

1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "Company" means Cranemech Pty Ltd ACN 612 755 352, its successors and assigns or any person acting on behalf of and with the authority of Cranemech Pty Ltd.
- 1.3 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Company to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 "Goods" means all Goods (including but not limited to, any parts and/or consumables) or Services supplied by the Company to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "Customer Plant" means any cranes, plant or equipment owned by the Customer.
- 1.6 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.7 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer.
- 1.8 "Price" means the Price payable (plus any GST where applicable) for the Goods and Services as agreed between the Company and the Customer in accordance with clause 5 below.
- 1.9 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.10 "Guarantor" means that person (or persons), or entity, who agrees to be jointly and severally liable for the debts of the Customer on a Customer debtor basis.
- 1.11 "PPSA" means the Personal Property and Securities Act 2009 (Cth) as amended from time to time.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, or accepts Services provided by the Company.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 The terms and conditions contained in this Contract may be amended by giving written notice of the changes to the Customer.
- 2.4 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with the Company and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods request exceeds the Customer's credit limit and/or the account exceeds the payment terms, the Company reserves the right to refuse delivery of the Goods and/or Services.
- 2.6 In the event that the Goods and/or Services provided by the Company are the subject of an insurance claim that the Customer has made, then the Customer shall be responsible for the payment of any monies payable to the insurance company and agrees to honour their obligation for payment for such transactions invoiced by the Company and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors & Omissions

- 3.1 The Customer acknowledges and accepts that the Company shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
(a) resulting from an inadvertent mistake made by the Company in the formation and/or administration of this Contract; and/or
(b) contained/omitted in/from any literature (hard copy and/or electronic) supplied by the Company in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Company; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Customer shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by the Company as a result of the Customer's failure to comply with this clause.

5. Price and Payment

- 5.1 At the Company's sole discretion, the Price shall be either:
(a) as indicated on invoices provided by the Company to the Customer in respect of the Services supplied; or
(b) the Price as at the date of Delivery of the Goods according to the Company's current price list; or

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- (c) the Company' estimated Price (subject to clause 6) which shall not be deemed binding upon the Company as the actual Price can only be determined upon completion of the Services. The Company undertakes to keep the Customer informed should the actual Price look likely to exceed the original estimate.
- 5.2 At the Company' sole discretion, a non-refundable deposit may be required, the amount or percentage of which will be stipulated at the time of the Customer's order and shall become immediately due and payable.
- 5.3 At the Company' sole discretion:
- (a) payment shall be due on completion of the Services; or
- (b) payment for approved Customers shall be due seven (7) days following the end of the month in which a statement is posted to the Customer's address or address for notices.
- 5.4 Payment will be made by cash, or by cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction) of the Price), or by any other method as agreed to between the Customer and the Company.
- 5.5 The Company may in its discretion allocate any payment received from the Customer towards any invoice that the Company determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Company may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Company, payment will be deemed to be allocated in such manner as preserves the maximum value of the Company' Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.6 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Company an amount equal to any GST the Company must pay for any supply by the Company under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6. Additional Charges**
- 6.1 The Company reserves the right to change the Price:
- (a) if a variation to the Services which are to be provided is requested; or
- (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, further faults which are found upon disassembly and/or further inspection) which are only discovered upon commencement of the Services; or
- (c) in the event of increases to the Company in the cost of labour or Goods, or fluctuations in currency exchange rates, which are beyond the Company' control.
- 6.2 Where the Company is requested to store the Customer's vehicle, or where the vehicle is not collected within twenty-four (24) hours of advice to the Customer that it is ready for collection, then the Company (at its sole discretion) may charge a fee of **(\$15.00 per day)** for storage.
- 6.3 All tow and/or salvage fees will be charged to the Customer, and will be added to the Price.
- 6.4 If the Company has been requested by the Customer to diagnose a fault that requires disassembly and/or testing, all costs involved will be charged to the Customer irrespective of whether or not the repair goes ahead.
- 6.5 The Customer acknowledges and agrees that the Company shall be entitled to:
- (a) retain any components replaced during the provision of the Services; and
- (b) the right to retain all proceeds obtained from the sale of such components to any auto recycler or salvage yard.
- 7. Delivery**
- 7.1 At the Company' sole discretion delivery of the Services shall take place when:
- (c) the Company provides the Services at the Company' address; or
- (d) the Company provides the Services at the Customer's nominated address.
- 7.2 Where the Company is to provide any Services at the Customer's nominated address then the Customer shall be liable for all costs incurred by the Company from the time they depart from, and until they return to, their normal place of work (including, but not limited to, mileage and time calculated at the Company's standard rates and any Goods purchased for the Services).
- 7.3 Any time specified by the Company for delivery of the Goods is an estimate only and the Company will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that the Company is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then the Company shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 8. Risk**
- 8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, 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 evidence of the Company' rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
- 8.3 If the Customer requests the Company to leave Goods outside the Company' premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 8.4 The Customer acknowledges and agree that where the Company has performed temporary repairs on the Customers Plant that:
- (a) the Company offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
- (b) the Company will immediately advise the Customer of the fault and shall provide the Customer with an estimate for the full repair of the Customers Plant.

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- 8.5 The Company will accept no responsibility for valuables or other items left in the Customer's Plant. It is the Customer's responsibility to remove any valuables from the Customer's Plant prior to servicing/repair.
- 8.6 The Customer acknowledges that the Company is only responsible for Goods that are replaced by the Company, and that in the event that other components subsequently fail, the Customer agrees to indemnify the Company against any loss or damage to the Goods or the Customer's Plant, or caused by the components, or any part thereof howsoever arising.
- 8.7 The Company shall not be liable for the loss of or damage to the Customer's Plant, its accessories or contents while being repaired or operated in connection with the authorised Services (including in the event of a call-out: it shall be the Customer's responsibility to remain with the Plant to ensure security of the same), unless caused by the negligence of the Company, or the Company' employees.
- 8.8 It is the Customer's responsibility to ensure that the Customer's Plant is insured against all possible damage (including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) whilst stored at the Company' premises. The Customers Plant is at all times stored and repaired at the Customer's sole risk.

9. Title

- 9.1 The Company and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid the Company all amounts owing to the Company; and
 - (b) the Customer has met all of its other obligations to the Company.
- 9.2 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.
- 9.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 9.1 that the Customer is only a bailee of the Goods and must return the Goods to the Company on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Company and must pay to the Company the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or Goods with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Company and must pay or deliver the proceeds to the Company on demand.
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Company and must sell, dispose of or return the resulting product to the Company as it so directs.
 - (e) the Customer irrevocably authorises the Company to enter any premises where the Company believes the Goods are kept and recover possession of the Goods.
 - (f) the Company may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Company.
 - (h) the Company may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

10. Personal Property Securities Act 2009 ("PPSA")

- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to the Company for Services – that have previously been supplied and that will be supplied in the future by the Company to the Customer.
- 10.3 The Customer undertakes to:
- (i) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 10.3(a)(i)1.1(i)(i) or 10.3(a)(ii);
 - (j) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (k) not register a financing change statement in respect of a security interest without the prior written consent of the Company;
 - (l) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Company;
 - (m) immediately advise the Company of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.4 The Company and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by the Company, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Customer must unconditionally ratify any actions taken by the Company under clauses 10.3 to 6.

- 10.9 Subject to any express provisions to the contrary (including those contained in this clause 10) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 11. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 11.1 The Customer must inspect the Goods on delivery and must within three (3) days of delivery notify the Company in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Customer must allow the Company to inspect the Goods.
- 11.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
- 11.3 The Company acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 11.4 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.
- 11.5 If the Customer is a consumer within the meaning of the CCA, the Company' liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.6 If the Company is required to replace the Goods under this clause or the CCA, but is unable to do so, the Company may refund any money the Customer has paid for the Goods.
- 11.7 If the Customer is not a consumer within the meaning of the CCA, the Company' liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty documentation provided to the Customer by the Company at the Company' sole discretion;
 - (b) limited to any warranty to which the Company is entitled, if the Company did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 11.8 Subject to this clause 11, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 11.1; and
 - (b) the Company has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, the Company shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by the Company;
 - (e) fair wear and tear, any accident, or act of God.
- 11.10 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.
- 11.11 For major failures with the Services, the Customer is entitled:
- (a) to cancel this Contract; and
 - (b) to a refund for the unused portion, or to compensation for its reduced value.
- 12. Intellectual Property**
- 12.1 Where the Company has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Company. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Company.
- 12.2 The Customer warrants that all designs, specifications or instructions given to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Company against any action taken by a third party against the Company in respect of any such infringement.
- 12.3 The Customer agrees that the Company may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Company has created for the Customer.
- 13. Default and Consequences of Default**
- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Company' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Customer owes the Company any money the Customer shall indemnify the Customer from and against all costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, the Company's' contract default fees, and bank dishonour fees).
- 13.3 Further to any other rights or remedies the Company may have under this Contract, if a Customer has made payment to the Company by credit card, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Company under this clause 13.2.3, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 13.4 Without prejudice to the Company' other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors (other than as specified in the amendments to the *Corporations Act 2001* (Cth) enacted by Part 2 of the *Treasury Law Amendment (2017 Enterprise Incentives No. 2) Act 2017* (Cth)); or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer (other than as specified in the amendments to the *Corporations Act 2001* (Cth) enacted by Part 2 of the *Treasury Law Amendment (2017 Enterprise Incentives No. 2) Act 2017* (Cth)).

14. Security and Charge

- 14.1 Despite anything to the contrary contained in this Contract or any other rights which the Company may have howsoever:
- (a) where the Customer is the owner of land, realty or any other asset capable of being charged, the Customer agrees to mortgage and/or charge all of their joint and/or several interests in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer agrees that the Company (or its nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer shall indemnify the Company from and against all costs and disbursements including legal costs on a solicitor and own Customer basis.
 - (c) the Customer agrees to irrevocably nominate, constitute and appoint the Company or the Company's nominee as the Customer's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 14.1.

15. Cancellation

- 15.1 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Company may suspend or terminate the supply of Goods to the Customer. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.
- 15.2 The Company may cancel any Contract to which these terms and conditions apply or cancel delivery of Goods and/or Services at any time before the Goods and /or Services are delivered by giving written notice to the Customer. On giving such notice the Company shall repay to the Customer any sums paid in respect of the Price. the Company shall not be liable for any loss or damage howsoever arising from such cancellation.
- 15.3 In the event that the Customer cancels the delivery of Goods and/ or Services the Customer shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation.

16. Privacy and Credit Application

- 16.1 All emails, documents, images or other recorded information held or used by the Company is Personal Information, as defined and referred to in clause 16.3, and therefore considered Confidential Information. the Company acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). the Company acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Company that may result in serious harm to the Customer, the Company will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 16.2 Notwithstanding clause 16.1, privacy limitations will extend to the Company in respect of Cookies where transactions for purchases/orders transpire directly from the Company' website. The Company agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Company when the Company sends an email to the Customer, so the Company may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via the Company' website.
- 16.3 The Customer agrees for the Company to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by the Company.
- 16.4 The Customer agrees that the Company may exchange information about the Customer with those credit providers and with related bodies corporate for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 16.5 The Customer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit.

- 16.6 The Customer agrees that personal credit information provided may be used and retained by the Company for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 16.7 The Company may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 16.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 16.3 above;
 - (b) name of the credit provider and that the Company is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and the Company has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of the Company, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 16.9 The Customer shall have the right to request (by e-mail) from the Company:
- (a) a copy of the Personal Information about the Customer retained by the Company and the right to request that the Company correct any incorrect Personal Information; and
 - (b) that the Company does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 16.10 The Company will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 16.11 The Customer can make a privacy complaint by contacting the Company via e-mail. The Company will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 17. Unpaid Seller's Rights**
- 17.1 Where the Customer has left any item with the Company for repair, modification, exchange or for the Company to perform any other service in relation to the item ("the Item") and the Company has not received or been tendered the whole of any monies owing to it by the Customer, the Company shall have, until all monies owing to the Company are paid:
- (a) a lien on the Item; and
 - (b) the right to retain or sell the Item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 17.2 In addition to the power of the *Disposal of Uncollected Goods Act 1967* the Company has the power of a statutory lien over the Customers Item for all moneys payable by the Customer to the Company pursuant to section 3 of the *Storage Liens Act 1973 (Qld) (Act)*.
- 17.3 The storer's lien on goods is declared to be a statutory interest to which section 73(2) of the *Personal Property Securities Act 2009 (Cwlth)* applies and has priority over all security interests in relation to the Customers Item.
- 17.4 Should some part of the moneys payable to the Company remain in arrears for a period of not less than 6 months (or such other period as may be allowed by the Act), the Company will, after providing written notice in accordance with the Act, sell the Customers Item by public auction.
- 17.5 After deducting the costs associated with or connected to the sale the Company is entitled to retain and apply the proceeds of sale to the payment of any outstanding fees and charges
- 17.6 The lien of the Company shall continue despite the commencement of proceedings, or judgment for any monies owing to the Company having been obtained against the Customer.
- 18. Service of Notices**
- 18.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (c) by handing the notice to the other party, in person;
 - (a) by leaving it at the address of the other party as stated in this Contract;
 - (b) by sending it by registered post to the address of the other party as stated in this Contract;
 - (c) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (d) if sent by electronic mail (email) to the other party's last known email address.
- 18.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 19. Trusts**
- 19.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Company may have notice of the Trust, the Customer covenants with the Company as follows:

- (e) this Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (a) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (b) the Customer will not without consent in writing of the Company (the Company will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

20. Dispute Resolution

- 20.1 If a dispute arises between the parties to this Contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to mediation. Any mediation shall be:
- (c) referred to a single mediator to be nominated by the President of the Institute of Arbitrators & Mediators Australia; and
 - (d) conducted in accordance with the Institute of Arbitrators & Mediators Australia Rules for the Conduct of Commercial Mediation.

21. General

- 21.1 The failure by either party to enforce any provision of this Contract shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of this Contract shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2 This Contract shall be governed by the laws of Queensland, the state in which the Company has its principal place of business, and are subject to the jurisdiction of the Brisbane Courts in Queensland.
- 21.3 The Company shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions.
- 21.4 The Company may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 21.5 The Customer cannot licence or assign without the written approval of the Company.
- 21.6 The Company may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Company' sub-contractors without the authority of the Company.
- 21.7 The Customer agrees that the Company may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Company to provide Goods to the Customer.
- 21.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 21.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 21.10 If any provision of this Contract shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.11 Any reference in these terms and conditions to any Statute or Statutory Provision includes a reference to that Statute or Statutory Provision as from time to time amended, extended or re-enacted.