

1. EVIDENCE OF CONTRACT

- 1.1. The Contract consists of the following documents:
 - (a) the Quotation;
 - (b) these standard conditions of Hire; and
 - (c) any other document which is attached to, or incorporated by reference in, the Quotation or these conditions of Hire.
- 1.2. If there is any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, the documents will rank in order of precedence following the order in which they are listed in clause 1.1.
- 1.3. No terms or conditions submitted by either of us that are in addition to, different from or inconsistent with those contained in the Contract, including, without limitation, your printed terms and conditions, and any terms and conditions contained in either your purchase order, payment schedule or another instrument, shall be binding upon either of us regarding the hire of the Goods unless expressly agreed to in writing and signed by both of us.
- 1.4. The Quotation is valid and is only open for acceptance for 30 days from its Date of Issue and may be withdrawn by us before acceptance for any reason.

2. DEFINITIONS

The following terms shall have the following meaning unless the context requires otherwise:

Act of God means a flood, fire, cyclone, hurricane, hailstorm or earthquake.

Building Renter Protection is as set out in clause 15.

Building Renter Protection Excess means:

- (a) for Goods owned by us - \$1,000 per damaged module; or
- (b) for third party, Cross-Hired Goods – the greater of \$1,000 per damaged item or 20% of the replacement cost of each damaged item.

Building Renter Protection Fee means the GST exclusive building renter protection fee specified in the relevant Quotation.

Cross-Hired Goods means any good hired to you under this Contract that is not owned by us but is on-hired from one of our suppliers to you under this Contract, for example, a power generator.

Commencement Date means the earlier of:

- (a) the date you take occupation of the Goods; and
- (b) the date the Goods are delivered to you;
- (c) the date the Goods are collected from us; or
- (d) Practical Completion if the Quotation includes the installation of the Goods by us, except where commencement is delayed due to our direct action or omission, in which case the commencement date will be the date you take occupation of the Goods.

Compensable Cause means an Act of God, other weather events, direction for a variation, no or limited access to Site, delay or other change to the delivery date.

Consequential Loss means any indirect, economic or consequential loss, including but not limited to loss of revenue, loss of profits, loss of production or service, loss or damage to reputation, loss of anticipated savings or benefits or any other consequential loss, whatsoever arising out of or relating to the Contract.

Contract has the meaning given to that term in clause 1.1.

Date for Delivery means the date for delivery set out in the Quotation.

Defect means any defect in the Goods that materially impacts the use of Goods but excludes any Fair Wear and Tear.

Fair Wear and Tear means changes which occur to the Goods from the normal use of the Goods or the natural ageing of the Goods but for clarity excludes damage caused by you or any third party and as otherwise described in clause 10.4.

Goods mean all goods, including all associated accessories, including for the avoidance of doubt, power generators and other Cross-Hired products, hired to you by us and all associated services provided by us under this Contract, as set out in the Quotation.

GST has the meaning given in *A New Tax System (Goods and Services) Act 1999* (Cth).

Hire Period means the period during which the Goods are hired to you, as set out in clause 3.2.

Minimum Hire Period means guaranteed hire period, as set out in the Quotation.

PPSA means the *Personal Property Securities Act 2009* (Cth) and any regulations or other instruments under it, and consolidations, amendments, re-enactments, or replacements of any of them.

PPSR means the Personal Property Securities Register.

Practical Completion means the date the Site works are deemed to have reached a state of practical completion under clause 5.8.

Price means the amount payable by you for the Goods supplied to you by us.

Provisional Sum Work means any work noted on the Quotation as being provisional sum work.

Quotation means the written quotation, with all nominated attachments, prepared and submitted to you by us for the supply of the Goods at a specified Price and is subject to the terms of this Contract.

Site means the site where the Goods will be installed and used, as set out in the Quotation or such other location where the Goods are relocated to under this Contract.

3. HIRE OF GOODS

- 3.1. You will hire the Goods from us during the Hire Period on the terms of this Contract.

- 3.2. Subject to clause 3.3, the Hire Period commences on the Commencement Date and continues indefinitely until the Goods are back in our control and possession or the hire is otherwise terminated under the terms of this Contract.
- 3.3. The Hire Period for any third-party Cross-Hired Goods begins on the earlier of the day that we receive the third-party Cross-Hired Goods or the day that you receive the third-party Cross-Hired Goods.
- 3.4. If specified in the Quotation, a minimum Hire Period will apply to this Contract and if before the end of the Minimum Hire Period we terminate this Contract due to a Default Event, you end the hire, terminate this Contract or return the Goods to us, you must pay us all Hire Charges in respect to the balance of the Minimum Hire Period, plus any other costs or fees payable on termination of this Contract.
- 3.5. For the avoidance of doubt, after the expiry of the Minimum Hire Period, this Contract will continue until terminated by either party under this Contract.
- 3.6. Hire charges are invoiced monthly in advance and are calculated daily based on a 7-day week and 24 hours or part thereof and continue to accrue over weekends and public holidays. Part month calculations will be rounded to 30.42 days per calendar month.
- 3.7. We may increase the Price at the end of the Minimum Hire Period and then on an annual basis thereafter. If we exercise our rights under this clause, you are entitled, within 30 days of us notifying you of any price increase, to terminate this Contract and return the Goods to us. All other provisions of this Contract regarding termination and return of the Goods continue to apply.

4. THE SITE

- 4.1. Unless the Quotation provides otherwise, you must:
 - (a) on or by the agreed delivery date, make available to us a clear, firm, level area compacted to 100kPa, free from impediment at the Site which is adequate for the Goods to be delivered and installed; and
 - (b) provide us with uninterrupted access to the Site so that trucks and other delivery machinery and labour can deliver, install, relocate or remove the Goods at the Site.
- 4.2. You, at your cost, will assume all responsibility for the condition of the Site above and below the surface including all environmental matters as may apply to the Site.
- 4.3. You warrant that:
 - (a) you own or have express legal authorisation to have the Goods installed or placed upon the Site and irrevocably authorise us to access the Site for this Contract;
 - (b) you have:
 - (i) sought and obtained all necessary licences, approvals and certificates; and
 - (ii) made all necessary inspections and inquiries, regarding the Site and the use of the Goods on the Site; and
 - (c) the Site works are capable of being performed on the Site.
- 4.4. You agree that we have no responsibility for obtaining any approval, licence or certificate required regarding the Goods unless otherwise specified in the Quotation.

5. DELIVERY AND INSTALLATION OF THE GOODS

- 5.1. Unless otherwise provided for in the Quotation, you shall pay all transport costs to and from the Site.
- 5.2. Delivery of the Goods is made by either:
 - (a) you collecting the Goods from our premises once we have notified you that the Goods are ready for collection; or
 - (b) if some other place for delivery is specified in the Quotation or is otherwise agreed, by us delivering the Goods to that place.
- 5.3. We may deliver the Goods in instalments. Partial delivery by us does not entitle you to terminate the Contract, and you remain liable to pay for the Goods so delivered.
- 5.4. If you fail, refuse or indicate to us that you will fail or refuse to take or accept delivery, then the Goods shall be deemed to have been delivered when we were willing to deliver them.
- 5.5. If you fail to:
 - (a) take delivery of the Goods by the Date for Delivery;
 - (b) provide us with satisfactory access to the Site, or provide a Site suitable for the delivery and installation of the Goods, by the Date for Delivery; or
 - (c) give us adequate instructions (including any documents, licenses or authorisations required for the delivery of the Goods),
 we may charge you for the reasonable costs associated with such failure and the storage and redelivery of the Goods.
- 5.6. We will only cancel or vary the Date for Delivery at your request if you have given us three Business Days' prior notice. We may charge you for the reasonable costs associated with such cancellation and the storage and redelivery of the Goods.
- 5.7. Where installation is included in the Quotation, as soon as is reasonably practicable after the Goods are delivered to the Site, we will cause installation of the Goods to be carried out:
 - (a) in an orderly, professional, manner;
 - (b) following all relevant laws and approvals;
 - (c) following the agreed specifications set out in the Quotation; and
 - (d) to practical completion by the date specified in the Quotation (if any).
- 5.8. Any Site works required as part of the installation will be deemed to have reached a state of practical completion on the earlier of:
 - (a) the issue by us of either a Certificate of Practical Completion or a Certificate of Occupancy; or

- (b) the date that we notify you that, in our reasonable opinion, they are fit for occupation or use.
- 5.9. You shall bear the cost of all tests and inspections.
- 5.10. Notwithstanding anything to the contrary in this Contract, we will be granted an extension of time to the Date for Delivery and the date for Practical Completion if we suffer any delay or disruption to our supply chain whatsoever in connection with COVID-19, regardless of whether such delay or disruption was foreseeable.
- 5.11. We will use commercially reasonable endeavours to mitigate the effects of delays of the type referred to in clause 5.10 however, where a delay can be mitigated by sourcing from an alternative supplier or by procuring an alternate item, it is agreed that we will have no obligation to use such alternative supplier or item (as the case may be) unless and until we have both agreed on a reasonable variation for any cost and time impacts. If no agreement is reached within a reasonable period, but no longer than 5 days, then the extension of time granted will continue until such time as the original supplier or item is available to supply at the original price or until this Contract is terminated. If the Contract is not terminated under this clause then the extension of time will be deemed a compensable cause of delay and we will be entitled to recover our direct, evidenced and reasonable costs and/or expenses incurred as a result of the delay.
- 5.12. We may choose to terminate this Contract for our convenience upon 5 business days' notice in the event an extension of time becomes necessary under clause 5.10.
- 6. ACCEPTANCE OR REJECTION OF THE GOODS**
- 6.1. You have three (3) days after we deliver the Goods to inspect and test them to ensure that they are in accordance with the Contract and otherwise free of Defects or error (**the Inspection Period**).
- 6.2. If in your reasonable opinion, the Goods fail in any material way to be in accordance with the Contract, you may reject the Goods by delivering to us a written list detailing each failure or Defect within the Inspection Period.
- 6.3. If you fail to notify us in accordance with clause 6.2, you are deemed to have accepted the Goods in the condition in which they were delivered and will be liable to pay the full Price without limitation.
- 6.4. If you make a valid claim in accordance with clause 6.2 which is accepted by us, then we may at our sole discretion choose to do any of the following:
 - (a) repair or replace the Goods or re-perform the associated services (or the part in question) at our own cost; or
 - (b) refund part or all of any of the Price paid.
- 7. USE OF THE GOODS & YOUR OBLIGATIONS**
- 7.1. You acknowledge that the Goods may be second-hand goods and you are not entitled to demand new goods.
- 7.2. During the Hire Period, you must ensure that:
 - (a) the Goods are always in your care, custody and control and are not moved from Site without our prior written consent;
 - (b) all necessary permits are obtained before you begin using the Goods;
 - (c) the Goods are only used for their normal and obvious purpose and in a manner which will not invalidate any insurance;
 - (d) adequate and proper measures are taken to protect the Goods from theft, damage vandalism and other risks and the Goods are kept clean and in good condition;
 - (e) the Goods are not exposed to contaminants including, but not limited to, chemicals, corrosive agents or other hazardous substances or to radiation;
 - (f) subject to clause 8, no repairs, maintenance, adjustments, alterations or additions to the Goods are made without our prior written consent;
 - (g) the Goods remain chattels and are at no time annexed to any land;
 - (h) numbers, distinguishing marks or notices on the Goods are not removed, altered, defaced or otherwise tampered with; and
 - (i) you notify us as soon as possible, but in any event within 5 business days, of any damage incurred to any property or any injury, death or sickness suffered by any person in connection with the Goods.
- 7.3. You must pay all costs related to the general use and maintenance of the Goods (including but not limited to the costs of electricity supply, fuel, light bulbs or other consumables).
- 7.4. You agree and acknowledge that it is your responsibility to ensure that the Goods are appropriate for the purpose you require and we make no representations to you about the suitability for any Goods for any purpose.
- 7.5. You must not on-hire or grant possession of the Goods to any third party (a **Sub-Hirer**) without our prior written consent, which we may withhold in our absolute discretion, and any consent given by us will be on the condition that:
 - (a) the Sub-Hirer agrees to be bound by this Contract; and
 - (b) you protect our title in the Goods including, but not limited to, ensuring that the Sub-Hirer grants you a Purchase Money Security Interest in the Goods and you register an interest on the PPSR in accordance with the PPSA.
- 7.6. The on-hiring of the Goods does not relieve you from any liability or obligation under this Contract. You remain liable to us for the acts and omissions of any Sub-Hirer and the employees and agents of Sub-Hirer, as if they were your acts or omissions.
- 7.7. If you hire air conditioners for use in the Goods, then the air conditioner can only be installed in the wall cut-outs provided. At the end of the Contract, you, will remove all air conditioners from the Goods and securely pack them within the Goods if requested to do so by us.
- 7.8. You must comply with all instructions and statutory provisions in respect to the use of the Goods, including provisions on health and safety in the workplace being applicable at the time of use.
- 7.9. Our Quality Assurance program and Work Health and Safety policy shall apply to this Contract. You will be provided with copies on request and are deemed in any event to have read and understood their provisions.
- 7.10. You warrant that:
 - (a) you have and shall continue to provide us with all information and assistance relevant to the carrying out of the supply of the Goods;
 - (b) you have obtained all necessary resource consents and licences from the relevant local authority or other competent authority for the installation and use of the Goods and have informed us of all matters relating to such consents;
 - (c) before the commencement of any supply, you shall mark all boundaries of the Site where work is to proceed and shall inform us and all delivery and installation personnel and if any soil is to be removed from Site, the place where it is to be deposited;
 - (d) you have located, marked and advised us of all gas pipes, water pipes, sewage lines, drainage lines, telephone cabling, and other utilities that are on, near, or adjacent to the Site before the delivery of the Goods;
 - (e) all Goods are always firmly fixed to foundations or securely anchored to the ground at your expense and where modular buildings are to be placed on a concrete floor, such floor shall have a smooth trowelled concrete finish and be level to within 3mm in no less than 3,000mm and within 5mm at any point in the floor; and
 - (f) you have advised us of any potential or existing subsidence, slip, erosion, flooding, or any other thing which might constitute a hazard on the Site.
- 7.11. You must, at your cost:
 - (a) ensure that road slabs or other indirect foundations are in a condition to withstand the planned pressure from one base of the support in accordance with all current standards and regulations;
 - (b) ensure safe access to and from all places of work at the Site and provide a safe working environment, and
 - (c) safe and securely store any Goods, not in use.
- 7.12. You must not place or permit any other party to place any advertisement or sign on the Goods without our prior consent.
- 8. MAINTENANCE, ALTERATIONS AND REPAIRS**
- 8.1. At your own expense, you will service, clean and maintain the Goods in good and reasonable condition, Fair Wear and Tear excepted. You will ensure that the Goods are in a clean state at the end of the Hire Period.
- 8.2. We can inspect the Goods at any time with reasonable notice, and if the Goods are damaged, we may, at our discretion, repair the Goods or repossess them at your expense.
- 8.3. The Goods will not be altered or repaired in any way by you unless we agree in writing.
- 8.4. We are entitled to charge you all reasonable costs incurred in attending any required Site induction or undertaking any maintenance or repairs to a Good if the Site is located outside a 100-km radius of any of our branches.
- 9. VARIATIONS**
- 9.1. We will only perform a variation on written instruction from you and only after you have agreed to the price of the variation in writing.
- 10. CLEANING, DAMAGE AND LOSS OF THE GOODS**
- 10.1. You must return all Goods in the same condition you received them in, Fair Wear and Tear excepted.
- 10.2. We will charge you a standard cleaning charge on all returned Goods. An excess cleaning charge will apply when we consider that the Goods require specialised cleaning products or methods to return to the Goods to a re-hireable state.
- 10.3. If you clean the Goods, such cleaning shall be per our requirements, and all ablution units should be flushed several times before being disconnected.
- 10.4. Our brochure "Definition of Damage" describes certain common circumstances which we do not consider to be Fair Wear and Tear. This brochure is not exhaustive and is provided to you as a guide only. Ultimately, our determination regarding what does and what does not constitute Fair Wear and Tear is final. A copy of this brochure is available at www.ausco.com.au/termsandconditions.
- 10.5. You must notify us immediately in writing of any damage, loss or theft of the Goods including full details of such damage, loss or theft.
- 10.6. Subject to clause 15:
 - (a) you will be liable for damaged Goods, and they will be repaired, at your cost, to the condition that they were in at the commencement of the hire;
 - (b) you must pay for the replacement of any Goods that are lost, stolen or if in our sole opinion are unfit for repair with reasonable effort and cost; and
 - (c) you will indemnify us for any loss and damage including lost revenue incurred by us while the damaged or missing Good is being repaired or replaced.
- 11. RELOCATION**
- 11.1. We must perform any relocation of the Goods unless we otherwise consent in writing, and if we consent then the relocation will be undertaken at your risk but must be undertaken in accordance with any conditions set out in our consent. The notice must be given to us by telephone or email at least 48 hours before you seek to relocate the Goods.
- 11.2. If you require Goods to be relocated, then the Goods must be immediately ready for removal or relocation at the specified time notified by us, and you indemnify us for any cost or loss incurred by us resulting from the Goods not being ready for relocation by that time.
- 12. PICK UP AND RETURN OF GOODS**
- 12.1. The return of the Goods will be at your cost and risk unless otherwise agreed in writing.

- 12.2. If you require the Goods to be demobilised and collected by us, you must give us no less than seven (7) days written notice.
- 12.3. Notwithstanding clause 12.2, if we are required to demobilise the Goods and collect them between December 15th and January 15th of any year, you must give us no less than 3 weeks' written notice.
- 12.4. On termination of the Contract, the Goods must be:
- (a) returned to us complete and in the same condition as they were delivered (except for Fair Wear and Tear) and you indemnify us for any cost or loss incurred by us resulting from the Goods not being ready for pick up; and
 - (b) cleaned, disconnected from all services and otherwise available for collection.
- 12.5. We will inspect the Goods upon their return to verify the quantity and condition and will issue a return notice. You may attend such inspection, and unless we receive written notice of any dispute from you within five business days of the date on which the inspection was completed, the Goods shall be deemed to have been returned to us in the quantity and condition specified by us on their return.
- 13. RIGHT OF INSPECTION**
- 13.1. You grant us the right to enter the Site and inspect the Goods during normal business hours at any time during the Hire Period.
- 13.2. Upon our request, you must immediately notify us of the exact location of the Goods.
- 13.3. Notwithstanding any other rights under the Contract, we have the right to remove the Goods if, within the course of our inspection we discover that:
- (c) the Goods are used contrary to the provisions of the Contract; or
 - (d) there is a risk that the further use of the Goods may result in damage to the Goods, third party property or the safety or health of individuals using the Goods.
- 13.4. You will be liable for all costs and expenses incurred by us exercising our rights under this clause 13.
- 14. INSURANCE**
- 14.1. For the duration of the Hire Period, you must take out insurance policies that comply with the following requirements:
- (a) broad form public liability insurance for at least \$10million per occurrence;
 - (b) if you do not elect to take out Building Renter Protection, then property insurance for the full replacement value of the Goods;
 - (c) the policies are extended to protect our interests for any vicarious liability arising out of your activities under this Contract;
 - (d) all insurance to be underwritten by an insurer approved by us; and
 - (e) any excess or deductible amount to be shown on insurance certificates and you are liable for any excess or deductible amount.
- 14.2. All insurance policies required under this clause must:
- (a) be in your name, and
 - (b) be current and note us as an interested party.
- 14.3. On request, you must provide us with a certificate of currency for all required policies.
- 14.4. Your requirement to effect and maintain insurance under this Contract will not limit your liabilities or obligations under any other provisions of this Contract.
- 14.5. You are responsible for the cost of insuring yourself, your property, third parties and third-party property against all risks arising from the presence or operation of the Goods.
- 15. BUILDING RENTER PROTECTION**
- 15.1. This clause only applies where Building Renter Protection (BRP) is included in the Quotation, and you have consistently paid the Building Renter Protection Fee.
- 15.2. The Building Renter Protection Fee, plus GST, referred to in the Quotation will automatically be charged to you in addition to the hire charges each month of the Hire Period.
- 15.3. Your payment of the Building Renter Protection Fee under clause 15.1 relieves you of liability over the Building Renter Protection Excess for any loss or damage to the Goods (but not associated accessories, unless clause 15.5 applies) during the Hire Period, caused by:
- (a) Act of God;
 - (b) vandalism;
 - (c) theft (including forced or attempted forced entry); or
 - (d) graffiti.
- 15.4. BRP does not extend to:
- (a) loss or damage to Goods or hired associated accessories or any other property due to misuse, abuse or overloading of the Goods;
 - (b) loss or damage to Goods or hired associated accessories or any other property caused by you or your agents or employees or any other person lawfully or unlawfully on the Site intentionally or unintentionally, accidentally, negligently or otherwise during loading, unloading, lifting or otherwise moving the Goods or hired associated accessories or any other property;
 - (c) unexplained disappearance or wrongful conversion of the Goods or hired associated accessories;
 - (d) loss or damage to the Goods or hired associated accessories in contravention of this Contract;
 - (e) loss or damage to the Goods or hired associated accessories which has occurred when the Goods and/or associated accessories were located underground; or
 - (f) loss or damage from use of the Goods or hired associated accessories in violation of any legislation or regulation.
- 15.5. Subject to clauses 15.4, your payment of the Building Renter Protection Fee also relieves you of liability over the Building Renter Protection Excess for any loss or damage to any hired associated accessories located inside a hired Good that are lost or damaged by an Act of God, however does not relieve you of any liability with respect to power generators or other third-party Cross-Hired Goods unless clause 15.7 applies..
- 15.6. Notwithstanding anything to the contrary, you cannot limit your liability under this clause to the extent that any loss or damage is caused by any negligent act or omission of you, or your officers, employees, agents or contractors, including failing to secure the Goods properly.
- 15.7. You cannot limit your liability under this clause for any power generator or other Cross-Hired Goods unless:
- (a) we expressly offer you Building Renter Protection on the Cross-Hired Goods; and
 - (b) the Quotation specifically states that Building Renter Protection has been included in relation to those Cross-Hired Goods.
- 15.8. Building Renter Protection does not cover damage to the Goods caused by you, howsoever caused, including damage caused at the end of the Hire Period and damage that is not Fair Wear and Tear.
- 15.9. Before you are entitled to rely on the limitation of liability in this clause, you must:
- (a) pay all Building Renter Protection Fees due and owing;
 - (b) pay the Building Renter Protection Excess;
 - (c) demonstrate to us that you have taken reasonable precautions against loss, damage, theft and forced entry;
 - (d) notify us in writing of any loss or damage to the hire Goods within five business days of becoming aware of such damage;
 - (e) if required by us, provide to our reasonable satisfaction, evidence of the loss or damage (including any police reports in the event of theft, vandalism or forced entry), within ten business days of our request;
 - (f) comply with our reasonable requests in relation to the submission of information and the application of assessment of the relevant claim; and
 - (g) not have breached or currently be in breach of any term of this Contract.
- 15.10. You acknowledge and agree that the Building Renter Protection in this clause is not insurance and therefore does not cover any general liability incurred by you (including, but not limited to, any loss or injury to third parties) or your use of the Goods, or any consequential loss incurred by you or any third party.
- 15.11. If specified in the Quotation that Building Renter Protection applies to any third-party Cross-Hired power generator, clause 35.5 applies.
- 16. PRICE**
- 16.1. The Price of the Goods is the price quoted in the Quotation, and unless otherwise expressly specified, all Prices are exclusive of GST.
- 16.2. The Price includes an environmental levy in relation to the Goods as stated in the Quotation.
- 16.3. The Price does not include the cost of relocation or removal of the Goods, and unless stated in the Quotation, such costs will be provided to you in writing by us at the time of the removal or relocation of the Goods.
- 16.4. The Price does not include the costs of return transport unless stated in the Quotation, and, even if quoted, the costs of return transport Provisional Sum only and a definitive price for such costs will be provided to you in writing by us at the time of the return transport.
- 16.5. If you require or request us to use, access or process any payment claims or invoicing through third party vendors or systems, or request we meet any individualised or customised payment claim or invoice format outside of our normal invoice format, then we may charge and invoice you a reasonable administration fee in addition to the Price for such inconvenience or expense.
- 16.6. We reserve the right to adjust the Price by giving written notice to you in case of any price or cost increases due to:
- (a) any factor beyond our reasonable control, including but not limited to, increases in labour costs or material costs or increases to Goods supplied by a third party and on hired to you by us;
 - (b) any changes in delivery dates, quantities or specifications requested by you;
 - (c) any delay or expense caused by any instructions or lack of instructions from you or you failing to give us access to a Site; or
 - (d) any unanticipated Site conditions or access that makes the delivery, installation, relocation and removal of the Goods more complex than anticipated by us.
- 16.7. If we manufacture Goods to your specifications, and you terminate this Contract, in addition to the Minimum Hire Period, you must pay us the following amounts as determined by us acting reasonably:
- (a) for work carried out before the date of termination, the amount which would have been payable if the Contract had not been terminated and we submitted a payment claim for work carried out to the date of termination; and
 - (b) the cost of goods or materials reasonably ordered by us for the works for which we are legally bound to pay.
- 17. PROVISIONAL SUM WORK**
- 17.1. For each item of Provisional Sum Work, when requested by us, you must give us an instruction either deleting that item of Provisional Sum Work from the Contract or requiring us to proceed with the relevant work. If you instruct us to delete that item of Provisional Sum Work, you must undertake that item of Provisional Sum Work at your own cost, expense and risk.
- 17.2. If any item of Provisional Sum Work is deleted from the Contract, the Price will be reduced by the amount allowed for the item of Provisional Sum Work in the Quotation.

- 17.3. If we are instructed to proceed with an item of Provisional Sum Work, we will prepare the updated scope and pricing information for the item of Provisional Sum Work.
- 17.4. After we are instructed to proceed with an item of Provisional Sum Work the Price will if the amount priced under clause 17.3 above by us is more or less than the amount allowed in the Quotation for that item of Provisional Sum Work, be adjusted by the amount of the difference.
- 18. PAYMENT**
- 18.1. Notwithstanding any other terms in this Contract, all outstanding fees and charges payable by you must be paid in full upon termination or expiry of the Hire Period.
- 18.2. You must pay the full Price, without set off, deduction or withholding, and all other sums owing under this Contract in respect to the hire of Goods, on the first Business Day of each month during the Hire Period, except where you have an approved credit account with us, then:
- (a) the Price shall be paid in full on or before the 30th day of the month to which the invoice relates; or
 - (b) otherwise as agreed to in writing by us,
- (each of the dates referred to in this clause is a "Due Date" for clauses 18.5 and 24.1(a)).
- 18.3. Where installation or retrofit works are included in the Quotation, we will invoice you separately for the installation costs and payment for the installation or retrofit costs must be paid by you as set out in the Quotation, and, if not set out, within 30 days of the date of the invoice. We will invoice you for installation or retrofit works at the end of each month during the completion of the installation or retrofit works.
- 18.4. If you dispute our invoice:
- (a) you must pay the undisputed amount (if any) and may dispute the balance; and
 - (b) the disputed amount will be resolved in accordance with the dispute resolution process under clause 25.
- 18.5. If you fail to pay the Price (plus GST) or any other sum payable under this Contract by the Due Date, without prejudice to our other remedies under this Contract, at law or otherwise:
- (a) we may stop the further supply of any additional Goods;
 - (b) we may terminate the hire of the Goods and repossess the Goods in accordance with this Contract;
 - (c) you must pay us interest on any sum owing after the Due Date at the rate of 8% per annum from the Due Date until such time that it is paid in full; and
 - (d) you will be liable for any expenses, disbursements and legal costs incurred by us in the enforcement of any rights, or an attempted exercise of any of our rights in recovering any sum owing.
- 18.6. Payment of any amount payable under this Contract by way of a cheque, bill of exchange, or another negotiable instrument shall not be deemed paid until all cheques and other instruments are honoured or met in full.
- 18.7. Where we are entitled to an extension of time for any delay or disruption caused by a Compensable Cause, you shall also pay us delay costs. Delay costs are equal to the daily hire rate for all Goods hired by you under this Contract multiplied by the number of days by which the completion date is extended because of a cause (or combination of causes) listed as a Compensable Cause. Nothing in this clause shall limit your liability for damages for breach of contract.
- 19. WARRANTY**
- 19.1. We warrant that the Goods:
- (a) will be free from Defects and be of merchantable quality at the time of delivery;
 - (b) will correspond to their general specification stated in the Quotation at the time of delivery; and
 - (c) comply with the relevant standards as at the time of manufacture.
- 19.2. It is a condition of the warranties that you meet all your obligations under this Contract, especially your payment obligations.
- 19.3. We do not provide any warranty to you in relation to the suitability of the water contained in any water tank supplied nor that it meets appropriate drinking standards.
- 19.4. To the extent permitted by law, our liability under a warranty claim is limited to repairing or replacing the Goods or the defective part and we provide no other express or implied warranties other than what is stated in this Contract and all other warranties (express or implied), including any warranty of merchantability or fitness for any purpose, are hereby excluded.
- 20. INDEMNIFICATION**
- 20.1. You indemnify and continue to indemnify us against any claim, actual or potential, that may be made against us or any liability, cost, loss or expense we may incur (including but not limited to reasonable solicitor fees) that arises out of or relating to a breach of any of your obligations under this Contract, except to the extent that such loss or expense was caused or contributed to by us.
- 20.2. We indemnify and continue to indemnify you against any claim, actual or potential, that may be made against you or any liability, cost, loss or expense you may incur (including but not limited to reasonable solicitor fees) that arises out of or relating to a breach of any of our obligations under this Contract, except to the extent that such loss or expense was caused or contributed to by you.
- 21. LIMITATION OF LIABILITY**
- Notwithstanding anything to the contrary in the Contract, to the extent permissible by law:
- (a) our total aggregate liability to you under this Contract is limited to an amount equal to six months of hire charges for the relevant Goods; and
 - (b) we shall not be liable to you for any Consequential Loss whatsoever arising out of or relating to this Contract.
- 22. TITLE AND RISK**
- 22.1. Title in the Goods shall always remain with us, and you shall have no right, title or interest in the Goods other than as the hirer.
- 22.2. You must not charge the Goods in any way, or sub-hire, part with possession, grant or otherwise give any interest in the Goods or in any way prejudice or endanger our ownership or rights in the Goods, without our prior written consent.
- 22.3. Risk of damage to or loss of the Goods will pass to you, in the case of the Goods to be delivered at our premises, at the time that we notify you that the Goods are available for collection. Where the Goods are to be delivered other than at our premises, at the time of delivery or, if you wrongfully fail to take delivery of the Goods, at the time when we had tendered delivery of the Goods.
- 23. PPSA**
- 23.1. Expressions defined in the PPSA have the same meaning when used in this clause.
- 23.2. Notwithstanding any other provision of these terms and conditions, you acknowledge that:
- (a) this Contract constitutes a security agreement for the PPSA in favour of us in respect of:
 - (i) the Goods we hire you under this Contract and any further Goods we hire you in the future; and
 - (ii) any proceeds (as defined in the PPSA) from the Goods; and
 - (b) the security interest attaches to the Goods upon you obtaining possession of the Goods. We may perfect our security interest under this Contract by registration on the PPSR;
 - (c) to the extent permitted by section 115(1) of the PPSA: sections 132(4) and 135 of the PPSA are excluded; and
 - (d) to the extent permitted by section 115(7) of the PPSA: sections 129(2) and (3), 134(2) and 135 are excluded.
- 23.3. If requested, you must immediately do such acts and provide such information as in our opinion may be necessary or desirable to enable us to perfect a first priority in any security interest created or provided for by these terms, in the Goods or their proceeds.
- 23.4. In addition to the security interest referred to in clause 23.2, you also grant a security interest in all present and after-acquired goods as security for all monies now and in the future owing to us by you.
- 24. DEFAULT AND TERMINATION**
- 24.1. A "Default Event" will occur if you:
- (a) fail to pay any amount due to us under this Contract or any other agreement by its Due Date;
 - (b) breach any provision of this Contract;
 - (c) wrongfully refuse the delivery of the Goods;
 - (d) purport to terminate the Contract or return the Goods before the end of a Minimum Hire Period;
 - (e) make or threaten to make any voluntary or involuntary arrangement with your creditors or becomes subject to any external administration;
 - (f) enter or threaten to enter into liquidation, receivership, administration or bankruptcy;
 - (g) are subject to any measure by a receiver or administrator in respect of the whole or any part of your assets or if any distress or execution is levied on your assets; or
 - (h) cease, or threaten to cease, to carry on business.
- 24.2. If a Default Event occurs, we may, without incurring any liability to you, immediately take any of the following actions:
- (a) suspend any further deliveries to you under this Contract;
 - (b) repossess the Goods;
 - (c) terminate this Contract by notice in writing; and
 - (d) declare all amounts due by you to us under this Contract to be due and payable.
- 24.3. If a Default Event occurs or this Contract is terminated, all Goods where legal and equitable title is held by us must be returned to us immediately upon our request. You must provide all necessary assistance to our agents in the recovery of the Goods or us and will pay all fees and costs (including reasonable solicitor fees) associated with the recovery of the Goods. Failure by you to comply with this clause constitutes a material breach of the Contract.
- 24.4. At any time for its sole convenience, and for any reason, either party may by written notice to the other party, terminate this Contract effective from the time stated in the notice.
- 24.5. If you terminate this Contract prior to the expiry of the Minimum Hire Period for whatever reason, or we terminate due to a Default Event, then you must pay us all monies owing at the time of termination, plus all hire charges for the balance of the Minimum Hire Period.
- 24.6. If prior to delivery of the Goods you terminate this Contract or we terminate due to a Default Event, then you must pay us all monies owing at the time of termination, plus all hire charges for the balance of the Minimum Hire Period, plus a cancellation fee equal to 1 months' hire of the Goods.
- 25. DISPUTE RESOLUTION**
- 25.1. In the event of any dispute or difference of opinion between the two of us arising out of or under the Contract (**Dispute**), either of us may give to the other a Notice (**Dispute Notice**) specifying the Dispute and requiring its resolution under this clause.
- 25.2. If the Dispute is not resolved within 7 days after a Dispute Notice is given, each of us must nominate a representative from our senior management to resolve the Dispute (each, a **Dispute Representative**).

25.3. If the Dispute is not resolved within 30 days of the Dispute being referred to the respective Dispute Representatives, then either of us may refer the Dispute to mediation and the mediator will be mutually agreed upon, or failing such agreement, nominated upon the request of either party by the President of the local chapter of the Institute of Arbitrators and Mediators Australia or their appointee and any determination shall be final and binding on both of us.

25.4. During the existence of any Dispute, both of us must continue to perform all obligations under the Contract without prejudice to our respective positions in respect of such Dispute, unless both of us agree otherwise.

25.5. Nothing in this clause prevents either of us from seeking any urgent interlocutory relief which may be required in relation to the Contract or instituting proceedings to enforce payment due under the Contract.

26. CONFIDENTIALITY

26.1. You must treat as confidential any information (whether written or oral) concerning pricing, trade secrets, intellectual property and other proprietary information, and any technical, business, financial or marketing information) disclosed by us in relation to this Contract.

26.2. You will be responsible for any breach of this clause by your representatives or any other party acting on your behalf.

27. INTELLECTUAL PROPERTY

27.1. Unless otherwise specifically agreed to in writing by us, all rights in the Goods, all information, solutions, samples, drawings, illustrations, descriptions, specifications or in any intellectual property issued to you or published by us (including any descriptions or illustrations) remains our property.

27.2. Nothing in this Contract purports to grant or transfer any intellectual property rights to you.

28. AUSTRALIAN CONSUMER LAW

Nothing in this Contract is intended to have the effect of contracting out of the provisions of the *Competition and Consumer Act 2010* (Cth) (**CCA**) except to the extent permitted by the CCA, and this Contract is to be modified to the extent necessary to give effect to that intention. You agree to indemnify us against any liability or cost incurred by us under the CCA because of any breach by you of this clause.

29. TERMS TO SURVIVE THE CONTRACT

The following clauses survive the expiry or termination of this Contract: clauses 7, 10, 14, 16, 17, 20, 21, 22, 23, 25, 26, 27, 28, 30 and 31.

30. ASSIGNMENT AND SUBCONTRACTING

30.1. You may not transfer any of your rights and obligations under this Contract to any other person without our prior written consent.

30.2. We may on written notice to you transfer or sub-contract any or all our rights or obligations under this Contract to any other person.

31. GENERAL

31.1. Any reports or copies which we are obliged by law to possess will be supplied to you on request and must be returned at the end of the Hire Period.

31.2. The Contract contains the entire agreement between the two of us concerning its subject matter and supersedes all prior communications and negotiations between the two of us in this regard unless those communications expressly form part of the Contract.

31.3. No amendment or variation of the Contract is valid or binding on either of us unless made in writing and signed by both of us.

31.4. The failure or delay by us to exercise any of our rights under the Contract will not waive or vary that or any other right, and any partial exercise of any right will not preclude us from exercising that or any other right.

31.5. Each right or remedy of ours under this Contract is without prejudice to any other right or remedy of ours whether under this Contract or at law.

31.6. Any part hereof being a whole part of a clause shall be capable of severance without affecting any other part of this Contract.

31.7. The parties irrevocably agree to be governed by the laws of Queensland and the courts of Queensland will have jurisdiction.

31.8. Nothing in this Contract shall be deemed to constitute a partnership between the parties or constitute any party the agent of the other party for any purpose or entitle any party to commit or bind the other party in any manner or give rise to fiduciary duties by one party in favour of any other.

31.9. Where you consist of two or more persons, then each person is jointly and severally liable for performance under this Contract.

PART B: POWER GENERATOR HIRE

In addition to the provisions contained in Part A of this Contract, the provisions in Part B will apply to all Contracts where you have requested to hire a power generator, and such hire is detailed on the Quotation.

32. TRANSPORTATION

32.1. If the power generator requires transportation for repair or replacement then cost of transport is born by us or our supplier or agent unless the repair or replacement is due to damage or breakdown of the power generator caused by you.

32.2. You must recoil any cable on the drums supplied.

32.3. You are responsible for loading and unloading the power generator on Site. Any personnel supplied for loading and unloading will do so as your agents.

33. YOUR RESPONSIBILITIES

33.1. You are responsible for:

- (a) safekeeping of the power generator during the Hire Period;
- (b) maintenance of the power generator in good working condition;

(c) operating the power generator for any intervals specified by us and seeking our consent before an interval is exceeded;

(d) checking lubrication and cooling levels of the power generator daily and changing the lubricating oil and coolant in strict accordance with our instructions;

(e) using only fuel, oil, coolant, lubricants specified by us;

(f) use of the power generator in strict conformity with our specifications and any other relevant laws or regulations;

(g) ensuring that the power generator is not operated for any purpose beyond its rated capacity or in a manner likely to result in undue wear;

(h) inspecting the power generator and ensuring that it is not to operate if it has become defective, damaged or in a dangerous state;

(i) ensuring that the power generator is not moved from the Site, unless in an emergency and we are advised immediately afterwards;

(j) complying with all relevant laws, by-laws and regulations applicable to the installation, use and operation of the power generator;

(k) advising us immediately the power generator breaks down or fails to operate properly; and

(l) protecting the power generator against fire, theft, distress or seizure.

33.2. If the Site is soft or unsuitable for the power generator to work on or travel over, you must at your cost supply suitable timbers or equivalent for the power generator to travel over or work on.

33.3. You must provide us with weekly utilisation reports, advising of the power generator hour meter readings.

34. ACCESS

34.1. You must allow us and our servants, agents and insurers access to the power generators at all reasonable times to deliver, remove, inspect, test, adjust, maintain, repair or replace it. You are responsible for providing safe and proper access and are liable for all loss or damage suffered by us or our servants, agents or insurers because of your failure or delay in doing so.

34.2. You are responsible for all costs associated with access to the Site, including inductions while our agents or we service the power generator.

35. SERVICE, REPAIR & BREAKDOWN

35.1. We or our servant or agent will, at our cost, service the power generator within one week of us advising you that we will do so.

35.2. If you fail to notify us or if our agents or we are unable to access the power generator to service the power generator during business hours within the period specified, we may, in addition to any other rights we have, charge you for:

- (a) compensation for added wear, tear and damage to the power generator;
- (b) any overtime costs incurred by our agent or us; and
- (c) the costs of the next service and any consequential repairs.

35.3. You must not try to affect any repairs on the power generator.

35.4. Breakdowns or Defects in the power generator resulting from:

- (a) proper and ordinary use or Fair Wear and Tear; or
- (b) the development of an inherent fault or a fault not ascertainable before the commencement of the Hire Period,

may, at our option, either be repaired or the power generator may be replaced at our expense. No Hire Fees for the power generator will apply from the date of notice of breakdown until the repair or replacement of the power generator.

35.5. Building Renter Protection in relation to power generators does not extend to:

- (a) loss of tools, accessories, electric cord, power cable, batteries and other similar accessories;
- (b) loss or damage resulting from lack of lubrication or other normal servicing or equivalent;
- (c) loss or damage to motors or other electric appliances or devices caused by overloading or artificial electrical current, including the use of underrated extension leads or electrical powered tools and machines including automatic voltage regulators;
- (d) damage to tyres, including punctures;
- (e) loss or damage caused by incorrectly synchronising the Goods with another plant, utility power source, main power supply or any other power supply;
- (f) loss or damage when the Goods are synchronised or otherwise connected to other equipment or any other power source by any person other than our authorised agent; or
- (g) Goods transported at any time during the Hire Period other than by our authorised agent.

PART C: COVID-19 SPECIAL CONDITIONS

In addition to the provisions contained in Part A and Part B of this Contract, due to the outbreak of Covid-19 (Coronavirus), our supply chains, manufacturing facilities and hire branches have been, or may be, affected by shortages of materials and manpower or by government-enforced shutdowns or restrictions. While we are more than happy to continue to service your business in these challenging times, we are not willing and cannot be held responsible for necessary changes to our regular business practices and risk tolerances.

36.1 Therefore, notwithstanding anything to the contrary in this Contract:

- (a) If any supplier of materials or services required by us to perform this Contract increase the costs of those materials or services at any time before we procure those items and we can provide reasonable evidence of such increase, you agree that we are not required to source an alternative supplier and are entitled to recover such increase in costs by way of an approved variation;

- (b) If the Contract requires us to spend any money getting buildings ready for delivery or we incur any other expenses to perform this Contract, and you subsequently delay the start of the hire; or terminate the Contract or seek to terminate the Contract before the hire commences or within the first three months of the hire starting; for whatever reason, then those costs and expenses incurred by us become a debt immediately due and owing from you to us;
- (c) given that Covid-19 is a known event at the time of entering this Contract and the government (at all levels) has announced that there is a possibility that they may need to lockdown or suspend trading of certain businesses, industries or parts of the country, you enter this Contract acknowledging and agreeing that you will not be entitled to stand down or suspend the hire during any such event and you will continue to be liable for the payment of hire and other costs for the duration of such event; and
- (d) while we will use all reasonable commercial efforts to fulfil the order (except for having to engage additional third-party assistance), due to the exceptional circumstances, we may not be able to fulfil the order on time, or at all. If that happens, we will not have any liability at all, and we will not be in breach of this Contract.