YAGA Corporation – Terms & Conditions of Trade

1. Definitions

1.1 "Additional Fees" means any fee as may be charged by the Supplier in accordance with clause 7.3 of these terms and conditions.
1.2 "CCA" means the Competition and Consumer Act 2010 (Cth), including the Australian Consumer Laws contained in schedule 2 of the CCA.
1.3 "Client" means the person or entity specified on a Purchase Order or Credit Account Application (as relevant), or any person acting on behalf of and with the authority of the Client requesting the Supplier to provide the Goods or 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.
1.4 "Completion Date", in respect of the hiring of Goods, means the last day of a hiring term specified under a Purchase Order, Credit Account Application or a request by the Client in writing (as relevant), or otherwise the date as agreed between the Client and the Supplier in writing or deemed to be agreed by the Client and the Supplier by operations of any terms and conditions.
1.5 "CRB" has the meaning given in clause 18.1 of these terms and conditions.
1.6 "Damage", in relation to defects in Goods, means substantial structural damage only, such as breakage, but does not include any minor or cosmetic imperfections, such as chips or minor wear and tears.
1.7 "Delivery", in relation to Goods, has the meaning given in clause 8.1 of these terms and conditions.
1.8 "Force Majeure Event" has the meaning given in clause 8.5(a) of these terms and conditions.
1.9 "Guarantee and Indemnity" means each of guarantee and indemnity given by the Guarantor in the Personal/Directors Guarantee and Indemnity Form and in clause 23 of these terms and conditions.
1.10 "Guaranteed Monies" has the meaning given in clause 23.2(a) of these terms and conditions.
1.11 "Insurance" or "Insurances" have the meaning given in clause 9.1(e).
1.12 "Interest Rate" means the pre-judgment interest rate of the New South Wales Local Court as published from time to time.
1.13 "Invoice Due Date" has the meaning given in clause 7.12.
1.14 "Goods" means all Goods to be supplied by the Supplier (whether by sale or hire) to the Client pursuant to an Order made by the Client from time to time.
1.15 "GST" means Goods and Services Tax (GST) as defined within A New Tax System (Goods and Services Tax) Act 1999 (Cth).
1.16 "Guarantor" means each person(s) specified on the Personal/Director's Guarantee and Indemnity Form whom guarantees the performance of the Client's obligations under the Purchase Order or Credit Account Application (as relevant) and these terms and conditions.
1.17 "Minimum Hire Period" means the period specified on the invoices, quotation, authority to hire, or any other forms as provided by the Supplier to the Client.
1.18 "Order" means an order for the supply of Goods and/or Services made by the Client to the Supplier in accordance with clause 3 of these terms and conditions.
1.19 "Order Variation Request" has the meaning given in clause 4.2 of these terms and conditions.
1.20 "Personal/Directors Guarantee and Indemnity Form" means the document annexed to these terms and conditions marked with the letter "A".
1.21 "Price" means the Price payable (plus any GST) for the hire or purchase of Goods or provision of Services as agreed between the Supplier and the Client inaccordance with clause 7 of these terms and conditions.
1.22 "Price Variation Notice" has the meaning given in clause 7.4.
1.23 "Price Variation Notice Period" has the meaning given in clause 7.4.
1.24 "PPSA" means the Personal Property Securities Act 2009 (Cth).
1.25 "Project" means each Client site at which Goods and/or Services are provided.
1.26 "Services" means the services to be provided by the Supplier (whether in relation to sale or hire of Goods) to the Client pursuant to an Order made by the Client from time to time.
1.27 "Supplier" means ***YAGA Corporation***.
1.28 "Trust" has the meaning given in clause 21.1 of these terms and conditions.
1.29 "Variation Notice" has the meaning given in clause 2.4.
1.30 "Variation Notice Period" has the meaning given in clause 2.4.

2. Operations of terms and conditions

2.1 These terms and conditions, which can be accessed on the Supplier's website at ***www.yagacorporation.com.au***
(a) apply to any Order for the Goods and/or Services placed by the Client;
(b) is taken to be incorporated into a Purchase Order or Credit Account Application (as relevant) and the Personal/Directors Guarantee and Indemnity Form; and
(c) govern the relationship between the Supplier and the Client in relation to an Order.
2.2 The Client is taken to have accepted and is immediately bound by these terms and conditions on the earlier of:
(a) the Client placing an Order for the Goods and/or Services for the first time;
(b) the Client accepting an invoice issued by the Supplier to the Client pursuant to clause 7.1 of these terms and conditions; or
(c) the Client accepting the Goods and/or Services.
2.3 To the extent that there is any conflict between these terms and conditions and a Purchase Order or Credit Account Application (as relevant), the provisions of these terms and conditions shall prevail, unless as expressly specified otherwise in the 'Special Conditions' section of the Purchase Order or Credit Account Application (as relevant).
2.4 The Supplier reserves the right to amend these terms and conditions from time to time by giving 10 days' prior written notice ("Variation Notice Period") to the Client providing details of amendments to the terms ("Variation Notice").
2.5 Upon receipt of a Variation Notice from the Supplier pursuant to clause 2.4, the Client may within the Variation Notice Period elect to terminate the Order, these terms and conditions, and any other agreement between the Supplier and the Client.
2.6 Where the Client exercises its right to terminate under clause 2.5, the Completion Date shall be varied to the date that is the end of the Variation Notice Period in clause 2.4.
2.7 The Client acknowledges and agrees that where it has received a Variation Notice from the Supplier and it has not elected to terminate an Order and these terms and conditions, the varied terms and conditions shall take effect on the date following the end of the Variation Notice Period in clause 2.4.
2.8 Electronic signatures shall be deemed to be accepted by either party provided that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (NSW), including any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Orders

3.1 The Client may place an Order from the Supplier pursuant to the following:
(a) if the Client is a new client placing an Order for the first time, by duly executing and delivering a Purchase Order or Credit Account Application (as relevant) to the Supplier; or

(b) if the Client is an existing client placing subsequent Order(s), by submitting a request to the Supplier in writing.

4. Errors and Omissions

4.1 The Client acknowledges that:
(a) the Client is responsible for the accuracy and completeness of any information submitted by the Client to the Supplier under an Order, including but not limited to information in relation to quantity, dimension, or any specification of Goods or scope of Services detailed in that Order; and
(b) the Supplier may hold the Client liable in respect of any loss, damage, liability, or cost suffered or incurred by the Supplier pursuant to any error or omission by the Client under an Order.

4.2 Upon becoming aware of any error or omission under an Order, the Client must, as soon as practicable, submit a request to the Supplier for the variation of that Order in writing ("Order Variation Request").

4.3 On the receipt of an Order Variation Request from the Client, the Supplier may, but is not obliged to, accommodate the request.

4.4 The Supplier is responsible for any error or omission made by the Supplier under an Order.

5. Change in Control

5.1 If the Client has placed an Order via a Credit Account Application, the Client must give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to changes in the Client's name, address, contact phone or fax number/s, change in trustees, or business practice). The Client shall be liable for any loss, damage, liability or cost suffered or incurred by the Supplier as a result of the Client's failure to comply with this clause 5.1.

6. Brochures and Promotional Material

6.1 The Client acknowledges and agrees that:
(a) description and illustrations in the Supplier's brochures, promotional material and advertising are not to be taken as an exact representation of the articles described and are intended to present a general idea of the Goods;
(b) all drawings, brochures and electronic information supplied are informative only; and
(c) all samples, illustrations, designs and specifications supplied to the Client by the Supplier remain the property of the Supplier and may not be copied, reverse engineered, disassembled, reproduced or used in part or whole without the prior written consent of the Supplier.

6.2 The Supplier accepts no responsibility for the accuracy of illustrations, designs, samples, weights, dimensions, capacities and other particulars of the Goods, and will not be responsible for the cost of additional work, direct or consequential loss, liability, cost or damage pursuant to any variation in the Goods or otherwise than as depicted in brochures and promotional material.

7. Price and Payment

7.1 The Client agrees to pay the Price on any invoice issued by the Supplier to the Client in respect of an Order placed by the Client.

7.2 For the avoidance of doubt, the Price invoiced to the Client shall be determined on basis of the Supplier's quoted price as accepted by the Client when an Order is made by the Client (subject to clauses 7.3 to 7.8 of these terms and conditions) plus any Additional Fees and any such other costs charged pursuant to these terms and conditions (as relevant).

7.3 (a) The Supplier reserves the right to charge the following Additional Fees to the Client in accordance with the following rates:

Fee Description	Amount of Fee (exclusive of GST)	Timing of Fee
Administrative Fee	A flat rate of $100 + GST per week applies for each Project for the duration of the hire period. By way of example only: If the hire is in relation to two (2) Projects for a hire period of four (4) weeks, then the total Administration Fee charged will be a total of $800 plus GST, calculated by multiplying the flat rate of $100 plus GST per week by the total number of Projects (x2) and the total weeks under the hire period (x4).	The fees will be payable on the first invoice for the initial hire period. If any additional hire is required, the Additional Fees will be payable on the invoice issued in respect of the additional hire and covering the duration of the additional hire period.

(b) Any Additional Fees charged to the Client under the preceding paragraph shall be applied to the Price as in accordance with this clause 7 of these terms and conditions.

7.4 The Supplier reserves the right to amend its Price from time to time by giving 10 days' prior written notice ("Price Variation Notice Period") to the Client ("Price Variation Notice") providing details of amendments to the Price.

7.5 Upon receipt of a Price Variation Notice from the Supplier pursuant to clause 7.4, the Client may within the Price Variation Notice Period elect to terminate any Order, these terms and conditions, and any other agreement between the Supplier and the Client.

7.6 Where the Client exercises its right to terminate under clause 7.5, the Completion Date shall be varied to the date that is the end of the Price Variation Notice Period in clause 7.4.

7.7 The Client acknowledges and agrees that where it has received a Price Variation Notice from the Supplier and it has not elected to terminate an Order and these terms and conditions, the Supplier's new Price shall take effect in respect of any subsequent Order placed by the Client.

7.8 Subject to prior notice given to Client in writing, the Supplier reserves the right to change the Price:
(a) if an Order Variation Request made by the Client pursuant to clause 4.2 of these terms and conditions is accepted by the Supplier and the Goods or Services which are to be supplied under an Order is varied; and/or
(b) in the event of any increase to the Supplier's operational costs and expenses, including such as increases in the costs of labour, materials, productions or fluctuations in currency exchange rates.

7.9 Price variations pursuant to an accepted Order Variation Request will be charged in the same manner as in accordance with clause 7 of these terms and conditions, and will be detailed in writing, and shown as variations on the Supplier's invoice. Payment for all variations must be made in full in the same manner as in accordance with clauses 7.10 to 7.15 of these terms and conditions.

7.10 The Client shall be responsible for, and will pay for, all costs and expenses relevant to the provision of Goods and/or Services by the Supplier to the Client, including:
(a) all costs associated with the Delivery of Goods, including:

(i) pickup and delivery of the Goods to and from the Supplier's depot;
(ii) if necessary, loading equipment and packaging costs;

(b) any additional costs or expenses not specifically provided for in this agreement, including but not limited to, any taxes, fees, stamp duty, levy or charge imposed by government, or semi-government authority;
(c) any extra costs due to the difference between any information supplied by the Client and the actual site shall be paid by the Client.

7.11 At the Supplier's sole discretion, a non-refundable deposit may be required.

7.12 The Client acknowledges that time for payment of an invoice issued to the Client (pursuant to clause 7.1 of these terms and conditions) is of the essence, and the invoice will be payable by the Client on the due date/s specified on the invoice, which may be:
(a) upon Delivery;
(b) prior to Delivery;
(c) by way of instalments/progress payments in accordance with payment schedule detailed in an invoice (as relevant);
(d) thirty (30) days following the end of the month in which an invoice is issued to the Client;
(e) the date specified on any invoice as being the date for payment; or
(f) absent a specification of a date on the invoice, the date which is seven (7) days following the date of any invoice given to the Client by the Supplier,
("Invoice Due Date").

7.13 Payment may be made by:
(a) Cash;
(b) cheque, bank cheque, or credit card in cleared funds; or
(c) any other method as agreed to between the Client and the Supplier.

7.14 The Client shall not be entitled to set off against, or deduct from any outstanding invoice, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.

7.15 Unless otherwise stated the amount due under an invoice does not include GST. The Client must pay to the Supplier an amount equal to any GST required to be paid by the Client in respect of the supply or provision of Goods and/or Services by the Supplier under an Order. The Client must pay GST on the amount due on an invoice without deduction or set off on an Invoice Due Date and by the same payment method as the Client's payment of the relevant invoice. If applicable, the Client must pay any other taxes or duties that may arise in respect of the supply or provision of Goods and/or Services, except otherwise where any such tax or duty is expressly included in the Price or invoice.

8. Delivery of Goods

8.1 Delivery of the Goods ("Delivery") is taken to occur at such time when:
(a) the Client or the Client's nominated carrier takes possession of the Goods at the Supplier's premises; or
(b) the Supplier (or the Supplier's nominated carrier) delivers the Goods to the Client's nominated address as specified in a Purchase Order or Credit Account Application (as relevant) or as otherwise directed by the Client in writing. For the avoidance of doubt, Delivery is deemed to have occurred when the Goods arrive at the Client's nominated address even if the Goods are not directly handed over to the Client or if the Client is not present at that address.

8.2 The cost of Delivery shall be borne by the Client in accordance with clause 7.10 of these terms and conditions.

8.3 The Supplier may deliver the Goods in separate stages. Each separate stage shall be invoiced and paid in accordance with the provisions in these terms and conditions.

8.4 Delivery in accordance with clause 8.1 of these terms and conditions must occur at such time agreed between the parties in writing. In the event that the Client is unable to receive a Delivery of the Goods on the agreed time, then the Supplier shall be entitled to charge a reasonable fee for redelivery of the Goods and/or the storage of the Goods.

8.5 The Client acknowledges and agrees that:
(a) the Supplier shall not be held responsible for any delay or failure by the Supplier to perform or complete an Order as a result of or arising from, directly or indirectly, an event beyond the reasonable control of the Supplier, including but not limited to, an act of God (natural disaster), industrial action, strikes, lockouts, epidemics, fire, war, government actions, commotion, riot, floods or inclement weather ("Force Majeure Event"); and
(b) on the occurrence of a Force Majeure Event, the Supplier shall not be deemed to be in breach or default of these terms and conditions and a Purchase Order or Credit Account Application (as relevant).

9. Title to the Goods and Insurances

9.1 Where these terms and conditions relate to the hiring of Goods by the Client from the Supplier, the Client acknowledges and accepts that:
(a) All title and ownership of the Goods are and will at all times remain the absolute property of the Supplier.
(b) To the extent that the Supplier owns any additions, replacements, attachments and improvements made to the Goods in accordance with this clause, the Supplier agrees to hire such additions, replacements, attachments and improvements to the Client in accordance with these terms and conditions.
(c) The Supplier shall be entitled to remove any addition, replacement, attachment and improvement made to the Goods, and the Supplier shall not be liable in relation to any loss or damage resulting out of or in connection with such removal.
(d) The Client acknowledges and accepts that:
(i) the Client is fully responsible for the safekeeping of the Goods and the Client shall indemnify, and keep indemnified, the Supplier for all direct and indirect loss, liability, cost or damage, howsoever caused, to the Goods, including as a result of theft; and
(ii) the Client shall keep the Supplier indemnified against all direct and indirect losses, liabilities, costs, or damages arising under or in connection with the Client's use of the Goods or the Supplier's use of the Goods in conjunction with the provision of Services to the Client during the hire period, including all actions, proceedings, claims, damages, costs and expenses arising under or in connection with any injury to persons, damage to property, whether or not arising from any negligence, failure or omission of the Client or any other persons.
(e) Throughout the term during which the Goods are hired, the Client must take out and maintain from a reputable insurer the following:
(i) insurance(s) covering loss or damage of Goods, including but not limited to third party damage, fire, theft and burglary and any such other potential areas of liabilities as relevant;
(ii) public liability insurance covering any loss, damage or injury to property arising out of or in connection with the Client's hiring of the Goods, including the use and installation of the Goods;
(iii) any such other insurance covering any potential areas of liability as relevant to the Client's business and purposes for hiring the Goods;
(iv) any such other insurance as reasonably directed by the Supplier to be taken out and maintained by the Client,
(each of the above, an "Insurance", and collectively, "Insurances").
(f) Each Insurance taken out by the Client under clause 9.1(e) must name the Supplier as insured parties and indemnify the Supplier in respect of the Client's hire and use of the Goods.
(g) The Client must provide to the Supplier upon request each certificate of currency of the Insurances and any such other documentation reasonably requested by the Supplier to verify that the Insurances are current and meet each Insurance requirement.
(h) The Client agrees that it shall not use the Goods nor permit the Goods to be used in such a manner as would cause an insurer to decline any Insurance claim.
(i) The Client agrees to return the Goods on the Completion Date.
(j) If the Client fails to return the Goods to the Supplier on the Completion Date, then the Supplier or the Supplier'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 Goods is situated and take possession of the Goods, without being responsible for any damage thereby caused. In this event, the Client is responsible for any direct or indirect losses that the Supplier

suffers or incurs arising out of or in connection with the Supplier taking possession of the Goods from the Client.

(k) The Client is not authorised to pledge the Supplier's credit for repairs to the Goods or to create a lien over the Goods in respect of any repairs.

9.2 Where these terms and conditions relate to an agreement for the purchase of the Goods:

(a) The Supplier and the Client agree that title and ownership of the Goods shall not pass until:
  (i) the Client has paid the Supplier all amounts owing to the Supplier; and
  (ii) the Client has met all of its other obligations to the Supplier.

(b) Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

(c) The Client further acknowledges and agrees that:
  (i) until ownership of the Goods passes to the Client in accordance with clause 9.2(a) that the Client is only a bailee of the Goods and:
    (A) the Client owes the Supplier the duties and liabilities of a bailee; and
    (B) the Client must return the Goods to the Supplier on request; and

  (ii) 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 the sale on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.
  (iii) the Client shall not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.
  (iv) The Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods without prejudice to any other rights and remedies subsisting under these terms and conditions or relevant laws. In such an event:
    (A) the Supplier shall not be liable to the Client for the tort of trespass, negligence or payment of any compensation to the Client or anyone claiming through the Client whatsoever;
    (B) the Client shall facilitate assistance to the Supplier in respect of any entry and enforcement action undertaken by the Supplier under this clause 9.2(c)(iv) of these terms and conditions; and
    (C) the Supplier is not required to provide notice of its intention to exercise its rights under this clause 9.2(c)(iv) of these terms and conditions;
    (D) the Client indemnifies, and shall keep indemnified, the Supplier against all direct and indirect losses, liabilities, costs or damages sustained by any person pursuant to a recovery of Goods pursuant to this clause 9.2(c)(iv).
  (v) the Supplier may recover possession of any Goods in transit whether or not Delivery has occurred.
  (vi) the Client shall not charge or grant an encumbrance over the Goods nor grant or otherwise give away any interest in the Goods while they remain the property of the Supplier.
  (vii) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

10. PPSA

10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

10.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:

(a) all Goods presently in the Client's possession and custody and after-acquired Goods supplied by the Supplier to the Client;

(b) all present and after-acquired property of the Client pursuant to the charge granted by it to the Supplier under clause 11.1.

10.3 The Client undertakes to:

(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to;
  (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  (ii) register any other document required to be registered by the PPSA; or
  (iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii) of these terms and conditions;

(b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;

(c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;

(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Supplier;

(e) immediately advise the Supplier of any material change in its business practices of selling Goods which would result in a change in the nature of proceedsderived from such sales.

10.4 The Supplier and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

10.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and132(4) of the PPSA.

10.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

10.7 Unless otherwise agreed to in writing by the Supplier, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

10.8 The Client must unconditionally ratify any actions taken by the Supplier under clauses 10.3 to 10.5.

10.9 Subject to any express provisions to the contrary (including those contained in this clause 10, nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

10.10 Only to the extent that the hire of the Goods exceeds a two (2) year hire period with the right of renewal shall clause 10 apply as a security agreement in the form of a PPS Lease in respect of Section 13 of the PPSA, in all other matters this clause 10 will apply generally for the purposes of the PPSA.

11. Security and Charge

11.1 To secure payment on the Goods supplied to the Client pursuant to any Order and any punctual payment of the Client's obligations to the Supplier at any time, the Client charges all of its rights, title and interest (whether joint or several) in any land, real estate, personal property or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

11.2 The Client indemnifies, and shall keep indemnified, the Supplier from and against all the Supplier's costs and disbursements, including legal costs from a solicitor, incurred under or in connection with the Supplier exercising its rights under this clause.

11.3 The Client acknowledges the charge granted by it in clause 11.1 and expressly consents to any caveat or mortgage being lodged by the Supplier against any land or real property owned by the Client, either now or in the future, to protect the Supplier's equitable interest arising out of this clause 11.

11.4 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's attorney/s to perform all necessary acts to give effect to the provisions of clauses 10 and 11 including, but not limited to, signing any document listed in clauses10.3(a) and/or any caveat registration on the Client's behalf.

12. Buyer Beware, Warranties Returns, and the CCA

12.1 To the fullest extent permitted by law, the Client acknowledges that:

(a) immediately upon Delivery, the Client acknowledges that it is responsible for inspecting the Goods and to notify the Supplier immediately in writing of any Damage to the Goods;

(b) upon Delivery and absent of any notification by the Client pursuant to clause 12.1(a), the Client is solely responsible for the quality, fitness for purpose and merchantability of the Goods; and

(c) other than in respect of any Goods that is the subject of a notification in clause 12.1(a), the Client will not be entitled to a refund of any payment and charges made by the Client for the purchase and Delivery of the Goods upon Delivery.

12.2 To the fullest extent permitted by law, including, but not limited to, the CCA:

(a) upon Delivery and absent of any notification by the Client pursuant to clause 12.1(a), the Goods are deemed to have been Delivered to and received by the Client free from any damage;

(b) upon Delivery and absent of any notification by the Client pursuant to clause 12.1(a), the Client assumes all risks in relation to the Goods and is responsible for any loss, damage or liability in relation to the Goods upon Delivery; and

(c) unless as otherwise contained expressly in this document, the Supplier excludes all other representations, warranties, guarantees or terms (whether express or implied) in respect of the Goods.

12.3 The Supplier acknowledges that:

(a) the Client has statutory rights under the laws, including, but not limited to, the rights contained in the CCA; and

(b) nothing in this document seeks to limit any right or remedy as may be available for or relied upon by the Client under any laws, including the CCA which cannot be limited.

12.4 If the Client is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.

12.5 If the Supplier is required to replace the Goods under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Client has paid for the Goods.

12.6 If the Client is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Goods is:

(a) limited to the value of any express warranty or warranty card provided to the Client by the Supplier at the Supplier's sole discretion;

(b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Goods;

(c) otherwise negated absolutely.

12.7 Subject to this clause 12, returns will only be accepted provided that:

(a) the Supplier has agreed that the Goods are defective or Damaged; and

(b) the Goods are returned immediately on inspection upon Delivery

(c) the Goods are returned at the Client's cost; and

(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

12.8 Notwithstanding clauses 12.1 to 12.5 but subject to the CCA, the Supplier shall not be liable for any defect or Damage which may be caused or partly caused by or arise as a result of:

(a) the Client failing to properly maintain or store the Goods;

(b) the Client using the Goods for any purpose other than that for which they were designed;

(c) the Client continuing the use of the Goods after any defect or Damage became apparent or should have become apparent to a reasonably prudent operator or user;

(d) the Client failing to follow any instructions or guidelines provided by the Supplier;

(e) fair wear and tear, any accident, or act of God.

12.9 Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.

13. Intellectual Property

13.1 Where the Supplier has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain theproperty of the Supplier. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.

13.2 The Client warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.

13.3 The Client agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Supplier has created for the Client.

14. Default and Consequences of Default

14.1 Interest on overdue invoices shall accrue daily, on basis of 365 days per year and calculated on basis of actual day(s) elapsed, from the date when payment becomes due until the date on which payment has been received by the Supplier in cleared funds, at the Interest Rate per annum.

14.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's contract default fee, and bank dishonour fees).

14.3 The terms of payment are strictly as noted on the date of the invoice provided by the Supplier to the Client. In the event that the Client does not pay for the goods or services supplied by the Supplier or on before the due date noted on the invoice, or as agreed in writing by the Supplier and the Client from time to time, the Supplier may through an external legal service provider, issue a written demand to the Client demanding payment within seven (7) days. In the event that a demand is issued, the Applicant must pay, in addition to the invoice sum, any legal costs incurred by the Supplier (inc GST), this being, the costs and disbursements incurred by the Supplier for having the demand issued. It is an essential term that the Client pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Client, including collection costs, debt recovery fees and legal costs on an indemnity basis.

14.4 Further to any other rights or remedies the Supplier may have under this contract, if a Client has made payment to the Supplier, and the transaction issubsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 14 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.

14.5 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:

(a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to make a payment when it falls due;

(b) the Client has exceeded any applicable credit limit provided by the Supplier;

(c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

14.6 The Client acknowledges and agrees that each of these terms and conditions is an essential term, and any breach of any of these terms and conditions by the Client shall entitle the Supplier to terminate an Order, these terms and conditions, and any other agreement between the Supplier and the Client by giving notice to the Client.

14.7 Where the Supplier terminates an Order, these terms and conditions, and any other agreement between the Supplier and the Client under clause 14.6, the Supplier shall not be liable for any loss, liability, damages, costs or expenses of the Client arising out of or in connection with the Supplier exercising its right to terminate under clause 14.6.

15. Cancellation

15.1 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Goods to the Client. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.

15.2 The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any money paid by the Client for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.

15.3 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits and any cost of materials, labour and other costs incurred by the Supplier).

16. Hire of Goods

16.1 Hire charges shall commence from the time the Goods leave the Supplier's premises and continue until the return of the Goods to the Supplier's premises, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

16.2 The Completion Date or otherwise the date upon which the Client advises of termination shall in all cases be treated as a full day's hire.

16.3 No allowance whatsoever can be made for time during which the Goods are not in use for any reason, unless the Supplier confirms special prior arrangements in writing. In the event of Goods breakdown provided the Client notifies the Supplier immediately, hiring charges will not be payable during the time the Goods are not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.

16.4 The Client shall:

(a) maintain the Goods as is required by the Supplier;
(b) notify the Supplier immediately by telephone of the full circumstances of any mechanical breakdown or accident. The Client is not absolved from the requirements to safeguard the Goods by giving such notification;
(c) be responsible to satisfy itself at commencement of the hire of the Goods that the Goods are suitable for its purposes;
(d) operate the Goods safely, strictly in accordance with the law, only for its intended use, and in accordance with any manufacturer's instruction whether supplied by the Supplier or posted on the Goods;
(e) ensure that all persons operating or erecting the Goods 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 Goods and shall provide evidence of the same to the Supplier upon request;
(f) comply with all occupational health and safety laws relating to the Goods and their operation;
(g) on termination of the hire, deliver the Goods complete with all parts and accessories, clean and in good order as delivered, fair wear and tear accepted, to the Supplier;
(h) keep the Goods in their own possession and control and shall not assign the benefit of the hire contract nor be entitled to lien over the Goods;
(i) not alter or make any additions to the Goods including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Goods or in any other manner interfere with the Goods;
(j) employ the Goods solely in its own work and shall not permit the Goods or any part thereof to be used by any other party for any other work;
(k) not exceed the recommended or legal load and capacity limits of the Goods;
(l) not use or carry any illegal, prohibited or dangerous substance in, or on, the Goods;
(m) not fix any of the Goods in such a manner as to make them legally a fixture forming part of any freehold;

16.5 Immediately on request by the Supplier (acting reasonably and only where warranted by the relevant circumstance), the Client will pay:

(a) the new list price of any Goods that are for whatever reason destroyed, written off or not returned to the Supplier;
(b) all costs incurred in cleaning the Goods;
(c) all costs of repairing any damage caused by the ordinary use of the Goods up to an amount equal to ten percent (10%) of the new list price of the Goods;
(d) the cost of repairing any damage to the Goods caused by the negligence of the Client or the Client's agent;
(e) the cost of repairing any damage to the Goods caused by vandalism, or (in the Supplier's reasonable opinion) in any way whatsoever other than by the ordinary use of the Goods by the Client;
(f) any lost hire fees the Supplier would have otherwise been entitled to for the Goods, under this, or any other hire agreement.

17. Sale of Goods

17.1 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.

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

17.3 If the Client requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.

17.4 In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Supplier as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that the Supplier has agreed to provide the Client with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 17.4.

17.5 The Client acknowledges that cancellation will not be permitted in circumstances where an Order has been placed by the Client for Goods made to the Client's specifications, or for non-stock list items.

18. Privacy Act 1988

18.1 The Client acknowledges and gives consent to 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, previous credit applications, credit history) about the Client in relation to credit provided by the Supplier.

18.2 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
(d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.

18.3 The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.

18.4 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 and/or Services; and/or
(b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods and/or Services;
(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.

18.5 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.

18.6 The information given to the CRB may include:
(a) personal information as outlined in 17.1 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).

18.7 The Client shall have the right to request in writing (by e-mail) from the Supplier:
(a) a copy of the information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect information; and
(b) that the Supplier does not disclose any personal information about the Client for the purpose of direct marketing.

18.8 The Supplier will destroy personal information upon the Client's request in writing (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.

18.9 The Client can make a privacy complaint by contacting the Supplier in writing 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 Office of the Australian Information Commissioner at www.oaic.gov.au

19. Unpaid Seller's Rights

19.1 Where the Client has left any item with the Supplier for repair, modification, exchange or for the Supplier to perform any other service in relation to the item and the Supplier has not received or been tendered the whole of any monies owing to it by the Client, the Supplier shall have, until all monies owing to the Supplier are paid:
(a) a lien on the item; and
(b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

19.2 The lien of the Supplier shall continue despite the commencement of proceedings, or judgment for any monies owing to the Supplier having been obtained against the Client.

20. Building and Construction Industry Security of Payments Act 1999

20.1 At the Supplier's sole discretion, if there are any disputes or claims for unpaid Goods then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.

20.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

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 Supplier has awareness of the Trust, the Client covenants with the Supplier 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 Supplier (not to be unreasonably withheld), 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.

22.2 If any provision under these terms and conditions shall become invalid, void, illegal or deemed unenforceable under the laws, then:
(a) that provision is severed from these terms and conditions to the extent necessary to remove the invalidity or illegality; and
(b) the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

22.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts of the New South Wales.

22.4 Subject to clause 12 the Supplier shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods hired).

22.5 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.

22.6 The Client cannot licence or assign without the written approval of the Supplier.

22.7 The Supplier 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 Supplier's sub- contractors without the authority of the Supplier.

22.8 The Client agrees that the Supplier may amend these terms and conditions by notifying 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 Supplier to provide Goods to the Client.

22.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the

reasonable control of either party.

22.10 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.

23. Guarantee and Indemnity

23.1 In consideration of the Supplier agreeing to supply Goods and/or Services to the Client, each Guarantor agrees to be bound by the obligations and responsibilities as set out in the Personal/Directors Guarantee and Indemnity Form.

23.2 Each Guarantor:

(a) unconditionally and irrevocably guarantees the performance of the Client's obligations under these terms and conditions and a Purchase Order or Credit Application Form (as relevant), including the obligation by the Client to make due and punctual payment to the Supplier any amount owing by the Client to the Supplier ("Guaranteed Monies");

(b) covenants to pay the Supplier on demand any amount owing by the Client to the Supplier the Guaranteed Monies; and

23.3 Where the Personal/Directors Guarantee and Indemnity Form is signed by more than one (1) Guarantor, each Guarantor acknowledges and accepts that it shall be held jointly and severally liable with all other Guarantors for the Guaranteed Monies.

23.4 Each Guarantor indemnifies, and shall keep indemnified, the Supplier, any receiver, or any other person appointed by the Supplier to act on the Supplier's behalf, against any direct or indirect losses, liabilities, damages, costs or expenses (including but not limited to legal costs) or taxes suffered or incurred out of or in connection with:

(a) the exercise or attempted exercise of any powers, rights, discretions or remedies as a result of any act or omission of the Client or the Guarantor;

(b) enforcing the Supplier's rights; or

(c) any breach of the Client;

(d) the Client's failure to perform, or delay in performing, any of the Client's obligations,

under these terms and conditions, a Purchase Order or Credit Account Application Form (as relevant), the Personal/Directors Guarantee and Indemnity Form and/or relevant laws.

23.5 To secure payment of all monies which may become payable to the Supplier by the Guarantor under this Guarantee and Indemnity, the Guarantor charges all of the Guarantor's interest (freehold and leasehold) in land and personal property held now or in the future. If a demand is made upon by the Supplier, the Guarantor will immediately execute a mortgage, or other instruments of security, or consent to the registration of a caveat, as requested by the Supplier. If a Guarantor fails to execute a mortgage, or other instruments of security, or consent to a caveat, within a reasonable time of bring so requested, the Guarantor irrevocably and by way of security appoints any credit manager or solicitor engaged by the Supplier to be our true and lawful attorney to execute and register such instruments. The Guarantor consents to any caveat being lodged against any land or real estate with the land registry in each and every state the Guarantor has land or real estate to protect the Supplier's interest under this Guarantee and Indemnity. The Guarantor waives all rights inconsistent with anything in this Guarantee and Indemnity.

Execution Page

If customer is an individual:

Signed, sealed and delivered by **(insert individuals name)** and witnessed:		
Name	**Capacity**	**Signature**
	Client	
	Witness	

If customer is a company:

Executed for and on behalf of_____Pty Ltd (ACN_____) In accordance with section 127 of the Corporations Act by:		
Name	**Capacity (Circle one)**	**Signature**
	Sole Director Director Secretary	
	Director Secretary	

Guarantor signature:

Signed, sealed and delivered by **(insert Guarantor's name)** and witnessed:		
Name	**Capacity**	**Signature**
	Guarantor	
	Witness	

Executed by **[Name]** as agent/authorised representative with express actual authority to sign for and on behalf of		
Name	**Capacity**	**Signature**
	Purchaser Manager Credit Manager	
Witness Name: Witness Address:	Witness	