



Ischebeck Titan (Australia) Pty Ltd

ABN: 99 613 583 369

197 Queens Road, Kingston QLD 4114

Phone: (07) 3208 1158 • Fax: (07) 3208 1650

Email: mira.butler@ischebeck-titan.com.au

Web: www.ischebeck-titan.com.au

CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions overleaf or attached.

Client's Details: <input type="checkbox"/> Individual <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Other:				
Full or Legal Name:				
Trading Name (if different from above):				
Physical Address:			State:	Postcode:
Billing Address:			State:	Postcode:
Email Address:				
Phone No:		Fax No:		Mobile No:
Personal Details: <i>(please complete if you are an Individual)</i>				
D.O.B.:			Driver's Licence No:	
Business Details: <i>(please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)</i>				
ABN:		ACN:		Date Established <i>(current owners)</i> :
Nature of Business:				
Paid Up Capital: \$		Estimated Monthly Purchases: \$		Credit Limit Required: \$
Principal Place of Business is: <input type="checkbox"/> Rented <input type="checkbox"/> Owned <input type="checkbox"/> Mortgaged <i>(to whom)</i> :				
Directors / Owners / Trustee <i>(if more than two, please attach a separate sheet)</i>				
(1) Full Name:			D.O.B.:	
Private Address:			State:	Postcode:
Driver's Licence No:		Phone No:		Mobile No:
(2) Full Name:			D.O.B.:	
Private Address:			State:	Postcode:
Driver's Licence No:		Phone No:		Mobile No:
Account Terms: <input type="checkbox"/> 30 Days from EOM <input type="checkbox"/> COD <input type="checkbox"/> Other:				
Purchase Order Required? <input type="checkbox"/> YES <input type="checkbox"/> NO		Accounts to be emailed? <input type="checkbox"/> YES <input type="checkbox"/> NO		
Accounts Email Address:				
Accounts Contact:			Phone No:	
Bank and Branch:			Account No:	
Trade References: <i>(please provide companies that are willing to do trade references)</i>				
Name:		Address:		Phone / Fax / Email:
1.				
2.				
3.				

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 (overleaf or attached) of Ischebeck Titan (Australia) 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.

SIGNED (CLIENT): _____ **SIGNED (CONTRACTOR):** _____

Name: _____ Name: _____

Position: _____ Position: _____

WITNESS TO CLIENT'S SIGNATURE:

Signed: _____ Name: _____ Date: _____

OFFICE USE ONLY				
Account / Ref. No.	CREDIT LIMIT	APPROVED BY	DATA INPUTTED	DATE
	\$			/ /

Ischebeck Titan (Australia) Pty Ltd – Terms & Conditions (Sales & Hire)

1. Definitions

- 1.1 “Contractor” means Ischebeck Titan (Australia) Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Ischebeck Titan (Australia) Pty Ltd.
- 1.2 “Client” means the person/s or any person or agent acting on behalf of and with the authority of the Client requesting the Contractor to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.3 “Goods” means all Goods or Services supplied by the Contractor 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” means all Equipment including any accessories supplied on hire by the Contractor to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Contractor to the Client.
- 1.5 “Minimum Hire Period” means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Contractor to the Client. Where no specified Minimum Hire Period is stipulated, then the Minimum Hire Period shall be seven (7) days. Such Hire Period may include weekends and public holidays.
- 1.6 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.7 “Cookies” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.8 “Price” means the Price payable (plus any GST where applicable) for the Goods and/or Equipment hire as agreed between the Contractor and the Client in accordance with clause 6 below.
- 1.9 “GST” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

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/Equipment.
- 2.2 Clause 2.1 is not to derogate from the principle of acceptance of these terms and conditions by execution.
- 2.3 All orders for Goods and/or the hire of the Equipment shall be deemed to be an offer by the Client to purchase Goods or hire Equipment pursuant to these terms and conditions. Acceptance of delivery of the Goods and/or Equipment shall be deemed conclusive evidence of the Client’s acceptance of these terms and conditions.
- 2.4 In the event of any inconsistency between the terms and conditions of this contract and any other prior documentation or schedule that the parties have entered into, the terms of this contract shall prevail.
- 2.5 Any amendment to the terms and conditions (including any special terms and conditions) contained in this contract may only be amended in writing with the consent of both parties.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (New South Wales), the Electronic Communications Act 2000 (South Australia), the Electronic Transactions Act 2001 (Australian Capital Territory), the Electronic Transactions (Victoria) Act 2000, the Electronic Transactions (Northern Territory) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (Tasmania), Section 10 of the Electronic Transactions Act 2011 (Western Australia), (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.7 Any advice or recommendation given by the Contractor or its employees or agents to the Client or its employees or agents as to the storage, application or use of the Goods and/or Equipment which is not confirmed in writing by the Contractor is followed or acted upon entirely at the Client’s own risk. The Contractor shall not be liable for any losses sustained by the Client following the said advice or recommendation.

3. Errors and Omissions

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

4. Change in Control

- 4.1 The Client shall give the Contractor 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, change of trustees or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client’s failure to comply with this clause.

5. Credit Accounts

- 5.1 The Client acknowledges that the supply of Goods and/or Equipment on credit shall not take effect until the Client has completed a credit application with the Contractor and it has been approved with a credit limit established for the account.

Ischebeck Titan (Australia) Pty Ltd – Terms & Conditions (Sales & Hire)

- 5.2 In the event that the supply of Goods request exceeds the Client's credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse delivery and/or request an alternative payment method.
- 5.3 From time to time, the Contractor may review any Credit Account the Contractor may have granted to the Client without notice.
- 5.4 The Contractor may, at its absolute discretion, decide to withdraw or extend the credit limit for any reason, including but not limited to if the Client's circumstances change, the Client fails to make payments on time, and/or the Client fails to use the Equipment in accordance with the terms and conditions of this contract.
- 5.5 If the Contractor withdraws credit the Client may terminate this contract immediately by giving the Contractor written notice. However, if the Client terminates, it must:
- pay amounts that were subject to credit in accordance with the terms on which the credit was provided;
 - pay all amounts due to the Contractor under this contract, including hire charges until the Equipment is returned to the Contractor and is in the Contractor's possession.

6. Price and Payment

- 6.1 At the Contractor's sole discretion, the Price shall be either:
- as indicated on any invoice provided by the Contractor to the Client; or
 - the Contractor's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 The Contractor reserves the right to change the Price if a variation to the Contractor's quotation is requested. Any variation from the plan of scheduled Services, quantities or specifications (including, but not limited to, any variation as a result of additional Services required due to unforeseen circumstances such as poor weather conditions, limitations to accessing the site, availability of Goods/Equipment, safety considerations, prerequisite work by any third party not being completed or as a result of any increase to the Contractor in the cost of materials and labour) will be charged for on the basis of the Contractor's quotation and will be shown as variations on the invoice. The Client shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.3 Further to clause 6.2 and prior to the date of Delivery, the Contractor may by giving the Client written notice, change the date of Delivery, quantities or specification for the Goods and/or Equipment by the Client, and/or any delay caused by any instructions of the Client.
- 6.4 The Contractor reserves the right to vary the hire charges at any time during the hire period. If the hire charge is revised, the Contractor shall give the Client twenty-eight (28) days' notice of the revised Price and shall be entitled to charge the revised Price at the expiry of that twenty-eight (28) day period. The Client shall be entitled to terminate the hire within this notice period on giving the Client not less than three (3) days' notice in writing, and by returning the Equipment (at the Client's expense) to the Contractor in good repair and condition.
- 6.5 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:
- on delivery of the Goods/Equipment;
 - thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - the date specified on any invoice or other form as being the date for payment; or
 - 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 Contractor.
- 6.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Contractor.
- 6.7 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 Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other contract for the sale of the Goods/hire of the 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.

7. Delivery of Goods/Equipment

- 7.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:
- the Client or the Client's nominated carrier takes possession of the Goods/Equipment at the Contractor's address; or
 - the Contractor (or the Contractor's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.
- 7.2 The Client acknowledges and accepts that Goods and/or Equipment are supplied are ex works. In the event that the Contractor agrees to deliver the Goods and/or Equipment, the Client shall be liable for the costs of transportation, packaging and insurance.
- 7.3 Where the Delivery or collection of Equipment is effected by the Contractor, the Client will pay a Delivery or collection charge at the Contractor's standard transport rate applicable at the date of Delivery or collection. Such charges shall include any wasted journey or transport time incurred by the Client in attempting reasonably to comply with the express or implied requirements of the Client.
- 7.4 Where the Goods and/or Equipment are carried by the Contractor's own transport, or by a carrier on behalf of the Contractor, and there has been damage to or loss of the Goods and/or Equipment, the Client must notify to the Contractor any loss or damage to the Goods and/or Equipment within **forty-eight (48) hours** of receipt and the Goods and/or Equipment shall be held for inspection to enable a claim to be made on the carrier. The Client shall immediately notify the Contractor if the Goods and/or Equipment are not received within **forty-eight (48) hours** of the date of the invoice. Any claim for damaged Goods and/or Equipment or shortages or non-delivery shall be notified to the carriers by the Client in the manner and within the appropriate time limit prescribed by the carriers' terms and conditions. In the event of the Client's failure to comply with the terms of 7.4, they shall be deemed to have accepted the Goods and/or Equipment and any claim by the Client will be waived and barred. Where the Client rejects the Goods and/or Equipment pursuant to this clause, they shall nevertheless be obliged to unload and store the Goods and/or Equipment.
- 7.5 The Client shall be deemed to have accepted the Goods and/or Equipment forty-eight (48) hours after Delivery to the Client. After acceptance, the Client shall not be entitled to reject Goods and/or Equipment which are not in accordance with the contract.

Ischebeck Titan (Australia) Pty Ltd – Terms & Conditions (Sales & Hire)

- 7.6 Any time specified by the Contractor for Delivery of the Goods/Equipment is an estimate only. The Client shall be bound to accept Delivery and to pay for the Goods and/or Equipment in full provided that Delivery shall be tendered at any time within three (3) months of the estimated Delivery date. The Contractor will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. In the event that the Client is unable to take Delivery of the Goods/Equipment as arranged then the Contractor shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or storage of the Goods (including insurance).
- 7.7 The Contractor may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions. Failure by the Contractor to deliver any one or more of the instalments shall not entitle the Client to terminate the whole contract.
- 7.8 If the Client fails to take Delivery of the Goods and/or Equipment or fails to give the Contractor adequate delivery instructions then, without prejudice to any other right or remedy available, the Contractor may sell the Goods at the best price readily available and (after deducting all reasonable storage and selling expenses) account to the Client for the excess over the Price under the contract or charge the Client for any shortfall below the Price of the contract.
- 7.9 The cost of pallets, bins, packaging, cases and returnable containers will be charged to the Client in addition to the Price of the Goods and/or Equipment in accordance with credit being given to the Client provided that the items are returned undamaged to the Contractor at the sole discretion of the Contractor.

8. Risk to Goods

- 8.1 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.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Contractor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.
- 8.3 If the Client requests the Contractor to leave Goods outside the Contractor'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.

9. Specification of Goods and/or Equipment

- 9.1 The Goods and/or Equipment will be supplied in accordance with the tolerances of dimension, quality and design criteria specified on the Contractor's final drawings and quotations. Tolerances specified on the Client's documentation or enquiry, do not form part of this contract unless expressly agreed in writing by the Contractor before or at the time of acceptance of the Client's order.
- 9.2 The Client is responsible for checking the quotation and satisfying itself that any specification given is accurate and adequate for the Goods and/or Equipment.
- 9.3 The Client shall be responsible for the accuracy of all drawings, designs and specifications submitted by the Client to the Contractor and the Client shall be responsible for all costs arising from any omissions, errors or inaccuracies in the said drawings, designs, or specifications and shall indemnify and hold harmless the Contractor against any liability of the Contractor arising as a result of any such omissions, errors or inaccuracies.
- 9.4 If there is an error in the specification made by the Contractor for the Client then where that error is material and it has been relied upon by the Client, the Client may cancel that part of the contract which is affected by the error without liability due to the cancellation.
- 9.5 The Client shall be responsible for obtaining all necessary consents, licences and/or permits in relation to the purchase of the Goods and/or Equipment, the purposes for which the Goods and/or Equipment are to be used and the manner of such use.
- 9.6 The Client agrees to indemnify and keep indemnified the Contractor against any and all claims, losses, expenses, proceedings, actions, awards, liabilities, costs (including legal costs on a full indemnity basis and increased administration costs) expenses, damages and any other losses and/or liabilities arising out of the Contractor's use of specifications, details and/or drawings supplied by the Client.
- 9.7 As regards any Goods and/or Equipment supplied by the Contractor, the Contractor shall be deemed not to have any knowledge of the particular purpose, use or market for which the Goods and/or Equipment are required unless such purpose, use or market is expressly stated in the contract and (without limiting the generality of the foregoing) any timber or plywood Goods and/or Equipment supplied by the Contractor or not tested by the Contractor nor sold by it as being fit for a particular purpose.
- 9.8 The Contractor reserves the right to make changes to the specification of the Goods and/or Equipment as required from time to time by law, applicable safety requirements or manufacturing requirements provided that they do not have a material adverse effect on the quality and/or performance of the Goods and/or Equipment.
- 9.9 No drawings, descriptive matter, weights, dimensions or shipping specifications issued by the Contractor for the manufacture of the Goods and/or Equipment nor the descriptions and illustrations contained in the Contractor's Goods, manufacturers catalogues, price lists or other promotional material will form part of the contract nor be regarded as a warranty or representation relating to the Goods and/or Equipment.
- 9.10 If the Contractor does make changes to the specification of the Goods and/or Equipment which have a material adverse effect then the Client shall have the right to cancel the contract without liability.

10. Export

- 10.1 "Incoterms" means the international rules for the interpretation of trade terms of the International Chambers of Commerce as in force at the date when the contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these terms and conditions. If there is any conflict between the Incoterms and these terms and conditions, the latter shall prevail.
- 10.2 The Client shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 10.3 The Client shall be responsible for arranging for testing and inspection of the Goods at the Contractor's premises before shipment. The Contractor shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipments, or in respect of any damage during transit.
- 10.4 Payment of all amounts due to the Contractor shall be made as follows:
(a) in respect of new Clients, or Clients refused a credit account, cleared funds are required in advance of export for the Price. Alternatively, the Contractor may at their absolute discretion accept a letter of credit with payment being thirty (30) days after documentation;

Ischebeck Titan (Australia) Pty Ltd – Terms & Conditions (Sales & Hire)

- (b) in respect of the Clients permitted a credit account, payment shall be due within thirty (30) days from the date of the Contractor's invoice unless otherwise agreed in writing.
- 10.5 The Client undertakes not to offer the Goods for resale in any country notified by the Contractor to the Client or to sell the Goods to any person if the Client knows or has reason to believe that that person intends to resell the Goods in any such country.
- 11. Title to Goods**
- 11.1 The Contractor and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid the Contractor all amounts owing to the Contractor;
 - (b) the Client has met all of its other obligations to the Contractor; and
 - (c) the Client has taken delivery of the Goods.
- 11.2 Receipt by the Contractor 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.
- 11.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 11.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to the Contractor on demand;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Contractor and must pay to the Contractor 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 Contractor and must pay or deliver the proceeds to the Contractor 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 Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs;
 - (e) the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Goods are kept and recover possession of the Goods;
 - (f) the Contractor 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 Contractor; and
 - (h) the Contractor may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 12. Personal Property Securities Act 2009 ("PPSA")**
- 12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 12.2 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/Equipment and/or collateral (account) – being a monetary obligation of the Client to the Contractor for Services – that have previously been supplied and that will be supplied in the future by the Contractor to the Client.
- 12.3 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 Contractor 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 12.3(a)(i) or 12.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Contractor 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/Equipment charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Contractor;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment and/or collateral (account) in favour of a third party without the prior written consent of the Contractor;
 - (e) immediately advise the Contractor 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.
- 12.4 The Contractor 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.
- 12.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by the Contractor, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Client must unconditionally ratify any actions taken by the Contractor under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 12.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 12 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 12 will apply generally for the purposes of the PPSA.
- 13. Security and Charge**
- 13.1 The Client irrevocably agrees to charge for the benefit of the Contractor, the Client's interest held jointly, severally or jointly and severally or in the Client's capacity as a trustee of a trust, over all freehold and leasehold interest in land, including land which the Client may obtain an interest in after the date of these terms and conditions, with due payment of all amounts that may become due from the Client to the

Ischebeck Titan (Australia) Pty Ltd – Terms & Conditions (Sales & Hire)

Contractor arising out of, or in connection with these terms and conditions. The Client consents to the Contractor lodging caveats over the Client's real property and irrevocably appoints the Contractor (including any director of the Contractor) as the Client's attorney to do all things reasonable and necessary to enable consent caveats to be lodged against the Client's real property. The Client waives any right it may have to require the Contractor to proceed against, or enforce any other rights or claim payment from, any other person before claiming from the Client under the guarantee and indemnity. This waiver applies irrespective of any law or any provision contained in the terms and conditions to the contrary.

- 13.2 The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.

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

- 14.1 The Client must inspect the Goods/Equipment on delivery and must within seven (7) days of delivery notify the Contractor 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/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Contractor to inspect the Goods/Equipment.
- 14.2 Any Equipment proved to be defective when delivered will be replaced free of charge by the Contractor and hire charges will be suspended until the replacement is available, and furthermore, the Contractor will not charge any Delivery charges in respect of such replacement.
- 14.3 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**).
- 14.4 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 14.5 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.6 If the Client is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.7 If the Contractor is required to replace the Goods under this clause or the CCA, but is unable to do so, the Contractor may refund any money the Client has paid for the Goods.
- 14.8 If the Client is not a consumer within the meaning of the CCA, the Contractor'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 Contractor at the Contractor's sole discretion;
 - (b) limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 14.9 Subject to this clause 14, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 14.1; and
 - (b) the Contractor 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.
- 14.10 Notwithstanding clauses 14.1 to 14.9 but subject to the CCA, the Contractor 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/Equipment;
 - (b) the Client using the Goods/Equipment for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of the Goods/Equipment 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 Contractor;
 - (e) fair wear and tear, any accident, or act of God.
- 14.11 Notwithstanding anything contained in this clause if the Contractor is required by a law to accept a return then the Contractor will only accept a return on the conditions imposed by that law.

15. Intellectual Property

- 15.1 Where the Contractor has designed, drawn or developed Goods/Equipment for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Contractor. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Contractor.
- 15.2 The Client warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.
- 15.3 The Client agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods/Equipment which the Contractor has created for the Client.

16. Default and Consequences of Default

- 16.1 Any payments tendered by the Client to the Contractor (or proceeds of the sale of Goods to which the Contractor has a lien), where the Client is in default of their obligations of payment shall be applied as follows:
- (a) firstly, as reimbursement for any contract default fee incurred by the Contractor;
 - (b) secondly, in payment of any interest charges;
 - (c) thirdly, in satisfaction or part satisfaction of the oldest portion of the Client's outstanding account; and
 - (d) finally, the Contractor shall account to the Client for the remainder (if any).
- 16.2 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 Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.3 If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred

Ischebeck Titan (Australia) Pty Ltd – Terms & Conditions (Sales & Hire)

- by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's contract default fee, and bank dishonour fees).
- 16.4 Further to any other rights or remedies the Contractor may have under this contract, if a Client has made payment to the Contractor, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 16.5 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by the Contractor;
 - (c) at the Contractor's discretion and upon a subsequent credit rating review the Contractor forms the opinion that the Client is financially unable to meet its obligations under this contract;
 - (d) 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;
 - (e) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client;
 - (f) the Client breaches these terms and condition and where the breach is capable of remedy, have not remedied the breach within fourteen (14) days of receiving notice requiring the breach to be so remedied;
 - (g) the Client persistently breaches the terms and conditions of this contract.
- 17. Cancellation**
- 17.1 Without prejudice to any other remedies the Contractor 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 Contractor may suspend or terminate the supply of Goods/Equipment to the Client. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.
- 17.2 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are delivered by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any money paid by the Client for the Goods/Equipment. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.3 Further to clause 17.2, if the Contractor is unable (whether temporarily or permanently) to procure any services, goods and/or equipment necessary to enable it to supply the Goods and/or Equipment or if the supply of Goods and/or Equipment is prevented or hindered by reason of any cause beyond the Contractor's control, including but not limited to a force majeure, the Contractor may cancel or suspend performance of the contract by notice in writing to the Client so far as it relates to Goods and/or Equipment not then supplied and such cancellation or suspension shall not give rise to any claims by the Client and the Client shall remain liable to pay for Goods and/or Equipment supplied or hired prior to the date of such cancellation or suspension.
- 17.4 In the event that the Client cancels Delivery of Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18. Privacy Policy**
- 18.1 All emails, documents, images or other recorded information held or used by the Supplier is Personal Information, as defined and referred to in clause 18.3, and therefore considered Confidential Information. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by the Supplier that may result in serious harm to the Client, the Supplier will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 18.2 Notwithstanding clause 18.1, privacy limitations will extend to the Supplier in respect of Cookies where transactions for purchases/orders transpire directly from the Supplier's website. The Supplier agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Supplier when the Supplier sends an email to the Client, so the Supplier may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via the Supplier's website.
- 18.3 The Client agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by the Supplier.
- 18.4 The Client agrees that the Supplier may exchange information about the Client with those credit providers and with related body corporates 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

Ischebeck Titan (Australia) Pty Ltd – Terms & Conditions (Sales & Hire)

- (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 18.5 The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.
- 18.6 The Client agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods/Equipment; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods/Equipment.
- 18.7 The Supplier may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 18.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 18.3 above;
 - (b) name of the credit provider and that the Supplier is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Supplier has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of the Supplier, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 18.9 The Client shall have the right to request (by e-mail) from the Supplier:
- (a) a copy of the Personal Information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect Personal Information; and
 - (b) that the Supplier does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 18.10 The Supplier will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 18.11 The Client can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

19. Other Applicable Legislation

- 19.1 At the Contractor's sole discretion, if there are any disputes or claims for unpaid Goods, Equipment hire and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 (Victoria), Building and Construction Industry Security of Payments Act 1999 (New South Wales), Construction Contracts Act 2004 (Western Australia), Building Industry Fairness (Security of Payment) Act 2017 (Queensland), Construction Contracts (Security of Payments) Act (Northern Territory), Building and Construction Industry Security of Payments Act 2009 (Tasmania), Building and Construction Industry Security of Payments Act 2009 (South Australia) and Building and Construction Industry (Security of Payment) Act 2009 (Australian Capital Territory) may apply.
- 19.2 Nothing in this contract is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 19.1 (each as applicable), except to the extent permitted by the Act where applicable.

20. Service of Notices

- 20.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 20.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

21. Trusts

- 21.1 If the Client at any time upon or subsequent to entering into the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Contractor may have notice of the Trust, the Client covenants with the Contractor as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
 - (c) the Client will not without consent in writing of the Contractor (the Contractor will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or

(iv) any resettlement of the trust property.

22. General

- 22.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of 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.
- 22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the State in which the Contractor has its principal place of business, and are subject to the jurisdiction of the Brisbane Courts in Queensland.
- 22.3 Subject to clause 14, the Contractor shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of actual or anticipated profits or revenue, loss of business, business interruption, wasted costs the Client has incurred, amounts that the Client is liable to its customers for or any loss suffered by third parties under or relating to this contract or its subject matter, whether in contract, tort, (including without limitation negligence) in equity, under statute, under an indemnity, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage) suffered by the Client arising out of a breach by the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 22.4 The Client is liable for and indemnifies the Contractor against all liability, claims, damage, loss, costs and expenses (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against the Contractor and any environmental loss, cost, damage or expense) in respect of:
- (a) personal injury;
 - (b) damage to property; or
 - (c) a claim by a third party.
- In respect of the Client's hire or use of the Equipment or the Client's breach of this contract. The Client's liability under this indemnity is diminished to the extent that the Contractor's breach of the contract or the Contractor's negligence causes the liability, claims, damage, loss, costs or expenses.
- 22.5 Each indemnity in this contract is a continuing obligation, separate and independent from the other obligations of the parties and survives termination, completion and expiration of this contract. It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this contract.
- 22.6 The Contractor may license and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 22.7 The Client cannot license or assign without the written approval of the Contractor.
- 22.8 The Contractor may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.
- 22.9 The Client agrees that the Contractor may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Contractor to provide Goods to the Client.
- 22.10 Neither party shall be liable for any default due to any act of God, war, civil disturbance, terrorism, malicious damage, strike, lock-out, industrial action, fire, flood, drought, extreme weather conditions, compliance with any law or governmental order, rule, regulation, direction or other circumstance beyond the reasonable control of either party ("Force Majeure Event"). Each party shall give notice forthwith to the other upon becoming aware of a Force Majeure Event, the notice to specify details of the circumstances giving rise to the Force Majeure Event.
- 22.11 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.
- 22.12 This contract constitutes the entire agreement and undertaking between the Company and the Customer with regard to the subject matter of this contract, and supersedes all prior discussions, agreements and understandings. The parties further agree that no statements or representations made by either party have been relied upon by the other party in entering into the contract.

Additional Terms & Conditions Applicable to Hire Only

23. Hire Period

- 23.1 Hire charges shall commence from the time the Equipment is collected by the Client from the Contractor's premises and will continue until the return of the Equipment to the Contractor's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 23.2 If the Contractor agrees with the Client to deliver and/or collect the Equipment, hire charges shall commence from the time the Equipment leaves the Contractor's premises and continue until the Client notifies the Contractor that the Equipment is available for collection, and/or until the expiry of the Minimum Hire Period, whichever last occurs.
- 23.3 Where the Contractor agrees to collect the Equipment, instructions to collect must be given in writing and received by the Contractor at least forty-eight (48) hours' before collection is required; and
- (a) the Client shall be responsible for loading of the Equipment;
 - (b) Equipment will not be received by the Contractor after 4:00 pm Monday to Friday;
 - (c) no returns will be accepted by the Contractor on a Saturday, Sunday or public holiday.
- 23.4 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.
- 23.5 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless the Contractor confirms special prior arrangements in writing.
- 23.6 Subject to clauses 23.1 and 23.2 and further to clause 17.3, the Client shall provide the Contractor with a minimum of three (3) days' notice of the Client's intention to cancel.

24. Risk to Equipment

- 24.1 The Contractor retains property in the Equipment nonetheless all risk for the Equipment passes to the Client on Delivery.
- 24.2 The Client accepts full responsibility for the safekeeping of the Equipment and indemnifies the Contractor for all loss, theft, or damage to the

Ischebeck Titan (Australia) Pty Ltd – Terms & Conditions (Sales & Hire)

- 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.
- 24.3 The Client will insure, or self-insure, the Contractor'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.
- 24.4 The Client acknowledges and accepts that where Equipment previously treated as lost is returned to the Contractor or recovered and taken back into use by the Client, the Client shall be entitled to a credit equal to the sum paid in respect thereof (either by insurance or as per clause 26.3, the Contractor shall be entitled to charge the Client hire charges in respect of the Equipment as if the same had never been lost but had remained in the possession of the Client.
- 24.5 The Client accepts full responsibility for and shall keep the Contractor indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses in respect of any injury to persons, damage to property, or otherwise arising out of the use of the Equipment during the hire period and whether or not arising from any negligence, failure or omission of the Client or any other persons.
- 24.6 Unless proven to be due to negligence on the part of the Contractor, the Client shall be solely responsible for loss or damage to the Equipment.
- 24.7 The Contractor shall reserve the right itself to repair or have repaired any Equipment which is the subject of an accident. If the Contractor does not choose to do so, then the Client shall be required to reinstate or repair the Equipment at its own expense and shall continue to pay the hire charges in respect of such Equipment during such reinstatement or repair.
- 25. Title to Equipment**
- 25.1 The Equipment is and will at all times remain the absolute property of the Contractor.
- 25.2 If the Client fails to return the Equipment to the Contractor then the Contractor or the Contractor's agent may (as the invitee of the Client) enter upon and into land and premises owned, occupied or used by the Client, or any premises where the Equipment is situated and take possession of the Equipment, without being responsible for any damage thereby caused.
- 25.3 The Client is not authorised to pledge the Contractor's credit for repairs to the Equipment or to create a lien over the Equipment in respect of any repairs.
- 26. Client's Responsibilities**
- 26.1 The Client acknowledges and accepts that damage to the Equipment include, but is not limited to breakages, cuts or drillings which is beyond normal wear and tear.
- 26.2 The Client shall:
- (a) maintain the Equipment as is required by the Contractor (including, but not limited to ensuring connectors are tight);
 - (b) notify the Contractor immediately by telephone of the full circumstances of any breakdown or accident. The Client is not absolved from the requirements to safeguard the Equipment by giving such notification;
 - (c) satisfy itself at commencement that the Equipment is suitable for its purposes;
 - (d) be responsible for the proper handling, dismantling, and storage of the Equipment;
 - (e) 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 Contractor or posted on the Equipment;
 - (f) ensure that all persons using 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 Contractor upon request;
 - (g) comply with all work health and safety laws relating to the Equipment and its operation;
 - (h) on termination of the hire, deliver the Equipment complete with all parts and accessories, bundled, pelleted and clean and in good order as delivered, fair wear and tear accepted, to the Contractor;
 - (i) 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;
 - (j) 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 including, but not limited to the addition or erection of any painting, sign-writing, lettering or advertising to or on the Equipment;
 - (k) employ the Equipment solely in its own work and shall not permit the Equipment or any part thereof to be used by any other party for any other work;
 - (l) not exceed the recommended or legal load and capacity limits of the Equipment;
 - (m) not fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold.
- 26.3 Immediately on request by the Contractor 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 Contractor;
 - (b) all costs incurred in cleaning the Equipment;
 - (c) all costs of repairing any damage caused by the ordinary use of the Equipment up to an amount equal to ten percent (10%) of the new list price of the Equipment;
 - (d) the cost of repairing any damage to the Equipment caused by the negligence of the Client or the Client's agent;
 - (e) any lost hire fees the Contractor would have otherwise been entitled to for the Equipment, under this, or any other hire contract;
 - (f) the cost of repairing any damage to the Equipment caused by vandalism, or (in the Contractor's reasonable opinion) in any way whatsoever other than by the ordinary use of the Equipment by the Client;
 - (g) the cost of consumables provided by the Contractor and used by the Client.
- 26.4 The Client acknowledges and accepts that damage as per clause 26.3 to the Equipment includes, but is not limited to breakages, cuts or drillings.

Schedule 1 - Personal Guarantee and Indemnity

27. Personal guarantor’s responsibilities

- 27.1 I, **(the Guarantor)** have requested the Contractor to supply the goods and/or services in these terms and conditions to the Client.
- 27.2 I am a shareholder of the Client and/or have another interest in the Client’s business and I acknowledge and agree that I will obtain a benefit from the Contractor agreeing to supply those goods and/or services to the Client.
- 27.3 In consideration of the Contractor agreeing to supply those goods and/or services to the Client (the sufficiency of which consideration I hereby acknowledge), I irrevocably guarantee as follows:
 - (a) to immediately on demand pay the Contractor all monies outstanding in accordance with these terms and conditions; and
 - (b) to perform any of the Client’s obligations under these terms and conditions.
- 27.4 In consideration of the Contractor agreeing to supply those goods and/or services to the Client (the sufficiency of which consideration I hereby acknowledge), I unconditionally and irrevocably indemnify the Contractor, its agents, contractors and employees against all losses (including loss of bargain or profit), damages, costs, charges, liabilities and expenses (including legal expenses on a full indemnity basis) of whatever kind or nature which the Contractor may at any time suffer or incur because of a failure by the Client to perform their obligations under these terms and conditions howsoever caused.
- 27.5 This guarantee and indemnity extends to the present and future balance of all monies that may become due and owing to the Contractor (including in respect of any contingent liability of the Client in connection with these terms and conditions as varied from time to time including in respect of any contingent liability) and continues until the Client has paid in full the amounts payable under these terms and conditions, as varied from time to time and performed its obligations, whether or not with the consent of, or notice to, the Client.
- 27.6 The Guarantor irrevocably agrees to charge, at the request of the Client and for the benefit of the Contractor, the Guarantor’s interest held jointly, severally or jointly and severally or in the Guarantor’s capacity as a trustee of a trust, over all freehold and leasehold interest in land, including land which the Guarantor may obtain an interest in after the date of this Guarantee, with due payment of all amounts that may become due from the Guarantor to the Contractor arising out of, or in connection with the Agreement. The Guarantor consents to the Contractor lodging caveats over the Guarantor’s real property and irrevocably appoints the Contractor (including any director of the Contractor) as the Guarantor’s attorney to do all things reasonable and necessary to enable consent caveats to be lodged against the Guarantor’s real property. Each Guarantor waives any right it may have to require the Contractor to proceed against, or enforce any other rights or claim payment from, any other person before claiming from the Guarantor under the guarantee and indemnity. This waiver applies irrespective of any law or any provision contained in these terms and conditions to the contrary.
- 27.7 Until all amounts that become due and owing under these terms and conditions have been received and the Contractor is satisfied that it will not be required to repay any money received by it, no Guarantor may (either directly or indirectly) without the Contractor’s prior written consent:
 - (a) claim, exercise or attempt to exercise a right of set-off, counterclaim or any other right or raise any defence against the Client or the Contractor which it or any other Guarantor might have which might reduce the Guarantor’s liability under this guarantee and indemnity;
 - (b) claim, exercise or attempt to exercise a right of subrogation or contribution or otherwise claim the benefit of a guarantee or security interest in relation to the monies payable under these terms and conditions and if the Guarantor receives any money in breach of this clause, each Guarantor must promptly pay that money to the Contractor.
- 27.8 Unless the Contractor has given a direction to do so (in which case the relevant Guarantor must do so in accordance with the direction as trustee for the Contractor), no Guarantor may without the Contractor’s prior written consent:
 - (a) prove, claim or exercise voting rights in the Client’s or Guarantor’s liquidation or bankruptcy, or otherwise claim or receive the benefit of any distribution, dividend or payment arising out of the Client’s liquidation or bankruptcy on any account; or
 - (b) demand or accept payment of any money owed to the Guarantor by the Client or other Guarantor, and any such money it receives must be paid promptly to the Contractor.

Executed as an Agreement

Signed by the Guarantor

Signature:

Date:

Name of Guarantor:

Signed for and on behalf of the Contractor

Signature:

Date:

Name: