



# CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants

Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.



DATE: \_\_\_\_\_ REF No. \_\_\_\_\_

CLIENT'S TRADE NAME: \_\_\_\_\_

CLIENT'S FULL or LEGAL NAME: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Mobile: \_\_\_\_\_ Email: \_\_\_\_\_

Billing Address: \_\_\_\_\_ Physical Address: \_\_\_\_\_

\_\_\_\_\_

State: \_\_\_\_\_ Postcode: \_\_\_\_\_ State: \_\_\_\_\_ Postcode: \_\_\_\_\_

## COMMERCIAL CLIENTS ONLY

ABN/ACN Number: \_\_\_\_\_

Requested Credit Limit: \_\_\_\_\_ Date Established: \_\_\_\_\_

Contact 1: \_\_\_\_\_ Contact 2: \_\_\_\_\_

Position: \_\_\_\_\_ Position: \_\_\_\_\_

Phone: \_\_\_\_\_ Phone: \_\_\_\_\_

## DETAILS OF OWNER (If Sole Trader) PARTNERS (If Partnership) OR DIRECTORS (If Company) OR TRUSTEE (If a Trust)

Full Name: \_\_\_\_\_ Full Name: \_\_\_\_\_

Home Address: \_\_\_\_\_ Home Address: \_\_\_\_\_

\_\_\_\_\_

Postcode: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Postcode: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

## TRADE REFERENCES

Business Name 1: \_\_\_\_\_ Business Name 2: \_\_\_\_\_

Address or A/C No: \_\_\_\_\_ Address or A/C No: \_\_\_\_\_

Phone: \_\_\_\_\_ Phone: \_\_\_\_\_

Fax: \_\_\_\_\_ Fax: \_\_\_\_\_

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Onsite Rentals - Dinkum Dunnies Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. ***I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.***

SIGNED (SUPPLIER): \_\_\_\_\_ SIGNED (CLIENT): \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Position: \_\_\_\_\_ Position: \_\_\_\_\_

## WITNESS TO CLIENT'S SIGNATURE:

Signed: \_\_\_\_\_ Name: \_\_\_\_\_ Date: \_\_\_\_\_

## PART I – GENERAL TERMS AND CONDITIONS

### 1. Definitions

- 1.1 “Supplier” means Onsite Rentals - Dinkum Dunnies Pty Ltd ATF The Warne Family Trust T/A Onsite Rentals - Dinkum Dunnies Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Onsite Rentals - Dinkum Dunnies Pty Ltd ATF The Warne Family Trust T/A Onsite Rentals - Dinkum Dunnies Pty Ltd.
- 1.2 “Client” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Goods” means all Goods or Services (but not Equipment as defined below) supplied by the Supplier to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Equipment” shall mean all Equipment and accessories (including but not limited to portable toilets, showers, temporary fencing and/or power poles) supplied on hire by the Supplier to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and is as described on the invoices, quotation, authority to hire, or any other work authorisation forms as provided by Supplier to the Client.
- 1.5 “Stipulated Hire Period” shall mean the Stipulated Equipment hire period as described on the invoices, quotation, authority to hire, or any other forms as provided by Supplier to the Client.
- 1.6 “Price” means the Price payable for the Goods and/or Equipment as agreed between the Supplier and the Client in accordance with clause 4 below.

### 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods and/or Equipment.
- 2.2 These terms and conditions may only be amended with the Supplier’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Supplier.
- 2.3 Where the Client requesting or organising the Supplier to provide Services is acting with or on behalf of any third party and that third party is intended to be responsible for the payment (or any part thereof) of the Price then in the event that the third party does not pay for the Services when due, the Client acknowledges that they shall be liable for the payment of the Price as if they had contracted the Services on their own behalf.
- 2.4 The Client accepts that the height nominated in the quote shall be the maximum height provided, by the same token, the heights may vary depending on construction and land level.
- 2.5 The Client and the Supplier agree to comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.

### 3. Change in Control

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

### 4. Price and Payment

- 4.1 At the Supplier’s sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by the Supplier to the Client; or
  - (b) the Price as at the date of delivery of the Goods and/or Equipment according to the Supplier’s current price list; or
  - (c) the Supplier’s quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

- 4.2 The Supplier reserves the right to change the Price if a variation to the Supplier's quotation is requested. Any variation to the Services originally scheduled (including any applicable plans or specifications) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, unforeseen circumstances such as poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, hard rock barriers below the surface, iron reinforcing rods in concrete or as a result of increase to the Supplier's cost in Goods and/or Equipment and labour and/or additional unscheduled visits to the worksite) which are only discovered on commencement of the Services will be charged for on the basis of the Supplier's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At the Supplier's sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods and/or Equipment being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which may be:
- (a) on delivery of the Goods and/or Equipment;
  - (b) before delivery of the Goods and/or Equipment;
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Supplier.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Supplier.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale/hire of the Goods and/or Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client 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.

## 5. **Provision of the Services**

- 5.1 Delivery ("**Delivery**") of the Goods and/or Equipment is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods and/or Equipment at the Supplier's address; or
  - (b) the Supplier (or the Supplier's nominated carrier) delivers the Goods and/or Equipment to the Client's nominated address even if the Client is not present at the address.
- 5.2 At the Supplier's sole discretion the cost of is in addition to the Price.
- 5.3 The Supplier may deliver the Goods and/or Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.4 Any time or date given by the Supplier to the Client is an estimate only. The Client must still accept delivery of the Goods and/or Equipment even if late and the Supplier will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

## 6. **Risk**

- 6.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
- 6.3 If the Client requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.

## **7. Access**

- 7.1 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by the Supplier. The Client shall pay the cost of replacement, repair or rectification to any paths, driveways, and access routes to the property.
- 7.2 The Supplier shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Supplier.

## **8. Underground Locations**

- 8.1 Prior to the Supplier commencing any work the Client must advise the Supplier of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 8.2 Whilst the Supplier will take all care to avoid damage to any underground services the Client agrees to indemnify the Supplier in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 8.1.

## **9. Title**

- 9.1 The Supplier and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid the Supplier all amounts owing to the Supplier; and
  - (b) the Client has met all of its other obligations to the Supplier.
- 9.2 Receipt by the Supplier 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 Client in accordance with clause 9.1 that the Client is only a bailee of the Goods and must return the Goods to the Supplier on request.
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Client 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 Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.
  - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.
  - (e) the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods.
  - (f) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred.
  - (g) the Client 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 Supplier.
  - (h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

## **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 Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or Equipment that has previously been supplied and that will be supplied in the future by the Supplier to the Client.
- 10.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier 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) or 10.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, the Supplier 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 and/or Equipment charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or Equipment in favour of a third party without the prior written consent of the Supplier;
  - (e) immediately advise the Supplier of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.4 The Supplier and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Client 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 Supplier, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Client must unconditionally ratify any actions taken by the Supplier under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

## **11. Security and Charge**

- 11.1 In consideration of the Supplier agreeing to supply the Goods and/or Equipment, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- 11.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

## **12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**

- 12.1 The Client must inspect the Goods on delivery and must within twenty-four (24) hours of delivery notify the Supplier in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect

- in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Supplier to inspect the Goods.
- 12.2 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**).
- 12.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Client is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If the Supplier is required to replace the Goods under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Client has paid for the Goods.
- 12.7 If the Client is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by the Supplier in the Supplier's sole discretion;
  - (b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 12.1; and
  - (b) the Supplier has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Client'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.
- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods;
  - (b) the Client using the Goods for any purpose other than that for which they were designed;
  - (c) the Client 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 Client failing to follow any instructions or guidelines provided by the Supplier;
  - (e) fair wear and tear, any accident, or act of God.
- 12.10 Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.

### **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 Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).
- 13.3 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and

conditions the Supplier may suspend or terminate the supply of Goods and/or Equipment to the Client. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.

- 13.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors;  
or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

#### **14. Cancellation**

- 14.1 The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Goods and/or Equipment at any time before the Goods and/or Equipment are delivered by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any money paid by the Client for the Goods and/or Equipment. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 In the event that the Client cancels delivery of Goods and/or Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 14.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

#### **15. Privacy Act 1988**

- 15.1 The Client agrees for the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by the Supplier.
- 15.2 The Client agrees that the Supplier may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 15.3 The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 15.4 The Client agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other purposes as shall be agreed between the Client and Supplier or required by law from time to time):
- (a) the provision of Goods and/or Equipment; and/or
  - (b) the marketing of Goods and/or Equipment by the Supplier, its agents or distributors;  
and/or
  - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods and/or Equipment.

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

## **16. Unpaid Supplier's Rights**

- 16.1 Where the Client has left any item with the Supplier for repair, modification, exchange or for the Supplier to perform any other service in relation to the item and the Supplier has not received or been tendered the whole of any moneys owing to it by the Client, the Supplier shall have, until all moneys owing to the Supplier 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.
- 16.2 The lien of the Supplier shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Supplier having been obtained against the Client.

## **17. Conditions Applicable to Installation of Temporary Poles**

- 17.1 The Client must ensure the area where the pole is to be installed has free access and is clear of all rubbish, dirt, building goods or any other materials which may impede the installation.
- 17.2 The Supplier's quoted Price is for one trip only, to install the pole, any further trips required shall be charged at the Supplier's current call out rate.
- 17.3 It is the Client's responsibility to ensure that any stays or braces used in the erection of the pole are not removed or tampered with. Should the Supplier be required to rectify any breach of this requirement then Clause 16.2 shall apply.
- 17.4 The Client shall ensure that the site is suitable for the installation of the pole and shall advise the Supplier of any possibility that rock may be present. The Client shall be responsible for any additional costs arising from the discovery of rock during the installation and shall be responsible for any excavation required.
- 17.5 It is the Client's responsibility to ensure the temporary pole and safety switch is tested and tagged every six (6) months by a competent person, and every twelve (12) months by a licenced contractor.
- 17.6 The Client acknowledges that the Supplier will not be held liable for any indirect or consequential damages or claims due to any injury caused by the Goods during installation or use.

## **18. Building and Construction Industry Payments Act 2004**



- 18.1 At the Supplier's sole discretion, if there are any disputes or claims for unpaid Goods and/or Equipment and/or Services then the provisions of the Building and Construction Industry Payments Act 2004 may apply.
- 18.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.

## **19. General**

- 19.1 The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which the Supplier has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 19.3 Subject to clause 12 the Supplier shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods and/or Equipment).
- 19.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.5 The Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 19.6 The Client agrees that the Supplier may amend these terms and conditions at any time. If the Supplier makes a change to these terms and conditions, then that change will take effect from the date on which the Supplier notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Supplier to provide Goods and/or Equipment to the Client.
- 19.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 19.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

## **PART II – TERMS APPLICABLE TO EQUIPMENT HIRE ONLY**

### **20. Hire Period & Charges**

- 20.1 The Minimum hire period is twenty eight (28) days.
- 20.2 Hire Charges shall commence from the time the Equipment is collected by the Client from the Supplier's premises and will continue until the return of the Equipment to the Supplier's premises, and/or until the expiry of the Stipulated Hire Period, whichever last occurs.
- 20.3 If the Supplier agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves the Supplier's premises and continue until the Client notifies the Supplier that the Equipment is available for collection, and/or until the expiry of the Stipulated Hire Period, whichever last occurs.
- 20.4 The Client shall be responsible for free access by the Supplier to the site on which the Equipment is located. If there are any delays due to free access not being available then the Client shall be responsible and shall reimburse the Supplier for all lost hire fees associated with the Equipment being unavailable. The Client shall also be responsible for all other expenses and costs incurred by the Supplier due to delays in access to the Equipment. The off-hire receipt will be issued when the Equipment is picked up by the Supplier or returned to the Supplier's premises.
- 20.5 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless the Supplier confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Client notifies the Supplier immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.
- 20.6 Any alterations to the Equipment by others will be rectified on receipt of the site instructions and will be additional to the Price based on Supplier's current hourly rate.
- 20.7 In the event that inclement weather is forecast on the day previous to a weekend or public holiday, then the Supplier will only attend the site to erect the Equipment at the specific request of the Client and provided that the Client agrees that any costs incurred by inclement weather will be covered by the issue of chargeable day labour dockets.

### **21. Risk For Equipment**

- 21.1 The Supplier retains ownership in the Equipment at all times nonetheless all risk for the Equipment passes to the Client on delivery.
- 21.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies the Supplier for all loss, theft, or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss, theft, or damage is attributable to any negligence, failure, or omission of the Client.
- 21.3 The Client will insure, or self insure, the Supplier's interest in the Equipment against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property arising out of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 21.4 The Client accepts full responsibility for and shall keep the Supplier indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons or damage to property arising out of the use of the Equipment during the hire period however arising and whether or not arising from any negligence, failure or omission of the Client or any other persons.

## **22. Title To Equipment**

- 22.1 The Equipment is and will at all times remain the absolute property of the Supplier.
- 22.2 If the Client fails to return the Equipment to the Supplier when required then the Supplier or the Supplier's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated as the invitee of the Client and take possession of the Equipment, without being responsible for any damage thereby caused.
- 22.3 The Client is not authorised to pledge the Supplier's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.

## **23. Warranty**

- 23.1 No Warranty is provided by the Supplier in respect of the condition of the Equipment or its fitness for any particular purpose. The Client shall indemnify and hold harmless the Supplier in respect of all claims arising out of use of the Equipment.

## **24. Client's Responsibilities**

- 24.1 The Client shall:
- (a) notify the Supplier immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
  - (b) satisfy itself at commencement that the Equipment is suitable for its purposes;
  - (c) use the Equipment safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by the Supplier or posted on the Equipment;
  - (d) ensure that all persons operating or erecting the Equipment are suitably instructed in its safe and proper use and where necessary hold a current Certificate of Competency and/or are fully licensed to operate the Equipment and shall provide evidence of the same to the Supplier upon request;
  - (e) comply with all occupational health and safety laws relating to the Equipment and its operation;
  - (f) on termination of the hire, the Client shall deliver the Equipment complete with all parts and accessories clean and in good order as delivered, fair wear and tear accepted on the day the Equipment is due for return;
  - (g) keep the Equipment in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Equipment;
  - (h) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
  - (i) employ the Equipment solely in its own work and shall not permit the Equipment of any part thereof to be used by any other party for any other work;
  - (j) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold;
  - (k) cover all electrical wiring within a five metre radius of the Equipment;
  - (l) provide the Supplier with forty eight (48) hours if the Supplier is required to dismantle the Equipment for return.
- 24.2 Immediately on request by the Supplier the Client will pay:

- (a) the new list price of any Equipment that is for whatever reason destroyed, written off or not returned to the Supplier;
  - (b) all costs incurred in cleaning the Equipment;
  - (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to 10% of the new list price of the Equipment;
  - (d) the cost of repairing any damage to the Equipment caused by the negligence of the Client or the Client's agent;
  - (e) the cost of repairing any damage to the Equipment caused by vandalism, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
- 24.3 Where the Supplier is required to erect the Equipment, the Client shall ensure that the site on which the Equipment is to be erected is clear and suitable to accommodate the erected Equipment. The Client is liable to the Supplier for any costs, or damages which the Supplier may suffer or incur by reason of the Client's failure to carry out their obligations hereunder.
- 24.4 The Client shall keep the Equipment, complete with all parts and accessories, clean and in good order, and shall comply with any maintenance schedule as advised by the Supplier, and shall allow the Supplier (at its sole desertion) to inspect the Equipment at the worksite.