

## The Glossary

### 1. DEFINITIONS AND INTERPRETATION

**Additional Expenses** means any fees, expenses, duties, taxes (including GST) and disbursements imposed by these Terms, including delivery and freight charges, permit and licence fees, toll or other road charges, scaffolding or fence hire charges, traffic management costs, installation and mobilisation fees, recalibration fees, de-installation or decommissioning fees, call out and call back fees, Personnel travel costs including flights, car rental, meals and accommodation, storage and restocking fees, survey and other report fees, third-party services, pre-employment checks, uniform or PPE costs, administration and account keeping fees, merchant fees and surcharges, at amounts and rates advised by Us from time-to-time.

**Credit Account** means the approved commercial account You have with Us to purchase Goods and Services on credit pursuant to these Terms, or the number of trading days listed on Our invoice.

**Customer** means any person, firm or company placing an Order with Us for the purchase of Goods and Services pursuant to these Terms, including Your associated, related, subsidiary and parent companies, successors and assigns (all of which are referred to as "You" and "Your").

**Due Date** means the date listed on Our invoice for Your payment of Goods and Services.

**Equipment** means the plant, machinery, appliances, tools, vehicles, accessories and other equipment that We use to deliver the Services or hire to You as part of the Services.

**Force Majeure** means something outside a party's reasonable control, including war, strikes, lockouts and lockdowns, epidemics and pandemics, industrial disputes or civil unrest, government restrictions or intervention, transport delays, fire, act of God, storm, flood, theft and vandalism.

**Goods** means any products, parts, materials, merchandise and other goods that We supply to You pursuant to any Quote, Order and/or these Terms.

**Hire Period** means the period of time that You agree to hire Equipment and/or Personnel as part of the Services or have Equipment and/or Personnel in Your possession, including all rollover, extended possession or agreed extension of time for the Equipment and/or Personnel.

**Industrial Law** means any industrial or employment contract, award, instrument, rule, statute or legislation and amended from time to time.

**Insolvency Event** means any circumstances where We reasonably believe that You are unable to pay Your debts as and when they fall due or You have suffered a material adverse change in Your financial circumstances.

**Loss** means any claim, demand, cause of action, loss and damage, liability, costs (including legal costs on an indemnity basis), expenses (including any GST payable) and is not limited by the Losses which were contemplated by the parties at the time of entering into these Terms.

**Order** means Your request to purchase Goods and Services.

**Personnel** means the labour hire personnel who We supply to You as part of the Services.

**Placement Fee** means the amount referred to in clause 15(b) of these Terms and calculated as follows:

Placement Fee	Personnel Salary or Wages (ex. Superannuation)
12% of	\$0 to \$54,999.99 per annum
14% of	\$55,000 to \$74,999.99 per annum
16% of	\$75,000 to \$99,999.99 per annum
18% of	\$100,00 and above per annum

**PPSA** means:

- the *Personal Property Securities Act 2009* (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- any amendment made at any time to any other legislation as a consequence of the PPS Act.

**Quote** means Our written description and price of the Goods and Services to be supplied to You, which is valid for 30 days.

**Services** means the:

- Ongoing maintenance services* for industrial electrical equipment and systems using on-site Personnel;
- Job-based services*, including installation, calibration, instrumentation, repair, thermal imaging, testing and tagging, inspections, labelling and other compliance services;
- Project-based services*, including design, consultation, manufacture, fabrication and construction of industrial electrical equipment;
- Labour hire services*, including recruiting and supplying Personnel to perform the Services for You on a temporary or long-term basis; and
- Hire of Equipment*;

that We provide to You pursuant to any Quote, Order and/or these Terms.

**Service Schedule** means the document specifying the goods, scope of work, Equipment, Personnel, Hire Period and/or any other details for provision of the Services pursuant to these Terms.

**Site** means any place where You request Goods and Services to be supplied.

**Supplier** means the entity or entities specified in these Terms as supplying Goods and Services to You and includes any associated, related, subsidiary and parent companies, successors and assigns (all of which are referred to as "Us", "We" and "Our").

**Website** means [www.gpselec.com.au](http://www.gpselec.com.au) as redirected from time to time.

In these Terms:

- A reference to 'Terms' means these Terms and Conditions of Business;
- A Business Day is any day except Saturday, Sunday or a public holiday in the location where the Goods and/or Services are being supplied;
- a reference to writing includes email and any communication through Our website;
- a reference to a clause or paragraph is a reference to these Terms;
- a reference to a party to these Terms or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;

Duly signed and accepted in full on behalf of \_\_\_\_\_

Signature \_\_\_\_\_ Name \_\_\_\_\_ Position \_\_\_\_\_ Date \_\_\_\_\_

- (f) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (g) headings and any explanatory notes and paragraphs are for ease of reference only and do not affect the meaning or interpretation of these Terms;
- (h) a reference to 'including' does not convey any limitation and should be interpreted as if the word 'without limitation' also appear; and
- (i) if these Terms require something to be done on a day that is not a Business Day (for example, payment or notice), then it must be done on the preceding Business Day.

## About these Terms

### 2. THIS AGREEMENT AND OUR RELATIONSHIPS

- (a) The entire agreement between the parties for all Goods and Services that We supply to You is comprised of these Terms, special conditions listed on any Quote or Order, and the Service Schedule. Unless the parties otherwise agree in writing, these Terms apply to the extent of any inconsistency between documents.
- (b) You warrant that You have obtained all the necessary authorisations to enter into and perform the agreement created by these Terms. You warrant that any person signing these Terms or instructing Us as to the Goods and Services has Your authority and power to do so.
- (c) You accept these Terms by signing and returning a copy of them to Us or by other conduct, for example by oral acceptance, submitting an Order, or by instructing Us to supply Goods and Services.
- (d) You engage Us to provide Goods and Services strictly as an independent contractor. We are not engaged as Your employee, partner, agent, joint venture or franchisee, nor is any other person working at Our direction.
- (e) These Terms are interpreted according to the laws of the State or Territory as We may reasonably determine. Proceedings by either party may be commenced and/or continued in the State or Territory We determine in Our sole discretion. If We do not make any determination, You consent to any proceedings being commenced and heard by a Court in the State of Victoria applying the laws of that State.

### 3. CHANGES AND UPDATES TO THESE TERMS

- (a) You acknowledge and agree that We may update or alter our standard terms and conditions of business from time-to-time.
- (b) We will provide You with 7 days' written notice of any proposed updates or variations to these Terms. Any such updated or varied Terms will apply to all Orders placed after the date of the notice, unless You object in writing within the notice period. If You object to Our updated Terms, You may exercise Your termination rights stipulated by these Terms and We may choose not to accept any new Orders from You until You accept Our updated Terms.
- (c) Any updates, variations or changes that You request for the Terms, Goods or Services are subject to Our consent (which will not be unreasonably withheld) and will only apply if agreed to in writing by a duly authorised officer.
- (d) You must notify Us in writing of any material change to Your organisation, including a change of director, bank account details or change of address.
- (e) The parties may only assign or transfer all or any of their title, estate, interest, benefit, rights, duties and obligations in these Terms to any person with the other parties' written consent and provided that the assignee agrees to assume any of Our duties and obligations owed to You in these Terms.
- (f) You must not charge, encumber or otherwise deal with any of Your rights and obligations under these Terms without Our prior written consent.

## How to Purchase Our Goods and Services

### 4. MINIMUM HIRE PERIODS

- (a) We may impose minimum Hire Periods on Orders for provision of Personnel or hire of Equipment.
- (b) Minimum Hire Periods are periods of time that We advise from time-to-time and are determined in Our reasonable discretion depending on the nature of the Goods and Services being supplied.
- (c) Unless We otherwise agree in writing, You agree to take possession of and pay for the Equipment and/or the Personnel for the full Hire Period stipulated by the Service Schedule.
- (d) You may request to shorten or extend the Hire Period, acceptance of which is in Our sole discretion and will not be unreasonably withheld.
- (e) You agree to pay all charges and Additional Expenses associated with the Equipment and/or Personnel for the full Hire Period, plus any rollover or extension of the Hire Period.

### 5. PRICES, QUOTATIONS AND ORDERS

- (a) We may issue a Quote to You, but a Quote is not an offer by Us to supply Goods and Services to You.
- (b) We may vary or cancel any Quote before a corresponding Order is accepted.
- (c) You may purchase Goods and Services by placing an Order with Us in writing. You warrant that the person who places the Order is authorised by You to do so.
- (d) Any Order that includes Personnel must be placed at least 14 days before the Hire Period is intended to begin and include:
  - i) The number of Personnel required;
  - ii) The proposed Hire Period;
  - iii) The proposed work to be done by the Personnel;
  - iv) Any qualifications, experience, licenses or training that the Personnel are required to have before commencing work;
  - v) Any Equipment or other material that the Personnel require to perform the Services.
- (e) We may accept or decline any Order by notifying You in writing or by supplying the Goods and Services to You.
- (f) We may ask You to pay a deposit for an Order in any amount that We advise from time-to-time. We are not required to accept Your Order until payment of the deposit has been made. The balance of the Order must be paid as We direct.
- (g) You may cancel an Order up to 24 hours after We have accepted it. In all other situations You cannot cancel an Order more than 24 hours after acceptance without Our written consent and at Our absolute discretion.
- (h) We cannot accept any cancellation of Orders for Goods that have been made to Your custom specifications, non-stocklist items or where production or work has commenced, unless You indemnify and pay Us for Loss that we incur as a result of Your cancellation.
- (i) Unless the parties otherwise agree in writing, the price You must pay for Goods and Services is specified in the Service Schedule, Our rates list that is current at the time You place Your Order and/or Our invoice for the Goods and Services.
- (j) You acknowledge and agree that We may impose Additional Expenses that We incur in providing the Goods and Services.
- (k) We have the right to revise, update or change the price of Goods and Services supplied under these Terms without notice to You in the following situations:
  - i) Before providing You with a Quote;
  - ii) Before accepting Your Order;
- (l) We have the right to revise, update or change the price of Goods and Services supplied under these Terms by giving You 7 days' written notice when:
  - i) Our scope of work for the changes, including where conditions of a Site differ from what We have quoted You, You request additional Goods and Services, or You request to vary the Hire Period;

- ii) The price of specific Goods (such as copper) is subject to market rises and falls;
  - iii) As required by any Industrial Law, such as where award rates or industrial instruments change;
  - iv) According to the Personnel's qualifications, skills and experience;
  - v) Any other variation to Our rates lists that are issued from time-to-time.
- (m) Unless You provide Us with a written objection within the notice period, the updated prices for Our Goods and Services will apply to all Orders submitted after expiry of the notice period.

## Getting the Goods and Services to You

### 6. DELIVERY

- (a) You authorise Us to:
  - i) deliver Goods and Equipment, supply Services and direct Personnel to the Site nominated by You; and
  - ii) leave Goods and Equipment at the Site whether or not any person is there to accept delivery.
- (b) The method of delivering any Goods and Equipment is at Our sole discretion. At any time, We may appoint a third party agent to perform Our delivery obligations of these Terms.
- (c) You must pay all Additional Expenses that We incur to supply Personnel and to deliver Goods and Equipment.
- (d) We are not obliged to obtain a signed receipt, signed delivery docket or other acknowledgement of any Goods and Equipment being delivered. But if a signed receipt, delivery docket or other acknowledgement is obtained then that document will be conclusive evidence of Your acceptance of the Goods and Equipment delivered.
- (e) You acknowledge and agree that any supply and delivery times indicated by Us are given in good faith and are estimates only. Estimates of time are subject to Goods, Equipment and Personnel being available, Our reasonable ability to supply on the estimated date, Force Majeure Events and receiving cooperation from You and relevant third parties.
- (f) We will endeavour to deliver Goods and Services at the time you need, but if We fail to deliver within a specified time due to factors beyond Our control or Your acts or omissions, You are not allowed to cancel Your Order, refuse to accept supply or refuse to pay.
- (g) You acknowledge and agree that We may incur Additional Expenses (such as storage, handling and insurance costs) if You cause a delay in delivery.
- (h) Delivery is deemed to occur when Goods and/or Equipment is either handed to You or Your representative or delivered to the Site, or when the Personnel arrives on Site.
- (i) You agree to meet with Personnel immediately when they commence work with You, and You agree to inspect and examine any Goods and Equipment immediately on delivery.
- (j) If You need to return Goods, Equipment or Personnel for any reason, You must notify Us within 24 hours of receiving the Goods, Equipment or Personnel and follow the returns policy outlined in these Terms.

### 7. SUPPLY OF SERVICES

- (a) Specifications for the Services being supplied under these Terms are contained in the Order/s You submit from time-to-time.
- (b) The Services are provided to You with all due skill and care in accordance with Our professional standards.
- (c) To facilitate the supply of Our Services, You must:
  - i) Provide all resources that We reasonably require to supply the Services, including but not limited to accurate and complete instructions, Site specifications and measurements, files and records, plans, licenses and permits, traffic management systems, third parties where applicable and people (whether engineers, builders, management or staff) with the relevant

- authority that We reasonably require;
  - ii) Provide and maintain a suitable and safe Site for Us (or Our agents, employees or contractors) to supply the Services, including a Site that is compliant with occupational health and safety legislation;
  - iii) Provide clear, close and easy access for Us to supply Personnel, deliver Goods and Equipment, and move Goods and Equipment around the Site;
  - iv) Erect and maintain all amenities at the Site, including power and water supply, scaffold, barricades, guards, fencing, temporary roadways and footpaths, bathrooms, signs and lighting at the Site that We or the Personnel reasonably require, unless such items are included in the Service Schedule; and
  - v) Provide adequate storage and protection for any of Our Equipment at the Site.
- (a) You acknowledge and agree that:
- i) Our Services are limited to the particular project, solution, tasks, activities, consultation or other scope of work that We have agreed to carry out in the Service Schedule;
  - ii) The Services provided are based on information that is available to Us at the time. You acknowledge and agree that actual results may be different from any Site conditions, objectives, budgets, projections or forecasts since unanticipated or unexpected events frequently occur and the variation may be material;
  - iii) We are entitled to rely on the accuracy and completeness of the information for the Services, whether that information is obtained by Us or provided by You, Your officers or staff, or Your advisors or consultants;
  - iv) You must promptly notify Us of any change in information that may have a material impact on the Services or if anything occurs after information is provided to Us which renders such information untrue, unfair or misleading;
  - v) We reserve the right to determine the method of installation, calibration, repair, maintenance or other Service that may be required; and
  - vi) We reserve the right to make modifications in Goods or Services (such as issuing revised designs or models) at any time and without charge to You where We consider those modifications to be reasonable and necessary to provision of the Goods and Services. We will seek Your prior written consent to approve any major modifications.

## Responsibilities & Obligations

### 8. HIRING OUR PERSONNEL

#### What We Must Do

- (a) We will:
  - i) supply Personnel who are appropriately qualified, experienced, skilled and licensed to undertake the work required in Your Order or Quote; and
  - ii) Ensure that all Personnel have the right to work in Australia and that appropriate visa and work rights checks are made in accordance with the *Migration Act 1958* (Cth).
- (b) We are responsible for:
  - i) Payment of remuneration and other entitlements that Personnel may be entitled to under any Industrial Law, including salaries and wages, minimum wage entitlements, allowances, superannuation, leave, rostered-days-off, redundancy and public holiday entitlements;
  - ii) Payment of all taxes and duties in respect of Personnel remuneration and entitlements, including payroll tax;
  - iii) Provide or pay for any standard personal protective equipment (PPE) required by occupational health and safety legislation;
  - iv) Payment and maintenance of relevant insurances for the Personnel supplied, including public liability insurance and workers compensation insurance;

- v) Resolving all reported incidences of injury, underperformance and/or misconduct.

#### **What You Must Do**

- (c) You must:
  - i) Comply with all Industrial Law;
  - ii) Conduct a Site and safety induction for all Personnel (and ensure that all Personnel complete such Site and safety induction) prior to any Personnel commencing the Hire Period;
  - iii) Provide and maintain safe Sites, working environments and work systems for the Personnel in accordance with all applicable occupational health and safety legislation and Industrial Law;
  - iv) Provide or pay for any specialty personal protective equipment (PPE) that is unique to Your business or that You specifically require;
  - v) Obtain all permits, approvals, inspections and sign-offs for any equipment that the Personnel will be using or operating during the Hire Period;
  - vi) Ensure that all equipment to be used or operated by Personnel during the Hire Period is safe to use at all times;
  - vii) Adequately instruct, supervise and train Personnel at all times during the Hire Period to ensure that work or operation of equipment is carried out correctly and safely;
  - viii) Effect adequate insurance to cover personal injury or death of Personnel, or any Loss or damage to Your equipment caused by Personnel, that occurs during the Hire Period;
  - ix) Ensure that each Personnel maintains an accurate timesheet recording the number of hours worked and the time and date of hours worked;
  - x) Ensure that all Personnel timesheets are reviewed for accuracy, approved, signed and submitted by an authorised representative at times that We advise during the Hire Period;
  - xi) Provide or pay for Site-specific Additional Expenses required by Personnel;
  - xii) Promptly advise Us in writing of any incident involving misconduct or underperformance of Personnel;
  - xiii) Promptly advise Us of any incidents and injuries involving Personnel; and
  - xiv) Where required, assist with the rehabilitation of any injured Personnel by providing suitable alternative duties.
- (d) **You must provide Us with at least 7 days' written notice of any change to the quantity of Personnel required (whether an increase or decrease of Personnel) or any change required to the Personnel's scope of work, tasks undertaken or equipment operated.**

You must provide Your cooperation and all reasonable access to Sites, Personnel, documentation and staff so that We can:

  - i) Investigate any reported incidence of underperformance, injury or misconduct;
  - ii) Investigate any error or discrepancy in timesheet reporting;
  - iii) Conduct occupational health and safety inspections from time-to-time;
  - iv) Conduct safety, toolbox, training or other meeting with the Personnel as may be required from time-to-time.

## **9. HIRING EQUIPMENT**

### **Before Hiring Our Equipment**

- (a) Before taking possession of the Equipment, You must:
  - i) Determine the suitability of the Equipment for any purpose You require; and
  - ii) Take out and maintain at all times during the Hire Period insurance for the full insurable value of the Equipment against damage or destruction to the Equipment, any commonly insurable risk for equipment of similar nature to the Equipment, public and third-party liability and any other insurable risks that We reasonably require; and
  - iii) Provide us with a certificate of currency for such insurance.
- (b) You warrant that You are using the Equipment for business

purposes.

- (c) When the Equipment is delivered, You must:
  - i) Immediately inspect the Equipment for its condition; and
  - ii) Within 24 hours of delivery notify Us in writing of any discrepancy, unsatisfactory condition, damage or defect in the Equipment.

### **During the Hire Period**

- (d) During the Hire Period, You must:
  - i) Use the Equipment in a skilful and workman like manner and only for the purposes and within the capacity for which the Equipment is designed;
  - ii) Ensure that the Equipment is used by suitably certified, trained or licensed personnel;
  - iii) Ensure that the Equipment is used in accordance with Yours and Our instructions, the manufacturer's instructions and any user guides or instruction manuals;
  - iv) Ensure the safety of all personnel using the Equipment, including:
    - 1. Attaching any relevant safety signs, calibration seals and anti-tamper notices to the Equipment, ensuring that they are clearly legible by all users of the Equipment;
    - 2. Maintaining the safety signs, seals and notices and ensuring that they are not defaced or removed from the Equipment;
    - 3. Ensuring that all safety information supplied with the Equipment is conveyed to any person using it; and
    - 4. Ensuring that all users of the Equipment wear suitable clothing and protective equipment required or recommended by the manufacturer's safety and operating instructions, or as recommended by Us;
  - v) Keep the Equipment in good repair and condition; and
  - vi) Prevent the Equipment from being lost, stolen or damaged in any way.
- (e) During the Hire Period, You must not without Our prior written consent:
  - i) Affix the Equipment to any land or premises;
  - ii) Move the Equipment from the Site;
  - iii) Claim any lien over, sell, transfer, charge, part with possession of, assign, or encumber the Equipment in any way;
  - iv) Interfere with the Equipment, including altering, adding to, defacing, or erasing any identifying mark, plate or number on or in the Equipment; or
  - v) Service or repair the Equipment.

### **Ending the Hire Period**

- (f) You are responsible for any and all loss and damage that occurs to the Equipment, or in relation to the Equipment, during the Hire Period. This responsibility includes the costs to repair or replace Equipment that is lost, stolen or damaged during the Hire Period. We reserve all rights to charge You for repair or replacement of such Loss.
- (g) We may access the Equipment from time to time during the Hire Period for the purpose of inspection and providing any Services. You must permit and arrange such access to the Equipment.
- (h) You must return all Equipment to Us at the end of the Hire Period and return the Equipment in a clean condition.

### **How to Pay for Our Goods and Services**

## **10. CREDIT ACCOUNTS**

- (a) You may apply for a Credit Account with Us to purchase Goods and Services.
- (b) We have no obligation to provide or continue to provide credit facilities to You. You are not entitled to credit facilities until You receive an approved Credit Account with Us.
- (c) A Credit Account must only be used by You, which means it cannot be assigned, transferred or made available for use by any other entity or person (including by a subsequent purchaser of You) without Our prior written consent.



- (d) You authorise Us to debit Your Credit Account with the price of Goods and Services supplied to You and all other amounts owed by You to Us (including fees and interest payable under the Contract).
- (e) We may apply any payments You make to Us towards any debt You owe Us. We may also set-off any credit amount that We owe to You against any debt owed to Us by You.
- (f) Any credit limit placed on Your Credit Account is for Our administrative purposes only and does not constitute a term of this or any other contract You have with Us.
- (g) If You exceed the credit limit placed on Your Credit Account, We may require You to make immediate payment on Your Credit Account to return Your Credit Account to the credit limit before placing any further Orders.

## 11. PAYMENT

- (a) Unless the parties otherwise agree in writing, You must pay for Goods and Services on or before the Due Date.
- (b) All amounts payable by You for Goods and Services are exclusive of GST (unless expressly stated otherwise).
- (c) You must pay Us GST imposed on any supply of Goods and Services made under these Terms. Payment of any GST must be made at the same time as payment for the Goods and Services.
- (d) Payment must be made in a method that is approved by Us. There may be Additional Expenses associated with Your chosen payment method (for example, a surcharge of up to 1.5% of the price of the Goods).
- (e) We may request payment of Goods and Services by instalments or progress claims.
- (f) If You believe You have a set-off or claim against Us (including any query, dispute or claim), You cannot withhold any payment on that basis without Our prior written consent.
- (g) If You do not pay for Goods and Services by the Due Date, We may:
  - i) Charge You interest on all overdue accounts a rate which is 4% higher than the cash rate last published by the Reserve Bank of Australia as at the Due Date, calculated and payable daily and compounded from the due date until the invoice is paid in full. The parties agree that this interest charge is not a penalty, but a true measure of damages incurred by Us;
  - ii) Require You to pay cash on delivery of any further Goods and Services, or suspend or cease supplying Goods and Services to You;
  - iii) Demand Your immediate payment of all outstanding monies on Your account whether or not the Due Date has passed;
  - iv) Charge You a reasonable fee if any payment is dishonoured or returned by Your financial provider (or where we are otherwise unable to process any payment from Your financial provider);
  - v) Credit any payments received from You first against any interest charges and costs and all such charges will be payable on demand; and
  - vi) Preclude You from participating in any special deals, discounts, bonus payments redemptions, rebates and all other incentive programs until Your account is no longer overdue.
- (h) Time is of the essence in relation to this section 10. This section 10 survives expiry or termination of these Terms.

## Managing Issues That Arise

## 12. RISK AND OWNERSHIP

- (a) Unless the parties otherwise agree in writing:
  - i) All risk in the Goods and Equipment passes to You when the Goods and Equipment are handed to You (or Your agent, representative or nominated carrier) or delivered to Your Site;
  - ii) Responsibility for supervising Personnel passes to You when the Personnel arrives on Site and risk in that Personnel remains with You while the Personnel is under Your supervision;
  - iii) All risk in Equipment remains with you until the Hire Period ends;

- iv) All risk in the Services passes to You when the Services are complete.
- (b) Legal ownership of Equipment remains with Us at all times and never passes to You.
- (c) We retain title and intellectual property rights (whether in copyright, patent, goodwill, moral right or trademark) in any designs, drawings and Goods created for You for the purpose of the Services. Our intellectual property rights in any such designs, drawings and Goods are licensed non-exclusively for Your benefit and may be used by You solely for the purpose stated in the Service Schedule or Order.
- (d) Legal ownership of Goods does not pass to You until We have received all amounts owing by You on any account whatsoever with Us including any Additional Expenses.
- (e) Until legal ownership of the Goods passes to You, all Goods are held by You for Us as bailee. You must store the Goods separately from Your own or anyone else's Goods. Storage must be in a way that clearly identifies the Goods as Our property and prevents the Goods from being damaged or spoiled.
- (f) You may resell any Goods before legal ownership passes to You, provided that You:
  - i) Resell the Goods to a third party in the ordinary course of business;
  - ii) Act in any transaction as Our fiduciary agent;
  - iii) Hold the proceeds of sale of Goods on trust for Us and in a separate account with separate records;
  - iv) Account to Us for those proceeds or any other payment made by a third party for any sale of the Goods; and
  - v) Allow us to inspect any records of any payments received for Goods.
- v) If You do not pay for Goods and Services by the Due Date or You suffer an Insolvency Event, then We may repossess the Goods and Equipment wherever they are located. You irrevocably grant Us (including Our agents or any other nominated representative) an unrestricted right and licence to enter any Site or premises occupied by You without notice for the purpose of identifying and repossessing any of the Goods and Equipment. We reserve these repossession rights without being liable to You or any other third party in any way.

## 13. RETURNS

- (a) Unless provided by these Terms or We otherwise agree in writing, We are not required to accept returned Goods, Equipment or Personnel from You or issue You with a credit for Goods, Equipment or Personnel.
- (b) You may request a return of Goods, Equipment or Personnel in the following situations:
  - i) You have received the incorrect product type or Order quantity due to an error by Us;
  - ii) The Goods or Equipment are damaged or faulty at the time of delivery.
- (c) All other requests for return or credit may only be accepted on a case-by-case basis and strictly in Our sole discretion.
- (d) **You must request any return within 24 hours of the date that the Goods or Equipment were delivered or Personnel commenced work for You.**
- (e) You must take all steps necessary to mitigate any Loss arising from any defect in the Goods or Equipment supplied. You will be deemed to accept the Goods and Equipment (including any defects) if You do follow this returns procedure.
- (f) You must allow Us or Our authorised representatives access to the Goods and Equipment for inspection, if required.
- (g) If We accept a return from You, You are responsible for any Additional Expenses associated with the return (unless due to Our error). We may charge You reasonable restocking, storage, disposal or repacking charges which We incur from the Goods, Equipment or Personnel being returned.
- (h) Returns cannot be accepted in the following situations:
  - i) Goods or Equipment which are not in original or resaleable

condition;

- ii) Goods or Equipment which have been subject to Your incorrect handling, storage or other environmental requirements;
- iii) Any error in ordering by You;
- iv) Goods manufactured to Your custom specifications.

#### 14. MAINTENANCE, LOSS AND DAMAGE OF EQUIPMENT ON HIRE

- (a) You are responsible for any loss, theft or damage to Equipment during the Hire Period (including delivery and transit) for any cause whatsoever, except where that loss, theft or damage has been directly caused by Us.
- (b) If the Equipment is lost, stolen or damaged, you are responsible for:
  - i) The cost of repairs; or
  - ii) The cost of replacement (if the Equipment cannot be repaired, which will be determined at Our reasonable discretion);
  - iii) Ongoing hire charges until the Equipment is repaired or replaced, unless otherwise agreed by Us; and
  - iv) Any Additional Expenses associated with the repair and/or replacement of the Equipment.
- (c) If the Equipment breaks down, needs recalibration, repair or maintenance, or becomes unsafe to use during the Hire Period then You must:
  - i) Immediately stop using the Equipment;
  - ii) Notify Us of the breakdown, fault, repair or recalibration required;
  - iii) Take all steps necessary to prevent injury occurring to persons or property as a result of the condition of the Equipment;
  - iv) Take all steps necessary to prevent further fault or damage to the Equipment; and
  - v) Not repair or attempt to repair the Equipment without Our prior written consent.
- (d) If the breakdown, fault, repair or maintenance of the Equipment is not Your fault, then We will:
  - i) Repair, recalibrate or replace the Equipment (as may be required in Our sole discretion) as soon as practicable and at Our expense; and
  - ii) Either credit or not impose hire charges for the portion of the Hire Period that the Equipment was out-of-use.
- (e) If the breakdown, fault, repair or maintenance of the Equipment is due to Your use, act or omission in relation to the Equipment (including Your negligence, recklessness or misuse of the Equipment) then You are liable for all costs for repair or replacement of the Equipment and continuing hire charges while the Equipment is being repaired and/or replaced.

#### 15. POACHING PERSONNEL

- (a) Unless We provide Our prior written consent, You (including any of your related entities, staff, representatives and agents) must not directly or indirectly employ or offer to employ any Personnel, whether on a full-time, part-time, casual or contract basis.
- (b) We may charge You a Placement Fee where:
  - i) You (including any of Your related entities, staff, representatives or agents) have contact or communication with Personnel in any way connected with the Services; and
  - ii) You (including any of Your related entities, representatives or agents) employ or engage Personnel, whether directly or indirectly and whether on a full-time, part-time, casual or contract basis;
  - iii) The employment or engagement of that Personnel is without Our prior written consent; and
  - iv) The employment or engagement of the Personnel occurs during the Hire Period, or within 12 months of the Hire period ending.

### Making Sure We Get Paid

#### 16. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)

##### Security for Goods and/or Equipment Supplied

- (a) You acknowledge and agree that these Terms constitute a security agreement for the purposes of the PPSA ("**Security Agreement**") and create a security interest in the Goods and/or Equipment supplied by Us from time to time and any proceeds of the sale or supply of the Goods and/or Equipment to secure payment for the Goods and/or Equipment supplied ("**Security Interest**").
- (b) Each sale or supply of Goods and/or Equipment by Us under these Terms is subject to the Security Agreement for the purposes of the PPSA.
- (c) We may lodge a financing statement on the Personal Property Securities Register ("**PPSR**") in respect of the Security Interest in the Goods and/or Equipment and the proceeds of the sale or supply of the Goods and/or Equipment, including as a purchase money security interest (as that term is defined in the PPSA) ("**PMSI**"), pursuant to these Terms.

##### General Security Agreement for Services Supplied

- (d) For the purpose of any general security agreement ("**General Security Agreement**"), "**Collateral**" means all Your present and after-acquired personal property, including circulating and non-circulating assets. Collateral includes any personal property in respect of which You have at any time, or may in the future have at any time, a sufficient legal or equitable right, title, interest or power to grant a security interest either in Your own right or as trustee of a trust.
- (e) You acknowledge and agree that:
  - i) In addition to any other Security Interest created by these Terms, these Terms also constitute a General Security Agreement for the purposes of the PPSA and create a security interest in Your Collateral to secure payment for the Services supplied ("**Security Interest**");
  - ii) Each supply of Services by Us under these Terms is subject to the General Security Agreement for the purposes of the PPSA; and
  - iii) We may lodge a financing statement on the PPSR in respect of the Security Interest in the Collateral pursuant to these Terms.

##### Assurances

- (f) You must do all things, provide all information and sign all documents that are necessary and reasonably required to enable Us to acquire a perfected Security Interest in the Goods, Equipment and/or Services (as the case may be) including for the purposes of:
  - i) Ensuring that any Security Interest created under, or provided for, by these Terms:
    - a. Attaches to the Goods, Equipment and/or Collateral that is intended to be covered by that Security Interest; and
    - b. Is enforceable, perfected and otherwise effective; and
    - c. Has the priority required by Us.
  - ii) Enabling Us to prepare and register a financing statement or financing change statement;
  - iii) Enabling Us to register a PMSI pursuant to the PPSA (where applicable);
  - iv) Enabling Us to register an ALLPAAP pursuant to the PPSA (where applicable); and
  - v) Enabling Us to exercise and maintain any of Our rights or powers in connection with any such Security Interest.
- (g) If You dispose of the Goods or the Collateral, You must:
  - i) Immediately pay any proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as specified by subsection 14(6)(c) of the PPSA, unless otherwise specified by Us in writing; and
  - ii) Not allow any other charge or security interest to exist over those

proceeds without Our written consent if that security interest could rank ahead of Our Security Interest.

- (h) If a higher-priority security interest does arise in the Goods, the Collateral and/or their proceeds of sale despite Your obligations under this section, You must:
  - i) Ensure that You receive cash proceeds for the Goods and/or Collateral of at least equal to the market value of the Goods and/or Collateral; and
  - ii) Immediately pay those proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as We see fit.
- (i) You must never dispose of the Equipment, but if You do dispose of the Equipment in any way, You must:
  - i) Immediately pay any proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as specified by subsection 14(6)(c) of the PPSA, unless otherwise specified by Us in writing; and
  - ii) Not allow any other charge or security interest to exist over those proceeds or the Equipment without Our written consent if that security interest could rank ahead of Our Security Interest.
- (j) If a higher-priority security interest does arise in the Equipment and the proceeds of sale despite Your obligations under this section, You must:
  - i) Ensure that You receive cash proceeds for the Equipment of at least equal to the market value of the Equipment; and
  - ii) Immediately pay those proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as We see fit.
- (k) You must not change Your name, structure, status or partnership, or assign or sell Your business to another party, or initiate any change to any registered documentation, or act in any other manner which would impact on Our registered Security Interest without Our prior written consent. You agree that Your liability under these Terms is not affected by such an event until a new application for credit in Your new entity name as restructured or changed is made and approved by Us in writing.

#### **Exclusion of Notices and Other Obligations**

- (l) To the extent permitted by law and for the purposes of sections 115(1) and 115(7) of the PPSA:
  - i) We do not need to comply with sections 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d) or 132(4); and
  - ii) Sections 142 and 143 are excluded;
  - iii) For the purposes of section 115(7) of the PPSA, We do not need to comply with sections 132 and 137(3).
- (m) To the extent permitted by law, You agree to waive:
  - i) Your rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) or any other law before a secured party or a receiver exercises a right, power or remedy; and
  - ii) Any time period that must otherwise lapse under any law before a secured party or a receiver exercises a right, power or remedy.
- (n) If the law that requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

#### **Provision of Information**

- (o) You agree not to exercise Your rights to make any request of Us under section 275(6) of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- (p) The parties must not disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances where:
  - i) Disclosure is required by sections 275(7)(b) to (e) of the PPSA; and/or
  - ii) We disclose information of a kind mentioned in section 275(1) of

the PPSA to the extent that We are not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.

- (q) Notwithstanding the obligations of this section, You shall only authorise the disclosure of information for the purposes of section 275(7)(c) of the PPSA, or request information under section 275(7)(d) of the PPSA, if We approve such disclosure or request for information in writing.
- (r) Nothing in this part prevents any disclosure of information by Us that We believe is reasonably necessary to comply with any other obligations that We may have under the PPSA.

#### **Other**

- (s) If You default in the timely performance of any obligation owed to Us, We may enforce the Security Interest by exercising all or any of Our rights under these Terms, the general law and the PPSA.
- (t) Nothing in this part limits or is limited by any other provision of these Terms or any other agreement between the parties.

### **How We Reduce Risk**

#### **17. WARRANTIES AND EXCLUSIONS**

- (a) Neither party excludes or limits the application of any statute (including the *Competition and Consumer Act 2010* (Cth) as amended from time to time ("**the CCA**")), where to do so would contravene that statute or cause any provision of these Terms to be void. Nothing in these Terms modifies or excludes the conditions, warranties, and undertakings and other legal rights under the Act and other laws.
- (b) Except as expressly set out in the CCA, these Terms, or a separate warranty document, We give no implied warranties or representations under these Terms or in connection with the Goods and Services that We supply.
- (c) You acknowledge and agree that:
  - i) You are responsible for ensuring that the Goods and Services are suitable for Your intended Site and use. In that regard, You agree that You have not relied on any inducement, representation or statement made by or on behalf of Us in purchasing the Goods and Services;
  - ii) No sale under these Terms constitutes a sale by sample. You acknowledge that any sample may vary from the Goods or Equipment that are supplied;
  - iii) No sale under these Terms constitutes a sale by description. Any description of Goods or Equipment is by way of identification only; and
  - iv) To the extent permitted by law, all other implied warranties, terms and conditions are excluded.

#### **18. LIMITATION OF LIABILITY**

- (a) This section applies to Loss that You may suffer or incur as a result of or in connection with these Terms, the Goods or Services.
- (b) To the extent permitted by law, and where We consider it to be reasonable and appropriate to do so, We may limit Our liability to You pursuant to these Terms by Our choice of:
  - i) Resupplying the Goods and Services; or
  - ii) Replacing the Goods and Services with an equivalent (or paying the cost to supply an equivalent); or
  - iii) Refunding the price You paid for the Goods and Services.
- (c) To the extent permitted by law, Our liability to You for Loss suffered or incurred in relation to these Terms will not exceed the total price of all Goods and Services supplied by Us, except for the following types of Loss:
  - i) Personal injury (including sickness and death);
  - ii) Breach of privacy legislation;
  - iii) Breach of intellectual property rights;
  - iv) Breach of confidentiality;
  - v) Statutory liability that cannot be contracted out of;
  - vi) Property damage that is covered by insurance.

- (d) The liability of a party for loss or damage sustained by the other party will be reduced proportionately to the extent that such loss or damage was caused by the other party's failure to comply with its obligations and responsibilities under this agreement or to the extent that the negligence of the other party contributed to such loss or damage, regardless of whether a claim is made by the other party for breach of contract or for negligence.
- (e) We are not liable to You for any loss of profits, loss of sales, loss of market, loss of goodwill or reputation, third party claims, incidental or special damages, indirect or consequential loss of any kind.
- (f) We will not be liable to You for Loss in relation to the Goods and Services if:-
  - i) You have not paid for the Goods and Services;
  - ii) Goods or Equipment have been abused, misused or neglected by You;
  - iii) You have used Goods and Services other than for the purposes for which they were designed or intended, including for an illegal purpose;
  - iv) Goods or Equipment have been repaired or modified by someone other than Us;
  - v) Goods or Equipment have been subject to abnormal conditions, including environment, temperature, water, fire, humidity, pressure or other stress;
  - vi) The Loss arises from any negligence, dishonesty or lack of skill by Personnel, or You have failed to adequately instruct, supervise or train Personnel; and
  - vii) A defect has arisen due to Your failure to use and maintain the Goods or Equipment in accordance with Our care and maintenance recommendations or industry-accepted standards;
- (g) Neither party will be liable for any breach of these Terms which is wholly or partly caused by a Force Majeure event. This exclusion does not include Your obligation to pay for Goods, Services and any Additional Expenses.
- (h) Nothing in these Terms affects the duty of a party to mitigate damages after a breach of these Terms by the other party.

## 19. INDEMNITIES

- (a) To the extent permitted by law, You indemnify Us against and You must pay Us for any Loss that We suffer or incur as a result of any act or omission by You (or any entity or person that You are responsible for) pursuant to these Terms or in relation to the Goods and Services, including but not limited to any breach of these Terms by You, Your negligence or Your failure to perform the obligations in these Terms.
- (b) Specifically, You must indemnify Us against and pay Us for (or Our agents, employees or contractors):
  - i) All reasonable legal costs which We incur as a result of any breach, act or omission by You under these Terms. This includes, but is not limited to, legal or mercantile agent fees on an indemnity basis in the recovery or attempted recovery of any overdue amount for Goods and Services, any action taken to secure any charge and any action taken to repossess unpaid Goods and Equipment;
  - ii) Any stamp duty or other government rates, taxes (including GST) or charges levied on or in connection with any Credit Account and supply of Goods and Services;
  - iii) Any Loss that We incur as a result of You cancelling your Order after 24 hours, including but not limited to any Additional Expenses;
  - iv) All costs associated with the registration, maintenance and withdrawal of any Security Interest created under these Terms;
  - v) Any Loss arising out of damage to Our Equipment on hire (including any loss of or damage to property) except to the extent that such Loss is caused by Us;
  - vi) Any Loss that Your direct employment of Personnel causes Us;
  - vii) Any Loss that is caused or suffered by any Personnel on Your Site while under Your responsibility, supervision or control;
  - viii) Any Loss arising out of Your failure to provide a safe, suitable

and compliant Site for Us to provide the Goods and Services (including personal injury or death);

- ix) Any Loss that We incur by relying on information provided by You or on Your behalf which is inaccurate, incomplete or misleading, or Your failure to provide Us with relevant and accurate information.
- (c) This indemnity does not apply to the extent that Loss is caused by Us, including Our breach of these Terms or negligence.
- (d) This indemnity is a continuing obligation which is separate and independent from your other obligations under these Terms or at law and this indemnity survives termination of these Terms..

## Ending Our Agreement

## 20. DISPUTE RESOLUTION

- (a) If the parties have a dispute in relation to the Goods and Services or these Terms, then the parties must follow this dispute resolution procedure:
  - i) The disputing party must give the other party written notification of the dispute;
  - ii) On receipt of a dispute notice issued in accordance with this section, the parties must:
    - 1. Refer the dispute to its respective senior management;
    - 2. Each party's senior management representatives must endeavour to resolve the dispute within 30 days of the date of the dispute notice (or such other period as agreed between the parties in writing);
- (b) If the dispute has not been resolved by senior management representatives of each party within 30 days of the dispute notice (or such other period as agreed in writing), then either party **may** (but is not required to) elect to resolve the dispute by mediation via the Australian Disputes Centre (ADC) before commencing arbitration or litigation. Any ADC mediation must be conducted in accordance with the ADC Guidelines for Commercial Mediation which operate at the time the matter is referred to ADC. The ADC Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. This paragraph survives termination of these Terms;
- (c) Either party must not commence legal proceedings (except proceedings seeking interlocutory relief) about the dispute unless and until the dispute has been referred for resolution under these Terms and to the extent that this dispute resolution procedure has been completed;
- (d) Either party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute, pending the completion or termination of the procedure set out in this section;
- (e) The parties must continue to perform their respective obligations under these Terms, even if a dispute exists;
- (f) The parties must keep all information relating to any dispute confidential for the purposes of dispute resolution, unless otherwise required by law or at the direction of a court of competent jurisdiction. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

## 21. TERMINATION

- (a) By giving You written notice, We can:
  - i) Suspend or cancel supply of Goods and Services (including a current Order);
  - ii) Suspend or terminate Your Credit Account, if You have one;
  - iii) Require immediate payment of the balance of any Credit Account, invoices or any other amounts due and payable whether or not the Due Date has expired;
  - iv) Register a default with any credit reporting agency, where applicable;
  - v) Suspend or terminate the contract created by these Terms



(collectively "Our Termination Rights").

- (b) We can exercise Our Termination Rights immediately when:
  - i) You have not paid Our invoice (including any Additional Expenses) by the Due Date;
  - iii) You allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against Your property including under the PPSA;
  - iv) You engage in illegal activity related to the Goods and Services;
  - v) You breach Your occupational health and safety obligations or any Industrial Law in relation to any Personnel;
  - vi) You engage in conduct which, in Our reasonable opinion, may damage Our goodwill or reputation;
  - vii) An Insolvency Event occurs.
- (c) In all other situations, either party may terminate these Terms:
  - i) Immediately by written notice if the other party is in breach of a material clause of these Terms and the breach is not rectified within 7 days of the termination notice;
  - ii) If there is no minimum Hire Period or the minimum Hire Period has expired, by giving 7 days' written notice to the other party; or
  - iii) If a minimum Hire Period applies, by giving the other party at least 30 days' written notice.
- (d) When these Terms are terminated:
  - i) We may exercise Our repossession rights for all Equipment, Personnel and unpaid Goods stipulated by these Terms;
  - ii) We may recover from You the amount of any Loss sustained as a consequence of terminating the contract before expiry of a minimum Hire Period, including the balance of any unpaid minimum Hire Period and associated Additional Expenses; and
  - iii) Either party may pursue any additional or alternative remedies provided by law.

## Other Information

### 22. PRIVACY

- (a) We may collect personal and credit information in Our dealings with You (or any of Your guarantors) in accordance with Our Privacy Policy pursuant to the *Privacy (Credit Reporting) Code 2014*, the *Privacy Act 1988* (Cth), the *Privacy (Enhancing Privacy Protections) Act 2012* (Cth), and the Australian Privacy Principles. You consent to that information being collected. You can obtain a copy of Our Privacy Policy by contacting Us in writing.

### 23. CONFIDENTIALITY

- (a) Confidential Information means any information relating to the business of a party, expressly marked by the respective owner as confidential or which a reasonable person to whom the information is disclosed
- (b) Each party agrees to keep the Confidential Information of the other party confidential and to use such information only for the purposes of performance of their respective obligations under this agreement.
- (c) A party must:
  - i) not disclose any Confidential Information of the other party to anyone else except as permitted under this agreement;
  - ii) limit the disclosure of the Confidential Information within its own organisation only to those of its officers and employees to whom such disclosure is strictly necessary for the purposes of this agreement and who have been made aware of its confidential nature and have agreed to keep the information confidential in accordance with the terms of this clause; and
  - iii) not use the name of the other party in publicity releases, advertising or promotion of the party unless the other party has given its prior written consent (which must not be unreasonably withheld).
- (d) The obligations of confidentiality in this section will not apply to information which:

- i) is generally available in the public domain except where such availability is as a result of a breach of these Terms;
  - ii) was known prior to the disclosure of the information by the other party; or
  - iii) is required to be disclosed by an applicable law or court order.
- (e) The obligations imposed under this clause will survive the termination of these Terms.

### 24. GENERAL

- (a) Any clauses which are expressed to or are, by their nature, intended to survive expiry or termination of these Terms will survive expiry or termination of these Terms for any reason.
- (b) A failure to exercise or a delay in exercising any right, power or remedy under these Terms does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- (c) If any part of these Terms becomes void or unenforceable for any reason, then that part will be severed and, to the extent possible, all remaining parts continue with full force and effect without being affected by the severance of any other parts.
- (d) These Terms may be executed in any number of counterparts, each of which when executed and delivered constitutes a duplicate original, but all counterparts together constitute one agreement.
- (e) In addition to any other method of service provided by law, a notice may be sent by prepaid post, facsimile, email or courier to the address of a party as that address set out in the Contract or subsequently notified. A notice has no legal effect unless it is in writing.
- (f) A notice is deemed to have been delivered and received on the day if by hand, courier, email or fax, or otherwise on the second business day after posting.
- (g) You agree to receive invoices via email.
- (h) You agree to accept service of notices via email pursuant to the *Building and Construction Industry Security of Payment Act 2022* (Vic) as amended from time to time, or any like or similar legislation that may be applicable in the State or Territory where the Equipment is delivered to You (in addition to any and all other forms of services authorised by the legislation and its regulations).
- (i) You agree that email communications from Us to You constitute an "electronic communication" within the meaning of the *Electronic Transactions (Victoria) Act 2000* ("ETA").
- (j) You agree that the receipt and service of notices via email is "an information system for the purpose of receiving electronic communications" within the meaning of the ETA.
- (k) You agree that evidence of the "dispatch" (within the meaning of the Act) by Us of an email is also prima facie evidence of the "receipt" of the email by You within the meaning of the ETA. Unless the contrary is proven the time of receipt will be deemed to be twenty (20) seconds after the time of the "dispatch" of the email.

**Version: September 2023**