within 30 days after the date the dispute is resolved.
- (f) At Supplier's option, Supplier may require that the payment by Customer of all amounts which may be payable by Customer to Supplier under these conditions be guaranteed by a bank guarantee:
  - (i) for an amount equal to the Credit Limit (if any) or such other amount as Supplier requests;
  - (ii) in a form and substance acceptable to Supplier; and
  - (iii) from a bank acceptable to Supplier.

**3. Delivery or collection of Goods and Equipment**

- (a) Unless stated otherwise in the applicable Purchase Order, Customer is responsible for collecting the Goods or the Equipment (as the case may be) from Supplier's premises and delivering them to the address set out on the Purchase Order (**Customer's Premises**).
- (b) Where Supplier has agreed to deliver the Goods or the Equipment to Customer's Premises, unless the Purchase Order provides otherwise, Customer is responsible for the cost of delivery from Supplier's

premises to Customer's Premises, including the cost of loading and unloading the Goods or Equipment and the cost of transport insurance.

- (c) Customer is responsible for examining the Goods or Equipment collected by or delivered to it to ensure that the Goods or Equipment are as described in the Purchase Order.
- (d) Any claim relating to Goods or Equipment collected by or delivered to Customer must be made to Supplier within 7 days after such collection or delivery (as applicable), and confirmed in writing to Supplier within 7 days.

#### 4. Title and risk

- (a) Title to the Goods remains with Supplier until Customer pays Supplier the full amount owed by Customer in respect of those Goods and all other amounts payable by the Customer to the Supplier.
- (b) Title to the Equipment remains with Supplier.
- (c) Risk in the Goods passes from Supplier to Customer upon the Goods being delivered Customer's Premises or collected by Customer from Supplier's premises (as the case may be).
- (d) Risk in the Equipment passes to the Customer upon the Equipment being delivered to the Customer's Premises or collected by the Customer from Supplier's premises (as the case may be) until the time the Equipment is collected from the Customer's Premises by Supplier or returned by the Customer to Supplier's premises (as the case may be).

#### 5. Force majeure

- (a) If there is any delay or failure in the supply or delivery of Goods or Services, or in the commencement or continuance of the hire of Equipment by Supplier due to weather, fire, labour dispute, strike or any other cause whatsoever beyond Supplier's reasonable control:
  - (i) Supplier is not in breach of these conditions by reason of that delay or failure;
  - (ii) Supplier's obligation to supply or deliver the Goods or the Services or to hire the Equipment is suspended for the period of that delay or failure;
  - (iii) if the delay or failure continues for in excess of 7 days, Supplier may terminate the relevant Contract by notice in writing to Customer; and
  - (iv) Supplier is not liable for any loss, damage, cost or expense incurred by Customer by reason of such suspension or termination.
- (b) Unless Supplier has given Customer written notice of the termination of the relevant Contract in accordance with clause 5(a)(iii) **Error! Reference source not found.** of these Supply Conditions, a delay or failure does not relieve Customer of the obligation to pay the applicable Price when due.

#### 6. Warranties

- (a) Customer acknowledges and agrees that:
  - (i) Customer has satisfied itself that the Goods, Services or Equipment (as the case may be) are suitable for the Customer's purposes; and
  - (ii) Customer has not entered into these conditions in reliance upon any warranty or representation given by Supplier in relation to the Goods, the Services or the Equipment.
- (b) Except where non-excludable rights under Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (as amended) (**Act**) (or analogous legislation) (**Consumer Guarantees**) apply in relation to the supply of goods and services by Supplier (including, for the avoidance of doubt, the Goods, the Services and the Equipment), Supplier:

- (i) excludes all representations and warranties, including as to merchantability and fitness for purpose, relating to the goods and services supplied by Supplier or otherwise, whether expressed or implied by law, trade, custom or otherwise;
- (ii) excludes liability for any loss, damage, cost or expense incurred in respect of the goods or services supplied by Supplier as a result of any deficiency or fault in goods or services which are not provided by Supplier or Supplier's officers, employees, agents or contractors; and
- (iii) otherwise limits its liability in respect of the goods and services supplied by Supplier, the delivery of those goods and services, and any guidelines or specifications or other material provided to the Customer in relation to those goods and services, whether in contract, tort (including negligence), statute or otherwise, to the cost of replacing the goods or resupplying the services (or the affected part of the goods or services, as the case may be), in each case to the extent permitted by law, and where such Consumer Guarantees apply then Supplier's liability in respect of any breach of, or claim Customer has under, the Consumer Guarantees is limited, to the extent permitted by law, to one of the following (as determined by Supplier in its absolute discretion):
  - (iv) in the case of goods: the replacement of the goods or the supply of equivalent goods, or payment of the cost of replacing the goods or acquiring equivalent goods; and
  - (v) in the case of services: supplying the services again, or payment of the cost of having the services supplied again, except where it is not fair or reasonable (as defined in the Act) to limit liability in respect of the Consumer Guarantees in this way.

#### 7. Liability

- (a) Subject to clause 6(b) of these Supply Conditions and to the extent permitted by law, Supplier excludes:
  - (i) all liability, loss, damages, costs and expenses (including consequential loss, loss of profits, revenue or business, loss of contract, and product liability), whether in contract, tort (including negligence), statute or otherwise (**Loss**), incurred by Customer or any other person in connection with the supply of the Goods, the Services or the Equipment, regardless of whether such Loss was foreseeable and even if its possibility had been made known; and
  - (ii) any liability to Customer or any other person for any Loss incurred as a result of Customer or any other person not using or installing the Goods or Equipment in accordance with guidelines, specifications or other material provided to Customer by Supplier.
- (b) Customer agrees to install and use the Goods or Equipment (as the case may be) in accordance with all guidelines, specifications or other material provided to the Customer by Supplier, and Customer indemnifies Supplier and holds Supplier harmless against any and all Loss suffered or incurred in connection with Customer or any other person not installing or using the Goods or Equipment in accordance with any guidelines, specifications or other material provided to Customer by Supplier.
- (c) Supplier's liability under or in connection with these conditions is limited to 10% of the Price.
- (d) Supplier will have all rights and remedies set out in these conditions in addition to those otherwise

available at law and all such rights and remedies are cumulative.

- (e) Customer must pay all costs and expenses paid or incurred by Supplier in enforcing Supplier's rights under or in connection with these conditions, including any legal fees and court costs.

## 8. Termination

- (a) Supplier may terminate any Contract:
  - (i) immediately on written notice to Customer, if Customer breaches any of these conditions;
  - (ii) pursuant to clause 5(a)(iii) of these Supply Conditions; or
  - (iii) for any reason in its absolute discretion on giving 14 days' written notice to Customer.
- (b) Supplier is not liable for any Loss incurred by Customer or any other person by reason of the termination of any Contract in accordance with clause 8(a) of these Supply Conditions.
- (c) Customer may only terminate or vary a Contract with Supplier's prior written consent. Customer may cancel a Purchase Order prior to its acceptance by Supplier.
- (d) If a Contract is terminated by Customer:
  - (i) before commencement of the supply of the Goods or Services or the commencement of the Hire Period for Equipment (as the case may be) under the Contract, Customer must pay to Supplier an amount equal to 10% of the aggregate Price payable under the Contract; and
  - (ii) after commencement of the supply of the Goods or Services or the commencement of the Hire Period for Equipment (as the case may be) under the Contract, Customer must pay to Supplier an amount equal to the aggregate Price payable under the Contract, unless otherwise agreed by Supplier in writing,in each case to be paid within 7 days after the date of termination.

## 9. GST

- (a) If any supply by Supplier to Customer under or in connection with these conditions is subject to GST, Customer must pay to Supplier, in addition to the consideration for that supply (unless it expressly includes GST), an amount (**additional amount**) equal to the amount of the consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. Customer must pay the additional amount to Supplier at the same time as the consideration for the supply is payable.
- (b) In these conditions, the terms '**tax invoice**', '**GST**', and '**GST exclusive market value**' have the respective meanings given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended).

## 10. Dispute resolution

- (a) If a dispute arises between Supplier and Customer in connection with these conditions or a Purchase Order (**Dispute**), except where urgent interlocutory relief is sought, the party who reasonably believes that there is a Dispute must give written notice to the other party setting out the nature of the Dispute (**Dispute Notice**).
- (b) Within 14 days after the date of the Dispute Notice, a representative nominated by each party must meet together and use their reasonable endeavours to resolve the Dispute.
- (c) If the Dispute has not been resolved within 30 days of the date on which the representatives of the parties first convened under clause 10(b) of these Supply Conditions, either party may refer the Dispute to mediation by giving written notice to the other party.
- (d) The parties agree that any mediation commenced pursuant to clause 10(c) of these Supply Conditions will

be conducted by a person agreed between the parties or, if the parties are unable to agree on the identity of that person, by a person nominated by the Council of the Institute of Arbitrators & Mediators Australia in accordance with the process set out in The Institute of Arbitrators & Mediators Australia Mediation Rules.

- (e) Supplier has the right to suspend performance of its obligations under a Purchase Order from the date of the Dispute Notice until the Dispute is settled in accordance with this clause 10.

## 11. General

- (a) Each Contract, these conditions and the Credit Account Application of which these conditions form part constitute the entire agreement between Supplier and Customer in relation to their subject matter.
- (b) Customer agrees that Supplier may amend or replace these conditions in its absolute discretion by providing prior written notice to Customer, provided that the amended or replacement conditions:
  - (i) do not apply to Purchase Orders accepted by Supplier prior to the date stipulated in the notice from which the amended or replacement conditions are to take effect; and
  - (ii) do not affect Customer's or Supplier's accrued rights or obligations.
- (c) Customer must not assign or otherwise deal with its rights under these conditions without Supplier's prior written consent.
- (d) Supplier may assign or otherwise deal with its rights under these conditions without Customer's consent.
- (e) A waiver of any rights under these conditions must be in writing signed by the party giving the waiver.
- (f) A single or partial exercise of a right, power or remedy under these conditions does not preclude any other or further exercise of that or any other right, power or remedy.
- (g) If any provision in these conditions is invalid, void or voidable, that condition will be severed and the remainder of these conditions will continue to have full force and effect.
- (h) Supplier may give (whether or not subject to conditions) or withhold consent under these conditions in its absolute discretion.
- (i) A certificate given by Supplier to Customer about an amount payable to Supplier or any other matter in connection with these conditions is sufficient evidence of the amount or matter unless the amount or matter is proven to be false.
- (j) New South Wales law applies to these conditions. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them.

## 12. Further assurances

- (a) The expressions 'security interest', 'registration', 'verification statement' and 'perfected' in this clause have the meaning given to them in the *Personal Property Securities Act 2009* (Cth) (**PPSA**).
- (b) Customer acknowledges that Supplier may apply for any registration in connection with any security interest arising in favour of Supplier under a transaction contemplated by these conditions.
- (c) Supplier need not give Customer any notice of verification statement in connection with any security interest arising in favour of Supplier under a transaction contemplated by these conditions.
- (d) Customer must do anything (such as obtaining consents, signing and producing documents, producing receipts, getting documents completed and signed and providing information) which Supplier asks and considers necessary:
  - (i) to ensure that each security interest arising in favour of Supplier under a transaction contemplated

- by these conditions is enforceable, perfected and otherwise effective;
- (ii) to enable Supplier to apply for any registration, or give any notification in connection with any security interest arising in favour of Supplier under a transaction contemplated by these conditions so that the security interest has the priority Supplier requires; and
  - (iii) to enable Supplier to exercise its rights in connection with any security interest arising in favour of Supplier under a transaction contemplated by these conditions.
- (e) If Chapter 4 of the PPSA applies to any security interest arising in favour of the Supplier under a transaction contemplated by these conditions:
- (i) Customer agrees that Supplier need not comply with sections 95, 118, 121(4), 125, 130, 132(d) and 132(4) of the PPSA in connection with the security interest; and
  - (ii) Customer may not exercise any rights under sections 142 and 143 of the PPSA.
- (f) Customer agrees not to change any of its details required for registration of any security interest arising in favour of Supplier under a transaction contemplated by these conditions without giving Supplier at least 14 days' prior written notice of the change.
- (g) Except if section 275(7) of the PPSA applies, neither Supplier nor Customer will disclose any information of a kind referred to in section 275(1) of the PPSA which is not publicly available in regard to any security interest arising in favour of Supplier under a transaction contemplated by these conditions.
- (h) Everything Customer is required to do under this clause 12 is at its expense. Customer agrees to pay on demand Supplier's costs, charges and expenses (including registration fees) in connection with anything Supplier does under this clause 12 and in connection with enforcing any security interest arising in favour of Supplier under a transaction contemplated by these conditions, including legal fees on a full indemnity basis.

The conditions set out in this Part apply to the hire of Equipment by Supplier to Customer

**13. Period of hire**

- (a) The period of hire for Equipment (**Hire Period**) commences:
  - (i) when Customer collects the Equipment from Supplier's premises; or
  - (ii) if Customer requests delivery of the Equipment in the relevant Purchase Order, when the Equipment is delivered to Customer's Premises, and concludes when the Equipment is returned to Supplier's premises
- (b) The minimum Hire Period is **insert**.
- (c) Customer acknowledges and agrees that, unless otherwise agreed by Supplier, the Price for the hire of the Equipment is based on the length of the Hire Period, and not the actual amount of time the Equipment is used by the Customer.

**14. Insurance**

- (a) Customer must effect and maintain, from a reputable insurance company, insurance in the joint names of Customer and Supplier covering against the replacement value of the Equipment for the duration of the Hire Period, for the full replacement value of the Equipment.
- (b) Customer must provide Supplier with a copy of a certificate of currency for each insurance policy required by the Customer under clause 14(a) of these Supply Conditions prior to the Equipment leaving Supplier's depot and at any other time requested by Supplier during the Hire Period.

**15. Pre hire inspection**

- (a) The Equipment will be inspected by Supplier prior to its collection by, or delivery to, Customer to ascertain and record the condition of the Equipment at the commencement of the Hire Period (**Pre Hire Inspection**).
- (b) Customer acknowledges and agrees that Supplier's record of the Pre Hire Inspection is sufficient evidence of the condition of the Equipment at the commencement of the Hire Period unless it is proven to be false.
- (c) Supplier is entitled to charge Customer a fee for the Pre Hire Inspection.

**16. Use of the Equipment**

- (a) During the Hire Period, Customer must, and must procure that its employees, agents and contractors:
  - (i) operate the Equipment strictly in accordance with the Supplier's and the Equipment manufacturer's instructions;
  - (ii) use the Equipment only in the operating conditions, for the purpose and within the capacity for which it is designed;
  - (iii) ensure the Equipment is used only by suitably trained and certified persons;
  - (iv) wear suitable clothing and protective equipment when operating the Equipment;
  - (v) maintain the Equipment in good condition and in accordance with applicable legislation, Australian Standards and industry best practices;
  - (vi) store the Equipment securely;
  - (vii) if requested by Supplier, supply Supplier with monthly oil and fuel samples of the Equipment (all samples to be carried out by a NATA approved company);

- (viii) maintain all licences, consents, permits and approvals required in connection with the possession and use of the Equipment; and
- (ix) allow Supplier or its nominee to inspect the Equipment at any time during the Hire Period.
- (b) During the Hire Period, Customer must not, and must procure that its employees, agents and contractors do not, without the prior written consent of Supplier:
  - (i) do anything in breach of clause 16(a) of these Supply Conditions
  - (ii) undertake any modifications or additions to the Equipment;
  - (iii) deface, cover up or remove any identifying marks on the Equipment;
  - (iv) reverse engineer the Equipment;
  - (v) allow the Equipment to become affixed to land or to become an accession to any other goods;
  - (vi) sell, assign, lend, lease, sub-hire, bail, give a 'security interest' (as that term is defined in the PPSA) in or otherwise deal with the Equipment;
  - (vii) use the Equipment in an area where contaminants or materials that present a risk of harm to human health or the environment (including asbestos) are present; or
  - (viii) move the Equipment from the Customer's Premises to any other location.

**17. Servicing and maintenance**

- (a) Customer must notify Supplier in writing when the Equipment has operated:
  - (i) **for 250** hours from the start of the Hire Period; and thereafter
  - (ii) **for 250** hours since the date that the Equipment was last serviced.
- (b) Supplier will conduct monthly or **250 engine hour** servicing of the Equipment (whichever is more frequent) at Customer's Premises and at Customer's expense (**Regular Servicing**).
- (c) Customer must make the Equipment available to Supplier (or its nominee) for Regular Servicing at a safe and convenient location at Customer's Premises.
- (d) If Customer fails to provide notice to Supplier in accordance with clause 17(a) of these Supply Conditions, Customer will be liable for any added wear, tear and damage to the Equipment caused or contributed to by that failure, as determined by Supplier in its discretion.
- (e) Any inspection, servicing and maintenance of the Equipment conducted by Customer or a contractor of Customer must be carried out strictly in accordance with the manufacturer's guidelines and at Customer's expense.
- (f) Customer will be responsible for the cost of all ground engaging parts and consumables for the Equipment including fuel, oils, lubricants, filters and other wear parts.
- (g) All parts and consumables referred to in clause 17(f) of these Supply Conditions must be genuine original products of the manufacturer, unless otherwise expressly permitted by Supplier.
- (h) Supplier may supply consumables and parts for the Equipment at the request of Customer and Customer will be separately invoiced for these consumables and parts.
- (i) Supplier provides no warranty in respect of consumables and parts supplied to Customer in accordance with clause 17(h) of these Supply

Conditions, but to the extent permitted, will assign whatever warranties are provided by the manufacturers of those consumables and parts to Customer.

Customer and must be paid by Customer to Supplier within 7 days after the Customer receives a tax invoice from Supplier for those costs.

#### 18. Breakdown and repair

- (a) Customer must promptly notify Supplier if the Equipment breaks down or requires repair.
- (b) Supplier will only be responsible for the cost of replacing parts and components of the Equipment (other than ground engaging parts) required to be replaced due to normal wear and tear.
- (c) Customer will be responsible for the cost of any replacement parts or components damaged either directly or indirectly by:
  - (i) the misuse, mishandling, negligent use or operation of the Equipment by Customer or any other person, including use of the Equipment in extremely adverse environments causing premature failures to any parts or components; or
  - (ii) failing to comply with Customer's obligations pursuant to clause 16, 17 or 18 of these Supply Conditions,and Supplier will not be liable for any delay in Customer's work as a result of any of the above circumstances.
- (d) The Hire Period includes, and the Customer is liable for hire fees during, any period that the Equipment is stood down for repairs, maintenance or servicing unless otherwise agreed to by Supplier.

#### 19. Return of Equipment

- (a) At the end of the Hire Period, Customer must return the Equipment to the Supplier's premises nominated in the Purchase Order (**Depot**) during the Supplier's normal business hours.
- (b) The Equipment must be returned to Supplier in a clean, undamaged and unaltered condition, fair wear and tear excepted.
- (c) Supplier may agree to collect the Equipment from Customer if it receives a written request from Customer to do so at least 7 days before the end of the Hire Period (**Pick Up Request**). Supplier will indicate its acceptance of a Pick Up Request by providing pick-up number to Customer.
- (d) Supplier is entitled to charge the Customer a fee in each of the following circumstances:
  - (i) Customer provides a Pick Up Request less than 7 days before the end of the Hire Period;
  - (ii) Customer returns the Equipment to Supplier's premises other than to the Depot or outside the Supplier's normal business hours;
  - (iii) Supplier collects the Equipment from Customer, either at the request of Customer or because Customer fails to return the Equipment to Supplier.

#### 20. Post hire inspection

- (a) Upon the return of the Equipment to Supplier's premises, an inspection of the Equipment will be conducted by the Supplier to ascertain and record the condition of the Equipment at the end of the Hire Period (**Post Hire Inspection**).
- (b) Customer acknowledges and agrees that Supplier's record of the Post Hire Inspection is sufficient evidence of the condition of the Equipment at the end of the Hire Period unless it is provided to be false.
- (c) Supplier is entitled to charge Customer a fee for the Post Hire Inspection.
- (d) Customer acknowledges and agrees that the costs of repairing any damage to the Equipment occurring during the Hire Period (whether identified during or subsequent to the Post Hire Inspection), cleaning the Equipment and replacing any components, consumables and worn parts will be borne by